



## Board of City Commissioners

The Board of City Commissioners is scheduled to meet on Tuesday, April 9, 2024, at 5:15 PM in the Tom Baker Meeting Room, City/County Office Building, 221 North Fifth Street, Bismarck, North Dakota.

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

The City of Bismarck encourages citizens to email their comments for public hearing items on the Bismarck City Commission agenda to [bismarckadmin@bismarcknd.gov](mailto:bismarckadmin@bismarcknd.gov). Please include the item number that your comment references. The comments will be sent to the members and placed with the minutes.

To ensure your comments are received before the meeting, please submit them by 3:30 PM on the day of the meeting and reference the item your comments address. If you would like to appear via video or audio link for a 3-5 minute comment on a regular agenda public hearing item, please provide your email address and contact information to the above email at least one business day before the meeting.

Live meeting coverage is available on Government Access Channels 2 & 602HD, Radio Access 102.5 FM Radio, or streaming on multiple platforms, including [FreeTV.org](https://www.freeTV.org) and [Facebook LIVE](https://www.facebook.com/bismarckndgov). Agenda items can be found online at [www.bismarcknd.gov/agendacenter](http://www.bismarcknd.gov/agendacenter).

Call to Order

### FUTURE COMMISSION MEETINGS

- April 9, 2024 & April 23, 2024
- May 14, 2024 & May 28, 2024
- June 11, 2024 & June 25, 2024

### MISSION STATEMENT

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

### MEETING OF THE BOARD OF CITY COMMISSION

1. Public comment (restricted to items on the Consent Agenda and Regular Agenda, excluding public hearing items)
2. CONSENT AGENDA
  - A. Consider approval of minutes

Documents:

[March 26, 2024 - Minutes.pdf](#)

B. Consider approval of personnel actions

Documents:

[HR Personnel Actions.pdf](#)

C. Consider approval of expenditures

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

1. Introduction of and call for a public hearing on a request to transfer the Class E: Sale at Retail of Beer Only from Mini Mart, Inc. (dba) Loaf 'N Jug #685 to Washington Bismarck ND, LLC. (dba) Brake Time, at 2835 North Washington Street.
2. Introduction of and call for a public hearing on a request for a new Class I-2: Complementary Alcohol License for Coco Nails & Spa, LLC (dba) Coco Nails & Spa at 820 43rd Avenue NE.

Documents:

[C\) ADMIN - Brake Time Alcohol License Application.pdf](#)

[C\) ADMIN - Coco Nails and Spa Alcohol License Application.pdf](#)

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

1. Permission to enter into a new extraterritorial area agreement (ETA) with Missouri Township to address actions in the existing agreement that are no longer current.
2. Introduction of and call for public hearing on Ordinance 6575, a request for zoning map amendment from the A – Agricultural zoning district to the Conditional MA – Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision.

Documents:

[C\) CD - Missouri Township ETA Agreement.pdf](#)

[C\) CD - Ord 6575.pdf](#)

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

1. Approval of a Memorandum of Understanding with Blue Jay

Transit USFM, LLC to operate standup electric scooter sharing within the City of Bismarck right of way.

2. Approval of revised Development Agreement with MBR Properties, LLC for Paradise Valley Additions.
3. Approval for Bismarck State College to close Schafer Street from Edwards Avenue to College Drive on Thursday, April 18, 2024, from 8:00 AM to 3:00 PM.
4. Approval of hanging banners on city-owned light poles adjacent to Bismarck Municipal Field.
5. Approval for Resolution to Close Street Improvement District SI 567.

Documents:

- [C\) ENG - Bird Scooters MOU.pdf](#)
- [C\) ENG - MBR Paradise Valley Development Agreement.pdf](#)
- [C\) ENG - BSC Community Event.pdf](#)
- [C\) ENG - Bismarck Larks Encroachment Agreement.pdf](#)
- [C\) ENG - SI 567.pdf](#)

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

1. Applications for abatement.

Documents:

- [C\) FIN - Abatements.pdf](#)

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

1. Permission to conduct the Annual Deer and Turkey Hunting Program on City properties.

Documents:

- [C\) PD - Annual Deer and Turkey Archery Hunting Program.pdf](#)

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

1. Award bid for the Roof Replacement for the Convention & Visitors Bureau to Wegner Roofing.
2. Award bid for Type BL LED Luminaires to Border States Industries, Inc.

Documents:

- C) [PW SO - CVB Roof Replacement.pdf](#)
- C) [PW SO - Type BL LED Luminaires Bid Award.pdf](#)

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

1. Approve all Service Operations and Utility Operations payment convenience fees and credit card processing fees to be paid by the customer.
2. Approval of Amendment No. 1 for Apex Engineering Task Order 4 for Hay Creek Interceptor Main to Divide.
3. Approval of bid award for Mandan Street water tower removal to Iseler Demolition Inc.
4. Approval to award bid for Water Treatment Plant Expansion GMP3A for the UPS replacement.
5. Approval of contracts with seven engineering consulting firms for operations and maintenance activities for Utility Operations.
6. Approval to finalize the purchase of property for future lift station.

Documents:

- C) [PW UO - Payment Convenience Fee and Credit Card Processing Fee.pdf](#)
- C) [PW UO - Amendment No. 1 for Apex Engineering Hay Creek Interceptor Main-Divide.pdf](#)
- C) [PW UO - Bid award for Mandan Street Water Tower Removal.pdf](#)
- C) [PW UO - Bid Award for WTP Expansion GMP3A-UPS Replacement.pdf](#)
- C) [PW UO - Engineering Contracts for Operations and Maintenance Activities.pdf](#)
- C) [PW UO - Land Purchase Agreement for Future Lift Station.pdf](#)

3. REGULAR AGENDA

A. Receive the annual report from the City of Bismarck Human Relations Committee.

Documents:

- [2023 Human Relations Committee Annual Report.pdf](#)

B. Public hearing, second reading, and approval of Ordinance 6574 to amend the 2023 budget ordinance.

Documents:

- R) [FIN - Ord 6574.pdf](#)

C. Consider the request for resolution receiving bids, ordering preparation of the Engineer's Statement and awarding contracts for City Concrete Contracts Parts A-1, A-2, and B.

Documents:

R) ENG - CC24, A1, A2, B.pdf

- D. Consider the request to receive bids and award contract for project 2024 Pavement Crack Sealing Project HC 167.

Documents:

R) ENG - HC 167.pdf

- E. Consider approval of development agreement and purchase agreement relating to 2712 Hamilton Street.

Documents:

R) ENG - Development Agreement and Sale of City Property - 2712 Hamilton St.pdf

- F. Discussion on next steps for the Bismarck Event Center.
- G. Consider the request to enter into Executive Session under North Dakota Century Code Section 44-04-19.2 regarding contract negotiation/negotiation strategy under NDCC Section 44-04-19.1 (9).

Documents:

R) ENG - Executive Session.pdf

#### 4. Other Business

Adjourn

Phone: 701-355-1300 | 221 North 5th Street | P.O. Box 5503 | Bismarck, ND 58501  
[www.bismarcknd.gov](http://www.bismarcknd.gov) | TDD 711 | An Equal Opportunity-Affirmative Action Employer





## MEETING OF THE BOARD OF CITY COMMISSIONERS

3/26/2024 - Minutes

### Call to Order

The Board of City Commissioners met on March 26, 2024, at 5:15 PM in the Tom Baker Meeting Room, City/County Office Building, 221 North Fifth Street, Bismarck, North Dakota. Commissioner Cleary, Commissioner Connelly, Commissioner Marquardt, Commissioner Zenker, and Mayor Schmitz were present.

### FUTURE COMMISSION MEETINGS

- April 9, 2024 & April 23, 2024
- May 14, 2024 & May 28, 2024
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### MISSION STATEMENT

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

### MEETING OF THE BOARD OF CITY COMMISSION

#### 1. Proclamations

1. Fair Housing Month Proclamation
2. National Public Safety Telecommunications Week

#### 2. Recognition of Bismarck Citizen Academy Participants

The City Commission recognized the 2024 Bismarck Citizen Academy participants and staff for participating in the City's Citizen Academy program.

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

Dustin Gawrylow, Wayne Munson, Trevor Vannett, and Susan Dingle addressed the Commission relating to item 5K.

#### 4. CONSENT AGENDA

Commissioner Zenker motioned to approve the consent agenda with the removal of items

4.F.2 and 4.E.2 for discussion and Cleary seconded. Upon a roll call vote, all voted aye. M/C.

Commissioner Zenker motioned to approve item 4.F.2. with the change to hours of operation beginning at 9:00 AM Friday, May 31, 2024, and ending at 11:00 PM Saturday, June 1, 2024, and Commissioner Connelly seconded. Upon a roll call vote, all voted aye. M/C.

After discussion highlighting the project, Commissioner Marquardt motioned to approve item 4.E.2 as presented, and Commissioner Zenker seconded. Upon a roll call vote, all voted aye. M/C.

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

Vouchers #: 1116755 to 1117012.

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

1. Change Order #2 to the Ostrom Painting and Sandblasting Inc. Contract dated October 19, 2023.
2. Northern Improvement Company (NIC) Change Order #15 Final to Snow Removal Equipment (SRE) Building Agreement.

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

1. Appointment to the Bismarck Planning and Zoning Commission.
2. Approval of a contract and scope of work for the Land Development Code.
3. Approval of a substantial amendment to the Community Development Block Grant (CDBG) 2019 Annual Action Plan.
4. Approval of amendments to the Community Development Block Grant (CDBG) Citizen Participation Plan.
5. Approval for the release of a 14-foot utility easement over the south 7 feet of Lot 5B and the north 7 feet of Lot 6, running 390 feet east and west, less the west 7-foot and east 10-foot perimeter easements in Edens Subdivision.
6. Permission to assign the City of Bismarck's rights and responsibilities related to the 2017 HOME funds provided for the Washington Court project to North Dakota Housing Finance Agency (NDHFA).

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

1. Encroachment and waiver agreement with Cape Boats, LLC for installation of a sign overhanging the right of way.
2. Cathedral of the Holy Spirit street closure request.
3. Request to receive bids and award Street Light and Traffic Signal Project SV 72.

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

1. Applications for Abatement.
2. Approval of parking web payment convenience fees and credit card processing fees to be paid by the motorist.
3. Consider the introduction of and call for a public hearing on Ordinance 6574 to amend the 2023 budget ordinance.
4. Approval of the 2023 budget carryovers into the 2024 budget.

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

1. Permission to purchase Fire Station Alerting Systems through Purvis Systems, Sourcewell Contract.

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

1. Permission to award the contract for 2024 Furnishing Paving Materials to Northern Improvement Company.
2. Permission to enter into an agreement for the Collection and Disposal of Hazardous Waste by Clean Harbors Environmental Services, Inc. and to increase landfill fees for the disposal of hazardous waste for non-residents and businesses/commercial to capture increased fees and administrative costs.
3. Permission to award the bid for Installation of Painted Pavement Markings for 2024 to Traffic Safety Services, Inc.
4. Permission to sell assets from various City Departments at Public Sale or Online Auction.

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

1. Change Order No. 3 to Swanberg Construction's Contract for Water Treatment Plant Filters 1-6 & 12 MGD Accelerator Project.

## 5. REGULAR AGENDA

- ~~A. Continued discussion and final decision regarding the final recommendation from the City Commission Fact-Finding Subcommittee relating to the performance issues of Charlie Jeske, Event Center Director, and recommendations regarding the appropriate actions to take to address any necessary employee discipline and changes to Event Center operations.~~
- B. Receive a presentation and recommendations on East Century Avenue reconstruction project and provide direction.

Todd Hummel and Brad Krogstad, with KLJ Engineering, presented information on the

East Century Avenue reconstruction project HC 165. Gabé Schell, the City Engineer, recommended supporting Alternative D from the design concepts and determining an appropriate funding source for the tie-in with the existing right-of-way for 52nd Street as part of the 2025 budget development process. Engineer Schell noted that the project is scheduled for the 2025 construction season.

Commissioner Zenker motioned to approve Alternate D with instruction to determine alternate funding sources for the 52nd Street extension and continue working with Bismarck Parks and Recreation District on shared-use path connections, and Commissioner Connelly seconded. Upon a roll call vote, all voted aye. M/C.

<https://bismarcknd.gov/DocumentCenter/View/46407/Item-5B---March-26-2024-PDF>

- C. Public hearing on a request for a new Class I-2: Complementary Alcohol license for COM Garden Center Inc. dba Plant Perfect at 4615 Ottawa Street.

Mayor Schmitz opened the public hearing. No member of the public appeared for comment.

Commissioner Zenker motioned to approve as presented, and Commissioner Cleary seconded. Upon a roll call vote, all voted aye. M/C.

- D. Public hearing on a request for a new Class I-2: Complementary Alcohol license for Le Beauty, LLC. dba Lux Nails at 3001 Yorktown Drive.

Mayor Schmitz opened the public hearing. No member of the public appeared for comment.

Commissioner Marquardt motioned to approve as presented, and Commissioner Cleary seconded. Upon a roll call vote, all voted aye. M/C.

- E. Public hearing on Ordinance 6573 to amend the zoning district from the R10 – Residential district to a Planned Unit Development (PUD) for McKenzie and Coffin's Second Addition and the request for approval of a minor subdivision final plat, titled McKenzie and Coffin's Second Addition.

Ben Ehreth, Community Development Director, presented information regarding Ordinance 6573 to amend the zoning district from the R10 – Residential district to a Planned Unit Development (PUD) for McKenzie and Coffin's Second Addition and the request for approval of a minor subdivision final plat, titled McKenzie and Coffin's Second Addition.

Mayor Schmitz opened the public hearing. Landon Niemiller, with Swenson Hagen & Company, addressed the Commission with questions about the design of the new multi-unit structure.

Commissioner Marquardt motioned to approve as presented, recognizing the contextual front yard setbacks as noted in the ordinance, and Commissioner Connelly seconded. Upon a roll call vote, all voted aye. M/C.

- F. Appeal of the February 28, 2024, decision of the Planning and Zoning Commission to deny a zoning change from the A – Agricultural zoning district to the Conditional MA –

Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision.

Ben Ehreth, Community Development Director, addressed the Commission regarding the appeal of the Planning and Zoning Commission's February 28, 2024, decision to deny a zoning change from the A—Agricultural zoning district to the Conditional MA—Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision. Jacob Barney, representing 5-Star Storage, and Attorney Bob Martin, representing the landowner, the Ward Family highlighted components of the development project and noted the future land use plan identifies this area as Industrial Flex which would allow for this type of land use.

The Commission discussed the existing land uses and the concerns shared by others.

Commissioner Connelly motioned to uphold the decision of the Planning and Zoning Commission, and Commissioner Zenker seconded for discussion. Upon a roll call vote, Commissioners Marquardt and Connelly voted aye. Commissioners Zenker, Cleary, and Mayor Schmitz voted nay. M/F.

Commissioner Zenker motioned to overturn the Planning and Zoning Commission's decision and follow the process outlined by Community Development Director Ehreth, which requires a public hearing, and Commissioner Cleary seconded. Upon a roll call vote, Commissioners Zenker, Cleary, Marquardt, and Mayor Schmitz voted aye. Commissioner Connelly voted nay. M/C.

- G. Consider the request to receive bids and award contract for Street Light and Traffic Signal Project SV 73.

Gabe Schell, City Engineer, provided information regarding the request to receive bids and award the contract for Street Light and Traffic Signal Project SV 73.

Commissioner Zenker motioned to approve the request for resolutions to receive bids, order preparation of the engineer's statement, and award parts 1, 2, 7, and 8 to Edling Electric for \$96,287.50 as presented, and Commissioner Cleary seconded. Upon a roll call vote, all voted aye. M/C.

<https://www.bismarcknd.gov/DocumentCenter/View/46405/Item-5G---March-26-2024-PDF>

- H. Consider the request to receive bids and award contract for Street Light and Traffic Signal Project SV 74.

Gabe Schell, City Engineer, provided information regarding the request to receive bids and award the contract for Street Light and Traffic Signal Project SV 74.

Commissioner Marquardt motioned to approve the request for resolutions to receive bids, order preparation of the engineer's statement, and award of contract for Street Light and Traffic Signal Project SV 74 to Edling Electric for \$146,405.00 as presented, and Commissioner Zenker seconded. Upon a roll call vote, all voted aye. M/C.

<https://www.bismarcknd.gov/DocumentCenter/View/46406/Item-5H---March-26-2024-PDF>

- I. Consider approval of the revised City Concrete (CC24) A-2 gap sidewalk project list.

Gabe Schell, City Engineer, provided information relating to the request for a resolution creating district Parts A-2 and B, Resolution Approving Plans and Specifications, and authorization to advertise and receive bids for City Concrete (CC24).

Commissioner Marquardt motioned to approve the revised City Concrete A-2 sidewalk gap project list as presented, and Commissioner Zenker seconded. Upon a roll call vote, all voted aye. M/C.

- J. Consider request to receive bids and award contract for Public Works Roofing Project.

Steve Salwei, Public Works Service Operations Director, addressed the Commission regarding the request to receive bids and award the contract for the Public Works Roofing Project.

Commissioner Zenker motioned to receive bids, select all alternates to include the base bid of \$1,374,801.00, Alternate #1 \$886,030.00, and Alternate #2 \$23,117.00, and award the contract to Tecta America as presented for the Public Works Roofing Project and Commissioner Connelly seconded. Upon a roll call vote, all voted aye. M/C.

- K. Consider the request from Commissioner Connelly to discuss the initiation of a Home Rule Charter Amendment to add an additional ½-cent sales, use, and gross receipts tax with the proceeds to be dedicated exclusively to public safety and public transportation needs.

Commissioner Connelly introduced Carl Young, a sponsor of the initiated 1/2-cent sales and use tax collection. Mr. Young presented background information and noted a similar group of individuals in Mandan successfully collected the adequate number of signatures to be placed on the June ballot in 2024. Mr. Young noted supporters in Bismarck have collected approximately 1,100 signatures, several hundred short of the 1,500+ signatures required to be placed on the June ballot in Bismarck. Mr. Young requested the Commission consider adding the Home Rule Charter Amendment to the June ballot so it would align with similar efforts in Mandan. Mr. Young noted that if the measure were to pass in both communities, the tax collections would begin simultaneously.

Mayor Schmitz expressed support for the concept but raised concerns about the potential North Dakota property tax initiative. He noted that if it is approved, municipalities would be forced to modify budgeting processes to supplement the loss of property tax collections.

The general consensus of the Commission is to encourage the sponsoring committee to continue collecting signatures, recognizing that the deadline for the November general election will be 60 days before the general election day.

<https://bismarcknd.gov/DocumentCenter/View/46394/Item-5K---March-26-2024-PDF>

## 6. Other Business

Adjourn

There being no further business to discuss, the meeting adjourned at 8:07 PM.

Phone: 701-355-1300 | 221 North 5th Street | P.O. Box 5503 | Bismarck, ND 58501  
[www.bismarcknd.gov](http://www.bismarcknd.gov) | TDD 711 | An Equal Opportunity-Affirmative Action Employer



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## PERSONNEL ACTIONS FOR THE MEETING ON April 9, 2024

### Full-Time and Part-Time Appointments

Lawler, Samantha Engineering Intern	CenCom	Probationary Appointment @\$24.55/hr 4/29/2024
Murphy, Joseph Engineering Intern	Engineering	PT Appointment @\$16.00/hr 4/29/2024
Krueger, Phyllis Concession Worker	Event Center	PT Appointment @\$14.00/hr 3/26/24
Puklich, Shelly Box Office Cashier I	Event Center	PT Appointment @14.00/hr 4/1/2024
Koelzer, Levi Systems Administrator	Finance-IT	Probationary Appointment @\$30.05/hr 3/25/24
Miller, Derek Systems Administrator	Finance-IT	Probationary Appointment @\$28.85/hr 4/1/24

### Separations

Kroll, Craig Systems Administrator	Finance-IT	Terminated 3/15/2024
Ripple, Logan Firefighter	Fire	Resigned 3/16/2024
Wetzstein, Rachelle Deputy Court Clerk	Municipal Court	Terminated 3/26/2024
Dalo, Fulgence Police Officer	Police	Resigned 3/15/2024
Olheiser, Jakob Police Officer	Police	Resigned 3/14/2024
Oliver, Shawn Heavy Equip. Operator	PW – Services	Resigned 3/20/2024
Schriock, Wako Heavy Equip. Operator	PW – Services	Retired 3/15/2024

Vollmer, Shane  
Heavy Equip. Operator

PW – Services

Resigned  
3/28/2024

**Others**

Ronning, Susan  
Senior Accountant

Finance/Fiscal

Promotion  
@\$38.61/hr 03/31/2024

Anderson, Brett  
Master Police Officer

Police

Acting Lt.  
3/28/2024

Van Neste Joseph  
Police Officer

Police

Paid Admin Leave  
3/21/2024-3/22/2024

Van Neste Joseph  
Police Officer

Police

Light Duty  
3/25/2024

Tishmack, Cole  
Heavy Equip. Operator

PW – Services

G/L Change  
3/17/2024

Kaseman, Daniel  
Heavy Equip. Operator

PW – Services

G/L Change  
3/17/2024



## Administration Department

**DATE:** April 9, 2024

**FROM:** Jason Tomanek, City Administrator

**ITEM:** Application to transfer Class E: Retail Beer License

**REQUEST:**

Introduction of and call for a public hearing on a request to transfer the Class E: Sale at Retail of Beer Only from Mini Mart, Inc. (dba) Loaf 'N Jug #685 to Washington Bismarck ND, LLC. (dba) Brake Time, at 2835 North Washington Street.

**BACKGROUND INFORMATION:**

Washington Bismarck ND, LLC. (dba) Brake Time is requesting the transfer of Class E: Sale at Retail of Beer Only at 2835 North Washington Street from Mini Mart, Inc. (dba) Loaf 'N Jug #685.

**Class E**

To any applicant for the sale at retail of beer only. The total number of Class E licenses issued in any year may not exceed sixteen plus one additional license for each 2,500 people in excess of 60,000 people, as shown by the most recent official estimated census. New Class E licenses or Class E licenses revoked or not renewed may be issued only pursuant to section 5-01-06.

**RECOMMENDED CITY COMMISSION ACTION:**

Staff recommends approval of the Introduction of and call for a public hearing on a request to transfer the Class E: Sale at Retail of Beer Only from Mini Mart, Inc. (dba) Loaf 'N Jug #685 to Washington Bismarck ND, LLC. (dba) Brake Time, at 2835 North Washington Street, with the public hearing scheduled for Tuesday, April 23, 2024.

Staff also recommends approval of the transfer of the Class E license.

**STAFF CONTACT INFORMATION:**

Whitnie Olsen, Senior Administrative Assistant, [wolsen@bismarcknd.gov](mailto:wolsen@bismarcknd.gov)

**ATTACHMENTS:**

1. Brake Time Application\_Redacted
2. Applicant - Transfer Form
3. Owner - Transfer Form
4. Site Diagram





## APPLICATION FOR RETAIL ALCOHOL BEVERAGE LICENSE

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

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

LAST REVISED: 2/6/2024

<b>License Type:</b>				
	<input type="checkbox"/> New Application	<input type="checkbox"/> Renewal	<input checked="" type="checkbox"/> Transfer	<input type="checkbox"/> Relocation
Class A: Nationally Organized Fraternal Order or Club <span style="float: right;"><input type="checkbox"/> \$3,700</span>	Class B-1: Operator of the Beverage Concession at the Airport Terminal Building <span style="float: right;"><input type="checkbox"/> \$650</span>	Class B-2: Concession at the Bismarck Municipal Country Club <span style="float: right;"><input type="checkbox"/> \$650</span>	Class B-3: Commercial passenger vessels on the Missouri River <span style="float: right;"><input type="checkbox"/> \$650</span>	Class B-4: Sale of Beer & Wine at the Bismarck Event Center <span style="float: right;"><input type="checkbox"/> \$650</span>
Class B-5: Sale of Beer & Wine at Bismarck Parks and Recreation Locations <span style="float: right;"><input type="checkbox"/> \$650</span>	Class B-6 : Commercial Airline <span style="float: right;"><input type="checkbox"/> \$650</span>	Class C-1: Hotel or Motel Full Service <span style="float: right;"><input type="checkbox"/> \$3,800</span>	Class C-2: Hotel or Motel <span style="float: right;"><input type="checkbox"/> \$1,000</span>	Class D: Sale at Retail of Alcoholic Beverages <span style="float: right;"><input type="checkbox"/> \$4,100</span>
Class E: Sale at Retail of Beer Only <span style="float: right;"><input checked="" type="checkbox"/> \$800</span>	Class F-1: Restaurant - Alcoholic Beverages <span style="float: right;"><input type="checkbox"/> \$3,500</span>	Class F-2: Restaurant - Beer & Wine Only <span style="float: right;"><input type="checkbox"/> \$1,100</span>	Class G: Catered Retail Beer, Wine, & Liquor <span style="float: right;"><input type="checkbox"/> \$650</span>	Class H-1: Domestic Winery <span style="float: right;"><input type="checkbox"/> \$800</span>
Class H-2: Domestic Brewery <span style="float: right;"><input type="checkbox"/> \$800</span>	Class H-3: Domestic Distillery <span style="float: right;"><input type="checkbox"/> \$800</span>	Class I-1: Senior Living Community <span style="float: right;"><input type="checkbox"/> \$350</span>	Class I-2: Complimentary <span style="float: right;"><input type="checkbox"/> \$350</span>	

All Class F-1, F-2, & C-2 license holders shall file with the application for license renewal a copy of their report of food and alcoholic beverage amounts that they have filed with the State of North Dakota for their state alcohol permit for the immediately preceding calendar year prior to renewal. The Board of City Commissioners may, at its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the commission deems necessary.

<b>Location Information:</b>				
Legal Business Name: <b>Washington Bismarck ND LLC</b>			Date of Incorporation: <b>02/16/2024</b>	State Business ID Number:
Doing Business As (DBA) Name, if Applicable: <b>Brake Time</b>			If out of state corporation, is corporation registered in North Dakota? <span style="float: right;"><input type="checkbox"/> Yes <input type="checkbox"/> No</span>	
Location Address: <b>2835 N Washington St</b>	City: <b>Bismarck</b>	State: <b>ND</b>	Zip: <b>58501</b>	Phone Number: <b>(832) 539-8190</b>
Name and Title of Person Completing Form (must be the person listed in ownership information or manager):				

<b>Contact Information (Where correspondence is to be sent):</b>				
Primary Contact: <b>Muhammad Akhtar</b>		Phone Number: [REDACTED]	Email Address: [REDACTED]	
Mailing Address: <b>PO BOX 37329</b>		City: <b>Houston</b>	State: <b>TX</b>	Zip: <b>77237</b>

Manager's Name: <b>Terry Lee Barnes</b>		Date of Birth: [REDACTED]	Percentage of Ownership: <b>0.00%</b>	
Driver's License Number: [REDACTED]		State Issued: <b>ND</b>	Gender: <b>Male</b>	Race:
Home Address: <b>4905 Trenton Dr</b>		City: <b>Bismarck</b>	State: <b>ND</b>	Zip: <b>58503</b>
Occupation: <b>Manager</b>	Phone Number: [REDACTED]	Title: <b>Store Manager</b>	Email Address: [REDACTED]	

**List all officers or directors of corporation or partners and percentage of ownership:**

<b>Name:</b> Omar Bashir		Date of Birth: [REDACTED]	Percentage of Ownership: 10.00%
Driver's License Number: [REDACTED]	State Issued: TX	Gender: Male	Race: Asian
Home Address: [REDACTED]	City: Richmond	State: TX	Zip: 77404
Occupation: Entrepreneur	Phone Number: [REDACTED]	Title: Managing Member	Email Address: [REDACTED]

<b>Name:</b> Muhammad Akhtar		Date of Birth: [REDACTED]	Percentage of Ownership: 90.00%
Driver's License Number: [REDACTED]	State Issued: TX	Gender: Male	Race: Asian
Home Address: [REDACTED]	City: Sugar Land	State: TX	Zip: 77498
Occupation: Entrepreneur	Phone Number: [REDACTED]	Title: Managing Member	Email Address: [REDACTED]

<b>Name:</b>		Date of Birth:	Percentage of Ownership:
Driver's License Number:	State Issued:	Gender:	Race:
Home Address:	City:	State:	Zip:
Occupation:	Phone Number:	Title:	Email Address:

<b>Name:</b>		Date of Birth:	Percentage of Ownership:
Driver's License Number:	State Issued:	Gender:	Race:
Home Address:	City:	State:	Zip:
Occupation:	Phone Number:	Title:	Email Address:

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

<p>1. Are the manager and partners legal residents of the United States and the State of North Dakota, and are all officers or directors legal residents of the United States?</p> <p style="text-align: right;"><input checked="" type="checkbox"/> Yes      <input type="checkbox"/> No</p>	<p>If no, please explain:</p> <p>Yes, The Store Manager Mr. Terry Lee is legal resident of State of ND. Whereas, the owners are legal residents of the State of Texas.</p>
---	--

<p>2. Have any of the persons listed above been convicted of any crime within the past five years?</p> <p style="text-align: right;"><input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No</p>	<p>If yes, list all convictions and the dates, locations and sentence of disposition of each:</p>
---	---

<p>3. Does the building meet all state and local sanitation and safety requirements? <input checked="" type="checkbox"/> Yes      <input type="checkbox"/> No</p>
---

<p>4. Has applicant, or any of the persons listed above, within the past five years had any license to engage in sale of alcoholic beverages revoked or suspended?</p> <p style="text-align: right;"><input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No</p>	<p>If yes, please give details:</p>
---	-------------------------------------

<p>5. If a new application, has the applicant or any of the persons listed above engaged in the sale or transportation of alcoholic beverages previously?</p> <p style="text-align: right;"><input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No</p>	<p>If yes, please give details:</p>
--	-------------------------------------

<p>6. Has the applicant, or any of the persons listed above, within the past five years, had an application for any federal or state, or local license of any type rejected or denied?</p> <p style="text-align: right;"><input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No</p>	<p>If yes, please give details:</p>
---	-------------------------------------

<p>7. Is there any agreement or understanding, or proposed agreement or understanding to obtain the license for another, or to operate the business for another, or as an agent for another?</p> <p style="text-align: right;"><input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No</p>	<p>If yes, please give details:</p>
---	-------------------------------------

<p>8. Has the business been sold or leased, or is there any intention to sell or lease the business to another?</p> <p style="text-align: right;"><input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No</p>	<p>If yes, please give details:</p>
--	-------------------------------------

<p>9. Has the applicant, or any of the persons listed above, shown interest in whatsoever, directly or indirectly, any other licensed liquor establishment within or without the State of North Dakota?</p> <p style="text-align: right;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	<p>If yes, please give details:</p>
---	-------------------------------------

<p>10. Will the applicant, or any of the persons listed above, be engaged in any other business other than the sale of liquor under the license applied for?</p> <p style="text-align: right;"><input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No</p>	<p>If yes, please give details:</p>
---	-------------------------------------

<p>11. Have all property taxes and special assessments currently due been paid?</p> <p style="text-align: right;"><input checked="" type="checkbox"/> Yes      <input type="checkbox"/> No</p>	<p>If no, please give details:</p>
--	------------------------------------

**Signature:**

- I agree that I will not transfer or sell this license, if granted, without the prior approval of the governing body and in accordance with applicable ordinances.
  
- I also agree that should any of the information contained in this application change within the period of the license, if granted, that I will inform city officials immediately and furnish such details as may be requested by such officials concerning any such changes. I also agree that, should there be a change in ownership or management during the period of the license, prior approval of the Board of City Commissioners is required.
  
- I further agree that any misrepresentation, false statement or omission in this application shall be grounds for rejection of said application or for revocation or suspension of any license granted.

*A2 You*

3-19-24  
Date

Signature of Applicant

*Muhammad Akhtar*

Print Name / Title of Officer

**Liquor License Transfers (only use if license is being transferred):**

The Class E license owned by me is transferred to Applicant upon successful application.

*[Signature]*  
Signature of Current License Holder

*\* Notarized on Additional page*

NICHOLAS M. UNKOVIC  
Print Name

*A2 You*  
Signature of New Applicant

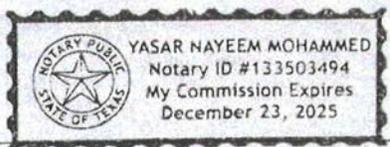
Muhammad Akhtar  
Print Name

Texas  
State of

Subscribed and sworn to before me this 19

Harris  
County of

day of March 2024



*[Signature]*  
Notary Public

My Commission Expires



### Alcoholic Beverages License Transfers

The following licenses may be transferred according to City Code 5-01-12. Licenses may be transferred with the prior approval of the Board of City Commissioners:

- **Class A** license may not be transferred to another person. It may be transferred to a new location only if the fraternal order or club is moved to that location.
- **Class B-1** license may not be transferred to another person or to a new location other than the airport terminal.
- **Class B-2** license may not be transferred to another person or to a new location other than the Municipal Country Club.
- **Class B-3** license may be transferred to another person only if that person has purchased or entered into an agreement to purchase the passenger vessel. It may not be transferred to a new location other than the passenger vessel and the location where the vessel docks and boards passengers.
- **Class B-4** license may not be transferred to a new entity or location.
- **Class B-5** license may not be transferred and may be held only by the person or entity holding the lease with the Bismarck Parks and Recreation District for the Riverwood or Tom O'Leary Golf Courses.
- **Class B-6** license may not be transferred to a new location or Entity.
- **Class C** license may be transferred to another person only if that person has purchased or entered into an agreement to purchase the hotel or motel. It may not be transferred to a new location.
- **Class D** license may be transferred to another person only with the prior approval of the board of city commissioners.
- **Class E** license may be transferred to another person only with the prior approval of the board of city commissioners.
- **Class F** license may be transferred to another person only if that person has purchased or entered into an agreement to purchase that establishment. It may not be transferred to a new location.
- **Class G** license may be transferred to another person or entity only if that person or entity has purchased or has entered into an agreement to purchase the catering business.
- **Class H** license may be transferred to another person only if that person has purchased or entered into an agreement to purchase that establishment. It may not be transferred to a new location except by the current owner.
- **Class I** license may be transferred to another person only if that person has purchased or entered into an agreement to purchase that establishment. It may not be transferred to a new location.

Notarized signatures of both parties are required for eligible license transfers.

STATE OF Texas

COUNTY OF Harris

On this 28 day of March, in the year 24 before me, personally appeared Mini Mart, Inc. DBA Loaf 'N Jug (Original license holder) and Washington Bismarck ND LLC (Transfer applicant) to acknowledge the transfer of a Class E alcoholic beverage license. The applicant agrees to abide by all rules of the license and the City of Bismarck Chapter 5-01 Alcoholic Beverages Code of Ordinances.

\_\_\_\_\_  
Original License Holder Signature

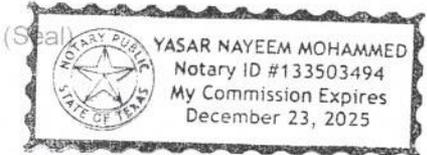
[Signature]  
\_\_\_\_\_  
Transfer Applicant Signature

\_\_\_\_\_  
Original License Holder Name Printed

Muhammad Akhtar - Managing Member  
\_\_\_\_\_  
Transfer Applicant Name Printed

\_\_\_\_\_  
Business Name

Washington Bismarck ND LLC DBA Brake Time  
\_\_\_\_\_  
Applicant Business Name



[Signature]  
\_\_\_\_\_  
Notary Signature / Date



## Alcoholic Beverages License Transfers

The following licenses may be transferred according to City Code 5-01-12. Licenses may be transferred with the prior approval of the Board of City Commissioners:

- **Class A** license may not be transferred to another person. It may be transferred to a new location only if the fraternal order or club is moved to that location.
- **Class B-1** license may not be transferred to another person or to a new location other than the airport terminal.
- **Class B-2** license may not be transferred to another person or to a new location other than the Municipal Country Club.
- **Class B-3** license may be transferred to another person only if that person has purchased or entered into an agreement to purchase the passenger vessel. It may not be transferred to a new location other than the passenger vessel and the location where the vessel docks and boards passengers.
- **Class B-4** license may not be transferred to a new entity or location.
- **Class B-5** license may not be transferred and may be held only by the person or entity holding the lease with the Bismarck Parks and Recreation District for the Riverwood or Tom O'Leary Golf Courses.
- **Class B-6** license may not be transferred to a new location or Entity.
- **Class C** license may be transferred to another person only if that person has purchased or entered into an agreement to purchase the hotel or motel. It may not be transferred to a new location.
- **Class D** license may be transferred to another person only with the prior approval of the board of city commissioners.
- **Class E** license may be transferred to another person only with the prior approval of the board of city commissioners.
- **Class F** license may be transferred to another person only if that person has purchased or entered into an agreement to purchase that establishment. It may not be transferred to a new location.
- **Class G** license may be transferred to another person or entity only if that person or entity has purchased or has entered into an agreement to purchase the catering business.
- **Class H** license may be transferred to another person only if that person has purchased or entered into an agreement to purchase that establishment. It may not be transferred to a new location except by the current owner.
- **Class I** license may be transferred to another person only if that person has purchased or entered into an agreement to purchase that establishment. It may not be transferred to a new location.

Notarized signatures of both parties are required for eligible license transfers.

STATE OF MASSACHUSETTS

COUNTY OF WORCESTER

On this 27TH day of MARCH, in the year 2024 before me, personally appeared

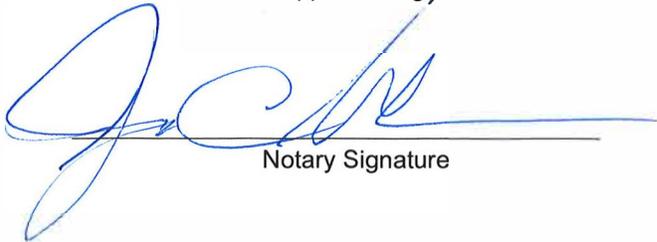
Mini Mart, Inc. d/b/a Loaf 'n Jug #685 (Original license holder) and Washington Bismarck ND LLC(Transfer applicant) to

acknowledge the transfer of a Class E alcoholic beverage license. The applicant agrees to abide by all rules of the license and the City of Bismarck Chapter 5-01 Alcoholic Beverages Code of Ordinances.

MINI MART, INC.  
D/B/A LOAF 'N JUG #685

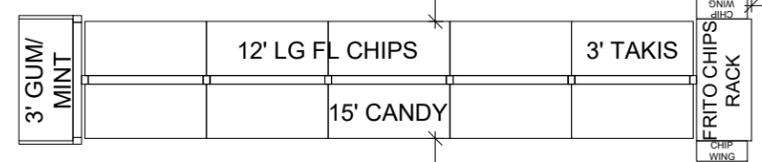
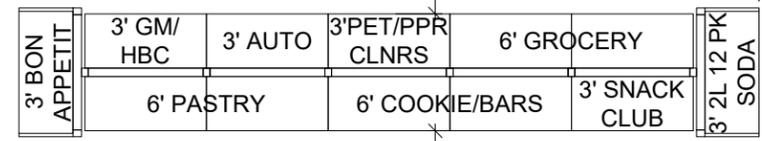
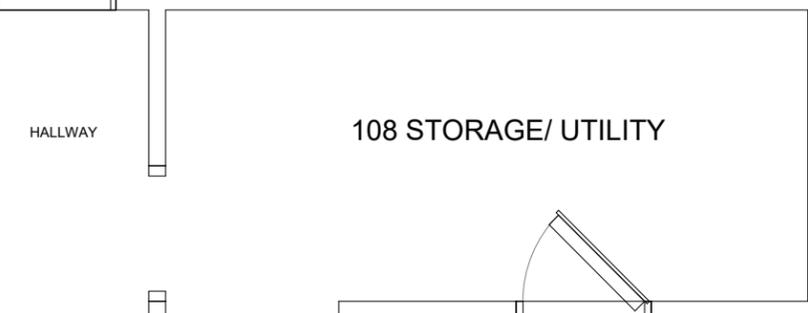
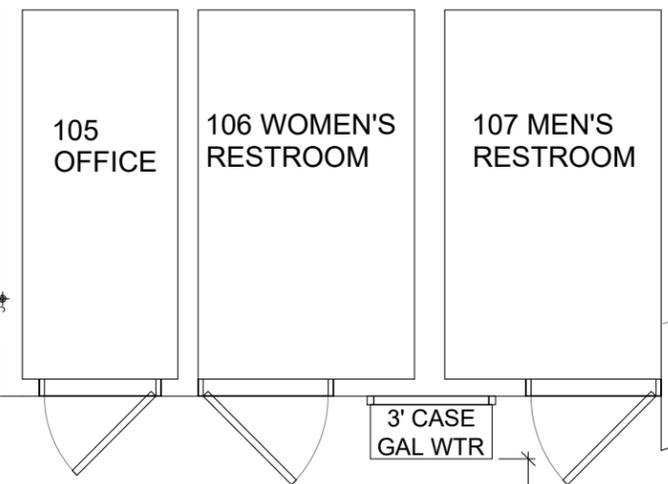
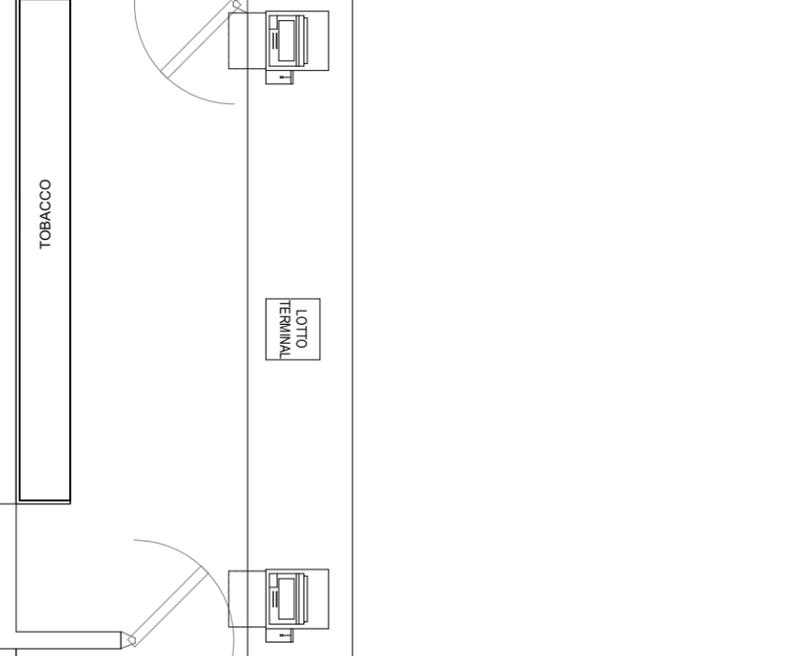
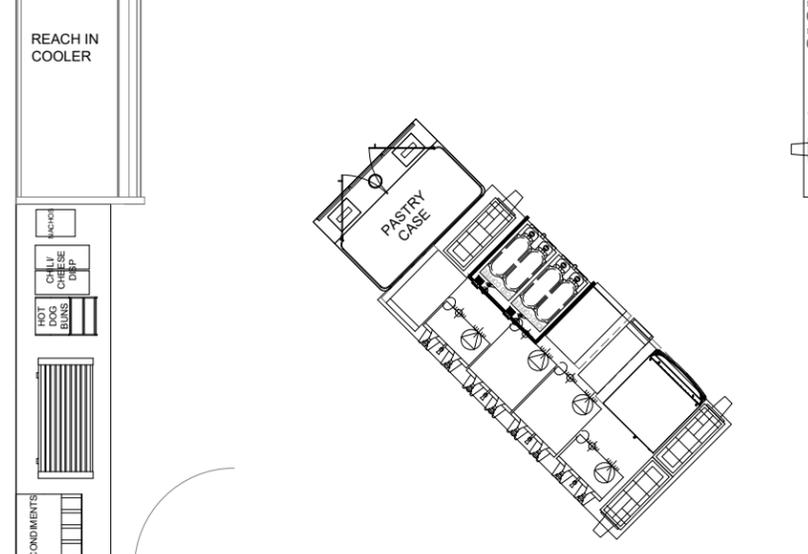
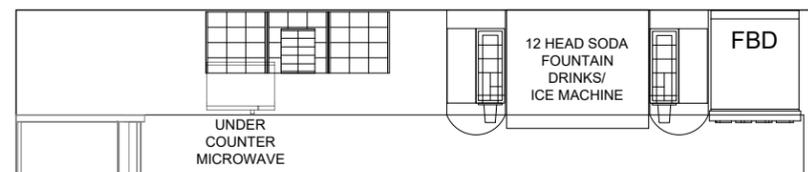
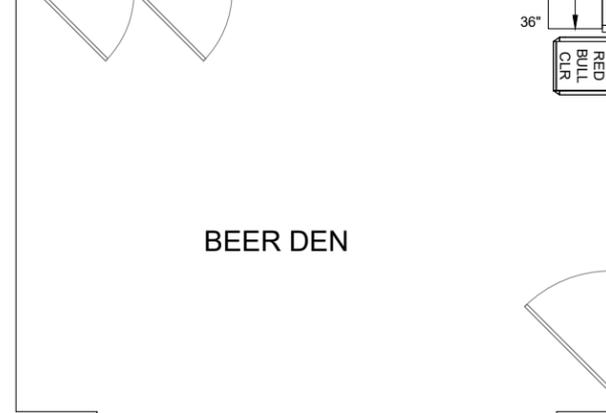
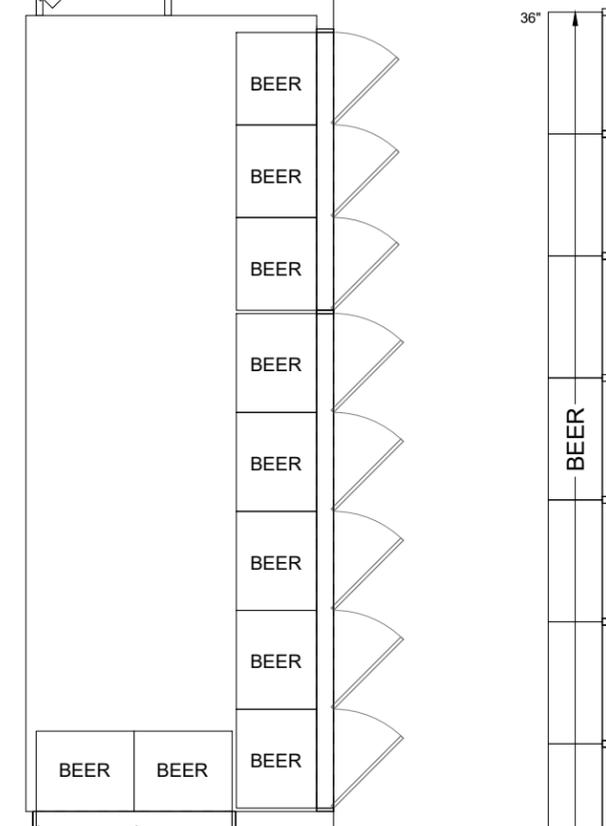
By:  Nicholas Unkovic, Secretary  
Original License Holder Signature

Transfer Applicant Signature

  
Notary Signature

 **JASON C. MELLO**  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires  
October 6, 2028

104 STORAGE



LOAF N JUG #750685  
 BISMARCK, ND - AS BUILT  
 MERCHANDISE PLAN 11/14/22





## Administration Department

**DATE:** April 9, 2024

**FROM:** Jason Tomanek, City Administrator

**ITEM:** Application for a new Class I-2: Complementary Alcohol License

**REQUEST:**

Introduction of and call for a public hearing on a request for a new Class I-2: Complementary Alcohol license for Coco Nails & Spa, LLC (dba) Coco Nails & Spa at 820 43rd Avenue NE.

**BACKGROUND INFORMATION:**

Coco Nails & Spa, LLC (dba) Coco Nails & Spa is requesting the issuance of a new Class I-2: Complementary Alcohol license at 820 43rd Avenue NE.

Class I-2. To an applicant for the complementary provision of “on-sale” only beer, wine, and liquor, subject to the following conditions:

- A. The applicant must be a business with a permanent location within the City of Bismarck.
- B. The dispensing of alcohol is only to customers on the licensed premises without any additional charge for the alcoholic beverage.
- C. The license is for “on-sale” only, and “off-sale” is not permitted. A cessation of business at a licensed location for a period of ninety days or longer shall constitute cause to revoke such license pursuant to Section 5-01-09.
- D. Once a license has been established at a particular location, the license may not be transferred to another location.
- E. A licensee may not obtain an event permit pursuant to Section 5-01-13 except on real property owned in the name of the licensee.
- F. The licensee must obtain and keep in effect off-premises alcohol liability insurance and provide the City proof of insurance with its license application.

**RECOMMENDED CITY COMMISSION ACTION:**

Staff recommends approval of the introduction of and call for a public hearing on the request for a new Class I-2, Complementary Alcohol, from Coco Nails & Spa, LLC (dba) Coco Nails & Spa at 820 43rd Avenue NE, with the public hearing scheduled for Tuesday, April 23, 2024.

Staff also recommends approval of the new Class I-2: Complementary Alcohol license.

**STAFF CONTACT INFORMATION:**

Whitnie Olsen, Senior Administrative Assistant, [wolsen@bismarcknd.gov](mailto:wolsen@bismarcknd.gov)

**ATTACHMENTS:**

1. Coco Nails and Spa Application

Print

Retail Alcohol Beverage License - Submission #22365

Date Submitted: 3/21/2024



License Information:

Application Type\*

New License Application

License Type\*

Please select the type(s) of license(s) you are applying for.

- Class A: Nationally Organized Fraternal Order or Club - \$3,700
- Class B-1: Operator of the Beverage Concession at the Airport Terminal Building - \$650
- Class B-2: Concession at the Bismarck Municipal Country Club - \$650
- Class B-3: Commercial passenger vessels on the Missouri River - \$650
- Class B-3: Commercial passenger vessels on the Missouri River - \$650
- Class B-4: Sale of Beer & Wine at the Bismarck Event Center - \$650
- Class B-5: Sale of Beer & Wine at Bismarck Parks and Recreation Locations - \$650
- Class B-6 : Commercial Airline - \$650
- Class C-1: Hotel or Motel Full Service - \$3,800
- Class C-2: Hotel or Motel - \$1,000
- Class D: Sale at Retail of Alcoholic Beverages - \$4,100
- Class E: Sale at Retail of Beer Only - \$800
- Class F-1: Restaurant - Alcoholic Beverages - \$3,500
- Class F-2: Restaurant - Beer & Wine Only - \$1,100
- Class G: Catered Retail Beer, Wine, & Liquor - \$650
- Class H-1: Domestic Winery - \$800
- Class H-2: Domestic Brewery - \$800
- Class H-3: Domestic Distillery - \$800
- Class I-1: Senior Living Community - \$350
- Class I-2: Complimentary - \$350

Location Information:

Legal Business Name:\*

Coco nails & Spa

Doing Business As (DBA) Name, if Applicable:\*

Coco Nails & Spa

**Date of Incorporation:\***

2-10-20

**State of ND Liquor License No.:**

**If out of state corporation, is corporation registered in North Dakota?**

- Yes
- No
- N/A

**Location Address:\***

820 43rd Ave

**City:\***

Bismarck

**State:\***

Nd

**Zip:\***

58503

**Phone No.:\***

701-805-6933

**Name and Title of Person Completing Form (must be the person listed in ownership information or manager):**

Randy Smid- owner

**Contact Information (Where correspondence is to be sent):**

**Primary Contact:\***

701-400-2691

**Email Address:\***

[Redacted]

**Mailing Address:\***

820 43rd Ave

**City:\***

Bismarck

**State:\***

ND

**Zip:\***

58503

**Phone No.:\***

[Redacted]

**Manager's Name:\***

Randy Smid

**Date of Birth:\***

[Redacted]

**Percentage of Ownership:\***

100

**Driver's License No.:**\*

[Redacted]

**State Issued:**\*

ND

**Gender:**

M

**Race:**

White

**Home Address:**\*

[Redacted]

**City:**\*

Bismarck

**State:**\*

ND

**Zip:**\*

58503

**Phone No.:**\*

[Redacted]

**Occupation:**\*

Nails

**Title:**\*

Owner

**Email Address:**\*

[Redacted]

**List all officers, directors, and stockholders of corporation and percentage of ownership:**

**Name:**\*

Randy Smid

**Date of Birth:**\*

[Redacted]

**Percentage of Ownership:**\*

100

**Driver's License No.:**\*

[Redacted]

**State Issued:**\*

ND

**Gender:**

M

**Race:**

**Home Address:**\*

[Redacted]

**City:**\*

Bismarck

**State:**\*

ND

**Zip:**\*

58503

**Phone No.:**\*

[Redacted]

**Occupation:\***

**Title:\***

**Email Address:**

Nails

Owner

[Redacted]

**Name:**

**Date of Birth:**

**Percentage of Ownership:**

**Driver's License No.:**

**State Issued:**

**Gender:**

**Race:**

**Home Address:**

**City:**

**State:**

**Zip:**

**Phone No.:**

**Occupation:**

**Title:**

**Email Address:**

**Name:**

**Date of Birth:**

**Percentage of Ownership:**

**Driver's License No.:**

**State Issued:**

**Gender:**

**Race:**

**Home Address:**

[Empty text box for Home Address]

**City:**

**State:**

**Zip:**

**Phone No.:**

[Empty text box for City]

[Empty text box for State]

[Empty text box for Zip]

[Empty text box for Phone No.]

**Occupation:**

**Title:**

**Email address:**

[Empty text box for Occupation]

[Empty text box for Title]

[Empty text box for Email address]

**Please submit all officers that will not fit on this form.**

No file chosen

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

**1. Are manager and partners legal residents of the United States and the State of North Dakota, and are all officers or directors legal residents of the United States?\***

- Yes
- No

**If no, please explain:**

[Empty text box for explanation]

**2. Have any of the persons listed above been convicted of any crime within the past five years? \***

- Yes
- No

**If yes, list all convictions and the dates, locations and sentence of disposition of each:**

[Empty text box for convictions]

**3. Does the building meet all state and local sanitation and safety requirements?\***

- Yes
- No

**4. Has applicant, or any of the persons listed above, within the past five years had any license to engage in sale of alcoholic beverages revoked or suspended? \***

- Yes
- No

**If yes please, give details:**

**5. If new application, have you ever engaged in the sale or transportation of alcoholic beverages previously?\***

- Yes
- No
- N/A

**If yes please, give details:**

**6. Has applicant, or any of the persons listed above, within the past five years, had an application for any federal or state or local license of any type rejected or denied? \***

- Yes
- No

**If yes please, give details:**

**7. Is there any agreement or understanding, or proposed agreement or understanding to obtain the license for another, or to operate the business for another, or as an agent for another?\***

- Yes
- No

**If yes please, give details:**

**8. Has the business been sold or leased, or is there any intention to sell or lease the business to another?\***

- Yes
- No

**If yes please, give details:**

**9. Has the applicant, or any of the persons listed above, shown interest in whatsoever, directly or indirectly, any other license liquor establishment within or without the State of North Dakota?\***

- Yes
- No

**If yes please, give details:**

**10. Will the applicant, or any of the persons listed above, be engaged in any other business other than the sale of liquor under the license applied for?\***

- Yes
- No

**If yes please, give details:**

**11. Have all property taxes and special assessments currently due been paid?\***

- Yes
- No

**If not please, explain why:**

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**Special Requirements:**

All Class F-1, F-2, C-2, & G license holders shall file with the application for license renewal a copy of their report of food and alcoholic beverage amounts that they have filed with the State of North Dakota for their state alcohol permit for the immediately preceding calendar year prior to renewal. The Board of City Commissioners may, at its discretion, require the licensee to provide such additional proof of the licensee's compliance with this section as the commission deems necessary.

**Upload Gross Food Sales Report:**

No file chosen

**Liquor License Site Diagram Requirements:**

- Site diagrams are to be submitted on a plain sheet of paper, 8½ x 11-inch size.
- The agency name shall be included on the diagram.
- The direction "North" shall be included on the diagram.
- The interior design of the licensed area shall be represented. This should include entrances, exits, interior doors, windows, tables, coolers, storage offices and room dividers.
- The diagram may be hand drawn, but it must be neat and reasonably accurate.
- If the licensed site is part of a larger complex such as a restaurant, areas such as mixing, serving and storage must be identified.

**Upload Site Diagram:\***

image.jpg

**Liquor License Transfers**

**Download Required Form for License Transfer:**

[Alcoholic Beverage License Transfer Form](#)

**Upload Notarized Alcoholic Beverage License Transfer Form**

No file chosen

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

I agree

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

I agree

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

I agree

**Signature of Applicant:\***

Randy Smid

//

**By checking this box I acknowledge that I am electronically signing this liquor license application.\***

**Date:\***

3/21/2024

Electronic Signature

---

**Payment Options:\***

Credit Card Authorization Form



**NOTE: This application must be accompanied by required fees.**

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

**Credit Card**

**Upload Credit Card Authorization Form**

[Credit Card Authorization Form](#)

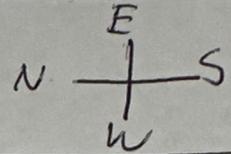
Choose File No file chosen

**Mail Payments To:**

City of Bismarck Administration, 221 North 5th Street, Bismarck, ND 58501

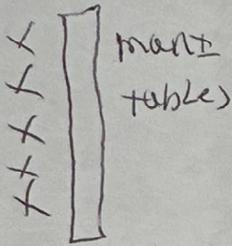
# COCO NAILS

Entrance

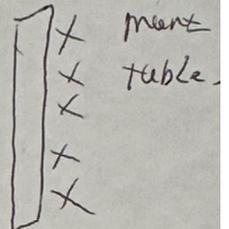


Front Desk

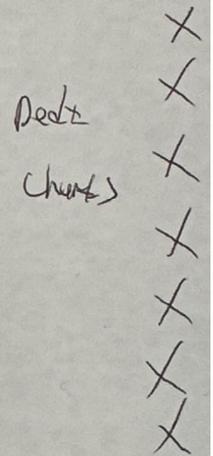
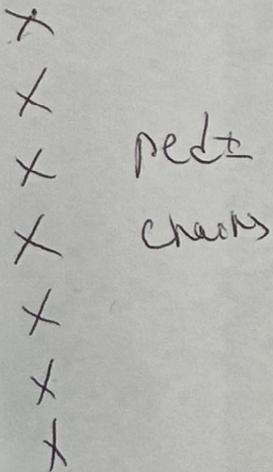
wall



wall



wall



Complimentary Area

sink

sink

Storage Area

Bath Room

Break Room

Exit



## Community Development Department

**DATE:** April 9, 2024

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

**ITEM:** Missouri Township and Bismarck Extraterritorial Jurisdiction Agreement – 2024

**REQUEST:**

The Community Development Department requests that the City of Bismarck enter into a new ETA agreement with Missouri Township to address actions in the existing agreement that are no longer current.

**BACKGROUND INFORMATION:**

North Dakota Century Code allows for cities to extend zoning, subdivision, building inspections, floodplain, and stormwater management authority into unincorporated areas within a certain distance of a city's corporate limits. The purpose of the ETA is to ensure the orderly outward expansion of North Dakota's communities. There are two options allowed by North Dakota Century Code for establishing an extraterritorial boundary. One option is population-based, and for communities of 25,000 or larger, the community has sole authority from the corporate limits to two miles out, and from two to four miles, there is joint authority between the city and the other jurisdiction. The second option allows for a negotiated boundary agreed upon by the city and the other jurisdictions, which would allow the city to retain all permitting authority within the negotiated ETA.

Bismarck presently utilizes a series of negotiated agreements between five different jurisdictions, including Missouri Township, Apple Creek Township, Naughton Township, the City of Lincoln, and Burleigh County. The majority of these agreements are 10 or more years old. There is no statutory requirement to update or amend these agreements, but updates or changes have historically been initiated by one of the jurisdictions involved in the agreement.

The Bismarck Together 2045 Plan recommended meeting periodically to determine if the agreements continue to be appropriate or if changes may be necessary. Additionally, the Bismarck-Burleigh Commission Committee directed staff to meet with all the jurisdictions involved in an ETA agreement with the City of Bismarck. Representatives from all the jurisdictions involved with an ETA agreement met in October 2023 to be informed of the existing agreements and discuss if any changes were necessary. Additionally, representatives agreed to meet on regular two-year intervals as a group to continue to evaluate the current ETA agreements.

No signed agreement with Missouri Township presently exists. The attached agreement was

signed by Missouri Township and reflects past and current practices regarding the administration of Bismarck's ETA in relation to Missouri Township.

Representatives from the City of Bismarck, Missouri Township, and Burleigh County met jointly to discuss proposed changes and all appeared in agreement. The new agreement was approved and signed by Missouri Township and is included as an attachment.

**RECOMMENDED CITY COMMISSION ACTION:**

Consider the request and adopt the proposed Missouri Township and City of Bismarck ETA agreement as reflected in the attached agreement.

**STAFF CONTACT INFORMATION:**

Ben Ehreth, Community Development Director, 701-355-1842, behreth@bismarcknd.gov

**ATTACHMENTS:**

1. Missouri Township Agreement
2. Missouri - Bismarck ETA Agreement Map

**MISSOURI TOWNSHIP AND CITY OF BISMARCK  
EXTRATERRITORIAL JURISDICTION AGREEMENT - 2024**

AGREEMENT between THE CITY OF BISMARCK, a Municipal Corporation, hereinafter referred to as "Bismarck", and MISSOURI TOWNSHIP, an organized township, hereinafter referred to as "Missouri".

WHEREAS, Section 40-47-01.1 North Dakota Century Code (NDCC), Section 40-48-18 NDCC, and Section 58-03-11 NDCC provide for the jurisdiction of Bismarck and Missouri over the zoning of land and generally provide: that Bismarck would have sole extraterritorial authority within two miles of its corporate limits in any direction, that Bismarck and Missouri would have joint jurisdiction with the area from two miles and four miles of Bismarck's corporate limits in any direction in Missouri Township; and that Missouri would have sole jurisdiction within the remainder of the township beyond four miles of Bismarck's corporate limits, and

WHEREAS, Title 14, Section 14-04-19 and Section 14-05-07 of the Code of Ordinances of the City of Bismarck further provide for the jurisdiction of Bismarck over the issuance of building permits and generally provide that Bismarck would have sole extraterritorial authority for such activities within four miles of its corporate limits in any direction in Missouri Township, and

WHEREAS Bismarck and Missouri wish to modify the extraterritorial boundary between the two political subdivisions, and

WHEREAS, Section 40-47-01.1 NDCC provides that political subdivisions may change their authority pursuant to a written agreement and that Bismarck and Missouri have reached such an agreement,

NOW THEREFORE, IT IS AGREED, between Bismarck and Missouri that Missouri shall have sole extraterritorial zoning and building permit jurisdiction within all of Missouri Township, as shown in Exhibit "A" attached hereto and by reference made a part hereof.

IT IS FURTHER AGREED that upon the written request of either party, the terms of the agreement shall be reviewed. Any amendments to the agreement shall be mutually approved by both parties.

IT IS FURTHER AGREED that the term of the agreement shall be for a period of five years from the date of approval of the last signature of a party noted below and shall automatically renew for successive five-year terms unless terminated in writing by notice to the other party at least six (6) months prior to the renewal date.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year written below.

BY: \_\_\_\_\_  
President, Board of City Commissioners

BY: Dan Welch  
Chair, Township Board of Supervisors

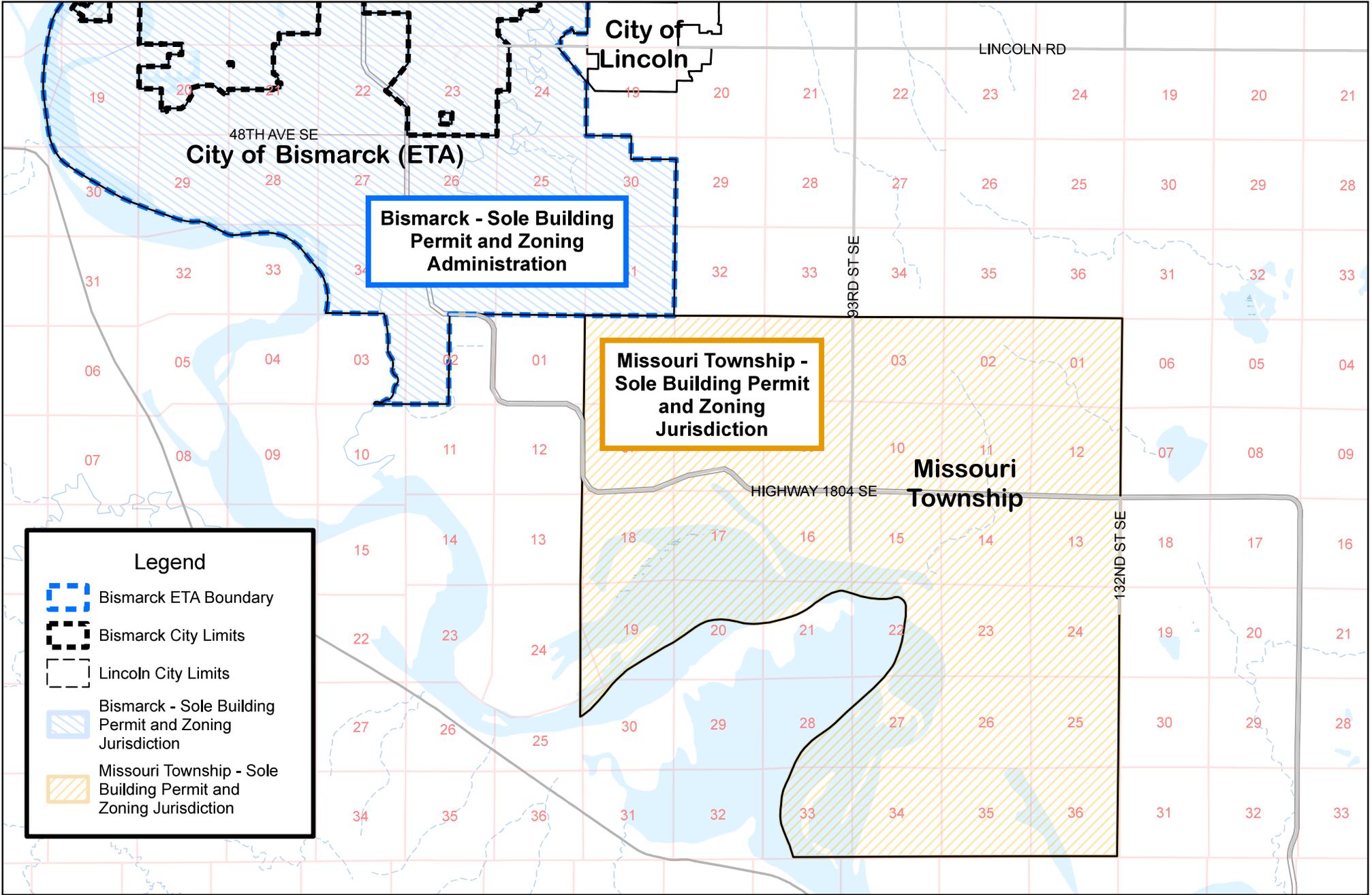
ATTEST: \_\_\_\_\_  
City Administrator

ATTEST: Lee Malard  
Township Secretary

DATE: \_\_\_\_\_

DATE: 3-19-24

# EXHIBIT A



**Legend**

- Bismarck ETA Boundary
- Bismarck City Limits
- Lincoln City Limits
- Bismarck - Sole Building Permit and Zoning Jurisdiction
- Missouri Township - Sole Building Permit and Zoning Jurisdiction

This map is for reference only and is not intended as a survey. No liability is assumed as to the accuracy of the data delineated hereon.





## Community Development Department

**DATE:** April 9, 2024

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

**ITEM:** Ordinance 6575

**REQUEST:**

Introduction of and call for public hearing on Ordinance 6575, a request for zoning map amendment from the A – Agricultural zoning district to the Conditional MA – Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision.

**BACKGROUND INFORMATION:**

Five Star Storage and Michael Ward are requesting a zoning map amendment from the A – Agricultural zoning district to the Conditional MA – Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision. The property is located northwest of Bismarck, north of 57th Avenue Northwest and west of North Washington Street, in the northwest quadrant of the intersection of Sonora Way and ND Highway 1804 Northwest.

Five Star Storage and Michael Ward appealed the February 28, 2024, Planning and Zoning Commission's decision to deny a zoning map amendment from the A – Agricultural zoning district to the Conditional MA – Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision, to the Bismarck City Commission at the March 26, 2024, meeting. At the meeting, the Bismarck City Commission voted to reverse the decision of the Planning and Zoning Commission. As part of the action on March 26, 2024, the City Commission asked for the zoning map amendment to be considered prior to a public hearing.

The attached staff report contains a complete review of the request, according to the Comprehensive Plan standards, city ordinances, and other relevant laws.

**RECOMMENDED CITY COMMISSION ACTION:**

Consider the request for Ordinance 6575 to amend zoning from the A – Agricultural zoning district to the Conditional MA – Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision, and call for a public hearing for the April 23, 2024, meeting.

**STAFF CONTACT INFORMATION:**

Ben Ehreth, Community Development Director, 701-355-1842, behreth@bismarcknd.gov

Daniel Nairn, Planning Manager, 701-355-1854, dnairn@bismarcknd.gov

Lauren Oster, Planner, 701-355-1846, laoster@bismarcknd.gov

**ATTACHMENTS:**

1. SR\_CapitalElec2nd\_ZC\_040924
2. Findings, Conclusions, Decision

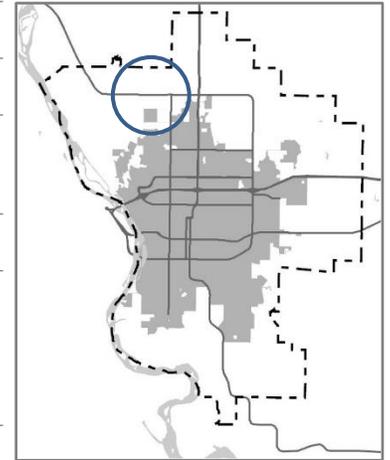
# STAFF REPORT

Application for: **Zoning Map Amendment**

Project ID: **ZC2023-013**

## Project Summary

<i>Title:</i>	Capital Electric Second Subdivision, Lot 2, Block 1
<i>Status:</i>	Board of City Commissioners – Consideration
<i>Property Owner(s):</i>	Michael Ward, Owner Five Star Storage, Applicant
<i>Project Contact:</i>	Jacob Barney, Five Star Storage
<i>Project Location:</i>	Northwest of Bismarck, north of 57th Avenue Northwest and west of North Washington Street, in the northwest quadrant of the intersection of Sonora Way and ND Highway 1804 Northwest
<i>Project Size:</i>	7.04 acres
<i>Applicant Request:</i>	Rezone to Conditional MA – Industrial to enable the use of a self-storage facility
<i>Staff Recommendation:</i>	Approve with conditions



## Site Information

<i>Existing Conditions</i>		<i>Proposed Conditions</i>	
<i>Lots/Blocks:</i>	1 Lot in 1 Block	<i>Lots/Blocks:</i>	1 Lot in 1 Block
<i>Land Use:</i>	Agriculture/Undeveloped	<i>Land Use:</i>	Conditional Light Industrial
<i>Future Land Use:</i>	Industrial Flex (IF)	<i>Future Land Use:</i>	Industrial Flex (IF)
<i>Zoning:</i>	A – Agricultural	<i>Zoning:</i>	Conditional MA – Industrial
<i>Uses Allowed:</i>	A – Agriculture	<i>Uses Allowed:</i>	Conditional MA – Light industrial, general commercial, warehouses, manufacturing and shop condos
<i>Max Density:</i>	A – 1 unit / 40 acres	<i>Max Density:</i>	Conditional MA – N/A

## Area Information

<i>Zoning Jurisdiction:</i>	Extraterritorial Area (ETA)
<i>Township:</i>	Hay Creek (organized)
<i>Neighborhood:</i>	Undefined

## Property History

<i>Zoned:</i>	10/1998
<i>Platted:</i>	04/05
<i>Annexed:</i>	N/A

(continued)

**Project Narrative**

Michael Ward and Five Star Storage are requesting approval of a zoning map amendment from the A – Agriculture zoning district to the Conditional MA – Industrial zoning district for Lot 2, Block 1, Capital Electric Second Subdivision. The applicant is proposing to develop the property to include a self-storage facility. The conditional MA – Industrial zoning would limit the use of the property to storage, as proposed.

The Planning and Zoning Commission considered this request on January 24, 2024. The Planning and Zoning Commission held a public hearing on

the zoning map amendment on February 28, 2024, and denied the request.

The applicant and owner appealed the Planning and Zoning Commission’s decision to the Bismarck City Commission at their March 26, 2024, meeting. The City Commission voted to reverse the decision of the Planning and Zoning Commission and asked that the zoning map amendment be considered prior to a public hearing. A copy of the findings, conclusions, and decisions from this appeal is attached.

**Project Context**

*Land uses adjacent to the project area are depicted on the adjacent map:*

*A Zoning and Plan Reference Map is attached to this staff report, including current zoning, the Future Land Use Plan, Major Street Plan, and Active Mobility Plan.*



The property has been identified as Industrial Flex (IF) in the Future Land Use Plan. The Industrial Flex (IF) areas are flexible employment centers for a range of businesses, primarily for smaller-scale industrial uses and offices. Goals and objectives of this plan as they relate to a zoning map amendment are referenced in review standards below.

Adjacent uses include agricultural uses to the north, west, and east, and residential uses to the south across ND Highway 1804 NW. A substation is located on the lot to the north of the proposed site.

The right-of-way for Sonora Way was granted when the property was platted in 2005; however, the street was never built to County

*(continued)*

Commercial/Industrial Subdivision Roadway standards as the substation to the north generated minimal traffic. Since the proposed self-storage facility will generate increased traffic to this area, Sonora Way will need to be built to the County Commercial/Industrial Subdivision standards at least to the entrance of the substation driveway. A gravel temporary cul-de-sac will also need to be constructed at the end of the street for turnaround purposes.

### Public Engagement

The public was duly notified of this request at the Planning and Zoning Commission level. A notice was published in the Bismarck Tribune on February 16 and February 23, and 30 letters were mailed to the owners of nearby properties on February 15, 2024.

Basic project information, with the ability to contact staff for more details, has been provided publicly online through the Community Development Activities map.

Two members of the public spoke at the Planning and Zoning Commission hearing. One written comment was received by staff prior to the public hearing on February 28, 2024, was distributed to the Planning and Zoning Commission, and summarized by staff during the oral presentation.

The signatory of the written public comment expressed concern about having storage units at that specific location. This comment was addressed by the applicant and the owner's consultant stating that this zoning map amendment and the development of storage units within this lot would follow the Bismarck's Future Land Use Plan.

Additional public engagement, in the form of publications in the Bismarck Tribune and letters to adjacent property owners, will commence if the Board of City Commissioners calls for a public hearing on this request. Any public comments received before the public hearing at the Board of

City Commissioners will be summarized by staff during the oral presentation.

### Review Standards and Findings of Fact

*The request is evaluated according to standards contained within the Comprehensive Plan, Bismarck Code of Ordinances, and relevant state law. Findings of fact, related to land use, are presented in response to each standard.*

*The Future Land Use Plan is adhered to with the proposed zoning map amendment ([Future Land Use Plan](#))*

**Yes.** The proposed zoning map amendment is within the area designated as Industrial Flex (IF) in the Future Land Use Plan, as described in the Project Context section above. The proposed zoning district would generally conform to the character of this district.

The applicant is aware of the Bismarck's Growth Phasing Plan and intends to annex into the city once city services are available. However, connection to city services is currently not feasible as the closest city service are half a mile from the property.

*The proposed amendment is compatible with adjacent land uses and zoning ([Goal S10-a](#), [S5-a](#))*

**Yes, with** certain conditions applied to this zoning district. Adjacent uses are described in the project context section above. The proposed conditional zoning district would allow self-storage. Certain conditions including design, aesthetic, and development standards applied to the proposed zoning would alleviate potential incompatibilities to adjacent land uses in the future. A densely landscaped 20-foot-wide buffer yard is required along the south and west sides of the lot. Example architectural renderings from another Five Star Storage site, showing examples of materials and potential landscaping, is attached. Additionally, an example electrical plan for

(continued)

another Five Star Storage site, showing how the site lighting is evaluated and contained within the property, is also attached. The proposed conditional zoning restricts more intensive uses, including, but not limited to:

- Retail Group B, which includes vehicle sales
- Service Group B, which includes motor vehicle repair garages
- Wholesale trade and distribution
- Hotel/Motel

With these conditions, development that may be anticipated from the proposed zoning would have no negative impact on the surrounding properties.

*A change in conditions or by an error in the zoning map has occurred since the previous zoning classification was established ([Goal S9-e](#))*

**Yes.** The current zoning district of A – Agricultural was established prior 1980. Conditions have changed since this time including the adoption of new comprehensive plans.

*Undue restriction of housing options or access to neighborhood amenities would not result from the proposed zoning map amendment ([Goal S1-a](#), [Goal T1-c](#))*

**Yes.** The proposed conditional zoning map amendment would not adversely impact housing opportunities in any way.

*The goals and objectives of Together 2045 Bismarck's Comprehensive Plan would be advanced by the proposed zoning ordinance text amendment ([Comprehensive Plan](#))*

**Yes.** The proposed conditional zoning map amendment would conform to the Industrial Flex (IF) designation as outlined in the Future Land Use Plan.

*The general intent and purpose of the zoning ordinance would be adhered to with the proposed zoning map amendment (Section 14-02-01; [NDCC 40-27-03](#))*

**Yes.** The proposed zoning map amendment would support the purpose of the zoning ordinance, as stated in the City Code of Ordinances and North Dakota Century Code.

*Proper administrative procedures related to the request are being followed (Section 14-07-02, [NDCC Chapter 40-47](#))*

**Yes.** All administrative procedures of the City Code of Ordinances and North Dakota Century Code have been followed to date. The applicant has submitted a complete application for a zoning map amendment, and the required staff review of all submitted materials has occurred prior to submittal of this report to the Planning and Zoning Commission.

*The public health, safety and general welfare will not be adversely impacted by the proposed zoning map amendment ([Goal S10-a](#))*

**Yes.** As a cumulative result of all findings contained in this staff report, City of Bismarck staff find that the proposed zoning map amendment would not adversely impact the public health, safety, and general welfare.

**Staff Recommendation**

Based on the above findings, staff recommends approval on the zoning map amendment from the A – Agriculture zoning district to the Conditional MA – Industrial zoning district, as outlined in the attached draft zoning ordinance, for Lot 2, Block 1, Capital Electric Second Subdivision with the following conditions:

1. Comply with all relevant design, aesthetic, and development standards.

**Attachments**

1. Draft Zoning Ordinance
  2. Zoning and Plan Reference Map
  3. Proposed Zoning Map
  4. Example Architectural Renderings from Another Five Star Storage Location
  5. Example Electrical Plan from Another Five Star Storage Location
  6. Appeal Findings, Conclusions, & Decisions
- 

*Staff report prepared by:* Lauren Oster, Planner

701-355-1846 | [laoster@bismarcknd.gov](mailto:laoster@bismarcknd.gov)

# **CITY OF BISMARCK**

## **ORDINANCE NO. 6575**

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

AN ORDINANCE TO AMEND AND RE-ENACT SECTION 14-03-02 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.), AS AMENDED, RELATING TO THE BOUNDARIES OF ZONING DISTRICTS.

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

Section 1. Amendment. Section 14-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota is hereby amended to read as follows:

The following described property shall be excluded from the A – Agricultural zoning district and included in the Conditional MA – Industrial zoning district:

Lot 2, Block 1, Capital Electric Second Subdivision

This Conditional MA - Industrial zoning district is subject to the following additional standards:

1. *Uses Permitted*. The following uses are permitted within this Conditional MA – Industrial zoning district:
  - a. Industrial group A, limited to storage buildings and warehouses, including rental and condo storage units.
  - b. Utility service group.

All other uses not included in this list shall be prohibited.

2. *Special Uses*. There are no uses allowed as special uses within this Conditional MA – Industrial zoning district.

3. *Dimensional Standards*.

- a. Lot Area. The minimum lot area is ten thousand (10,000) square feet.
- b. Lot Width. The minimum lot width is sixty (60) feet measured along the front building line.
- c. Lot Coverage. The maximum lot coverage for buildings and required parking is eighty (80) percent of the total lot area.
- d. Front Yard. The minimum front yard setback is fifty (50) feet from the property line adjacent to ND Highway 1804 and fifteen (15) feet from the property line adjacent to all other roadways.
- e. Side Yards. No side yards are required except where a lot adjoins a residential district.
- f. Rear Yard. The minimum rear yard setback is ten (10) feet.
- g. Height Limits. The maximum building height is seventy-five (75) feet.

#### 4. *Design and Aesthetic Standards.*

- a. Intent. It is the intent of the design standards to create and maintain a high visual quality and appearance for this development, encourage architectural creativity and diversity, to create a lessened visual impact upon the surrounding land uses and to stimulate and protect investment through the establishment of high standards with respect to materials, details, and appearance.
- b. Building Materials. All building facades shall be designed with finished materials, with primary building materials being limited to modular masonry materials such as brick, stone or dimensional block; precast concrete or aggregate panels; stucco or stucco-like materials; or prefinished metal architectural panels. All elevations, especially those facing a public right-of-way, must be visually pleasing and must not be exclusively covered in prefinished metal panels if this material is used.

The following building types and materials are expressly prohibited: wood as an exterior wall finish, except where used as an accent material and exposed, untextured, uncolored, unaugmented concrete.

All subsequent renovations, additions and related structures constructed after the construction of the original building shall be constructed of materials comparable to those used in the

original construction and shall be designed in a manner conforming to the original architectural design and general appearance.

- c. Enclosed Building Requirement. All production, processing, storage (excluding the storage of vehicles allowed over the WAPA easement), sales, display, or other business activity shall be conducted within a completely enclosed building.
- d. Outdoor Storage. Outdoor storage is only permitted for temporary vehicle storage within the WAPA easement area on the northern portion of the lot if agreed to by the utility entity. Continuous storage of vehicles involving 12 or more consecutive months without moving the vehicle(s) from the property is prohibited.

5. *Other Development Standards.*

- a. Buffer Yards. In addition to the requirements of Section 14-03-11, a 20-foot-wide buffer yard shall be provided along the south side, adjacent to ND Highway 1804 NW, and west side of the lot. Said buffer yard shall be densely planted in conjunction with site development with the minimum number, species and size of trees and shrubs required for a 20-foot buffer yard in the City's landscaping ordinance (2 shade trees, 4 ornamental trees, 3 large upright coniferous trees, 10 small upright coniferous trees and 14 shrubs).
- b. Lighting. Lighting at entrances, exits, and drive aisles between buildings is permitted provided that any associated glare does not create a public nuisance or traffic safety hazard. High-intensity lighting devices oriented outward, including but not limited to laser lights, strobe lights, searchlights, and beacons, are not permitted.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance area hereby repealed.

Section 3. Taking Effect. This ordinance shall take effect upon final passage, adoption and publication.



# Zoning and Plan Reference Map

ZC2023-013

CAPITAL ELECTRIC SECOND SUBDIVISION, L2, B1

## Zoning Districts

<b>A</b>	Agriculture
<b>RR</b>	Rural
	Residential
<b>R5</b>	Residential
<b>RMH</b>	Manufactured Home Residential
<b>R10</b>	Residential
<b>RM</b>	Residential Multifamily
<b>RT</b>	Residential (Offices)
<b>HM</b>	Health and Medical
<b>CA</b>	Commercial
<b>CG</b>	Commercial
<b>MA</b>	Industrial
<b>MB</b>	Industrial
<b>PUD</b>	Planned Unit Development
<b>DC</b>	Downtown Core
<b>DF</b>	Downtown Fringe

## Future Land Use Plan

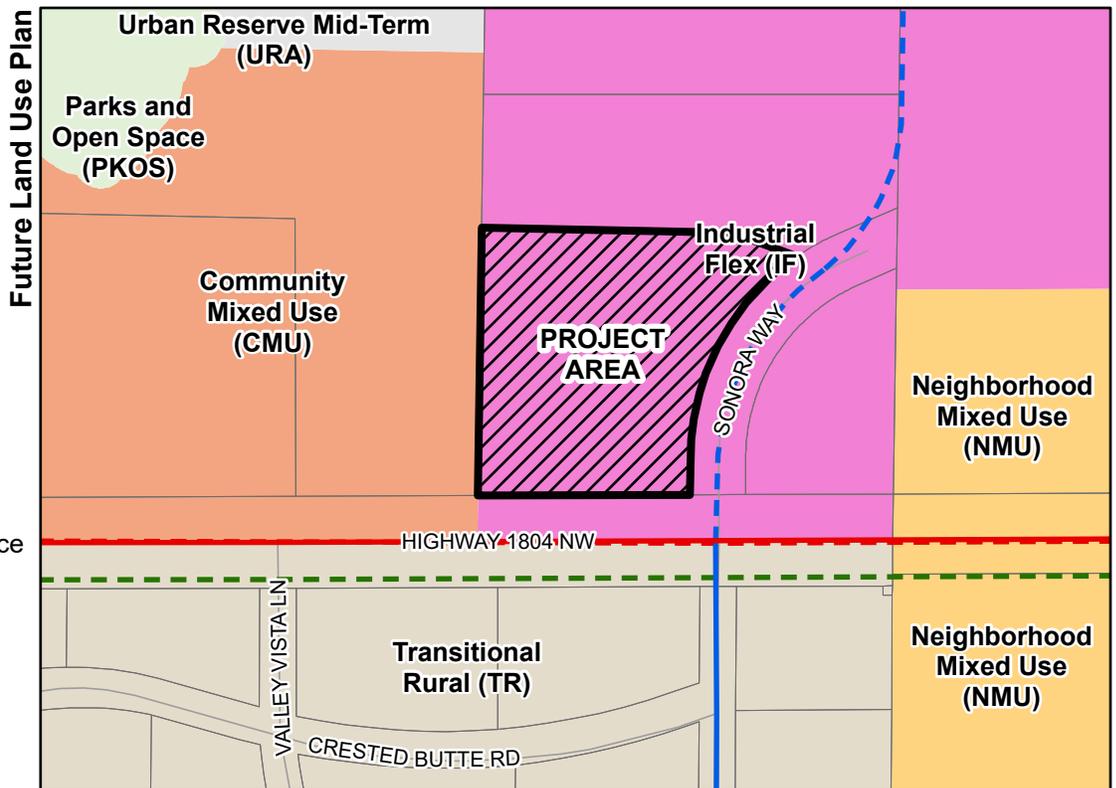
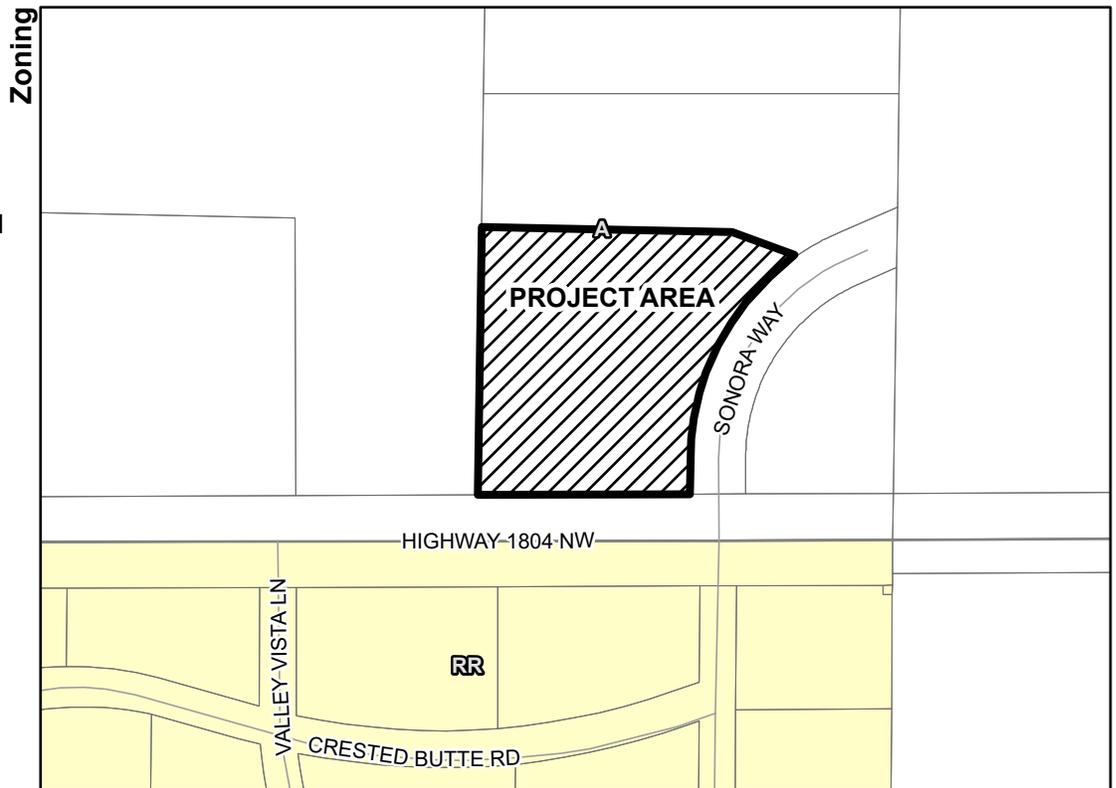
<b>UN</b>	Urban
<b>NMU</b>	Neighborhood Mixed Use
<b>CMU</b>	Community Mixed Use
<b>DMU</b>	Destination Mixed Use
<b>DT</b>	Downtown
<b>IND</b>	Industrial
<b>IF</b>	Industrial Flex
<b>IMU</b>	Industrial Mixed Use
<b>INS</b>	Institutional
<b>RR</b>	Rural
<b>TR</b>	Transitional Rural
<b>PKOS</b>	Parks/Open Space Urban Reserve
<b>URA/URB</b>	Mid/Long-Term

## Active Mobility Plan

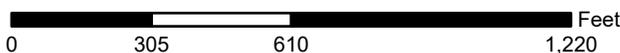
— Future Shared Trail

## Major Street Plan

- Existing Arterial
- - - Future Arterial
- Existing Collector
- - - Future Collector
- Existing Interstate
- - - Future Interstate



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



City of Bismarck  
Community Development  
Planning Division  
January 18, 2024



# Proposed Zoning Change

ZC2023-013

CAPITAL ELECTRIC SECOND SUBDIVISION, L2, B1

## Proposed New Zoning Map

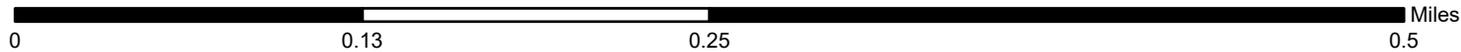
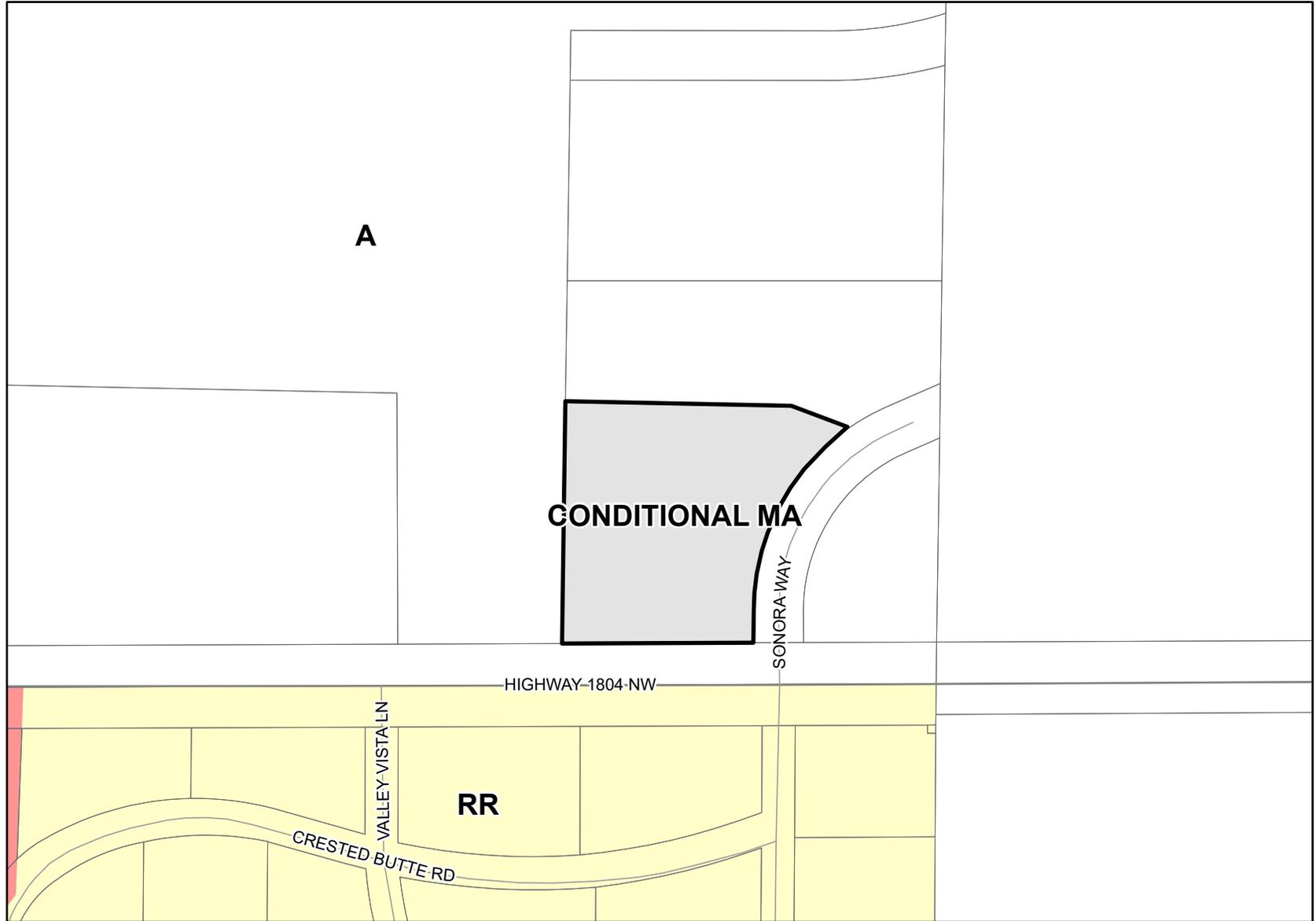
Project Area (zoning within is proposed)

City Limits

### Zoning Districts

- A** Agriculture
- RR** Rural Residential
- R5** Residential
- RMH** Manufactured Home Residential
- R10** Residential
- RM** Residential Multifamily
- RT** Residential (Offices)
- HM** Health and Medical
- CA** Commercial
- CG** Commercial
- MA** Industrial
- MB** Industrial
- PUD** Planned Unit Development
- DC** Downtown Core
- DF** Downtown Fringe

A "C-" prior to the district indicates that special conditions would apply to the zoning district



This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



City of Bismarck  
Community Development  
Planning Division  
January 18, 2024



FIVE STAR  
STORAGE



FIVESTAR  
STORAGE



FIVE STAR  
STORAGE





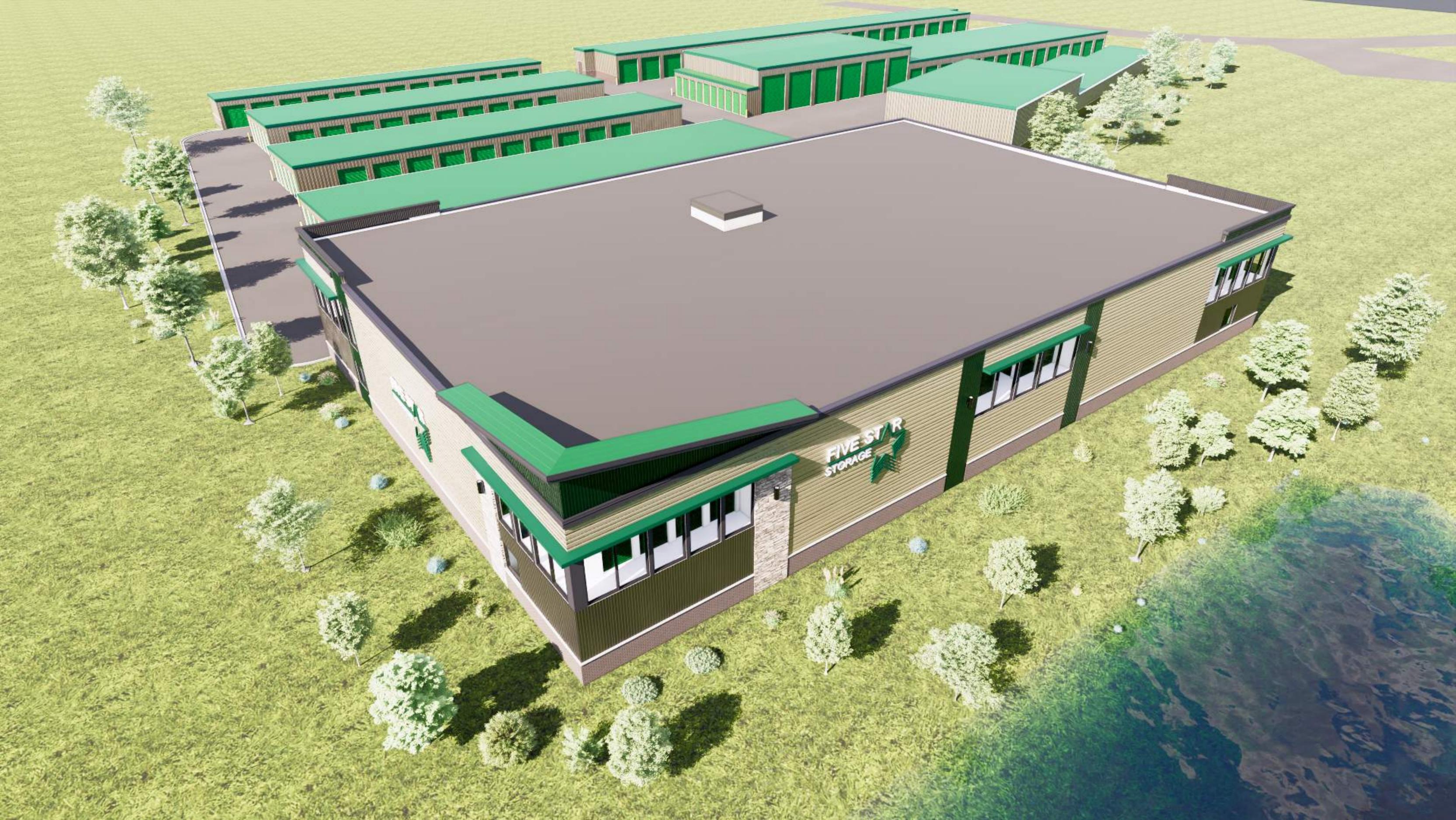
FIVE STAR  
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FIVE STAR  
STORAGE



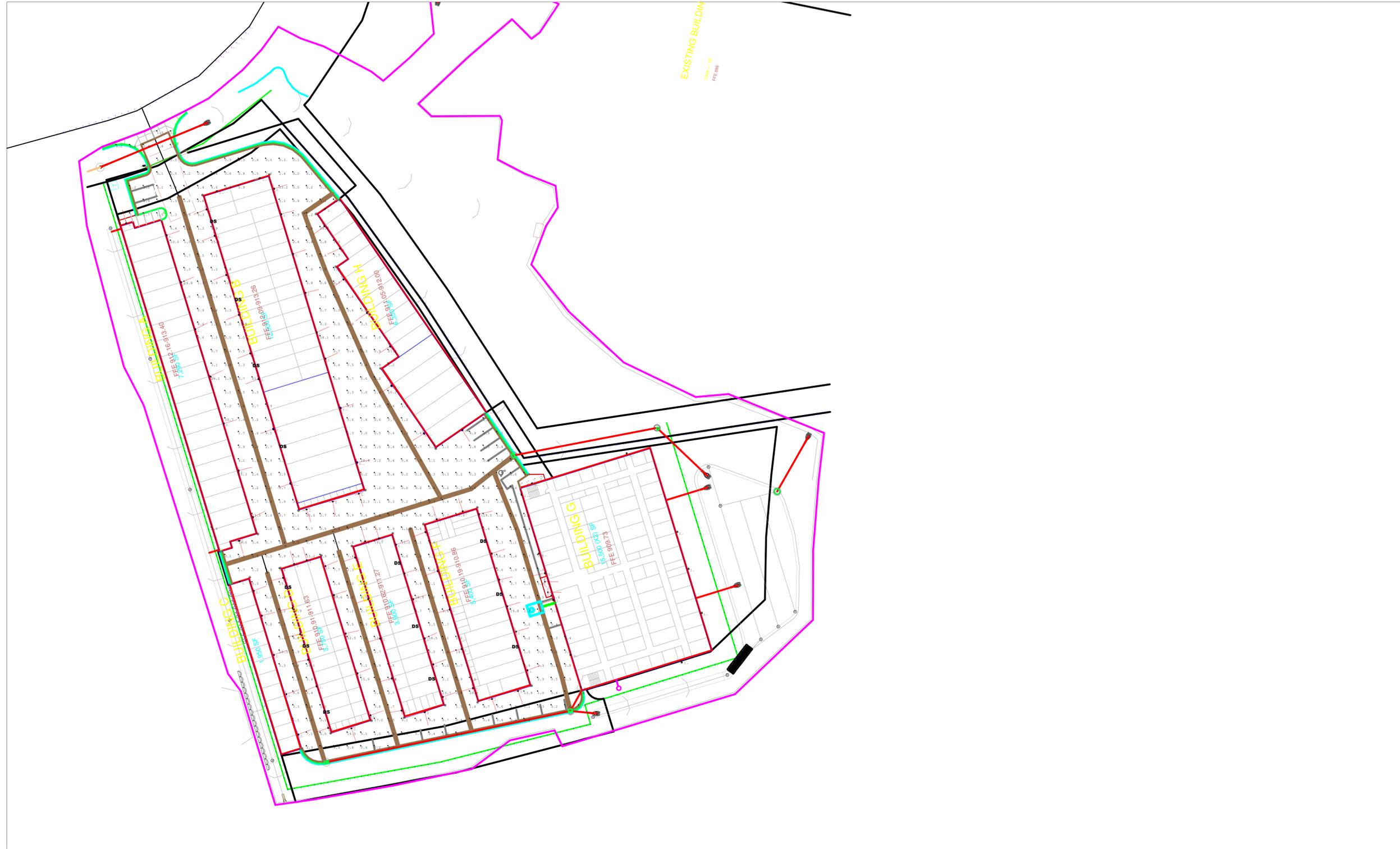


FIVE STAR  
STORAGE

Luminaire Schedule									
Symbol	Qty	Label	Arrangement	LLF	Description	Arr. Watts	Lum. Lumens	Mounting Height	
1	CC	Single	0.900	TGS ALPE2-S-L-C-4-U-FM-D ON 15FT SSS POLE ON A 2.5FT BASE	78.5	12345	17.5		
8	BB	Single	0.900	TGS CUDWR-0411-W-C-BK UP/DOWN CYLINDER	18.5	2307	9, 12, 16		
2	DD	Single	0.900	ELITE RL677-1000L-DIMTR-120-27K/30K/40K/50K-90-WH JBOX MOUNT	14.4	1244	9		
10	AA1	Single	0.900	OWP-FC-116-LED-1500L-2800L-4000L-DIM10-120-347V-30K-40K-50K(4000L)	31.294	3922	12.5, 14.5, 16.5		
82	AA	Single	0.900	OWP-FC-116-LED-1500L-2800L-4000L-DIM10-120-347V-30K-40K-50K(2800L)	19.31	2626	7, 8.5, 9, 12		

Calculation Summary									
Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min		
CALC POINTS GROUND	Illuminance	Fc	3.38	27.6	0.0	N.A.	N.A.		
centerline	Illuminance	Fc	0.17	0.5	0.0	N.A.	N.A.		
entrance typical wall pack	Illuminance	Fc	5.53	6.6	4.3	1.29	1.53		
MAIN ENTRANCE	Illuminance	Fc	10.67	13.0	9.0	1.19	1.44		
PROPERTY LINE	Illuminance	Fc	0.14	0.2	0.1	1.40	2.00		
PROPERTY LINE 1	Illuminance	Fc	0.10	0.1	0.1	1.00	1.00		
PROPERTY LINE 2	Illuminance	Fc	0.10	0.1	0.1	1.00	1.00		
PROPERTY LINE 3	Illuminance	Fc	0.10	0.1	0.1	1.00	1.00		
PROPERTY LINE 4	Illuminance	Fc	0.10	0.1	0.1	1.00	1.00		
PROPERTY LINE 5	Illuminance	Fc	0.13	0.2	0.1	1.30	2.00		

GENERAL NOTES:  
 A. PULSE PRODUCTS DOES NOT ASSUME RESPONSIBILITY FOR THE INTERPRETATION OF THIS CALCULATION OR COMPLIANCE TO THE LOCAL, STATE, OR FEDERAL LIGHTING CODES OR ORDINANCES.  
 B. LIGHTING LAYOUT IS NOT INTENDED FOR CONSTRUCTION DOCUMENTS BUT ONLY TO ILLUSTRATE THE PERFORMANCE OF THE PRODUCT.  
 C. ALL READINGS/CALCULATIONS SHOWN ARE SHOWN ON WORKPLANE OR FLOOR DEPENDING ON SPACE ACTIVITY.



Plan View  
 Scale: 1 inch= 35 Ft.

**BISMARCK BOARD OF CITY COMMISSIONERS**

IN THE MATTER OF THE )  
APPEAL OF FSS MANAGEMENT, LLC ) **FINDINGS, CONCLUSIONS & DECISION.**  
FIVE STAR STORAGE )

Re: Lot 2, Block 1, Capital Electric Second Subdivision

1. The Bismarck Board of City Commissioners considered the appeal of FSS Management, LLC DBA Five Star Storage (APPELLANT) from the Bismarck Board of Planning and Zoning Commission's denial of a zoning change from A – Agricultural zoning to the Conditional MA – Industrial zoning district. The hearing on the appeal was held on March 26, 2024, in the Tom Baker Meeting Room of the City/County building in Bismarck. Appellant appeared and presented testimony at the hearing. Ben Ehreth, Community Development Director, appeared and reported the action of the Bismarck Planning and Zoning Commission and informed the City Commission of the situation and explained the requirements of the zoning ordinance. Jacob Barney who is employed by the APPELLANT appeared and presented as well as the landowner Ward Farms' attorney Bob Martin. After all of the parties were given an opportunity to present evidence, the City Commission makes the following:

**FINDINGS OF FACT**

2. Appellant requested that the zoning designation of the property from the A – Agricultural zoning district to the Conditional MA – Industrial zoning district be made for Lot 2, Block 1, Capital Electric Second Subdivision.

3. According to the applicant, they requested the zoning map amendment to develop a self-storage facility. The property has been identified as Industrial Flex in the Future Land Use Plan. Staff recommended approval with conditions. Concerns raised by members of the public, both during the hearing and in the written comment, were related to the proposed storage use adjacent to rural residential areas and the increase in traffic to this area. Other concerns raised related to crime, incompatibility with current neighborhood character, and the additional distraction it would have to the traveling public, especially those experiencing the Lewis and Clark Trail along ND Highway 1804.

4. The Bismarck Planning and Zoning Commission, at their meeting of February 28, 2024, held a public hearing on the request and denied the request 5 to 3, noting that the proposed amendment is not compatible with adjacent land uses and zoning.

5. Appellant timely appealed.

6. At the hearing on the appeal, Community Development Director Ehreth presented the history of the matter. The APPELLANT indicated that the project meets the Future Land Use Plan, Comprehensive Plan and ordinances. They indicated that storage buildings are a use in the industrial flex designation. The area needs self-storage closer to their residences, and this project would be a good buffer between the residential uses and the power substation already in place. Traffic impacts would be lower with the storage units than another use in the industrial flex. The crime issue for storage units was when the units were kept in industrial areas away from people but now they see very little crime with the cameras and building closer to residential. Attorney Bob Martin, who represents Ward Farms who is the owner of the real property which APPELLANT intends to purchase, also spoke of the cooperation for the last two years while the comprehensive plan was finalized and how this property is part of a larger plan for the property that his client owns in that area.

### CONCLUSIONS OF LAW

7. That pursuant to City Ordinance 14-01-06, the hearing on an appeal of the Planning and Zoning Commission will only consider the question of whether or not to reverse the decision, introduce the ordinance, if necessary, and call for a public hearing on the zoning change ordinance. At the hearing, only the aggrieved applicant or their representative, a person entitled to receive mailed written notice of the application or an officer, department, board or bureau of the city may argue for or against the appeal. No new evidence may be presented and the review is limited to the record as received from the planning and zoning commission and the arguments at the hearing.

### DECISION

8. Based upon the findings and the conclusions, the Board of City Commissioners reverses the February 28, 2024, decision of the Bismarck Planning and Zoning Commission on the above property, introduces the ordinance and calls for a public hearing on the zoning change ordinance.

**Accordingly**, the Board of City Commissioners **REVERSES** the decision of the Bismarck Planning and Zoning Commission and **GRANTS** the relief requested in the appeal.





## Engineering Department

**DATE:** April 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** Bird Scooters - Memorandum of Understanding

**REQUEST:**

Consider approval of a Memorandum of Understanding with Blue Jay Transit USFM LLC to operate standup electric scooter sharing within the City of Bismarck right of way.

**BACKGROUND INFORMATION:**

Bird has operated a stand-up electric scooter rental program within Bismarck since 2021 under a series of annual Memorandum of Understandings (MOU) approved by the Board. Bird will operate under a new parent company, Blue Jay Transit USFM LLC, and has requested a new MOU so that they can provide scooter rentals in 2024. The 2024 agreement also includes automatic renewals but maintains the 30-day termination clause.

The scooters would operate on the street similar to a bicycle and would be enabled via a geofence to operate in specific areas within the community. When not in use, the scooters would be located within the public rights of way but would be stored outside of ADA pedestrian access routes.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve a Memorandum of Understanding with Blue Jay Transit USFM LLC to operate standup electric scooter sharing within the City of Bismarck right of way.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

1. Bismarck MOU 2024

## Memorandum of Understanding

City of Bismarck ("City"), a municipal corporation located 221 North 5<sup>th</sup> Street, Bismarck, North Dakota 58501 will permit Blue Jay Transit USFM LLC dba Bird ("Vendor"), a Delaware Corporation, located at 8605 Santa Monica Blvd. #20388, West Hollywood, CA 90069 to provide services under the following terms and limitations. This agreement shall remain in effect until December 31, 2024 and shall automatically renew for successive annual terms unless terminated by either party as set forth below.

### AGREEMENT

- 1) Scope: This Agreement and its terms apply to any proposed deployment of Stand-up electric scooter sharing systems within the City's jurisdictional boundaries. No person shall deploy a Stand-up electric scooter sharing system in the City in violation of this Agreement.
- 2) Stand-up electric scooters shall be governed by City Ordinance 12-09-41.
- 3) Vendor shall provide easily visible contact information, including toll-free phone number and/or e-mail address on each Stand-up electric scooter for members of the public to make relocation requests or to report other issues with devices. The number or e-mail address shall have a response time of not more than 3 hours of receiving notice between the hours of 7:00am and 7:00pm or within three hours the following day outside of those times.
- 4) Hours of operation: Stand-up electric scooters may operate 24 hours per day.
- 5) Vendor shall exercise care in deploying and activating the stand-up electric scooters during inclement weather and will remove from the public right of way and store off site all stand-up electric scooters during snow events and limited use. On days where snow is anticipated, Vendor will halt its operations completely and remove its scooters from City rights-of-way. Vendor agrees to hold the City harmless for damage to scooters caused by City's snow removal operations and for any damage caused to City vehicles by improper location and removal of scooters. Notwithstanding the above, Vendor shall coordinate within reason with the City regarding any request to alter operations due to weather conditions.
- 6) Vendor shall coordinate within reason with the City regarding geofenced areas of operations for the purpose of eliminating or reducing speed conflicts between the Stand-up electric scooters and other vehicles and pedestrians.
- 7) Vendor shall provide a minimum of 100 vehicles within the City.
- 8) Safety Education: Vendor will provide materials, videos, signage to promote safe riding and educate riders on rider responsibilities and encourage safe and courteous riding and parking.
- 9) Data sharing: Vendor will provide data to the City as necessary to assist with monitoring program usage.
- 10) Indemnification: Vendor agrees to indemnify, defend and hold harmless City (and City's employees, agents and affiliates) from and against all actions, damages or claims brought against City arising out of Vendor's negligence or willful misconduct, except that Vendor's indemnification obligation shall not extend to claims of City's (or City's employees', agents' or affiliates') negligence or willful misconduct. City expressly acknowledges that in no event shall Vendor be liable for any special, indirect, consequential or punitive damages. Vendor's

indemnification obligations shall survive for a period of three (3) years after expiration of this Agreement.

11) Insurance: Vendor shall provide additional insured status of the City with proof of insurance coverage exclusively for the operation of Stand-up electric scooters including: (a) Commercial General Liability insurance coverage with a limit of no less than \$2,000,000.00 each occurrence; (b) Automobile Insurance coverage with a limit of no less than \$2,000,000.00 each occurrence; and (c) where Vendor employs persons within the City, Workers' Compensation coverage of no less than the statutory requirement.

12) Notices: All notices and communications to the City from Vendor shall be made in writing (includes electronic communications) and sent to the address below.

13) Either party may terminate this agreement at any time and without cause upon (30) days prior written notice.

14) In carrying out their responsibilities, the parties shall remain independent contractors, and nothing herein shall be interpreted or intended to create a partnership, joint venture, employment, agency, franchise or other form of agreement or relationship.

15) The parties acknowledge that Vendor may utilize independent business logistics providers to facilitate local operations. Vendor's use of these logistics providers does not constitute a transfer or assignment of this Agreement, and Vendor remains responsible for all obligations and requirements under this Agreement.

16) This Agreement may be assigned by either party but only with the prior written consent of the other party.

17) Vendor shall provide the City of Bismarck contact information for a representative authorized to act on behalf of Vendor in fulfilling the terms and conditions of this agreement.

18) This agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

Signed By:

**City of Bismarck, North Dakota**

Signature: \_\_\_\_\_  
Print Name: Michael T Schmitz  
Title: President, Board of City Commissioners  
Email: mschmitz@bismarcknd.gov

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

**Blue Jay Transit USFM LLC dba Bird**

Signature: \_\_\_\_\_  
Print Name: Stewart Lyons  
Title: President  
Email: birdlegal@bird.co

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



## Engineering Department

**DATE:** April 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** BSC Community Event

**REQUEST:**

Consider approval for Bismarck State College to close Schafer St from Edwards Ave to College Dr on Thursday, April 18, 2024, from 8am - 3pm.

**BACKGROUND INFORMATION:**

Bismarck State College is having their end of the school year carnival. This road closure would allow some of the carnival activities to occur in the public right of way.

**RECOMMENDED CITY COMMISSION ACTION:**

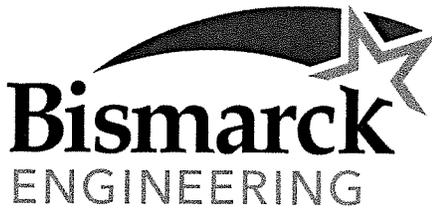
Approve request for Bismarck State College to close Schafer St from Edwards Ave to College Dr on Thursday, April 18, 2024, from 8am - 3pm.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

1. BSC Event Request



## Application for a Community Event in the Public Right of Way

The City Commission may grant permits for certain types of community events or festivals to take place upon the public streets, sidewalks, squares, avenues, or alleys of the City.

The sponsor of the event or festival shall submit to City Administration this completed application for a permit at least 45 days prior to the opening of the community event or festival. A completed application will be considered by the City Commission.

Name of Event: BSC 2024 Carnival

Sponsoring Individual/Organization: Bismarck State College

The purpose of the festival or event: Celebrate BSC Student Clubs + the final school days for all BSC students

The activities that will be held as part of the event: basketball, fake steer roping, cornhole, sports trivia, Famous Daves Food Truck, pizza giveaways,

Event Dates and times: April 18, 2024 10am - 2pm The MYX music

Street Closure Dates and Times: April 18, 2024 8am - 3pm

Reoccurring:  Annually  Monthly  Weekly

Benefiter: Commercial  Non-Profit Organization BSC

Event Manager/Coordinator Contact Information:

Name: Erin Schwalk

Address: 1425 Schafer St

Cell Phone: 701-224-5455

Amplified Music  (Environmental Health Permit Required)

Alcohol Served  (Police Department Permit Required)

Provide location map with layout on aerial photo of any street closures, on street parking utilization, impacts to sidewalks, and vendor spaces.

Food Vendors will not be permitted in the public right of way unless they registered with the event.



Final approval is required from Board of City Commissioners.

Once approval has been granted by the Board of City Commissioners the applicant will be required to provide:

- Proof of liability insurance. Coverages to be \$2 million per occurrence and \$500,000 per person and add city to the policy as an addition to the policy.
- Proof of food vendors being licensed and inspected by Environmental Health
- If alcohol is being served, a permit from the Police Department must be submitted.
- If amplified music is provided, a permit from Environmental Health Department for relief the from noise level designations must be submitted.

Failure to provide all the information request may result in the rejection of the application.

Any questions regarding this application should be directed to the Traffic Engineer.



Below is a copy of the Bismarck Code of City Ordinance for Community Events and Festivals:

## **Code of City Ordinance**

**10-05.1-03. Community Events and Festivals.** The City Commission may grant permits for certain types of community events or festivals to take place upon the public streets, sidewalks, squares, avenues, or alleys of the City.

1. The sponsor of the event or festival shall submit to City Administration a written application for a permit at least 45 days prior to the opening of the community event or festival for which a permit is desired. The application shall state:
  - a. The time, date and location of the festival or event. The applicant shall include a map of the proposed event showing the layout of booths, stalls or other attractions and including the specific location of any outdoor grilling activities;
  - b. The group, firm or individual by whom the festival or event will be sponsored;
  - c. The purpose of the festival or event;
  - d. The activities that will be held;
  - e. The streets requested to be closed. A drawing showing the requested street closures shall be included with the application.
2. A completed application will be considered by the City Commission.
3. In granting permits for community events and festivals, the City Commission shall consider the following:
  - a. The nature of the event or festival and how it can serve the community and its citizens;
  - b. The time period during which the event or festival will occur;
  - c. The location of the event or festival and whether the location inhibits the safe flow of traffic in the City;
  - d. Whether or not the location(s) proposed for cooking or grilling activities is appropriate considering area residents and businesses;
  - e. Whether the activities would be in compliance with other applicable laws;
  - f. Whether the event or festival is to benefit non-profit community service organizations. Commercial events or festivals which generate profit for the private sector, other than profit incidental to the festival or event which is made by persons other than the sponsor of the festival or event, shall be permitted only if the applicant submits evidence to the review committee that the event or festival constitutes a community service; and
  - g. The general health, safety and welfare of the participants in the event or festival and the citizens of the City.
  - h. The sponsor of the event or festival shall provide all cleaning services necessary to rid the festival area of all debris and litter created as a result of the event or festival.
  - i. The issuance of a permit to a sponsor shall authorize only that sponsor and participants specifically authorized by the sponsor to participate in that community event or festival without the restrictions imposed by this chapter.
  - j. Authorized participants in a community event or festival for which a permit has been issued shall not be required to obtain a city permit required by the provisions of this Chapter for the period during which the community event or festival takes place.





1500 Edwards Avenue  
PO Box 5587  
Bismarck, ND 58506-5587  
701.224.5400

Dear City of Bismarck,

Bismarck State College is requesting to shut down Schafer Street between College Drive and Edwards Ave on April 18, 2024, from 9:00 am – 3:00 pm for an End-of-Year Carnival. No alcohol will be served at this event.

Bismarck State College Campus Police will provide their own barricades and will move if an emergency arises. Campus Police will also notify Bismarck Fire Department, Bismarck Police Department, and Bismarck EMS 48 hours in advance about street closure date and time frame.

Bismarck State College will notify surrounding neighborhood regarding street closure out of courtesy.

Thank you,

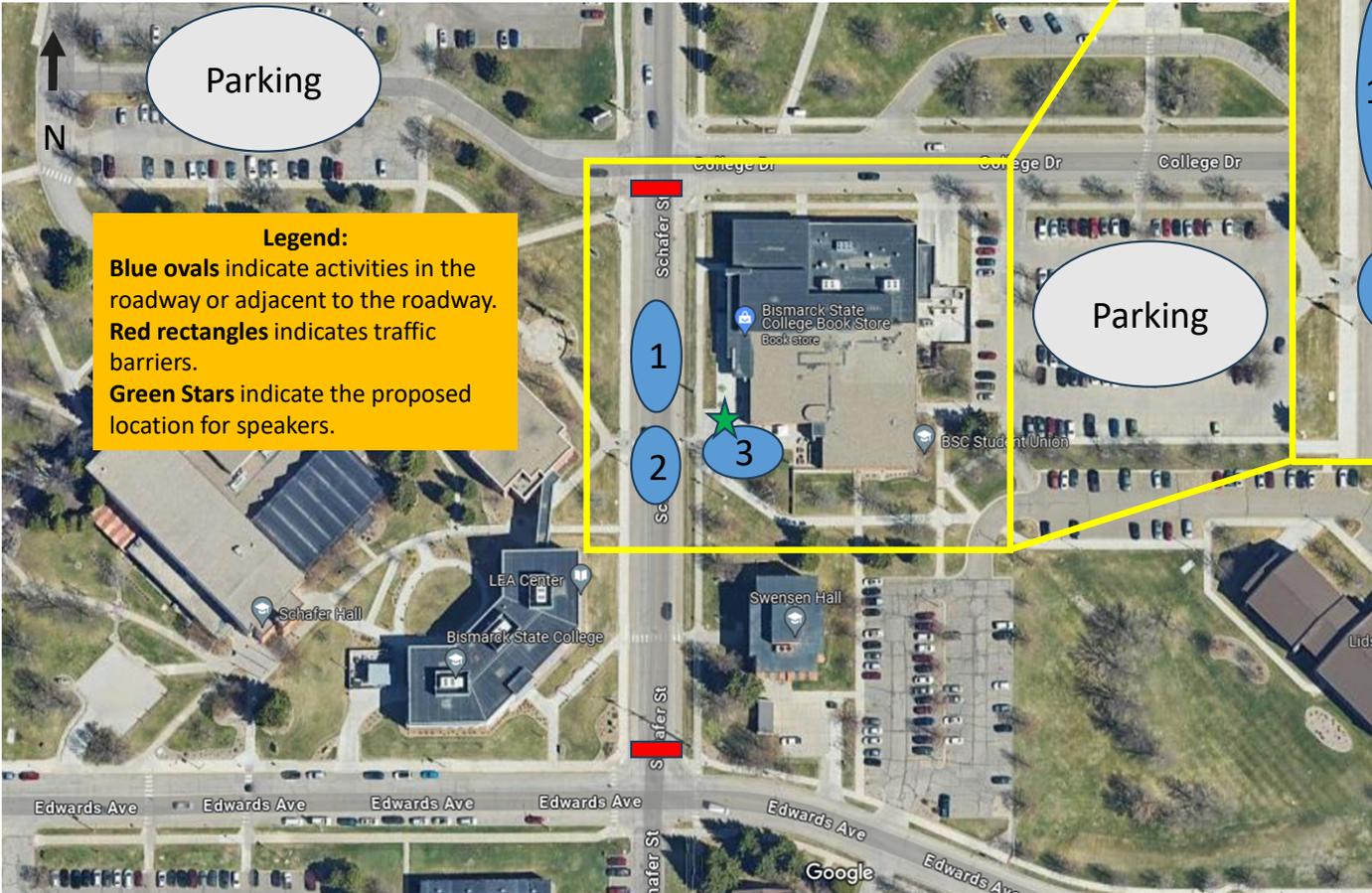
Sarah Owens  
Student Engagement Coordinator  
701-224-5584  
[sarah.m.owens@bismarckstate.edu](mailto:sarah.m.owens@bismarckstate.edu)

**Timeline April 18<sup>th</sup> 2024:**

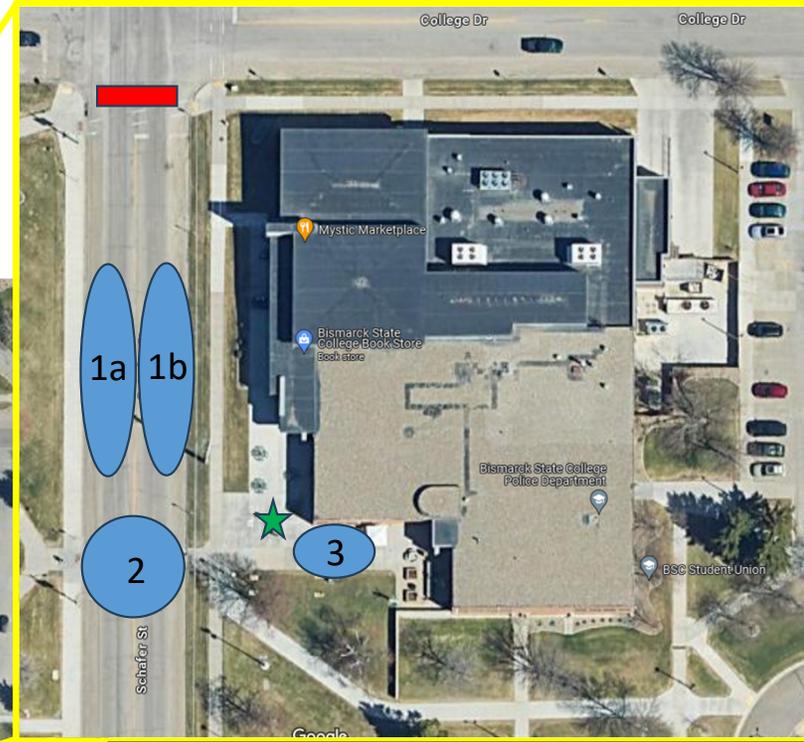
- 0800- Road Closure/Barricades Setup
- 0800-1000- Setup
- 1000-1400- Event Execution
- 1400-1500- Cleanup
- 1500- Barricades removed

**BSC Spring Carnival 18 APR 2024**

**Situation:** BSC will conduct a student centric engagement event 10:00am-2:00pm. Request shutdown of Schafer St. from College Drive to Edwards Ave.



**Legend:**  
Blue ovals indicate activities in the roadway or adjacent to the roadway.  
Red rectangles indicates traffic barriers.  
Green Stars indicate the proposed location for speakers.



**Activities/Obstacles (yellow highlighted area):**

- 1a- Steer Roping event in the south bound lane
- 1b- Corn Hole in the north bound lane
- 2- Bounce house tentatively planned
- 3- Various smaller games
  - Spikeball
  - Basketball shootout game (small contained w/netting)

\* Green star indicates the proposed location of the speaker  
\* Red rectangle is the location of the north side barricade.

## CERTIFICATE OF FINANCIAL RESPONSIBILITY

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE LIABILITIES ASSUMED BY THE STATE OF NORTH DAKOTA OR THE COVERAGES THAT MAY BE AFFORDED BY ANY INSURANCE CARRIERS OR SELF-INSURED FUNDS.

LIABILITY OF THE STATE IS CREATED AND LIMITED BY ENACTMENT OF CHAPTER 32-12.2 OF THE NORTH DAKOTA CENTURY CODE. ALL TERMS, CONDITIONS, STATUTES OF LIMITATIONS APPLY AS OUTLINE THEREIN. DAMAGES THAT MAY BE PAID WITHOUT SPECIFIC LEGISLATIVE AUTHORITY FOR EVENTS OCCURRING ON OR AFTER JULY 1, 2023, ARE \$406,250 PER PERSON AND \$1,625,000 PER OCCURRENCE.

EXCESS LIABILITY REINSURANCE COVERAGE PROVIDED BY SWISS RE AMERICA CERTIFICATE NO. CP 36: \$2,000,000

THE STATE OF NORTH DAKOTA HAS FUNDED FOR THIS LIABILITY EXPOSURE AT A LEVEL DETERMINED BY AN INDEPENDENT ACTUARY.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS:

### **Bismarck State College**

THIS CERTIFICATE IS ISSUED TO: City of Bismarck  
221 North 5<sup>th</sup> Street  
Bismarck, ND 58501

ON THIS DATE OF: March 20, 2024

BY:



---

AUTHORIZED REPRESENTATIVE OF THE  
STATE OF NORTH DAKOTA OFFICE OF  
MANAGEMENT AND BUDGET

**THIS CERTIFICATE OF FINANCIAL RESPONSIBILITY DOES NOT EXPIRE**

600 E Boulevard Ave, Dept 110 | Bismarck, ND 58505-0400 | omb.nd.gov

DIRECTOR  
& ADMINISTRATION  
4th Floor  
701.328.4904

SHARED  
SERVICES  
14th Floor  
701.328.2740

FACILITY  
MANAGEMENT  
4th Floor  
701.328.2471

FISCAL  
MANAGEMENT  
4th Floor  
701.328.2680

HUMAN RESOURCE  
MANAGEMENT SERVICES  
14th Floor  
701.328.3293

RISK  
MANAGEMENT  
1600 E Century Ave, Suite 4  
Bismarck, ND 58503  
701.328.7584



2024 BISMARCK FOOD SERVICE LICENSE

This license is non-transferrable and must be posted in a location which is conspicuous to customers within your establishment.

The license holder shall cease operations and contact Bismarck-Burleigh Public Health's Environmental Health Division if an imminent health hazard is created by way of fire, flood, interruption of water or electrical services, sewer backup, apparent foodborne illness outbreak, gross insanitary occurrence or condition, or other circumstances that may endanger public health.

You must also contact Bismarck-Burleigh Public Health in advance, if any of the follow actions are planned:

- Changing the products or services provided to customers
• Any remodeling of the facility or changes in equipment
• A change in ownership of the establishment
• Relocation of business

If you have questions or concerns, contact us at:

Bismarck-Burleigh Public Health
Environmental Health Division
407 S 26th St. Bismarck, ND 58504
Phone: (701) 355-3400
Email: bbph@bismarcknd.gov

ISSUED DATE: 1/29/2024
EXPIRATION DATE: 3/31/2025



BISMARCK-BURLEIGH PUBLIC HEA
407 S 26th St. BISMARCK, ND 58
701-355-
bbph@bismarckno

LICENSE #: FOOD2015-00127
LICENSE TYPE: FOOD SERVICE
LICENSE SUBTYPE: FOOD ESTABLISHMENT LEVEL 3 - 5,000 TO 10,000 SQ FT

The below named establishment has met the City of Bismarck's licensure requirements and agrees to comply with the applicable Code of Ordinances. Failure to comply with these regulations may result in license suspension or revocation.

Famous Dave's
401 E BISMARCK EX
BISMARCK, ND 58504

To view previous establishment inspection reports scan QR code and enter License # FOOD2015-00127





# Bismarck-Burleigh Public Health

407 S 26th St. Bismarck, ND 58504  
701-355-3400 • Fax: 701-221-6883 • Email: [bbph@bismarcknd.gov](mailto:bbph@bismarcknd.gov)

<b>FOR OFFICE USE ONLY:</b>
Date Recvd: _____
Assigned EHS: _____

## NOISE VARIANCE PERMIT APPLICATION

Applicant's Name & Title: \_\_\_\_\_ Applicant's Phone #: \_\_\_\_\_

Applicant's Email: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

### BE SPECIFIC WHEN ANSWERING THE FOLLOWING QUESTIONS:

What activity you are requesting a variance to the noise ordinance for: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Why are you requesting a variance to the noise ordinance for this activity: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Where (location) will the activity occur: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

When (list dates & times) will the activity occur: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Submit application to: **Bismarck-Burleigh Public Health** (contact information can be found on letterhead)

Upon review of your application, the applicant will be notified if their application has been approved, denied or if additional information is required.

With my signature, I declare that the information provided by me on the above form is true and correct to the best of my knowledge and belief. I also acknowledge that Bismarck's Environmental Health Division and/or the Bismarck Police Department reserve the right to revoke this permit at any time or revise the requirements to minimize the adverse effects upon the city or the surrounding neighborhood.

Permit Holder's Name (Print) \_\_\_\_\_

Permit Holder's Signature: \_\_\_\_\_ Date: \_\_\_\_\_



March 20, 2024

Sarah Owens  
1425 Schafer St  
Bismarck ND 58501

RE: Special Permit for Relief from Noise Level Designations

Dear Sarah Owens:

The letter serves as your special permit for relief from noise level designations as specified in Section 8-10-04 of the Code of Ordinances of the City of Bismarck for the following:

ACTIVITY: Amplified music at Bismarck State College's Celebration Carnival  
LOCATION: Outside of the Student Union near Schafer St.  
DATES/TIMES: Thursday, April 18, 2024 from 10:00am – 2:00pm CST  
CONDITIONS: None at this time.

Be advised that the Environmental Health Division and/or the Bismarck Police Department reserve the right to revoke this permit at any time or revise the requirements to minimize the adverse effects upon the city or the surrounding neighborhood. Please call me at 701-355-3401 if you have any questions.

Sincerely,

*Anton Sattler*

Anton Sattler, Administrator  
Environmental Health Division

cc via email: Bismarck Police & Fire Department





## Engineering Department

**DATE:** April 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** Revised Development Agreement

**REQUEST:**

Consider approval of revised Development Agreement with MBR Properties, LLC for Paradise Valley Additions.

**BACKGROUND INFORMATION:**

With the [March 12, 2024](#), rejection of bids for SE 582 and WPSP 392 underground improvements in Paradise Valley Addition, MBR representatives and City staff have finalized a plan for moving these projects forward. MBR requests to modify the existing Development Agreement to construct the water and sanitary sewer improvements within the development by standard three-way agreement and separately bid the storm sewer improvements through an assessed sewer improvement district. The portions of the existing Development Agreement related to improvements constructed with the South Washington Street reconstruction project remain mostly unchanged.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve the revised Development Agreement with MBR Properties, LLC for Paradise Valley Additions.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

1. Development Agreement - Paradise Valley

# DEVELOPMENT AGREEMENT

## PARADISE VALLEY ADDITION AND PARADISE VALLEY SECOND ADDITION

The City of Bismarck (the “**City**”) and MBR Properties, LLC (“**MBR**”) make the following Agreement (“**Agreement**”) with regard to public infrastructure improvements on public right-of-way and on lands owned by MBR and depicted in **Exhibit “A”** (Improvements) attached hereto and incorporated herein by reference, such lands in and being platted as Paradise Valley Addition and Paradise Valley Second Addition, located in Section 21, T138N, R80W, Burleigh County, North Dakota.

In exchange for the mutual agreements of the parties under this **Agreement**, the parties hereby agree to the following items, terms, conditions, and obligations.

### A. PREVIOUS AGREEMENTS

The previous development agreement between the City and MBR regarding utility installation, approved by the City on November 28, 2023, is nullified and superseded by this Agreement.

### B. MUNICIPAL UTILITIES

Municipal improvements consist of water lines, sanitary sewer lines, sanitary sewer lift stations, sanitary sewer force main, storm sewer lines, storm sewer laterals, storm sewer inlets, a storm sewer lift station, storm sewer force main, related appurtenances, and incidentals.

Design and construction of the improvements will be divided into multiple construction projects. The first being sanitary and stormwater forcemains, upsized gravity storm sewer, and related appurtenances within the project limits of the South Washington Street Reconstruction, Project AC-NHU-1-981(137), City project HC-158 which serve and benefit Paradise Valley and Paradise Valley Second Additions. These improvements will be further divided into sanitary improvements to be wholly paid for by MBR (referenced as **HC-158 Developer Improvements**) and storm improvements to be included in a special assessed Sewer Improvement District benefitting all lots within Paradise Valley and Paradise Valley Second Addition (referenced as **SE-584 Improvements**). See Exhibit A.

The City agrees to design and construct the HC-158 Developer Improvements. MBR agrees to pay for the HC-158 Developer Improvements and the City's incurred consultant costs for design and construction observation associated with the improvements. The City agrees to design and construct the SE-584 Improvements under the HC-158 project. All incurred costs for design, construction, and construction observation associated with the SE-584 improvements will be assessed to the benefiting properties within the SE-584 district. HC-158 was bid through the North Dakota Department of Transportation (NDDOT) at their February 16, 2024, bid letting. The City of Bismarck awarded the project on February 27, 2024, contingent on the NDDOT concurrence. The NDDOT provided concurrence on February 29, 2024.

The other construction projects will be those municipal improvements within the first phase of development of Paradise Valley and Paradise Valley Second Additions (collectively **SE-582** and **WPSP-392 Improvements**). See Exhibit A. The City will agree to special assess all eligible stormwater improvements to the benefiting lots within Paradise Valley and Paradise Valley Second Additions following typical City assessment project practice. MBR will agree to pay for construction costs for all water and sanitary sewer improvements following typically three-way agreement practice.

#### **i.MBR Responsibilities**

1. MBR will issue a letter of credit or have funds available via an escrow account in favor of the City for the design engineering, construction bid price with 10 percent contingency, estimated construction engineering costs of the HC-158 Developer Improvements, and one (1) percent City project management oversight fee, for a total amount of \$476,240.70, see Exhibit B, attached hereto and incorporated herein by reference. MBR shall issue the letter of credit or provide an escrow account contemporaneously with the execution of this agreement. MBR shall respond to a City request for payment within 7 days of notification.
2. MBR will make payment to the City for water and sanitary sewer plan reviews and construction observation of WPSP-392 for City project management oversight following standard three-way process. Payment will be for actual hours spent plus overhead.
3. MBR shall deed the lift station lots to the City. Warranty deeds for the sanitary and storm lift station lots shall be provided to the City after the project is substantially complete, but prior to the City accepting either the SE-582 or WPSP-392 Improvements.

#### **ii.City Responsibilities**

1. The City had the HC-158 Developer Improvements and SE-584 Improvements

designed by its consultant. The City bid the HC-158 Developer Improvements and SE-584 Improvements as part of AC-NHU-1-981(137), City project HC-158, through the North Dakota Department of Transportation.

2. The City will hire a consultant to perform construction engineering services for the sanitary sewer construction of HC-158 Developer Improvements and storm sewer construction of SE-584. For any required change order causing an increase in the cost of the sanitary sewer items above the available contingency amount paid by MBR, the City will notify MBR in writing prior to the City approving the change order. The City shall have final determination on approval of all change orders.
3. Upon closeout of the HC-158 Developer Improvements, and after receipt from MBR of warranty deeds for the lift station lots, the City shall return any unused portion of the MBR payment from item i.1.
4. Upon acceptance of the WPSP-392 Improvement project, the City will assume the operation and maintenance of the improvements.

## C. GENERAL TERMS

- i. For the HC-158 Developer Improvements, SE-582 Improvements, and WPSP-382 Improvements, Engineering fees incurred by the City either through a consultant contract or use of City engineering staff time associated with the improvements described in this Agreement will be allocated to each improvement and will be funded per the responsibilities as identified within this Agreement. If an improvement cost will be special assessed, the allocated construction engineering fee will be special assessed provided the City is a party to the contract generating the fee.
- ii. All work shall proceed only after the necessary permits and approvals have been obtained. Unless otherwise modified by this Agreement, all City development policies regarding public improvements must be followed.
- iii. All financial contributions by MBR for the HC-158 Developer Improvements shall be remitted to the City promptly following receipt of a written notice from the City.
- iv. Any quantity overruns or change orders on the project after the award will be funded per the responsibilities as identified within this Agreement.
- v. Successors and Assigns. This Agreement shall apply to, inure to the benefit of, and be binding upon and enforceable against the parties hereto and their respective transferees, successors, and assigns.

**MBR Properties, LLC**

\_\_\_\_\_  
Bradley A. Balerud, Member

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared Bradley A. Balerud, known to be to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public

**MBR Properties, LLC**

\_\_\_\_\_  
Randall J. Rhone, Member

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared Randall J. Rhone, known to be to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public

**MBR Properties, LLC**

\_\_\_\_\_  
Steve R. Mariner, Member

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared Steve R. Mariner, known to be to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public

**MBR Properties, LLC**

\_\_\_\_\_  
Greg P. Mariner, Member

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me personally appeared Greg P. Mariner, known to be to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**City of Bismarck**

\_\_\_\_\_  
Michael T. Schmitz  
President, Board of City  
Commissioners

Attest: \_\_\_\_\_  
Jason Tomanek  
City Administrator

Exhibit “A” – “B”  
To  
Development Agreement

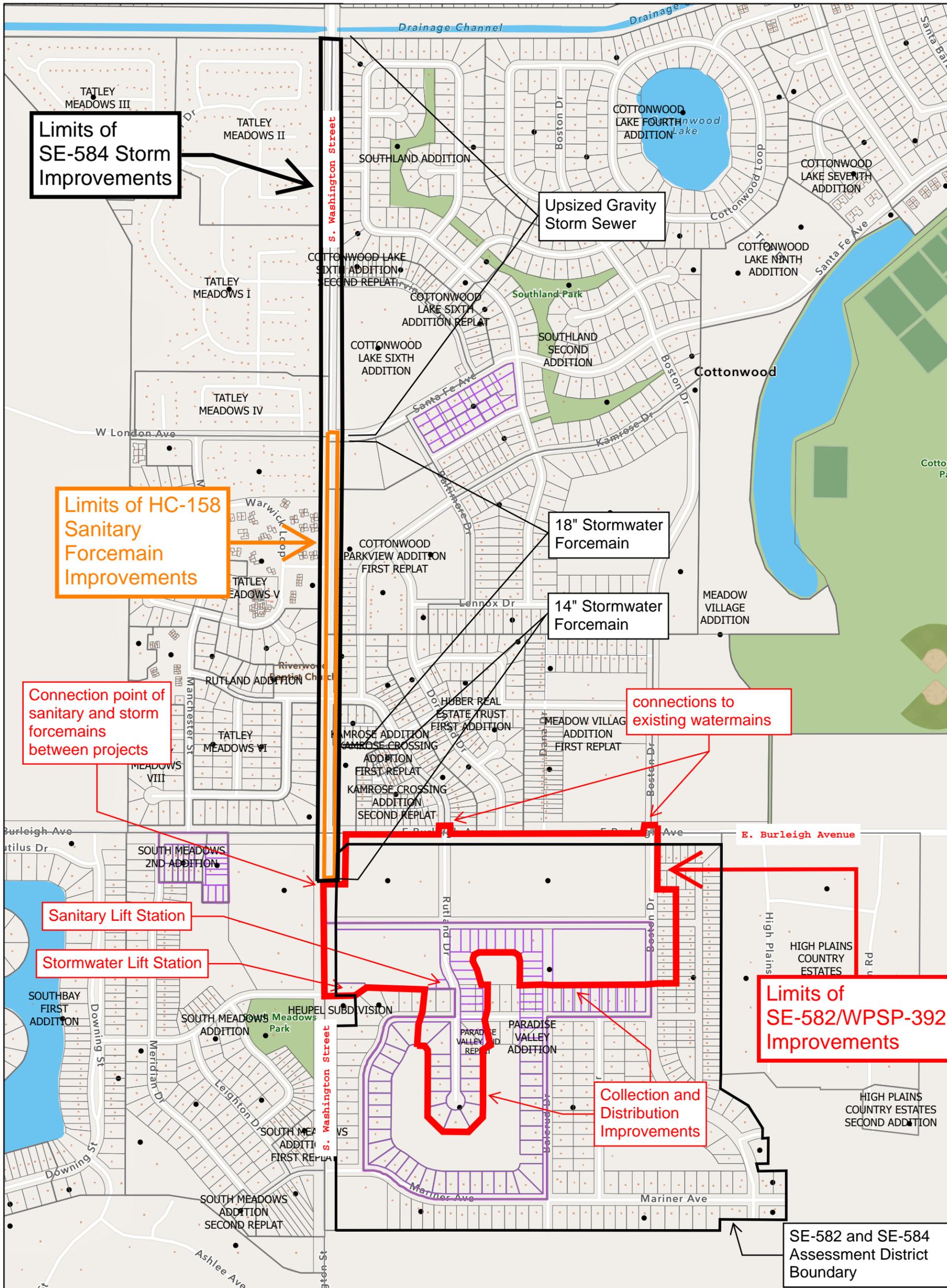
Exhibit “A” – Project Delineation and Improvement Map

- See the one page following this page.

Exhibit “B” – HC-158 Developer Improvements

- See the one page following this page.

# Exhibit "A"



Limits of SE-584 Storm Improvements

Limits of HC-158 Sanitary Forcemain Improvements

Connection point of sanitary and storm force mains between projects

Sanitary Lift Station

Stormwater Lift Station

Upsized Gravity Storm Sewer

18" Stormwater Forcemain

14" Stormwater Forcemain

connections to existing water mains

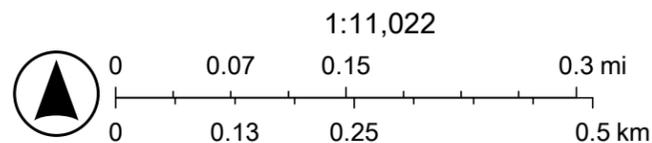
Limits of SE-582/WPSP-392 Improvements

Collection and Distribution Improvements

SE-582 and SE-584 Assessment District Boundary

10/10/2023

- City Parcels (Not Replatted)
- Subdivisions
- Pending Subdivisions
- Blocks
- Pending Lots
- Address



Esri Community Maps Contributors, City of Bismarck, State of North Dakota, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

# Exhibit B

## HC-158 Developer Improvements

Sanitary Sewer Forcemain						
					Contractor Bid Prices	
Spec	Code	Description	Qty	Unit	Unit Price	Total Price
724	9024	FORCEMAIN 10IN	3015	LF	\$120.00	\$361,800.00
724	583	TAPPING SLEEVE AND VALVE 24IN X 10IN	1	EA	\$14,000.00	\$14,000.00
<i>Total</i>						<b>\$375,800.00</b>
Construction Total						<b>\$375,800.00</b>
10% Construction Contingency						\$37,580.00
subtotal						<b>\$413,380.00</b>
10% Construction Engineering						\$41,338.00
1% City Project Management						\$4,133.80
subtotal						<b>\$45,471.80</b>
Design Engineering						\$17,388.90
<b>Total</b>						<b>\$476,240.70</b>



## Engineering Department

**DATE:** April 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** Encroachment Agreement & Waiver - 414 West Sweet Ave

**REQUEST:**

Consider approval of hanging banners on city-owned light poles adjacent to Bismarck Municipal Field.

**BACKGROUND INFORMATION:**

Bareknuckle Baseball, LLC dba Bismarck Larks requests to place brackets and banners on City-owned light poles around Municipal Field, see attachment. The brackets would be required to protect the poles from damage. The brackets and banners will need to be removed at the end of the 2024 baseball season. The Encroachment Committee has reviewed and recommends approval of the attached agreement with a term from April 26, 2024 to September 15, 2024 or prior abandonment.

The applicant has been notified that any damage resulting in the placement of the banners and hardware to the existing poles would be their responsibility to repair or replace.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve Encroachment Agreement & Waiver with Bareknuckle Baseball, LLC, dba Bismarck Larks.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

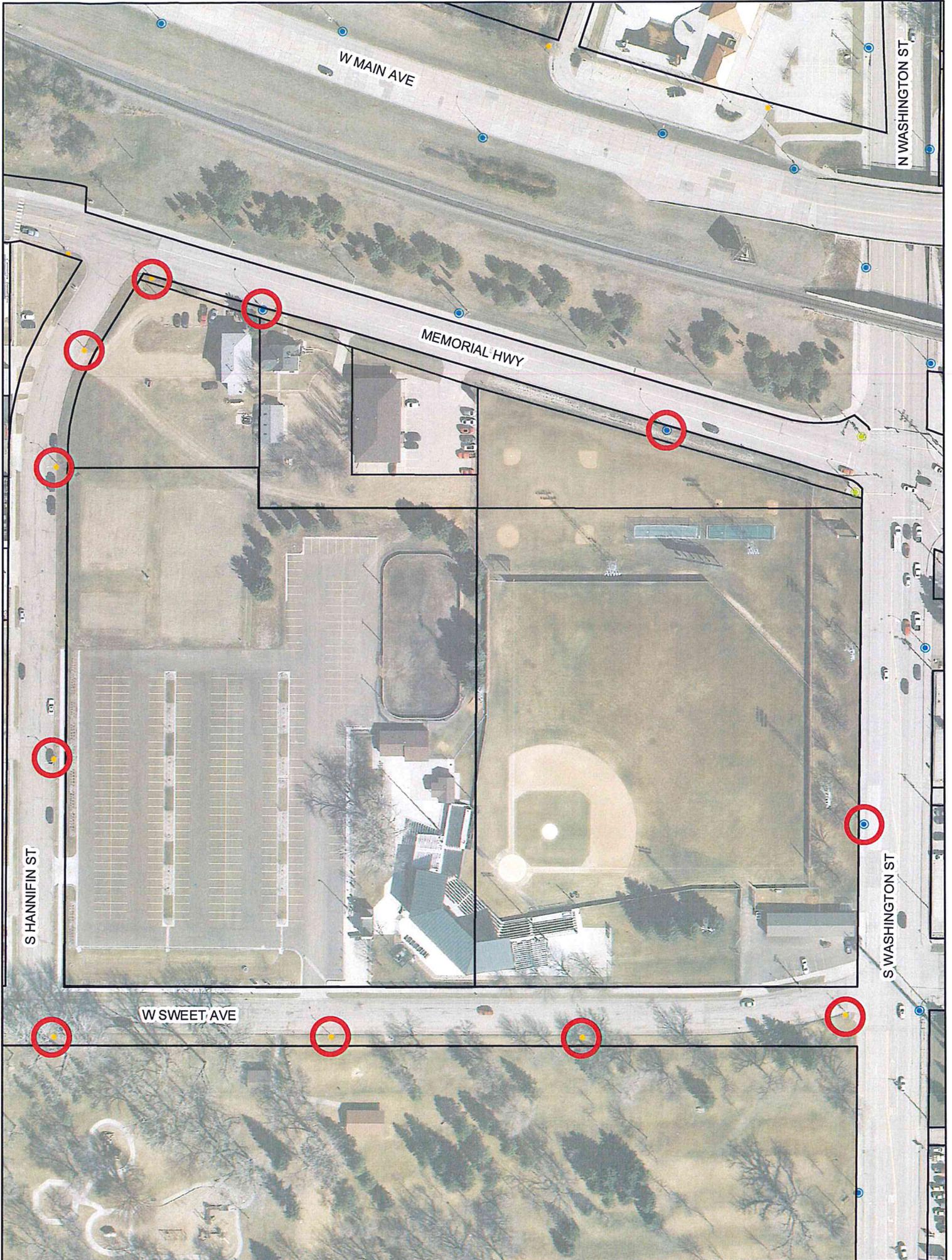
1. agreement 414 W Sweet Ave Municipal Field

## ENCROACHMENT AGREEMENT AND WAIVER

The City of Bismarck (City) hereby grants Bareknuckle Baseball, LLC dba Larks Baseball (Grantee) the right to install and maintain privately-owned banners & hardware (Encroachments) attached to City owned light poles and overhanging the public right-of-way, adjacent to and around Bismarck Municipal Ballpark located at 414 W Sweet Avenue, streets include Memorial Highway, S Washington Street, West Sweet Ave and S Hannifin Street adjacent only to the ballpark as shown on the attached Exhibit 1 and only with the approved attached banner designs, subject to the following conditions:

1. The Grantee shall comply with all rules regarding the placement of encroachments overhanging the public right-of-way as set by the City Engineer.
2. The term of this grant shall be from April 26, 2024 until September 15, 2024.
3. The Grantee shall maintain a minimum of fifteen (15) feet of unobstructed space between the lowest point of the encroachments and the top of the highest point in the sidewalk below the encroachments area. The attached encroachment must protect the pole from damage. Any damage to the poles shall be repaired or replaced at the Grantee's expense.
4. Upon the end of the term or termination of this agreement, or prior abandonment by the Grantee, the Grantee shall, at its own expense, remove the encroachment and restore the public right-of-way to its original condition.
5. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, in exchange for the City's permission to operate and maintain encroachments overhanging the right-of-way, Grantee agrees to release the City, its assigns, or other franchised utilities from and waive any and all claims relating to said encroachments, but not limited to, damages arising from damage to the encroachments, loss of business, or other personal injury or property damage resulting from damage to the encroachments by the City, its assigns, or other franchised utilities. Grantee agrees that it is using the public right-of-way at its own risk. Grantee shall not look to the City, its assigns, or other franchised utilities to pay for any expense or damage to the encroachments by the City, its assigns, or other franchised utilities. Grantee agrees that it will hold harmless and indemnify the City, its assigns, or other franchised utilities from any and all claims in any way resulting from the placement of the encroachments overhanging the public right-of-way. In the event the City is required to perform maintenance or construction on the right-of-way at the location of the encroachments, Grantee shall cooperate with the City in temporarily protecting the encroachments and accommodating the City's project, at Grantee's sole expense.





W MAIN AVE

N WASHINGTON ST

MEMORIAL HWY

S HANNIFIN ST

S WASHINGTON ST

W SWEET AVE



## Engineering Department

**DATE:** April 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** Street Improvement District SI 567

**REQUEST:**

Consider approval for Resolution to Close Street Improvement District SI 567.

**BACKGROUND INFORMATION:**

Street Improvement District No. 567 is one unit of new asphalt pavement in Silver Ranch Third Addition. The district was created on May 10, 2022, after street petitions were received from the developer. The engineer's report, along with the district boundary map are posted on the City website, [www.bismarcknd.gov/Streets](http://www.bismarcknd.gov/Streets).

Shortly after the district was created, the developer requested that City staff delay this district as there were discussions with another government entity which could affect the course and phasing of construction of the streets in Silver Ranch Third Addition.

On March 26, 2024, staff received a request from the developer to close the district as his development plan has changed. Portions of this district will be included in an upcoming street improvement district which will also include portions of Silver Ranch Fourth Addition; the remaining portions of district SI 567 will be delayed for an undetermined period of time. At this time, no real costs or staff time were incurred for this district.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve Resolution to Close Street Improvement District SI 567.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

None



## Finance Department

**DATE:** April 9, 2024

**FROM:** Dmitriy Chernyak, Finance Director

**ITEM:** Applications for Abatement

**REQUEST:**

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

Application for Abatement for 2023  
Property Owner - Ira Smith  
Property Address - 2622 Astronaut Dr  
Property ID - 0474-024-065

Applications for Abatement for 2022 & 2023  
Property Owner - Laureen Hollifield  
Property Address - 1905 N 6th St  
Property ID - 0365-005-030

Applications for Abatement for 2022 & 2023  
Property Owner - Russell & Jane Gilbertson  
Property Address - 3717 Calgary Ct  
Property ID - 1209-001-090

Application for Abatement for 2023  
Property Owner- Tara Star Rittel  
Property Address- 407 N 23rd St  
Property ID - 0105-036-040

**BACKGROUND INFORMATION:**

The property owners have met the requirements set forth in NDCC 57-02-08 to apply for the disabled veteran credit; market value reduction due to an error in the property description.

**RECOMMENDED CITY COMMISSION ACTION:**

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

**STAFF CONTACT INFORMATION:**

Allison Jensen, City Assessor, 701-355-1621, [ajensen@bismarcknd.gov](mailto:ajensen@bismarcknd.gov)

**ATTACHMENTS:**

1. Abatements



# Application For Abatement Or Refund Of Taxes

North Dakota Century Code § 57-23-04

File with the County Auditor on or before November 1 of the year following the year in which the tax becomes delinquent.

State of North Dakota Assessment District #1  
 County of \_\_\_\_\_ Property I.D. No. 0474-024-065  
 Name SMITH, IRA Telephone No. \_\_\_\_\_  
 Address 2622 ASTRONAUT DR, BISMARCK, ND 58503-1144

Legal description of the property involved in this application:

HOMAN ACRES 5TH Block: 24 LOT 14

Total true and full value of the property described above for the year 2023 is:

Land \$ 56,000  
 Improvements \$ 241,700  
 Total \$ 297,700  
(1)

Total true and full value of the property described above for the year 2023 should be:

Land \$ 56,000  
 Improvements \$ 241,700  
 Total Adj \$ 257,200  
(2)

The difference of \$ 40,500 true and full value between (1) and (2) above is due to the following reason(s):

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

The following facts relate to the market value of the residential or commercial property described above. For agricultural property, go directly to question #5.

1. Purchase price of property: \$ \_\_\_\_\_ Date of purchase: \_\_\_\_\_  
 Terms: Cash \_\_\_\_\_ Contract \_\_\_\_\_ Trade \_\_\_\_\_ Other (explain) \_\_\_\_\_  
 Was there personal property involved in the purchase price? \_\_\_\_\_ Estimated value: \$ \_\_\_\_\_  
yes/no

2. Has the property been offered for sale on the open market? \_\_\_\_\_ If yes, how long? \_\_\_\_\_  
yes/no  
 Asking price: \$ \_\_\_\_\_ Terms of sale: \_\_\_\_\_

3. The property was independently appraised: \_\_\_\_\_ Purpose of appraisal: \_\_\_\_\_  
yes/no  
 \_\_\_\_\_ Market value estimate: \$ \_\_\_\_\_  
 Appraisal was made by whom? \_\_\_\_\_

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

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

Applicant asks that the application be approved as presented.

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

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

Signature of Preparer (if other than applicant) \_\_\_\_\_ Date \_\_\_\_\_ Signature of Applicant [Signature] Date 3/19/2024

# Application For Abatement Or Refund Of Taxes

North Dakota Century Code § 57-23-04

File with the County Auditor on or before November 1 of the year following the year in which the tax becomes delinquent.

State of North Dakota Assessment District #1  
 County of Burleigh Property I.D. No. 0365-005-030  
 Name HOLLIFIELD, LAUREEN FORDYCE Telephone No. \_\_\_\_\_  
 Address 1905 N 6TH ST, BISMARCK, ND 58501-1812

Legal description of the property involved in this application:

JENNINGS 1ST Block: 5 NORTH 57' OF LOT 5 & SOUTH 7' OF LOT 6

Total true and full value of the property described above for the year 2022 is:

Land \$ 48,000  
 Improvements \$ 204,800  
 Total \$ 252,800  
(1)

Total true and full value of the property described above for the year 2022 should be:

Land \$ 48,000  
 Improvements \$ 204,800  
 Total Adj. \$ 162,800  
(2)

The difference of \$ 90,000 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
- 2. Residential or commercial property's true and full value exceeds the market value
- 3. Error in property description, entering the description, or extending the tax
- 4. Nonexisting improvement assessed
- 5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
- 6. Duplicate assessment
- 7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
- 8. Error in noting payment of taxes, taxes erroneously paid
- 9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
- 10. Other (explain) (100% / EXEMPT 6 months)

The following facts relate to the market value of the residential or commercial property described above. For agricultural property, go directly to question #5.

1. Purchase price of property: \$ \_\_\_\_\_ Date of purchase: \_\_\_\_\_  
 Terms: Cash \_\_\_\_\_ Contract \_\_\_\_\_ Trade \_\_\_\_\_ Other (explain) \_\_\_\_\_  
 Was there personal property involved in the purchase price? \_\_\_\_\_ Estimated value: \$ \_\_\_\_\_  
yes/no

2. Has the property been offered for sale on the open market? \_\_\_\_\_ If yes, how long? \_\_\_\_\_  
yes/no  
 Asking price: \$ \_\_\_\_\_ Terms of sale: \_\_\_\_\_

3. The property was independently appraised: \_\_\_\_\_ Purpose of appraisal: \_\_\_\_\_  
yes/no  
 \_\_\_\_\_ Market value estimate: \$ \_\_\_\_\_  
 Appraisal was made by whom? \_\_\_\_\_

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

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

Applicant asks that the Application be Approved As presented.

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

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

Signature of Preparer (if other than applicant) \_\_\_\_\_ Date \_\_\_\_\_  
 Signature of Applicant Laureen F. Hollifield Date 03/19/2024

Application For Abatement Or Refund Of Taxes

North Dakota Century Code § 57-23-04

File with the County Auditor on or before November 1 of the year following the year in which the tax becomes delinquent.

State of North Dakota Assessment District #1
County of Burleigh Property I.D. No. 0365-005-030
Name HOLLIFIELD, LAUREEN FORDYCE Telephone No.
Address 1905 N 6TH ST, BISMARCK, ND 58501-1812

Legal description of the property involved in this application:

JENNINGS 1ST Block: 5 NORTH 57' OF LOT 5 & SOUTH 7' OF LOT 6

Total true and full value of the property described above for the year 2023 is:

Land \$ 48,000
Improvements \$ 210,800
Total \$ 258,800 (1)

Total true and full value of the property described above for the year 2023 should be:

Land \$ 48,000
Improvements \$ 210,800
Total Adj. \$ 78,800 (2)

The difference of \$ 180,000 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
2. Residential or commercial property's true and full value exceeds the market value
3. Error in property description, entering the description, or extending the tax
4. Nonexisting improvement assessed
5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
6. Duplicate assessment
7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
8. Error in noting payment of taxes, taxes erroneously paid
9. Property qualifies for Homestead Credit (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
10. Other (explain) 100% - Full year

The following facts relate to the market value of the residential or commercial property described above. For agricultural property, go directly to question #5.
1. Purchase price of property: \$ Date of purchase:
Terms: Cash Contract Trade Other (explain)
Was there personal property involved in the purchase price? Estimated value: \$
yes/no
2. Has the property been offered for sale on the open market? If yes, how long?
yes/no
Asking price: \$ Terms of sale:
3. The property was independently appraised: Purpose of appraisal:
yes/no
Market value estimate: \$
Appraisal was made by whom?
4. The applicant's estimate of market value of the property involved in this application is \$
5. The estimated agricultural productive value of this property is excessive because of the following condition(s):

Applicant asks that the Application be Approved AS presented.

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

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

Signature of Preparer (if other than applicant) Date Signature of Applicant Laureen Hollifield Date 03/19/2024



# Application For Abatement Or Refund Of Taxes

North Dakota Century Code § 57-23-04

File with the County Auditor on or before November 1 of the year following the year in which the tax becomes delinquent.

State of North Dakota Assessment District #1  
 County of BURLEIGH Property I.D. No. 1209-001-090  
 Name GILBERTSON, RUSSELL & JANE Telephone No. \_\_\_\_\_  
 Address 3717 CALGARY CT, BISMARCK, ND 58503-5673

Legal description of the property involved in this application:

CALGARY COURT ADDITION Block: 1 LOT 19

Total true and full value of the property described above for the year 2022 is:

Land \$ 46,800  
 Improvements \$ 258,300  
 Total \$ 305,100  
 (1)

Total true and full value of the property described above for the year 2022 should be:

Land \$ 46,800  
 Improvements \$ 258,300  
 Total Adj. \$ 179,100  
 (2)

The difference of \$ 126,000 true and full value between (1) and (2) above is due to the following reason(s):

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

The following facts relate to the market value of the residential or commercial property described above. For agricultural property, go directly to question #5.

1. Purchase price of property: \$ \_\_\_\_\_ Date of purchase: \_\_\_\_\_  
 Terms: Cash \_\_\_\_\_ Contract \_\_\_\_\_ Trade \_\_\_\_\_ Other (explain) \_\_\_\_\_  
 Was there personal property involved in the purchase price? \_\_\_\_\_ Estimated value: \$ \_\_\_\_\_  
 yes/no

2. Has the property been offered for sale on the open market? \_\_\_\_\_ If yes, how long? \_\_\_\_\_  
 yes/no  
 Asking price: \$ \_\_\_\_\_ Terms of sale: \_\_\_\_\_

3. The property was independently appraised: \_\_\_\_\_ Purpose of appraisal: \_\_\_\_\_  
 yes/no  
 Market value estimate: \$ \_\_\_\_\_  
 Appraisal was made by whom? \_\_\_\_\_

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

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

Applicant asks that the Application be Approved AS presented.

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

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

Signature of Preparer (if other than applicant) \_\_\_\_\_ Date \_\_\_\_\_  
 Signature of Applicant Russell Gilbertson Date 3-27-24



# Application For Abatement Or Refund Of Taxes

North Dakota Century Code § 57-23-04

File with the County Auditor on or before November 1 of the year following the year in which the tax becomes delinquent.

State of North Dakota Assessment District #1  
 County of BURLEIGH Property I.D. No. 1209-001-090  
 Name GILBERTSON, RUSSELL & JANE Telephone No. \_\_\_\_\_  
 Address 3717 CALGARY CT, BISMARCK, ND 58503-5673

Legal description of the property involved in this application:

CALGARY COURT ADDITION Block: 1 LOT 19

Total true and full value of the property described above for the year 2023 is:

Land \$ 46,800  
 Improvements \$ 293,600  
 Total \$ 340,400  
 (1)

Total true and full value of the property described above for the year 2023 should be:

Land \$ 46,800  
 Improvements \$ 293,600  
 Total Adj. \$ 214,400  
 (2)

The difference of \$ 126,000 true and full value between (1) and (2) above is due to the following reason(s):

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

The following facts relate to the market value of the residential or commercial property described above. For agricultural property, go directly to question #5.

1. Purchase price of property: \$ \_\_\_\_\_ Date of purchase: \_\_\_\_\_  
 Terms: Cash \_\_\_\_\_ Contract \_\_\_\_\_ Trade \_\_\_\_\_ Other (explain) \_\_\_\_\_  
 Was there personal property involved in the purchase price? \_\_\_\_\_ Estimated value: \$ \_\_\_\_\_  
 yes/no

2. Has the property been offered for sale on the open market? \_\_\_\_\_ If yes, how long? \_\_\_\_\_  
 yes/no  
 Asking price: \$ \_\_\_\_\_ Terms of sale: \_\_\_\_\_

3. The property was independently appraised: \_\_\_\_\_ Purpose of appraisal: \_\_\_\_\_  
 yes/no  
 Market value estimate: \$ \_\_\_\_\_  
 Appraisal was made by whom? \_\_\_\_\_

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

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

Applicant asks that the Application be Approved As presented.

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

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

Signature of Preparer (if other than applicant) \_\_\_\_\_ Date \_\_\_\_\_  
 Signature of Applicant Russell Gilbertson Date 3-27-24





## Police Department

**DATE:** April 9, 2024

**FROM:** Dave Draovitch, Police Chief

**ITEM:** Annual Deer and Turkey Archery Hunting Program on City Properties

**REQUEST:**

Permission to Conduct the Annual Deer and Turkey Archery Hunting Program on City Properties.

**BACKGROUND INFORMATION:**

The Police Department requests authorization to conduct the Annual Deer and Turkey Archery Hunting Program on select City properties. This hunting season will begin September 1st and will coincide with the archery season set forth by the ND Game and Fish Department. The deer hunting program is an annual program which has been in existence since 1987. The turkey hunting program was initially approved by the Board in 2008 and has been successfully conducted each year, with the exception of 2011 when it was canceled due to the flood. Both programs have aided in controlling the problems associated with wild deer and turkeys entering areas of Bismarck, especially the residential areas of the southwest portion of the City. All hunters must possess a valid ND archery to participate in the programs. The Animal Control section of the PD issues trespass permits to hunters who wish to participate in the Archery Hunting Program. There will be 25 permits issued for the season on a first-come-first-served basis. Animal Control staff provides instructions and maps of specific authorized City property and monitors those selected to participate in the program.

**RECOMMENDED CITY COMMISSION ACTION:**

Authorization to conduct the Archery Hunting Program on City Properties

**STAFF CONTACT INFORMATION:**

Dave Draovitch, Police Chief, 701-355-1866, [ddraovitch@bismarcknd.gov](mailto:ddraovitch@bismarcknd.gov)

**ATTACHMENTS:**

1. 2024 Deer-Turkey Archery Hunting Program



To: Dave Draovitch, Chief of Police

From: ACW Woodcock

Date: April 1st, 2024

Subject: Annual Deer/Turkey Archery Hunting program

The Bismarck Animal Control is requesting this be placed on the next agenda for the commission to approve the archery hunting program in designated area within the city limits. The areas included in this program consist of the Airport property east of the Airway Avenue and south of Lincoln Road and a small section of land north of Lincoln Road, also the area east of the archery range and horse arena extending south to Burleigh Ave to include the area surrounding the Waste water treatment plant.

The Hunting Season will begin September 1<sup>st</sup> and will coincide with the archery season set forth by the Game and Fish Department. There will be 25 permits issued again this year for the season, this is the same amount of permits as last year, we saw increased numbers of deer being harvested and received less complaints in general of the hunting season, it will remain on a first come basis. As in years past the permit will be issued by the Police Department and the animal control staff will provide instructions, and maps to all participating in the program.

Thank you

Logan Woodcock  
Animal Control Warden

**Dave Draovitch, Chief of Police**

Phone: 701-223-1212 • Fax: 701-355-1861 • 700 South 9th Street • Bismarck, ND 58504-5899  
www.bismarcknd.gov • TDD 711 • An Equal Opportunity-Affirmative Action Employer





## Public Works Service Operations

**DATE:** April 9, 2024

**FROM:** Steven Salwei, Director Public Works Services

**ITEM:** Convention & Visitors Bureau Roof Replacement Bid Award

**REQUEST:**

Award bid for the Roof Replacement for the Convention & Visitors Bureau to Wegner Roofing.

**BACKGROUND INFORMATION:**

Bids were received on March 20, 2024, for the Convention & Visitors Bureau Roof Replacement project. We received one bid. The recommendation is to award the bid to Wegner Construction in the amount of \$109,500. Attached is the bid tab, advertisement, and bid documents.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve the bid award of the Convention & Visitors Bureau Roof Replacement project to Wegner Roofing in the amount of \$109,500.

**STAFF CONTACT INFORMATION:**

Steven Salwei, Director Public Works Services, 701-355-1705, [ssalwei@bismarcknd.gov](mailto:ssalwei@bismarcknd.gov)

**ATTACHMENTS:**

1. Bid Tab CVB Roof Replacement Bid Tab 03 22 24
2. Advertisement 2024 CVB Roof Replacement\_Trib Feb 1 & Mar 7 & 14
3. Addendum 1 Convention and Visitors Bureau Roof Replacement
4. Addendum 2 Convention and Visitors Bureau Roof Replacement
5. J22321 City of Bismarck Bismarck-Mandan Convention and Visitors Bureau Roof Replacement Specs 02 01 2024
6. J22321 City of Bismarck Bismarck-Mandan Convention and Visitors Bureau Roof Replacement Dwgs 02 01 2024

**Bid Tabulation**  
**03.22.2024**

Project: **City of Bismarck**  
**Bismarck-Mandan Convention & Visitor's Bureau Roof Replacement**  
Project #: **J22321**



Roofing Contractor	Acknowledged Addenda 1-2	License	Bid Bond	Installer's Certificate	Base Bid	Completion Date	Notes
Wegner Roofing	Yes	Yes	Yes	Yes	\$109,500.00	9/13/2024	

### ADVERTISEMENT FOR BIDS

Notice is hereby given that sealed bids for City of Bismarck, Bismarck-Mandan Convention & Visitors Bureau Roof Replacement, Bismarck, North Dakota will be received by the Board of City Commissioners of the City of Bismarck in the office of the City Administrator until 10:00 AM CT on Friday, March 22, 2024. Bids will be publicly opened and reviewed at 11:00 AM CT on Friday, March 22, 2024.

The sealed bids may be mailed to the City Administrator (P.O. Box 5503, Bismarck, ND 58506-5503) or otherwise deposited with the City Administrator (221 N 5<sup>th</sup> Street, Bismarck, ND 58501) and shall be sealed and endorsed:

Bids for City of Bismarck, Bismarck-Mandan Convention & Visitors Bureau Roof Replacement  
Name of the person, firm or corporation submitting the bid.

All bids received after the scheduled time will be returned to the bidder unopened. Bids which do not comply with the Bond and Licensing provisions and any deficient bid submitted will be resealed and returned to the Bidder.

All bids shall be in accordance with the Contract Documents as prepared by J2 Studio Architecture + Design, PC, 925 Basin Avenue, Suite 5, Bismarck, ND 58504. Bona fide Prime Contract Bidders may secure copies of the proposed Contract Documents by the following methods:

Printed Procurement and Contracting Documents: Obtain on February 29, 2024 by contacting Architect. Contractor shall be responsible for the cost of all reproduction for bid and construction documents.

Online Procurement and Contracting Documents: Obtain access on February 29, 2024 by contacting Architect. Online access will be provided to all registered bidders and suppliers.

Viewing Procurement and Contracting Documents: Copies of the plans and specifications are also on file and open for public inspection at:

Bismarck-Mandan Builders Exchange, Mandan, ND  
Bismarck Builders Exchange, Bismarck, ND  
Fargo-Moorhead Builders Exchange, Fargo, ND  
Minnesota Builders Exchange, Minneapolis, MN  
Builders Exchange of Billings, Billings, MT  
Bozeman Plan Room, Bozeman, MT  
Missoula Plans Exchange, Missoula, MT  
Construction Industry Center, Rapid City, SD

In compliance with the laws of the state of North Dakota, each Contractor must be licensed for the highest amount of their bid as stated in Section 43-07-05 of the North Dakota Century Code.

All bids must be accompanied by a separate envelope containing the contractor's license and bid security complying with Section 48-01.2-05 of the North Dakota Century Code. This separate envelope shall be attached to the outside of the BID envelope. The bid security must be in a sum equal to five (5 %) percent of the full amount of the bid; including all add Alternates, and must be in the form of a bidder's bond. The copy of the license or Certificate of Renewal thereof issued by the Secretary of State must be enclosed in the required bid bond envelope complying with Section 43-07-12 of the North Dakota Century Code.

No bid may be read or considered if the bid does not fully comply with the requirements of Section 48-01.2-05 and that any deficient bid submitted must be resealed and returned to the bidder immediately.

City of Bismarck  
Bismarck-Mandan Convention and Visitors Bureau Roof Replacement  
Bismarck, North Dakota

J22321

The Owner reserves the right to reject any and all bids and rebid the project until a satisfactory bid is received in accordance with 48-01.2-07. The Owner further reserves the right to hold all bids for a period of SIXTY (60) DAYS AFTER THE DATE OF THE OPENING. The Owner reserves the right to reject any and all bids or portions thereof and to waive irregularities, and the Owner shall incur no legal liability for the payment of any monies until the contract is awarded and approved by the proper authorities.

The successful Bidder will be required to furnish a Performance-Payment Bond.

Dated this 29th Day of February 2024.  
Bruce Schirado, Building Maintenance Manager  
City of Bismarck  
Public Works Service Operations  
601 South 26<sup>th</sup> Street, P.O. Box 5503  
Bismarck, ND 58506-5503

Published February 1, March 7 and March 14, 2024.

**END OF SECTION**



Date: March 4, 2024

Project: City of Bismarck  
Bismarck-Mandan Convention & Visitor's Bureau Roof Replacement  
Bismarck, ND

J2 Studio #: J22321

RE: Addendum #1

From: J2 Studio Architecture + Design  
925 Basin Avenue Suite #5  
Bismarck, ND 58504  
Phone: (701) 255-1622  
Fax: (701) 223-8927

To: All Planholders on record

No. of Pages: 3 (1 - 8½ x 11 Addendum body, 1 – 8 ½ x 11 Planholders List)

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## **General**

1. **The bid date and time is revised from what is shown in the specifications as follows:**
  - a. **Refer to the revised Advertisement for Bids.**
  - b. Bids will be received by the Board of City Commissioners at the City of Bismarck in the office of the City Administrator until **10:00am CT on Friday, March 22, 2024.**
    - i. Bids may be mailed to **P.O. Box 5503, Bismarck, ND 58506-5503** or delivered to **221 N. 5<sup>th</sup> Street, Bismarck, ND 58501** and shall be sealed and endorsed as per the advertisement for bids.
  - c. **Bids will be opened publicly at 11:00am CT on Friday, March 22, 2024 in the Mayor's 4<sup>th</sup> Floor Conference Room at 221 N. 5<sup>th</sup> Street.**
    - i. The bid opening may be attended virtually. Contact Gale Nicholson: [gnicholson@bismarcknd.gov](mailto:gnicholson@bismarcknd.gov) for access.
  - d. Bid Submission; Bids shall follow standard bid submission and include:
    - i. Bid shall be sealed and endorsed:
      1. Bids for City of Bismarck Public Works Roof Replacement
      2. Name of person, firm or corporation submitting the bid.
    - ii. Bidders shall include the bid bond and their license in a separate envelope attached to the outside of the bid envelope.

- iii. In the bid envelope, bidders shall include (2) copies of their bid, and (2) copies of installer's certification for the intended roofing system.

Refer to the specifications for complete bid requirements.

## **Specifications**

### **Section 00 2113 Instructions to Bidders**

1. Subparagraph 2.01.A; revise bid date to Friday, March 22, 2024. Bids shall be received at 10:00 am.
2. Subparagraph 2.01.C; revise bid opening date to Friday, March 22, 2024. Bids will be opened at 11:00 am.
3. Subparagraph 2.03.A; revise to read:
  - a. A. Commencement date is anticipated to be May 1, 2024. Substantial Completion shall be October 15, 2024.
4. Subparagraph 3.03.B; revise access date to February 29, 2024.
  - a. Clarification: project is being re-bid and new access date is February 29, 2024.

## **Drawings**

None

## **Approved Equals**

<b>Specification Section</b>	<b>Manufacturer</b>	<b>Model/Type</b>
07 5400 Thermoplastic Membrane Roofing	Duro-Last	Duro-Tuff 60 Mil; Color - Green
		Duro-Last Vinyl Rib; Color - Green

**End of Addendum #1**

## Planholders List - J22321

City of Bismarck

Bismarck-Mandan Convention & Visitor's Bureau Roof Replacement

Bismarck, North Dakota



Set	Planholder	Mailing Address	City	State	Zip	Phone #	Fax #	Contact Name
1	City of Bismarck	601 S. 26th Street	Bismarck	ND	58504	(701) 355-1743	-	Bruce Schirado
E	J2 Studio Architecture + Design	925 Basin Avenue, Suite 5	Bismarck	ND	58504	(701) 255-1622	(701) 223-8927	James Devine/Carrie Meyer
E	Pinnacle Construction, Inc.	4020 Somerset Circle	Casper	WY	82609	(307) 200-9685	-	Jordon McDonald
E	M.J. Dalsin Co. of N.D., Inc.	635 Armour Street	West Fargo	ND	58078	(701) 282-0509	-	Mark Stahl
E	Tecta America	213 Riverwood Ave SE	Mandan	ND	58554	(701) 541-3801	-	Dave Rinas
E	Twin City Roofing, LLC	2720 34th Street NW	Mandan	ND	58554	(701) 663-3196		Kurtis Ganyo
E	Wegner Roofing	537 Airport Road	Bismarck	ND	58504	(701) 561-0777	-	Matt Arps
E	Fargo-Moorhead Builders Exchange	1010 Page Dr	Fargo	ND	58103	(701) 237-6772	(701) 232-1653	Calisa Nickelson
E	Minnesota Builders Exchange	1123 Glenwood Avenue	Minneapolis	MN	58405	(612) 381-2620	(612) 381-2621	Jeff Boelter
E	Bismarck-Mandan Builders Exchange	805 Adobe Trail SE	Mandan	ND	58554	(701) 667-4322	(701) 667-5217	Julie Monzelowsky
E	Construction Industry Center	2771 Plant St	Rapid City	SD	57702	(605) 343-5252	(605) 343-4591	Kasi Kuiper
E	Builders Exchange of Billings	2050 Broadwater Ave, Suite A	Billings	MT	59102	(406) 652-1311	(406) 652-1391	Luke Hudson
E	Bismarck Builders Exchange	215 Airport Rd	Bismarck	ND	58504	(701) 258-4215	(701) 258-1391	Sandy Kerzman
E	Bozeman Planroom	1105 Reeves Rd W, Suite 800	Bozeman	MT	59718	(406) 586-7653	(406) 586-4062	Stan Wagner
E	Missoula Builders Exchange	201 N Russell St	Missoula	MT	59801	(406) 549-5502	(406) 721-2941	Twyla Brooks
E	ConstructConnect					(323) 602-5079	-	Maria Delfino
E	Dodge Construction Network	2860 South State Hwy 161, Suite 160 #501	Grand Prairie	TX	75052	(844) 326-3826 ext. 9210		John Doroy

**Printed Copies = \$2/sheet for drawings and \$.12/page for specifications**



Date: March 20, 2024

Project: City of Bismarck  
Bismarck-Mandan Convention & Visitor's Bureau Roof Replacement  
Bismarck, ND

J2 Studio #: J22321

RE: Addendum #2

From: J2 Studio Architecture + Design  
925 Basin Avenue Suite #5  
Bismarck, ND 58504  
Phone: (701) 255-1622  
Fax: (701) 223-8927

To: All Planholders on record

No. of Pages: 3 (1 - 8½ x 11 Addendum body, 1 – 8 ½ x 11 Planholders List)

---

## **General**

1. **The bid date and time is as follows:**
  - a. Bids will be received by the Board of City Commissioners at the City of Bismarck in the office of the City Administrator until **10:00am CT on Friday, March 22, 2024.**
    - i. Bids may be mailed to **P.O. Box 5503, Bismarck, ND 58506-5503** or delivered to **221 N. 5<sup>th</sup> Street, Bismarck, ND 58501 to the City Administrator on the 4<sup>th</sup> Floor** and shall be sealed and endorsed as per the advertisement for bids.
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    - i. The bid opening may be attended virtually. Contact Gale Nicholson: [gnicholson@bismarcknd.gov](mailto:gnicholson@bismarcknd.gov) for access.
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      2. Name of person, firm or corporation submitting the bid.
    - ii. In the bid envelope, bidders shall include (2) copies of their bid, and (2) copies of installer's certification for the intended roofing system.

- iii. Bidders shall include the bid bond and their license in a separate envelope attached to the outside of the bid envelope.
- d. Refer to the specifications for complete bid requirements.

**Specifications**

None

**Drawings**

None

**Approved Equals**

None

**End of Addendum #2**

## Planholders List - J22321

City of Bismarck

Bismarck-Mandan Convention & Visitor's Bureau Roof Replacement

Bismarck, North Dakota



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E	Tecta America	213 Riverwood Ave SE	Mandan	ND	58554	(701) 541-3801	-	Dave Rinas
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*Bismarck*

**City of Bismarck  
Bismarck-Mandan Convention & Visitors  
Bureau Roof Replacement**

**Bismarck, North Dakota**

**Contract Documents  
February 1, 2024**



**SECTION 00 0107  
SEALS PAGE**



**END OF SECTION**

**SECTION 00 0110  
TABLE OF CONTENTS**

**PROCUREMENT AND CONTRACTING REQUIREMENTS**

**DIVISION 00 -- PROCUREMENT AND CONTRACTING REQUIREMENTS**

- 00 0107 - Seals Page
- 00 0110 - Table of Contents
  - Advertisement for Bids
- 00 2113 - Instructions to Bidders
  - AIA Document A701 - 2018
- 00 4000 - Procurement Forms and Supplements
  - Substitution Request Form
- 00 4100 - Bid Form
- 00 5000 - Contracting Forms and Supplements
- 00 5200 - Agreement Form
  - AIA Document A101 - 2017
- 00 7200 - General Conditions
  - AIA Document A201 - 2017

**SPECIFICATIONS**

**DIVISION 01 -- GENERAL REQUIREMENTS**

- 01 1000 - Summary
- 01 2000 - Price and Payment Procedures
- 01 3000 - Administrative Requirements
- 01 5000 - Temporary Facilities and Controls
- 01 5100 - Temporary Utilities
- 01 6000 - Product Requirements
- 01 7000 - Execution and Closeout Requirements
- 01 7800 - Closeout Submittals

**DIVISION 02 -- EXISTING CONDITIONS (NOT USED)**

**DIVISION 03 -- CONCRETE (NOT USED)**

**DIVISION 04 -- MASONRY (NOT USED)**

**DIVISION 05 -- METALS (NOT USED)**

**DIVISION 06 -- WOOD, PLASTICS, AND COMPOSITES (NOT USED)**

**DIVISION 07 -- THERMAL AND MOISTURE PROTECTION**

- 07 0150.19 - Preparation for Re-Roofing
- 07 5400 - Thermoplastic Membrane Roofing
- 07 6200 - Sheet Metal Flashing and Trim
- 07 9200 - Joint Sealants

**DIVISION 08 -- OPENINGS (NOT USED)**

**DIVISION 09 -- FINISHES (NOT USED)**

**DIVISION 10 -- SPECIALTIES (NOT USED)**

**DIVISION 11 -- EQUIPMENT (NOT USED)**

**DIVISION 12 -- FURNISHINGS (NOT USED)**

City of Bismarck  
Bismarck-Mandan Convention & Visitors Bureau Roof Replacement  
Bismarck, North Dakota

J22321

**DIVISION 13 -- SPECIAL CONSTRUCTION (NOT USED)**

**DIVISION 14 -- CONVEYING EQUIPMENT (NOT USED)**

**END OF SECTION**

### ADVERTISEMENT FOR BIDS

Notice is hereby given that sealed bids for City of Bismarck, Bismarck-Mandan Convention & Visitors Bureau Roof Replacement, Bismarck, North Dakota will be received by the Board of City Commissioners of the City of Bismarck in the office of the City Administrator until 10:00 AM CT on Friday, February 23, 2024. Bids will be publicly opened and reviewed at 11:00 AM CT on Friday, February 23, 2024.

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Builders Exchange of Billings, Billings, MT  
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City of Bismarck  
Bismarck-Mandan Convention and Visitors Bureau Roof Replacement  
Bismarck, North Dakota

J22321

The Owner reserves the right to reject any and all bids and rebid the project until a satisfactory bid is received in accordance with 48-01.2-07. The Owner further reserves the right to hold all bids for a period of SIXTY (60) DAYS AFTER THE DATE OF THE OPENING. The Owner reserves the right to reject any and all bids or portions thereof and to waive irregularities, and the Owner shall incur no legal liability for the payment of any monies until the contract is awarded and approved by the proper authorities.

The successful Bidder will be required to furnish a Performance-Payment Bond.

Dated this 1st Day of February 2024.  
Bruce Schirado, Building Maintenance Manager  
City of Bismarck  
Public Works Service Operations  
601 South 26<sup>th</sup> Street, P.O. Box 5503  
Bismarck, ND 58506-5503

Published February 1, 8 and 15, 2024.

**END OF SECTION**

**SECTION 00 2113  
INSTRUCTIONS TO BIDDERS**

**SUMMARY**

**1.01 SEE AIA DOCUMENT A701 - 2018, INSTRUCTIONS TO BIDDERS BOUND IN THE PROJECT MANUAL.**

**INVITATION**

**2.01 BID SUBMISSION**

- A. Bids signed and under seal, executed, and dated will be received by the Board of City Commissioners at the City of Bismarck in the office of the City Administrator until 10:00am CT on Friday, February 23, 2024. The sealed bids may be mailed to the City Administrator (P.O. Box 5503, Bismarck, ND 58506-5503) or otherwise deposited with the City Administrator (221 N. 5th Street, Bismarck, ND 58501) and shall be sealed and endorsed:
  - 1. Bids for City of Bismarck, Bismarck-Mandan Convention & Visitors Bureau Roof Replacement
  - 2. Name of person, firm or corporation submitting the bid.
- B. Offers submitted after the above time will be returned to the bidder unopened.
- C. Bids will be publicly opened and reviewed at 11:00am CT on Friday, February 23, 2024.

**2.02 INTENT**

- A. The intent of this Bid request is to obtain an offer to perform work to complete project named City of Bismarck Bismarck-Mandan Convention & Visitors Bureau Roof Replacement for a Stipulated Sum contract, in accordance with Contract Documents.

**2.03 CONTRACT TIME**

- A. Commencement date is anticipated to be May 1, 2024. Substantial Completion shall be September 13, 2024.
- B. Identify Contract Time in the Bid Form. The completion date in the Agreement shall be the Contract Time added to the commencement date.

**BID DOCUMENTS AND CONTRACT DOCUMENTS**

**3.01 DEFINITIONS**

- A. Bid Documents: Contract Documents supplemented with Invitation To Bid, Instructions to Bidders, Information Available to Bidders, Bid Form Supplements To Bid Forms and Appendices identified.
- B. Bid, Offer, or Bidding: Act of submitting an offer under seal.
- C. Bid Amount: Monetary sum identified by the Bidder in the Bid Form.

**3.02 CONTRACT DOCUMENTS IDENTIFICATION**

- A. The Contract Documents are identified as Project Number J22321 City of Bismarck Bismarck-Mandan Convention & Visitors Bureau Roof Replacement, as prepared by Architect who is located at 925 Basin Avenue, Suite 5, Bismarck, ND 58504, and with contents as identified in the Table of Contents.

**3.03 AVAILABILITY**

- A. Printed Procurement and Contracting Documents: Bid documents may be obtained at J2 Studio Architecture + Design, PC, 925 Basin Avenue, Suite #5, Bismarck ND 58504. Phone number is (701) 255-1622. Cost for the drawings will be \$2.10 per individual sheet, and cost for the specifications will be \$.12 per page. **Cost of documents is non-refundable. Contractor shall be responsible for cost of all reproduction of for bid and construction documents.**
- B. Online Procurement and Contracting Documents: Obtain access on February 1, 2024 by contacting Architect. Online access will be provided to all registered bidders and suppliers.

- C. Bid Documents are made available only for the purpose of obtaining offers for this project. Their use does not grant a license for other purposes.

### **3.04 EXAMINATION**

- A. Bid Documents are on display at the offices of the following construction plan rooms:
  - 1. Bismarck-Mandan Builders Exchange, Mandan, ND
  - 2. Bismarck Builders Exchange, Bismarck, ND
  - 3. Fargo-Moorhead Builders Exchange, Fargo, ND
  - 4. Minnesota Builders Exchange, Minneapolis, MN
  - 5. Builders Exchange of Billings, Billings, MT
  - 6. Bozeman Plan Room, Bozeman, MT
  - 7. Missoula Plans Exchange, Missoula, MT
  - 8. Construction Industry Center, Rapid City, SD
- B. Upon receipt of Bid Documents verify that documents are complete. Notify Architect should the documents be incomplete.
- C. Immediately notify Architect upon finding discrepancies or omissions in the Bid Documents.

### **3.05 INQUIRIES/ADDENDA**

- A. Direct questions to James Devine, email; james@j2studio.us.
- B. Addenda may be issued during the bidding period. All Addenda become part of Contract Documents. Include resultant costs in the Bid Amount.
- C. Verbal answers are not binding on any party.
- D. Clarifications requested by bidders must be in writing not less than 5 days before date set for receipt of bids. The reply will be in the form of an Addendum, a copy of which will be forwarded to known recipients.

### **3.06 PRODUCT/ASSEMBLY/SYSTEM SUBSTITUTIONS**

- A. General Requirements for Substitution Requests:
- B. Substitution Request Time Restrictions:
  - 1. Where the Bid Documents stipulate a particular product, substitutions will be considered up to 5 days before receipt of bids. **No post bid substitutions will be accepted.**
- C. Substitution Request Form:
  - 1. Submit substitution requests by completing the form in Section 04 4000; see this section for additional information and instructions. Use only this form; other forms of submission are unacceptable.
- D. Review and Acceptance of Request:
  - 1. Architect may approve the proposed substitution and will issue an Addendum to known bidders.

## **SITE ASSESSMENT**

### **4.01 SITE EXAMINATION**

- A. Examination of the project site is recommended before submitting a bid.
- B. The bidder shall contact the Owner at the following address and phone number in order to arrange a date and time to visit the project site: Bruce Schirado, Building Maintenance Manager, City of Bismarck Public Works Service Operations, 601 S. 26th Street, Bismarck, ND 58504, 701-355-1700.

## **BID SUBMISSION**

### **5.01 SUBMISSION PROCEDURE**

- A. Bidders shall be solely responsible for the delivery of their bids in the manner and time prescribed.

- B. Submit two copies of the executed offer on the Bid Forms provided, signed and sealed in a closed opaque envelope, clearly identified with bidder's name, project name and Owner's name on the outside.
  - 1. Bidders shall include two copies of installer's certification for the intended roofing system with their bid submission.
- C. Submit the Bid Bond and the bidder's License Certificate of Renewal **in a separate envelope attached to the outside of the Bid envelope.**

## **5.02 BID INELIGIBILITY**

- A. Bids that are unsigned, improperly signed or sealed, conditional, illegible, obscure, contain arithmetical errors, erasures, alterations, or irregularities of any kind, may at the discretion of the Owner, be declared unacceptable.
- B. Bid Forms, Appendices, and enclosures that are improperly prepared may, at the discretion of Owner, be declared unacceptable.
- C. Failure to provide security deposit, bonding or insurance requirements may, at the discretion of Owner, invalidate the bid.

## **BID ENCLOSURES/REQUIREMENTS**

### **6.01 SECURITY DEPOSIT**

- A. Bids shall be accompanied by a security deposit as follows:
  - 1. Bid Bond of a sum no less than 5 percent of the Bid Amount on AIA A310 Bid Bond Form.
- B. Endorse the Bid Bond in the name of the Owner as obligee, signed and sealed by the principal (Contractor) and surety.
- C. The security deposit will be returned after delivery to the Owner of the required Performance and Payment Bond(s) by the accepted bidder.
- D. Include the cost of bid security in the Bid Amount.
- E. If no contract is awarded, all security deposits will be returned.

### **6.02 PERFORMANCE ASSURANCE**

- A. Accepted Bidder: Provide a Performance and Payment bond as described in 00 7300 - Supplementary Conditions. Both a Performance Bond and Payment Bond will be required, each in an amount equal to 100 percent of the Contract Sum.
- B. Include the cost of performance assurance bonds in the Bid Amount.

### **6.03 BID FORM REQUIREMENTS**

- A. Complete all requested information in the Bid Form and Appendices.

### **6.04 SALES AND USE TAX**

- A. The bidder is responsible to include all applicable Federal, State, and Local taxes in the bid.

### **6.05 BID FORM SIGNATURE**

- A. The Bid Form shall be signed by the bidder, as follows:
  - 1. Sole Proprietorship: Signature of sole proprietor in the presence of a witness who will also sign. Insert the words "Sole Proprietor" under the signature. Affix seal.
  - 2. Partnership: Signature of all partners in the presence of a witness who will also sign. Insert the word "Partner" under each signature. Affix seal to each signature.
  - 3. Corporation: Signature of a duly authorized signing officer(s) in their normal signatures. Insert the officer's capacity in which the signing officer acts, under each signature. Affix the corporate seal. If the bid is signed by officials other than the president and secretary of the company, or the president/secretary/treasurer of the company, a copy of the by-law resolution of their board of directors authorizing them to do so, must also be submitted with the Bid Form in the bid envelope.

4. Joint Venture: Each party of the joint venture shall execute the Bid Form under their respective seals in a manner appropriate to such party as described above, similar to the requirements of a Partnership.

**OFFER ACCEPTANCE/REJECTION**

**7.01 DURATION OF OFFER**

- A. Bids shall remain open to acceptance and shall be irrevocable for a period of sixty (60) days after the bid closing date.

**7.02 ACCEPTANCE OF OFFER**

- A. Owner reserves the right to accept or reject any or all offers.
- B. After acceptance by Owner, Architect on behalf of Owner, will issue to the successful bidder, a written letter of Contract Award.

**END OF SECTION**

# DRAFT AIA® Document A701® – 2018

## Instructions to Bidders

for the following Project:  
(Name, location, and detailed description)

«[J22321 City of Bismarck Bismarck-Mandan Convention & Visitors Bureau Roof Replacement](#)»  
«[Bismarck, ND](#)»  
«[Replacement of Roof at Bismarck-Mandan Convention & Visitors Bureau](#)»

**THE OWNER:**  
(Name, legal status, address, and other information)

«[City of Bismarck](#) »« »  
«[Public Works Department](#) »  
«[601 South 26th Street, P.O. Box 5503](#) »  
«[Bismarck, ND 58506-5503](#) »  
«[Telephone Number: 701-390-1700](#) »

**THE ARCHITECT:**  
(Name, legal status, address, and other information)

«[J2 Studio Architecture + Design, PC](#)»« »  
«[925 Basin Avenue, Suite 5](#) »  
«[Bismarck, ND 58504](#) »  
«[Telephone Number: 701-255-1622](#) »  
«[Fax Number: 701-223-8927](#) »

### TABLE OF ARTICLES

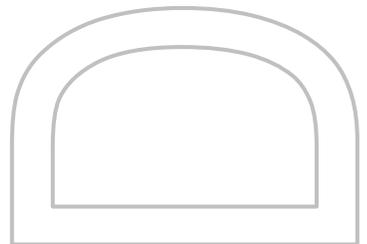
- 1 DEFINITIONS
- 2 BIDDER'S REPRESENTATIONS
- 3 BIDDING DOCUMENTS
- 4 BIDDING PROCEDURES
- 5 CONSIDERATION OF BIDS
- 6 POST-BID INFORMATION
- 7 PERFORMANCE BOND AND PAYMENT BOND
- 8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

FEDERAL, STATE, AND LOCAL LAWS MAY IMPOSE REQUIREMENTS ON PUBLIC PROCUREMENT CONTRACTS. CONSULT LOCAL AUTHORITIES OR AN ATTORNEY TO VERIFY REQUIREMENTS APPLICABLE TO THIS PROCUREMENT BEFORE COMPLETING THIS FORM.

It is intended that AIA Document G612™-2017, Owner's Instructions to the Architect, Parts A and B will be completed prior to using this document.



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## ARTICLE 1 DEFINITIONS

§ 1.1 Bidding Documents include the Bidding Requirements and the Proposed Contract Documents. The Bidding Requirements consist of the advertisement or invitation to bid, Instructions to Bidders, supplementary instructions to bidders, the bid form, and any other bidding forms. The Proposed Contract Documents consist of the unexecuted form of Agreement between the Owner and Contractor and that Agreement's Exhibits, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda, and all other documents enumerated in Article 8 of these Instructions.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, or in other Proposed Contract Documents apply to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect, which, by additions, deletions, clarifications, or corrections, modify or interpret the Bidding Documents.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents, to which Work may be added or deleted by sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from, or that does not change, the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment, or services, or a portion of the Work, as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment, or labor for a portion of the Work.

## ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 By submitting a Bid, the Bidder represents that:

- .1 the Bidder has read and understands the Bidding Documents;
- .2 the Bidder understands how the Bidding Documents relate to other portions of the Project, if any, being bid concurrently or presently under construction;
- .3 the Bid complies with the Bidding Documents;
- .4 the Bidder has visited the site, become familiar with local conditions under which the Work is to be performed, and has correlated the Bidder's observations with the requirements of the Proposed Contract Documents;
- .5 the Bid is based upon the materials, equipment, and systems required by the Bidding Documents without exception; and
- .6 the Bidder has read and understands the provisions for liquidated damages, if any, set forth in the form of Agreement between the Owner and Contractor.

## ARTICLE 3 BIDDING DOCUMENTS

### § 3.1 Distribution

§ 3.1.1 Bidders shall obtain complete Bidding Documents, as indicated below, from the issuing office designated in the advertisement or invitation to bid, for the deposit sum, if any, stated therein.

*(Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall obtain Bidding Documents.)*

«[Printed Procurement and Contracting Documents can be obtained by contacting the Architect. Contractor shall be responsible for the cost of all reproduction for bid and construction documents. Online access can be obtained by contacting Architect. Online access will be provided to all registered bidders and supplier. Documents are also available from local and regional construction plan exchanges. Refer to the Advertisement for Bids.](#)»

§ 3.1.2 Any required deposit shall be refunded to Bidders who submit a bona fide Bid and return the paper Bidding Documents in good condition within ten days after receipt of Bids. The cost to replace missing or damaged paper documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the paper Bidding Documents, and the Bidder's deposit will be refunded.

§ 3.1.3 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the advertisement or invitation to bid, or in supplementary instructions to bidders.

§ 3.1.4 Bidders shall use complete Bidding Documents in preparing Bids. Neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete Bidding Documents.

§ 3.1.5 The Bidding Documents will be available for the sole purpose of obtaining Bids on the Work. No license or grant of use is conferred by distribution of the Bidding Documents.

### § 3.2 Modification or Interpretation of Bidding Documents

§ 3.2.1 The Bidder shall carefully study the Bidding Documents, shall examine the site and local conditions, and shall notify the Architect of errors, inconsistencies, or ambiguities discovered and request clarification or interpretation pursuant to Section 3.2.2.

§ 3.2.2 Requests for clarification or interpretation of the Bidding Documents shall be submitted by the Bidder in writing and shall be received by the Architect at least seven days prior to the date for receipt of Bids.

*(Indicate how, such as by email, website, host site/platform, paper copy, or other method Bidders shall submit requests for clarification and interpretation.)*

«[Direct questions to James Devine: james@j2studio.us](mailto:james@j2studio.us). Addenda may be issued during the bidding period. All addenda become part of the Contract Documents. Include resultant costs in the bid amount. Verbal answers are not binding on any party. Clarifications requested by bidders must be in writing not less than 5 days before the date set for receipt of bids. The reply will be in the form of an addenda.»

§ 3.2.3 Modifications and interpretations of the Bidding Documents shall be made by Addendum. Modifications and interpretations of the Bidding Documents made in any other manner shall not be binding, and Bidders shall not rely upon them.

### § 3.3 Substitutions

§ 3.3.1 The materials, products, and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance, and quality to be met by any proposed substitution.

#### § 3.3.2 Substitution Process

§ 3.3.2.1 Written requests for substitutions shall be received by the Architect at least ten days prior to the date for receipt of Bids. Requests shall be submitted in the same manner as that established for submitting clarifications and interpretations in Section 3.2.2.

§ 3.3.2.2 Bidders shall submit substitution requests on a Substitution Request Form if one is provided in the Bidding Documents.

§ 3.3.2.3 If a Substitution Request Form is not provided, requests shall include (1) the name of the material or equipment specified in the Bidding Documents; (2) the reason for the requested substitution; (3) a complete description of the proposed substitution including the name of the material or equipment proposed as the substitute, performance and test data, and relevant drawings; and (4) any other information necessary for an evaluation. The request shall include a statement setting forth changes in other materials, equipment, or other portions of the Work, including changes in the work of other contracts or the impact on any Project Certifications (such as LEED), that will result from incorporation of the proposed substitution.

§ 3.3.3 The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

§ 3.3.4 If the Architect approves a proposed substitution prior to receipt of Bids, such approval shall be set forth in an Addendum. Approvals made in any other manner shall not be binding, and Bidders shall not rely upon them.

§ 3.3.5 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

#### § 3.4 Addenda

§ 3.4.1 Addenda will be transmitted to Bidders known by the issuing office to have received complete Bidding Documents.

*(Indicate how, such as by email, website, host site/platform, paper copy, or other method Addenda will be transmitted.)*

«Addenda will be emailed to all registered bidders on the planholders list, uploaded to the project Dropbox folder and shared with construction plan exchanges.»

§ 3.4.2 Addenda will be available where Bidding Documents are on file.

§ 3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids, except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

§ 3.4.4 Prior to submitting a Bid, each Bidder shall ascertain that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

### ARTICLE 4 BIDDING PROCEDURES

#### § 4.1 Preparation of Bids

§ 4.1.1 Bids shall be submitted on the forms included with or identified in the Bidding Documents.

§ 4.1.2 All blanks on the bid form shall be legibly executed. Paper bid forms shall be executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and numbers, unless noted otherwise on the bid form. In case of discrepancy, the amount entered in words shall govern.

§ 4.1.4 Edits to entries made on paper bid forms must be initialed by the signer of the Bid.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change" or as required by the bid form.

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall neither make additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name and legal status of the Bidder. As part of the documentation submitted with the Bid, the Bidder shall provide evidence of its legal authority to perform the Work in the jurisdiction where the Project is located. Each copy of the Bid shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further name the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached, certifying the agent's authority to bind the Bidder.

§ 4.1.8 A Bidder shall incur all costs associated with the preparation of its Bid.

#### § 4.2 Bid Security

§ 4.2.1 Each Bid shall be accompanied by the following bid security:

*(Insert the form and amount of bid security.)*

«Bid Bond of a sum of no less than 5 percent of the bid amount.»

§ 4.2.2 The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and shall, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder.

Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. In the event the Owner fails to comply with Section 6.2, the amount of the bid security shall not be forfeited to the Owner.

**§ 4.2.3** If a surety bond is required as bid security, it shall be written on AIA Document A310™, Bid Bond, unless otherwise provided in the Bidding Documents. The attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of an acceptable power of attorney. The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 4.2.4** The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until (a) the Contract has been executed and bonds, if required, have been furnished; (b) the specified time has elapsed so that Bids may be withdrawn; or (c) all Bids have been rejected. However, if no Contract has been awarded or a Bidder has not been notified of the acceptance of its Bid, a Bidder may, beginning «60 days» days after the opening of Bids, withdraw its Bid and request the return of its bid security.

### **§ 4.3 Submission of Bids**

**§ 4.3.1** A Bidder shall submit its Bid as indicated below:

*(Indicate how, such as by website, host site/platform, paper copy, or other method Bidders shall submit their Bid.)*

«Bids will be received by the Board of City Commissioners of the City of Bismarck in the office of the City Administrator until 10:00am CT on Friday, February 23, 2024. Bids will be opened publicly at 11:00am CT. Sealed bids shall be mailed to P.O. Box 5503, Bismarck, ND 58506-5530 or delivered to 221 N. 5th Street, Bismarck, ND 58501. Refer to the Advertisement for Bids for further information.»

**§ 4.3.2** Paper copies of the Bid, the bid security, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address, and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

**§ 4.3.3** Bids shall be submitted by the date and time and at the place indicated in the invitation to bid. Bids submitted after the date and time for receipt of Bids, or at an incorrect place, will not be accepted.

**§ 4.3.4** The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

**§ 4.3.5** A Bid submitted by any method other than as provided in this Section 4.3 will not be accepted.

### **§ 4.4 Modification or Withdrawal of Bid**

**§ 4.4.1** Prior to the date and time designated for receipt of Bids, a Bidder may submit a new Bid to replace a Bid previously submitted, or withdraw its Bid entirely, by notice to the party designated to receive the Bids. Such notice shall be received and duly recorded by the receiving party on or before the date and time set for receipt of Bids. The receiving party shall verify that replaced or withdrawn Bids are removed from the other submitted Bids and not considered. Notice of submission of a replacement Bid or withdrawal of a Bid shall be worded so as not to reveal the amount of the original Bid.

**§ 4.4.2** Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids in the same format as that established in Section 4.3, provided they fully conform with these Instructions to Bidders. Bid security shall be in an amount sufficient for the Bid as resubmitted.

**§ 4.4.3** After the date and time designated for receipt of Bids, a Bidder who discovers that it made a clerical error in its Bid shall notify the Architect of such error within two days, or pursuant to a timeframe specified by the law of the jurisdiction where the Project is located, requesting withdrawal of its Bid. Upon providing evidence of such error to the reasonable satisfaction of the Architect, the Bid shall be withdrawn and not resubmitted. If a Bid is withdrawn pursuant to this Section 4.4.3, the bid security will be attended to as follows:

*(State the terms and conditions, such as Bid rank, for returning or retaining the bid security.)*

## ARTICLE 5 CONSIDERATION OF BIDS

### § 5.1 Opening of Bids

If stipulated in an advertisement or invitation to bid, or when otherwise required by law, Bids properly identified and received within the specified time limits will be publicly opened and read aloud. A summary of the Bids may be made available to Bidders.

### § 5.2 Rejection of Bids

Unless otherwise prohibited by law, the Owner shall have the right to reject any or all Bids.

### § 5.3 Acceptance of Bid (Award)

**§ 5.3.1** It is the intent of the Owner to award a Contract to the lowest responsive and responsible Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding Documents. Unless otherwise prohibited by law, the Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's best interests.

**§ 5.3.2** Unless otherwise prohibited by law, the Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the lowest responsive and responsible Bidder on the basis of the sum of the Base Bid and Alternates accepted.

## ARTICLE 6 POST-BID INFORMATION

### § 6.1 Contractor's Qualification Statement

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request and within the timeframe specified by the Architect, a properly executed AIA Document A305™, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted for this Bid.

### § 6.2 Owner's Financial Capability

A Bidder to whom award of a Contract is under consideration may request in writing, fourteen days prior to the expiration of the time for withdrawal of Bids, that the Owner furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. The Owner shall then furnish such reasonable evidence to the Bidder no later than seven days prior to the expiration of the time for withdrawal of Bids. Unless such reasonable evidence is furnished within the allotted time, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

### § 6.3 Submittals

**§ 6.3.1** After notification of selection for the award of the Contract, the Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, submit in writing to the Owner through the Architect:

- .1 a designation of the Work to be performed with the Bidder's own forces;
- .2 names of the principal products and systems proposed for the Work and the manufacturers and suppliers of each; and
- .3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

**§ 6.3.2** The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

**§ 6.3.3** Prior to the execution of the Contract, the Architect will notify the Bidder if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, withdraw the Bid or submit an acceptable substitute person or entity. The Bidder may also submit any required adjustment in the Base Bid or Alternate Bid to account for the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

§ 6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

## ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

### § 7.1 Bond Requirements

§ 7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder.

§ 7.1.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

§ 7.1.3 The Bidder shall provide surety bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 7.1.4 Unless otherwise indicated below, the Penal Sum of the Payment and Performance Bonds shall be the amount of the Contract Sum.

*(If Payment or Performance Bonds are to be in an amount other than 100% of the Contract Sum, indicate the dollar amount or percentage of the Contract Sum.)*

<< >>

### § 7.2 Time of Delivery and Form of Bonds

§ 7.2.1 The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to commence sooner in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond.

§ 7.2.3 The bonds shall be dated on or after the date of the Contract.

§ 7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix to the bond a certified and current copy of the power of attorney.

## ARTICLE 8 ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

§ 8.1 Copies of the proposed Contract Documents have been made available to the Bidder and consist of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, unless otherwise stated below.  
*(Insert the complete AIA Document number, including year, and Document title.)*

<< >>

- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds, unless otherwise stated below.  
*(Insert the complete AIA Document number, including year, and Document title.)*

<< >>

- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, unless otherwise stated below.  
*(Insert the complete AIA Document number, including year, and Document title.)*

<< >>

- 4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013.)*

« »

.5 Drawings

Number	Title	Date
« »		

.6 Specifications

Section	Title	Date	Pages
« »			

.7 Addenda:

Number	Date	Pages
« »		

.8 Other Exhibits:

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

- « » AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017.)*

« »

- « » The Sustainability Plan:

Title	Date	Pages
« »		

- « » Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
« »			

.9 Other documents listed below:

*(List here any additional documents that are intended to form part of the Proposed Contract Documents.)*

« »

**SECTION 00 4000  
PROCUREMENT FORMS AND SUPPLEMENTS**

**PART 1 GENERAL**

**1.01 FORMS**

- A. Use the following forms for the specified purposes unless otherwise indicated elsewhere in the procurement requirements.
- B. Instructions to Bidders: AIA A701.
- C. Substitution Request Form (During Procurement): Substitution Request Form on the following page.
- D. Bid Form: Section 00 4100 - Bid Form.
- E. Procurement Form Supplements:
  - 1. Bid Security Form: AIA A310.
  - 2. Proposed Schedule of Values Form: AIA G703.

**1.02 REFERENCE STANDARDS**

- A. AIA A310 - Bid Bond; 2010.
- B. AIA A701 - Instructions to Bidders; 2018.
- C. AIA G703 - Continuation Sheet; 1992.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION - NOT USED**

**END OF SECTION**

**SECTION 00 4000**  
**PROCUREMENT FORMS SUPPLEMENTS**  
**SUBSTITUTION REQUEST FORM**

To: J2 Studio  
925 Basin Avenue, Suite #5  
Bismarck, ND 58504  
701.255.1622  
701.223.8927

We hereby submit for your consideration the following product as a substitute for the specified item for the above project.

Section Name and Number	Page No.	Article, Paragraph, Subparagraph	Specified Item
-------------------------	----------	----------------------------------	----------------

Proposed Substitution: \_\_\_\_\_

Attach complete product description, drawings, photographs, performance, and test data, warranty, information and other information necessary for evaluation. Identify specific model numbers, finishes, etc.

A. Will change be required to building design or drawing dimensions in order to properly install proposed substitution es \_\_\_\_ No \_\_\_\_ . If yes, explain. \_\_\_\_\_

B. Will the undersigned pay for changes to the building design, including engineering and drawing cost, caused by the requested substitution es \_\_\_\_ No \_\_\_\_ N/A, Substitution does not require change to building design \_\_\_\_\_

C. Differences between proposed substitution and specified item. \_\_\_\_\_

D. What affect does substitution have on other trades \_\_\_\_\_

E. Does manufacturer's warranty of the proposed substitution differ from that specified? Yes \_\_\_\_ No \_\_\_\_ If yes, explain. \_\_\_\_\_

Submitted by: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Date: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email Address: \_\_\_\_\_

<b>For Architect's Use Only</b>	
__ Accepted	__ Accepted as Noted
__ Not Accepted	__ Received too Late
By: _____	
Date: _____	
Remarks: _____	
_____	

Approved substitutions will be set forth in an addendum, substitution requests will not be returned to bidders.

**END OF SECTION 00 4000**

**SECTION 00 4100  
BID FORM**

**THE PROJECT AND THE PARTIES**

**1.01 TO:**

- A. Board of City Commissioner of the City of Bismarck (Owner)  
221 N. 5th Street  
P.O. Box 5503  
Bismarck, ND 58506-5503

**1.02 FOR:**

- A. Project: City of Bismarck Bismarck-Mandan Convention & Visitors Bureau Roof Replacement
- B. Architect's Project Number: J22321  
1600 Burnt Boat Dr.  
Bismarck, North Dakota 58503

**1.03 DATE: \_\_\_\_\_ (BIDDER TO ENTER DATE)**

**1.04 SUBMITTED BY: (BIDDER TO ENTER NAME AND ADDRESS)**

- A. Bidder's Full Name \_\_\_\_\_
  - 1. Address \_\_\_\_\_
  - 2. City, State, Zip \_\_\_\_\_

**1.05 OFFER**

- A. Having examined the Place of The Work and all matters referred to in the Instructions to Bidders and the Contract Documents prepared by J2 Studio Architecture + Design, PC for the above mentioned project, we, the undersigned, hereby offer to enter into a Contract to perform the Work for the Sum of:
- B. \_\_\_\_\_ dollars  
(\$ \_\_\_\_\_), in lawful money of the United States of America.
- C. We have included the required security deposit as required by the Instruction to Bidders.
- D. We have included the required performance assurance bonds in the Bid Amount as required by the Instructions to Bidders.
- E. All applicable federal taxes are included and State of North Dakota taxes are included in the Bid Sum.

**1.06 ACCEPTANCE**

- A. This offer shall be open to acceptance and is irrevocable for (60) sixty days from the bid closing date.
- B. If this bid is accepted by Owner within the time period stated above, we will:
  - 1. Execute the Agreement within seven days of receipt of Notice of Award.
  - 2. Commence work within seven days after written Notice to Proceed of this bid.
- C. If this bid is accepted within the time stated, and we fail to commence the Work or we fail to provide the required Bond(s), the security deposit shall be forfeited as damages to Owner by reason of our failure, limited in amount to the lesser of the face value of the security deposit or the difference between this bid and the bid upon which a Contract is signed.
- D. In the event our bid is not accepted within the time stated above, the required security deposit shall be returned to the undersigned, in accordance with the provisions of the Instructions to Bidders; unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

**1.07 CONTRACT TIME**

- A. Complete the Work by the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. (Bidder to enter day, month, and year.)

**1.08 UNIT PRICES**

**1.09 ADDENDA**

- A. The following Addenda have been received. The modifications to the Bid Documents noted below have been considered and all costs are included in the Bid Sum.
1. Addendum # \_\_\_\_\_ Dated \_\_\_\_\_.
  2. Addendum # \_\_\_\_\_ Dated \_\_\_\_\_.
  3. Addendum # \_\_\_\_\_ Dated \_\_\_\_\_.

**1.10 BID FORM SUPPLEMENTS**

**1.11 BID FORM SIGNATURE(S)**

- A. The Corporate Seal of  
B. \_\_\_\_\_  
C. **(Bidder - print the full name of your firm)**  
D. was hereunto affixed in the presence of:  
E. \_\_\_\_\_  
F. **(Authorized signing officer, Title)**  
G. (Seal)  
H. \_\_\_\_\_  
I. **(Authorized signing officer, Title)**

- 1.12 IF THE BID IS A JOINT VENTURE OR PARTNERSHIP, ADD ADDITIONAL FORMS OF EXECUTION FOR EACH MEMBER OF THE JOINT VENTURE IN THE APPROPRIATE FORM OR FORMS AS ABOVE.**

**END OF SECTION**

**SECTION 00 5000  
CONTRACTING FORMS AND SUPPLEMENTS**

**PART 1 GENERAL**

**1.01 CONTRACTOR IS RESPONSIBLE FOR OBTAINING A VALID LICENSE TO USE ALL  
COPYRIGHTED DOCUMENTS SPECIFIED BUT NOT INCLUDED IN THE PROJECT MANUAL.**

**1.02 AGREEMENT AND CONDITIONS OF THE CONTRACT**

- A. See Section 00 5200 - Agreement Form for the Agreement form to be executed.
- B. See Section 00 7300 - Supplementary Conditions for the Supplementary Conditions.
- C. The Agreement is based on AIA A101.
- D. The General Conditions are based on AIA A201.

**1.03 FORMS**

- A. Use the following forms for the specified purposes unless otherwise indicated elsewhere in Contract Documents.
- B. Bond Forms:
  - 1. Performance and Payment Bond Form: AIA A312.
- C. Post-Award Certificates and Other Forms:
  - 1. Submittal Transmittal Letter Form: AIA G810.
  - 2. Schedule of Values Form: AIA G703.
  - 3. Application for Payment Forms: AIA G702 with AIA G703 (for Contractors).
- D. Clarification and Modification Forms:
  - 1. Architect's Supplemental Instructions Form: AIA G710.
  - 2. Construction Change Directive Form: AIA G714.
  - 3. Change Order Form: AIA G701.
- E. Closeout Forms:
  - 1. Certificate of Substantial Completion Form: AIA G704.

**1.04 REFERENCE STANDARDS**

- A. AIA A101 - Standard Form of Agreement Between Owner and Contractor where the basis of Payment is a Stipulated Sum; 2017.
- B. AIA A201 - General Conditions of the Contract for Construction; 2017.
- C. AIA A312 - Performance Bond and Payment Bond; 2010.
- D. AIA G701 - Change Order; 2017.
- E. AIA G702 - Application and Certificate for Payment; 1992.
- F. AIA G703 - Continuation Sheet; 1992.
- G. AIA G704 - Certificate of Substantial Completion; 2017.
- H. AIA G710 - Architect's Supplemental Instructions; 2017.
- I. AIA G714 - Construction Change Directive; 2017.
- J. AIA G810 - Transmittal Letter; 2001.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION - NOT USED**

**END OF SECTION**

**SECTION 00 5200  
AGREEMENT FORM**

**PART 1 GENERAL**

**1.01 FORM OF AGREEMENT**

**1.02 THE AGREEMENT TO BE EXECUTED IS ATTACHED FOLLOWING THIS PAGE.**

**1.03 RELATED REQUIREMENTS**

A. Section 00 7200 - General Conditions.

**PART 2 PRODUCTS (NOT USED)**

**PART 3 EXECUTION (NOT USED)**

**END OF SECTION**

# DRAFT AIA® Document A101® - 2017

## *Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum*

**AGREEMENT** made as of the «» day of «» in the year «»  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

«[City of Bismarck](#)»«[, Public Works Department](#)»  
«[601 S. 26th Street](#)  
[P.O. Box 5503](#)  
[Bismarck, ND 58506-5503](#)»  
«[Telephone Number: 701-390-1700](#)»  
«»

and the Contractor:  
(Name, legal status, address and other information)

«»  
«»  
«»  
«»

for the following Project:  
(Name, location and detailed description)

«[J22321 City of Bismarck Bismarck-Mandan Convention & Visitors Bureau Roof Replacement](#)»  
«[Bismarck, ND](#)»  
«[Replacement of Roof at Bismarck-Mandan Convention & Visitors Bureau](#)»

The Architect:  
(Name, legal status, address and other information)

«[J2 Studio Architecture + Design, PC](#)»«»  
«[925 Basin Avenue](#)  
[Suite 5](#)»  
«[Telephone Number: 701-255-1622](#)»  
«[Fax Number: 701-223-8927](#)»

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

### EXHIBIT A INSURANCE AND BONDS

#### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

#### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

#### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

- «  » The date of this Agreement.
- «  » A date set forth in a notice to proceed issued by the Owner.
- «  » Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

«  »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

« » Not later than « » ( « » ) calendar days from the date of commencement of the Work.

« » By the following date: «September 13, 2024.»

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
« »	

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be «TBD» (\$ «TBD» ), subject to additions and deductions as provided in the Contract Documents.

**§ 4.2 Alternates**

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
« »	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
« »		

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price
« »	

§ 4.4 Unit prices, if any: (Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
« »		

§ 4.5 Liquidated damages, if any: (Insert terms and conditions for liquidated damages, if any.)

« »

§ 4.6 Other: (Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

« »

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the «twenty-fifth» day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the «twenty first» day of the «following» month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «» («45») days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

«10.00»

**§ 5.1.7.1.1** The following items are not subject to retainage:  
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

«N/A»

**§ 5.1.7.2** Reduction or limitation of retainage, if any, shall be as follows:  
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

«Until the work is 50 percent complete, the Owner will pay 90 percent of the amount due the Contractor on account of progress payments. At the time work is 50 percent complete and thereafter, if the manner of completion of the Work and its progress are and remain satisfactory to the Architect, and in the absence of other good and sufficient reason, the Architect will authorize any remaining partial payments to be made in full. The full Contract retainage may be re-instated if the manner of completion of the Work and its progress do not remain satisfactory to the Architect or for other good and sufficient reasons.»

**§ 5.1.7.3** Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:  
(Insert any other conditions for release of retainage upon Substantial Completion.)

« »

**§ 5.1.8** If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

**§ 5.1.9** Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## **§ 5.2 Final Payment**

**§ 5.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

**§ 5.2.2** The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

« »

## **§ 5.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.  
(Insert rate of interest agreed upon, if any.)

«0.00» % «per annum»

## **ARTICLE 6 DISPUTE RESOLUTION**

### **§ 6.1 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

<< >>  
<< >>  
<< >>  
<< >>

**§ 6.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Section 15.4 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

<<>>

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

**§ 7.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

**§ 7.1.1** If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)*

<<N/A>>

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 8.2** The Owner’s representative:

*(Name, address, email address, and other information)*

<< >>  
<< >>  
<< >>  
<< >>  
<< >>

**§ 8.3** The Contractor’s representative:

*(Name, address, email address, and other information)*

<< >>  
<< >>  
<< >>  
<< >>  
<< >>  
<< >>

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

<< >>

§ 8.7 Other provisions:

<< >>

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

<< >>

.5 Drawings

**Number**

**Title**

**Date**

<< >>

.6 Specifications

**Section**

**Title**

**Date**

**Pages**

<< >>

.7 Addenda, if any:

**Number**

**Date**

**Pages**

<< >>

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

« » AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

« » The Sustainability Plan:

Title	Date	Pages
« »		

« » Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
« »			

.9 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

« »

This Agreement entered into as of the day and year first written above.

« »

\_\_\_\_\_  
**OWNER** (Signature)

« »  
\_\_\_\_\_

(Printed name and title)

« »

\_\_\_\_\_  
**CONTRACTOR** (Signature)

« »  
\_\_\_\_\_

(Printed name and title)

**SECTION 00 7200  
GENERAL CONDITIONS**

**FORM OF GENERAL CONDITIONS**

**1.01 THE GENERAL CONDITIONS APPLICABLE TO THIS CONTRACT IS ATTACHED FOLLOWING THIS PAGE.**

**RELATED REQUIREMENTS**

**END OF SECTION**

# DRAFT AIA® Document A201® - 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

«[J22321 City of Bismarck Bismarck-Mandan Convention & Visitors Bureau Roof Replacement](#)»  
«[Bismarck, ND](#)»

### THE OWNER:

(Name, legal status and address)

«[City of Bismarck](#)»«[, Public Works Department](#)»  
«[601 S. 26th Street](#)  
[P.O. Box 5503](#)  
[Bismarck, ND 58506-5503](#)»

### THE ARCHITECT:

(Name, legal status and address)

«[J2 Studio Architecture + Design, PC](#)» « »  
«[925 Basin Avenue, Suite 5](#)  
[Bismarck, ND 58504](#)»

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



## INDEX

(Topics and numbers in bold are Section headings.)

### **Acceptance of Nonconforming Work**

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### **Access to Work**

**3.16**, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### **Additional Inspections and Testing**

9.4.2, 9.8.3, 12.2.1, **13.4**

### **Additional Time, Claims for**

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### **Administration of the Contract**

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### **Allowances**

**3.8**

### **Applications for Payment**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

### **Arbitration**

8.3.1, 15.3.2, **15.4**

## **ARCHITECT**

**4**

**Architect**, Definition of

#### **4.1.1**

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

### **Award of Subcontracts and Other Contracts for Portions of the Work**

**5.2**

### **Basic Definitions**

**1.1**

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### **Bonds, Performance, and Payment**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

### **Building Information Models Use and Reliance**

**1.8**

Building Permit

3.7.1

### **Capitalization**

**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

### **Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval

13.4.4

Certificates of Insurance  
9.10.2  
**Change Orders**  
1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3,  
7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1,  
9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2  
**Change Orders**, Definition of  
**7.2.1**  
**CHANGES IN THE WORK**  
2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,  
11.5  
**Claims**, Definition of  
**15.1.1**  
Claims, Notice of  
1.6.2, 15.1.3  
**CLAIMS AND DISPUTES**  
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4  
Claims and Timely Assertion of Claims  
15.4.1  
**Claims for Additional Cost**  
3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**  
**Claims for Additional Time**  
3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**  
**Concealed or Unknown Conditions, Claims for**  
**3.7.4**  
Claims for Damages  
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3,  
11.3.2, 14.2.4, 15.1.7  
Claims Subject to Arbitration  
15.4.1  
**Cleaning Up**  
**3.15**, 6.3  
Commencement of the Work, Conditions Relating to  
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,  
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**  
**Commencement of the Work**, Definition of  
**8.1.2**  
**Communications**  
3.9.1, **4.2.4**  
Completion, Conditions Relating to  
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,  
9.10, 12.2, 14.1.2, 15.1.2  
**COMPLETION, PAYMENTS AND**  
**9**  
Completion, Substantial  
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1,  
9.10.3, 12.2, 15.1.2  
Compliance with Laws  
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1,  
13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8,  
15.4.2, 15.4.3  
Concealed or Unknown Conditions  
3.7.4, 4.2.8, 8.3.1, 10.3  
Conditions of the Contract  
1.1.1, 6.1.1, 6.1.4  
Consent, Written  
3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2,  
15.4.4.2

**Consolidation or Joinder**  
**15.4.4**  
**CONSTRUCTION BY OWNER OR BY**  
**SEPARATE CONTRACTORS**  
1.1.4, **6**  
**Construction Change Directive**, Definition of  
**7.3.1**  
**Construction Change Directives**  
1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**,  
9.3.1.1  
Construction Schedules, Contractor's  
3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  
**Contingent Assignment of Subcontracts**  
**5.4**, 14.2.2.2  
**Continuing Contract Performance**  
**15.1.4**  
**Contract**, Definition of  
**1.1.2**  
**CONTRACT, TERMINATION OR**  
**SUSPENSION OF THE**  
5.4.1.1, 5.4.2, 11.5, **14**  
Contract Administration  
3.1.3, 4, 9.4, 9.5  
Contract Award and Execution, Conditions Relating  
to  
3.7.1, 3.10, 5.2, 6.1  
Contract Documents, Copies Furnished and Use of  
1.5.2, 2.3.6, 5.3  
**Contract Documents**, Definition of  
**1.1.1**  
**Contract Sum**  
2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4,  
**9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2,  
12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**  
**Contract Sum**, Definition of  
**9.1**  
Contract Time  
1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5,  
7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1,  
8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2,  
14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5  
**Contract Time**, Definition of  
8.1.1  
**CONTRACTOR**  
**3**  
**Contractor**, Definition of  
**3.1**, **6.1.2**  
**Contractor's Construction and Submittal**  
**Schedules**  
**3.10**, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2  
Contractor's Employees  
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
10.3, 11.3, 14.1, 14.2.1.1  
**Contractor's Liability Insurance**  
**11.1**  
Contractor's Relationship with Separate Contractors  
and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors  
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7,  
9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect  
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2,  
7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3,  
11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the  
Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents  
3.2

Contractor's Right to Stop the Work  
2.2.2, 9.7

Contractor's Right to Terminate the Contract  
14.1

Contractor's Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,  
9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent  
3.9, 10.2.6

Contractor's Supervision and Construction  
Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,  
7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications  
1.5, 2.3.6, 3.11

Copyrights  
1.5, **3.17**

Correction of Work  
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3,  
15.1.3.1, 15.1.3.2, 15.2.1

**Correlation and Intent of the Contract Documents**  
**1.2**

**Cost**, Definition of  
**7.3.4**

Costs  
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,  
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2,  
12.1.2, 12.2.1, 12.2.4, 13.4, 14

**Cutting and Patching**  
**3.14**, 6.2.5

Damage to Construction of Owner or Separate  
Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,  
11.3, 14.2.4, 15.1.7

Damages for Delay  
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

**Date of Commencement of the Work**, Definition of

**8.1.2**  
**Date of Substantial Completion**, Definition of

**8.1.3**  
**Day**, Definition of

**8.1.4**  
Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,  
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,  
14.2.2, 14.2.4, 15.1, 15.2

**Decisions to Withhold Certification**  
9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance,  
Rejection and Correction of  
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,  
9.10.4, 12.2.1

Definitions  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,  
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

**Delays and Extensions of Time**  
**3.2**, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**,  
10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

**Digital Data Use and Transmission**  
**1.7**

Disputes  
6.3, 7.3.9, 15.1, 15.2

**Documents and Samples at the Site**  
**3.11**

**Drawings**, Definition of  
**1.1.5**

Drawings and Specifications, Use and Ownership of  
3.11

Effective Date of Insurance  
8.2.2

**Emergencies**  
**10.4**, 14.1.1.2, **15.1.5**

Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,  
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,  
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,  
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,  
10.4, 14.3, 15.1.6, **15.2.5**

**Failure of Payment**  
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work  
(See Defective or Nonconforming Work)

**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's  
2.2.1, 13.2.2, 14.1.1.4

**GENERAL PROVISIONS**

# 1

## Governing Law

### 13.1

Guarantees (See Warranty)

## Hazardous Materials and Substances

### 10.2.4, 10.3

Identification of Subcontractors and Suppliers

### 5.2.1

## Indemnification

3.1.7, 3.18, 9.6.8, 9.10.2, 10.3.3, 11.3

## Information and Services Required of the Owner

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

## Initial Decision

### 15.2

## Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

## Injury or Damage to Person or Property

### 10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

### 1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,

## 11

## Insurance, Notice of Cancellation or Expiration

### 11.1.4, 11.2.3

## Insurance, Contractor's Liability

### 11.1

Insurance, Effective Date of

8.2.2, 14.4.2

## Insurance, Owner's Liability

### 11.2

## Insurance, Property

### 10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

### 9.3.2

## INSURANCE AND BONDS

## 11

Insurance Companies, Consent to Partial Occupancy

### 9.9.1

Insured loss, Adjustment and Settlement of

### 11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

## Interest

### 13.5

## Interpretation

1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

## Labor and Materials, Equipment

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

## Materials, Hazardous

### 10.2.4, 10.3

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

## Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1, 15.4.1.1

## Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

## MISCELLANEOUS PROVISIONS

## 13

Modifications, Definition of

### 1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

## Mutual Responsibility

### 6.2

## Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of

2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

## Notice

**1.6**, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2, 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance  
11.1.4, 11.2.3

## Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections  
13.4.1, 13.4.2

Observations, Contractor's  
3.2, 3.7.4

Occupancy  
2.3.1, 9.6.6, 9.8

Orders, Written  
1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

## OWNER

**2**

**Owner**, Definition of

### 2.1.1

**Owner**, Evidence of Financial Arrangements

### 2.2

**Owner**, Information and Services Required of the  
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority  
1.5, 2.1.1, 2.3.3.2.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

**Owner's Insurance**

### 11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**

**2.5**, 14.2.2

**Owner's Right to Clean Up**

### 6.3

**Owner's Right to Perform Construction and to Award Separate Contracts**

### 6.1

**Owner's Right to Stop the Work**

### 2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

**Ownership and Use of Drawings, Specifications and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

**Partial Occupancy or Use**

9.6.6, **9.9**

**Patching, Cutting and**

**3.14**, 6.2.5

Patents

3.17

**Payment, Applications for**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

**Payment, Failure of**

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Payments, Progress**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

**PAYMENTS AND COMPLETION**

**9**

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

**Performance Bond and Payment Bond**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Permits, Fees, Notices and Compliance with Laws**

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

**PERSONS AND PROPERTY, PROTECTION OF**

**10**

Polychlorinated Biphenyl

10.3.1

**Product Data**, Definition of

**3.12.2**

**Product Data and Samples, Shop Drawings**

3.11, **3.12**, 4.2.7

**Progress and Completion**

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

**Progress Payments**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

**Project**, Definition of

**1.1.4**

Project Representatives

4.2.10

**Property Insurance**

10.2.5, **11.2**

**Proposal Requirements**

1.1.1

**PROTECTION OF PERSONS AND PROPERTY**

**10**

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,

10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8,

15.4

Rejection of Work  
4.2.6, 12.2.1

Releases and Waivers of Liens  
9.3.1, 9.10.2

Representations  
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

**Review of Contract Documents and Field Conditions by Contractor**  
**3.2**, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor  
3.12

**Rights and Remedies**  
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, **13.3**, 14, 15.4

**Royalties, Patents and Copyrights**  
**3.17**

Rules and Notices for Arbitration  
15.4.1

**Safety of Persons and Property**  
**10.2**, 10.4

**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4

**Samples, Definition of**  
**3.12.3**

**Samples, Shop Drawings, Product Data and**  
3.11, **3.12**, 4.2.7

**Samples at the Site, Documents and**  
**3.11**

**Schedule of Values**  
**9.2**, 9.3.1

Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

**Separate Contractors, Definition of**  
**6.1.1**

**Shop Drawings, Definition of**  
**3.12.1**

**Shop Drawings, Product Data and Samples**  
3.11, **3.12**, 4.2.7

**Site, Use of**  
**3.13**, 6.1.1, 6.2.1

Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

**Specifications, Definition of**  
**1.1.6**

**Specifications**  
1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations  
15.1.2, 15.4.1.1

Stopping the Work  
2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4

**Subcontractor, Definition of**  
**5.1.1**

**SUBCONTRACTORS**  
**5**

Subcontractors, Work by  
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

**Subcontractual Relations**  
**5.3**, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule  
3.10.2, 3.12.5, 4.2.7

**Subrogation, Waivers of**  
6.1.1, **11.3**

**Substances, Hazardous**  
**10.3**

**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

**Substantial Completion, Definition of**  
**9.8.1**

Substitution of Subcontractors  
5.2.3, 5.2.4

Substitution of Architect  
2.3.3

Substitutions of Materials  
3.4.2, 3.5, 7.3.8

**Sub-subcontractor, Definition of**  
**5.1.2**

Subsurface Conditions  
3.7.4

**Successors and Assigns**  
**13.2**

**Superintendent**  
**3.9**, 10.2.6

**Supervision and Construction Procedures**  
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers  
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety  
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of

9.8.5, 9.10.2, 9.10.3

Surveys

1.1.7, 2.3.4

**Suspension by the Owner for Convenience**

**14.3**

Suspension of the Work

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

**Taxes**

3.6, 3.8.2.1, 7.3.4.4

**Termination by the Contractor**

**14.1, 15.1.7**

**Termination by the Owner for Cause**

5.4.1.1, **14.2, 15.1.7**

**Termination by the Owner for Convenience**

**14.4**

Termination of the Architect

2.3.3

Termination of the Contractor Employment

14.2.2

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

**14**

**Tests and Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

**TIME**

**8**

**Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5**

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

**Time Limits on Claims**

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

## **UNCOVERING AND CORRECTION OF WORK**

**12**

**Uncovering of Work**

**12.1**

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

**Use of Site**

**3.13, 6.1.1, 6.2.1**

**Values, Schedule of**

**9.2, 9.3.1**

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, **15.1.7**

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

**Waivers of Subrogation**

6.1.1, **11.3**

**Warranty**

**3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2**

Weather Delays

8.3, 15.1.6.2

**Work, Definition of**

**1.1.3**

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 The Work**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 The Project**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### **§ 1.1.5 The Drawings**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### **§ 1.1.6 The Specifications**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

#### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### **§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk

and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These

obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### **§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 Shop Drawings, Product Data and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or

certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for

whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### **§ 4.2.4 Communications**

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

## **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

## **§ 5.3 Subcontractual Relations**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

## **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

### **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### **§ 6.3 Owner's Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 Minor Changes in the Work**

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

**§ 8.1.2** The date of commencement of the Work is the date established in the Agreement.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

#### **§ 8.2 Progress and Completion**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Article 15.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

**§ 9.1.1** The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### **§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials

and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

## **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

**§ 9.6.5** The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

**§ 9.6.8** Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## **§ 9.7 Failure of Payment**

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

## **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

## **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings

against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### **§ 10.2.8 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### **§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property

(other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to

provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

### **§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner

shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

#### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for

correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§ 12.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### **§ 13.2 Successors and Assigns**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### **§ 13.3 Rights and Remedies**

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

**§ 13.4.2** If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

### **§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### **§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker

and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

**§ 15.2.6.1** Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 15.3 Mediation**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

**§ 15.3.4** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### **§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

**§ 15.4.2** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### **§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

**SECTION 01 1000  
SUMMARY**

**PART 1 GENERAL**

**1.01 PROJECT**

- A. Project Name: City of Bismarck Bismarck-Mandan Convention & Visitors Bureau Roof Replacement
- B. Owner's Name: City of Bismarck.
- C. Architect's Name: J2 Studio Architecture + Design, P.C.
- D. The Project consists of the roof replacement of the existing standing seam roof and flashing replacement at the Bismarck-Mandan Convention & Visitors Bureau.

**1.02 CONTRACT DESCRIPTION**

- A. Contract Type: A single prime contract based on a Stipulated Price as described in Document 00 5200 - Agreement Form.

**1.03 DESCRIPTION OF ALTERATIONS WORK**

- A. Scope of alterations work is indicated on drawings.

**1.04 OWNER OCCUPANCY**

- A. Owner intends to continue to occupy adjacent portions of the existing building during the entire construction period.
- B. Owner intends to occupy the Project upon Substantial Completion..
- C. Cooperate with Owner to minimize conflict and to facilitate Owner's operations.
- D. Schedule the Work to accommodate Owner occupancy.

**1.05 CONTRACTOR USE OF SITE AND PREMISES**

- A. Construction Operations: Limited to areas noted on Drawings.
- B. Provide access to and from site as required by law and by Owner:
  - 1. Emergency Building Exits During Construction: Keep all exits required by code open during construction period; provide temporary exit signs if exit routes are temporarily altered.
  - 2. Do not obstruct roadways, sidewalks, or other public ways without permit.
- C. Existing building spaces may not be used for storage.
- D. Time Restrictions:
  - 1. Limit conduct of exterior work to the hours of 7:00 AM to 8:00 PM.
- E. Utility Outages and Shutdown:
  - 1. Limit disruption of utility services to hours the building is unoccupied.
  - 2. Do not disrupt or shut down life safety systems, including but not limited to fire sprinklers and fire alarm system, without 7 days notice to Owner and authorities having jurisdiction.
  - 3. Prevent accidental disruption of utility services to other facilities.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION - NOT USED**

**END OF SECTION**

**SECTION 01 2000  
PRICE AND PAYMENT PROCEDURES**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Procedures for preparation and submittal of applications for progress payments.
- B. Documentation of changes in Contract Sum and Contract Time.
- C. Change procedures.
- D. Correlation of Contractor submittals based on changes.
- E. Procedures for preparation and submittal of application for final payment.

**1.02 RELATED REQUIREMENTS**

- A. Section 00 5000 - Contracting Forms and Supplements: Forms to be used.
- B. Section 00 5200 - Agreement Form: Contract Sum, retainages, payment period, monetary values of unit prices.
- C. Section 00 7200 - General Conditions: Additional requirements for progress payments, final payment, changes in the Work.
- D. Section 00 7300 - Supplementary Conditions: Percentage allowances for Contractor's overhead and profit.

**1.03 SCHEDULE OF VALUES**

- A. Form to be used: AIA G703.
- B. Electronic media printout including equivalent information will be considered in lieu of standard form specified; submit draft to Architect for approval.
- C. Forms filled out by hand will not be accepted.
- D. Submit Schedule of Values in duplicate within 15 days after date of Owner-Contractor Agreement.
- E. Revise schedule to list approved Change Orders, with each Application For Payment.

**1.04 APPLICATIONS FOR PROGRESS PAYMENTS**

- A. Payment Period: Submit at intervals stipulated in the Agreement.
- B. Form to be used: AIA G702-1992.
- C. Electronic media printout including equivalent information will be considered in lieu of standard form specified; submit sample to Architect for approval.
- D. Forms filled out by hand will not be accepted.
- E. Execute certification by signature of authorized officer.
- F. Submit one electronic of each Application for Payment.

**1.05 MODIFICATION PROCEDURES**

- A. For minor changes not involving an adjustment to the Contract Sum or Contract Time, Architect will issue instructions directly to Contractor.
- B. For other required changes, Architect will issue a document signed by Owner instructing Contractor to proceed with the change, for subsequent inclusion in a Change Order.
  - 1. The document will describe the required changes and will designate method of determining any change in Contract Sum or Contract Time.
  - 2. Promptly execute the change.
- C. For changes for which advance pricing is desired, Architect will issue a document that includes a detailed description of a proposed change with supplementary or revised drawings and specifications, a change in Contract Time for executing the change with a stipulation of any

overtime work required with a stipulation of any overtime work required and the period of time during which the requested price will be considered valid and the period of time during which the requested price will be considered valid. Contractor shall prepare and submit a fixed fixed price quotation within 14 days.

- D. Computation of Change in Contract Amount: As specified in the Agreement and Conditions of the Contract.
  - 1. For change requested by Architect for work falling under a fixed price contract, the amount will be based on Contractor's price quotation.
  - 2. For change requested by Contractor, the amount will be based on the Contractor's request for a Change Order as approved by Architect.
- E. Substantiation of Costs: Provide full information required for evaluation.
  - 1. On request, provide the following data:
    - a. Quantities of products, labor, and equipment.
    - b. Taxes, insurance, and bonds.
    - c. Overhead and profit.
    - d. Justification for any change in Contract Time.
    - e. Credit for deletions from Contract, similarly documented.
- F. Execution of Change Orders: Architect will issue Change Orders for signatures of parties as provided in the Conditions of the Contract.

**1.06 APPLICATION FOR FINAL PAYMENT**

- A. Prepare Application for Final Payment as specified for progress payments, identifying total adjusted Contract Sum, previous payments, and sum remaining due.
- B. Application for Final Payment will not be considered until the following have been accomplished:
  - 1. All closeout procedures specified in Section 01 7000 and 01 7800.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION - NOT USED**

**END OF SECTION**

**SECTION 01 3000  
ADMINISTRATIVE REQUIREMENTS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. General administrative requirements.
- B. Preconstruction meeting.
- C. Progress meetings.
- D. Construction progress schedule.
- E. Coordination drawings.
- F. Submittal procedures.

**1.02 GENERAL ADMINISTRATIVE REQUIREMENTS**

- A. Comply with requirements of Section 01 7000 - Execution and Closeout Requirements for coordination of execution of administrative tasks with timing of construction activities.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION**

**3.01 PRECONSTRUCTION MEETING**

- A. Architect will schedule a meeting after Notice of Award.
- B. Attendance Required:
  - 1. Owner.
  - 2. Architect.
  - 3. Contractor.
- C. Agenda:
  - 1. Execution of Owner-Contractor Agreement.
  - 2. Submission of executed bonds and insurance certificates.
  - 3. Distribution of Contract Documents.
  - 4. Submission of list of subcontractors, list of products, schedule of values, and progress schedule.
  - 5. Designation of personnel representing the parties to Contract, Owner and Architect.
  - 6. Procedures and processing of field decisions, submittals, substitutions, applications for payments, proposal request, Change Orders, and Contract closeout procedures.
  - 7. Scheduling.
- D. Record minutes and distribute copies within two days after meeting to participants, with two copies to Architect, Owner, participants, and those affected by decisions made.

**3.02 PROGRESS MEETINGS**

- A. Schedule and administer meetings throughout progress of the work at maximum bi-monthly intervals.
- B. Make arrangements for meetings, prepare agenda with copies for participants, preside at meetings.
- C. Attendance Required:
  - 1. Contractor.
  - 2. Owner.
  - 3. Architect.
  - 4. Contractor's superintendent.
  - 5. Major subcontractors.
- D. Agenda:
  - 1. Review minutes of previous meetings.

2. Review of work progress.
  3. Field observations, problems, and decisions.
  4. Identification of problems that impede, or will impede, planned progress.
  5. Review of submittals schedule and status of submittals.
  6. Maintenance of progress schedule.
  7. Corrective measures to regain projected schedules.
  8. Planned progress during succeeding work period.
  9. Maintenance of quality and work standards.
  10. Effect of proposed changes on progress schedule and coordination.
  11. Other business relating to work.
- E. Record minutes and distribute copies within two days after meeting to participants, with copies to Architect, Owner, participants, and those affected by decisions made.

### **3.03 CONSTRUCTION PROGRESS SCHEDULE**

- A. If preliminary schedule requires revision after review, submit revised schedule within 10 days.
- B. Within 20 days after review of preliminary schedule, submit draft of proposed complete schedule for review.
  1. Include written certification that major contractors have reviewed and accepted proposed schedule.
- C. Within 10 days after joint review, submit complete schedule.
- D. Submit updated schedule with each Application for Payment.

### **3.04 COORDINATION DRAWINGS**

- A. Provide information required by Project Coordinator for preparation of coordination drawings.
- B. Review drawings prior to submission to Architect.

### **3.05 SUBMITTALS FOR REVIEW**

- A. When the following are specified in individual sections, submit them for review:
  1. Product data.
  2. Shop drawings.
  3. Samples for selection.
  4. Samples for verification.
- B. Submit to Architect for review for the limited purpose of checking for compliance with information given and the design concept expressed in Contract Documents.
- C. Samples will be reviewed for aesthetic, color, or finish selection.
- D. After review, provide copies and distribute in accordance with SUBMITTAL PROCEDURES article below and for record documents purposes described in Section 01 7800 - Closeout Submittals.

### **3.06 SUBMITTAL PROCEDURES**

- A. General Requirements:
- B. Transmit each submittal with approved form.

**END OF SECTION**

**SECTION 01 5000  
TEMPORARY FACILITIES AND CONTROLS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Temporary utilities.
- B. Temporary sanitary facilities.
- C. Vehicular access and parking.
- D. Waste removal facilities and services.
- E. Project identification sign.
- F. Field offices.

**1.02 TEMPORARY UTILITIES**

- A. Existing facilities may be used.
- B. Use trigger-operated nozzles for water hoses, to avoid waste of water.

**1.03 TEMPORARY SANITARY FACILITIES**

- A. Provide and maintain required facilities and enclosures. Provide at time of project mobilization.
- B. Use of existing facilities is not permitted.
- C. Maintain daily in clean and sanitary condition.

**1.04 VEHICULAR ACCESS AND PARKING**

- A. Coordinate access and haul routes with governing authorities and Owner.
- B. Provide and maintain access to fire hydrants, free of obstructions.
- C. Existing parking areas may be used for construction parking. Coordinate parking location with Owner.

**1.05 WASTE REMOVAL**

- A. Provide waste removal facilities and services as required to maintain the site in clean and orderly condition.
- B. Provide containers with lids. Remove trash from site periodically.
- C. If materials to be recycled or re-used on the project must be stored on-site, provide suitable non-combustible containers; locate containers holding flammable material outside the structure unless otherwise approved by the authorities having jurisdiction.
- D. Open free-fall chutes are not permitted. Terminate closed chutes into appropriate containers with lids.

**1.06 PROJECT IDENTIFICATION**

- A. Project signs are not permitted.
- B. No other signs are allowed without Owner permission except those required by law.

**1.07 FIELD OFFICES**

- A. A field office will not be required for this project. Contractor Superintendent shall be accessible by cellular phone. Contractor shall post all applicable documents required by law within one area within the construction zone.

**1.08 REMOVAL OF UTILITIES, FACILITIES, AND CONTROLS**

- A. Remove temporary utilities, equipment, facilities, materials, prior to Date of Substantial Completion inspection.
- B. Clean and repair damage caused by installation or use of temporary work.
- C. Restore existing facilities used during construction to original condition.

City of Bismarck  
Bismarck-Mandan Convention & Visitors Bureau Roof Replacement  
Bismarck, North Dakota

J22321

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION - NOT USED**

**END OF SECTION**

**SECTION 01 5100  
TEMPORARY UTILITIES**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Temporary Utilities: Provision of electricity, electricity, lighting, lighting, and water.

**1.02 RELATED REQUIREMENTS**

- A. Section 01 5000 - Temporary Facilities and Controls:

**1.03 TEMPORARY ELECTRICITY**

- A. Cost: By Owner.
- B. Connect to Owner's existing power service.
  - 1. Do not disrupt Owner's need for continuous service.
  - 2. Exercise measures to conserve energy.
- C. Provide power outlets for construction operations, with branch wiring and distribution boxes located as required. Provide flexible power cords as required.
- D. Permanent convenience receptacles may be utilized during construction.
- E. Provide adequate distribution equipment, wiring, and outlets to provide single phase branch circuits for power and lighting.

**1.04 TEMPORARY WATER SERVICE**

- A. Cost of Water Used: By Owner.
- B. Connect to existing water source.
  - 1. Exercise measures to conserve water.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION - NOT USED**

**END OF SECTION**

**SECTION 01 6000  
PRODUCT REQUIREMENTS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Transportation, handling, storage and protection.
- B. Product option requirements.
- C. Substitution limitations.
- D. Maintenance materials, including extra materials, spare parts, tools, and software.

**1.02 RELATED REQUIREMENTS**

- A. Section 01 2500 - Substitution Procedures: Substitutions made during procurement and/or construction phases.
- B. Section 01 7419 - Construction Waste Management and Disposal: Waste disposal requirements potentially affecting product selection, packaging and substitutions.

**1.03 SUBMITTALS**

- A. Product Data Submittals: Submit manufacturer's standard published data. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information specific to this Project.
- B. Shop Drawing Submittals: Prepared specifically for this Project; indicate utility and electrical characteristics, utility connection requirements, and location of utility outlets for service for functional equipment and appliances.
- C. Sample Submittals: Illustrate functional and aesthetic characteristics of the product, with integral parts and attachment devices. Coordinate sample submittals for interfacing work.
  - 1. For selection from standard finishes, submit samples of the full range of the manufacturer's standard colors, textures, and patterns.

**PART 2 PRODUCTS**

**2.01 EXISTING PRODUCTS**

- A. Existing materials and equipment indicated to be removed, but not to be re-used, relocated, reinstalled, delivered to the Owner, or otherwise indicated as to remain the property of the Owner, become the property of the Contractor; remove from site.
- B. Reused Products: Reused products include materials and equipment previously used in this or other construction, salvaged and refurbished as specified.

**2.02 NEW PRODUCTS**

- A. Provide new products unless specifically required or permitted by Contract Documents.

**2.03 PRODUCT OPTIONS**

- A. Products Specified by Reference Standards or by Description Only: Use any product meeting those standards or description.
- B. Products Specified by Naming One or More Manufacturers: Use a product of one of the manufacturers named and meeting specifications, no options or substitutions allowed.
- C. Products Specified by Naming One or More Manufacturers with a Provision for Substitutions: Submit a request for substitution for any manufacturer not named.

**2.04 MAINTENANCE MATERIALS**

- A. Furnish extra materials, spare parts, tools, and software of types and in quantities specified in individual specification sections.
- B. Deliver to Project site; obtain receipt prior to final payment.

**PART 3 EXECUTION**

### **3.01 SUBSTITUTION LIMITATIONS**

- A. See Section 01 2500 - Substitution Procedures.
- B. Instructions to Bidders specifies time restrictions for submitting requests for substitutions during the bidding period and the documents required. Comply with requirements specified in Section 00 2113.
- C. Document each request with complete data substantiating compliance of proposed substitution with Contract Documents.
- D. A request for substitution constitutes a representation that the submitter:
  - 1. Has investigated proposed product and determined that it meets or exceeds the quality level of the specified product.
  - 2. Agrees to provide the same warranty for the substitution as for the specified product.
  - 3. Agrees to coordinate installation and make changes to other Work that may be required for the Work to be complete with no additional cost to Owner.
  - 4. Waives claims for additional costs or time extension that may subsequently become apparent.
- E. Substitution Submittal Procedure:
  - 1. Submit one copy of request for substitution for consideration. Limit each request to one proposed substitution.
  - 2. Submit shop drawings, product data, and certified test results attesting to the proposed product equivalence. Burden of proof is on proposer.
  - 3. Architect will notify Contractor in writing of decision to accept or reject request.

### **3.02 TRANSPORTATION AND HANDLING**

- A. Package products for shipment in manner to prevent damage; for equipment, package to avoid loss of factory calibration.
- B. If special precautions are required, attach instructions prominently and legibly on outside of packaging.
- C. Coordinate schedule of product delivery to designated prepared areas in order to minimize site storage time and potential damage to stored materials.
- D. Transport and handle products in accordance with manufacturer's instructions.
- E. Transport materials in covered trucks to prevent contamination of product and littering of surrounding areas.
- F. Promptly inspect shipments to ensure that products comply with requirements, quantities are correct, and products are undamaged.
- G. Provide equipment and personnel to handle products by methods to prevent soiling, disfigurement, or damage, and to minimize handling.
- H. Arrange for the return of packing materials, such as wood pallets, where economically feasible.

### **3.03 STORAGE AND PROTECTION**

- A. Designate receiving/storage areas for incoming products so that they are delivered according to installation schedule and placed convenient to work area in order to minimize waste due to excessive materials handling and misapplication. See Section 01 7419.
- B. Store and protect products in accordance with manufacturers' instructions.
- C. Store with seals and labels intact and legible.
- D. Store sensitive products in weathertight, climate-controlled enclosures in an environment favorable to product.
- E. For exterior storage of fabricated products, place on sloped supports above ground.
- F. Protect products from damage or deterioration due to construction operations, weather, precipitation, humidity, temperature, sunlight and ultraviolet light, dirt, dust, and other

contaminants.

- G. Comply with manufacturer's warranty conditions, if any.
- H. Cover products subject to deterioration with impervious sheet covering. Provide ventilation to prevent condensation and degradation of products.
- I. Prevent contact with material that may cause corrosion, discoloration, or staining.
- J. Provide equipment and personnel to store products by methods to prevent soiling, disfigurement, or damage.
- K. Arrange storage of products to permit access for inspection. Periodically inspect to verify products are undamaged and are maintained in acceptable condition.

**END OF SECTION**

**SECTION 01 7000  
EXECUTION AND CLOSEOUT REQUIREMENTS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Examination, preparation, and general installation procedures.
- B. Requirements for alterations work, including selective demolition, except removal, disposal, and/or remediation of hazardous materials and toxic substances.
- C. Cutting and patching.
- D. Cleaning and protection.
- E. Closeout procedures, including Contractor's Correction Punch List, except payment procedures.
- F. General requirements for maintenance service.

**1.02 RELATED REQUIREMENTS**

- A. Section 01 1000 - Summary: Limitations on working in existing building; continued occupancy; work sequence; identification of salvaged and relocated materials.
- B. Section 01 5000 - Temporary Facilities and Controls

**1.03 SUBMITTALS**

- A. See Section 01 3000 - Administrative Requirements, for submittal procedures.
- B. Cutting and Patching: Submit written request in advance of cutting or alteration that affects:
  - 1. Structural integrity of any element of Project.
  - 2. Integrity of weather exposed or moisture resistant element.
  - 3. Efficiency, maintenance, or safety of any operational element.
  - 4. Visual qualities of sight exposed elements.
  - 5. Work of Owner or separate Contractor.

**1.04 COORDINATION**

- A. Coordinate scheduling, submittals, and work of the various sections of the Project Manual to ensure efficient and orderly sequence of installation of interdependent construction elements, with provisions for accommodating items installed later.
- B. Notify affected utility companies and comply with their requirements.
- C. Verify that utility requirements and characteristics of new operating equipment are compatible with building utilities. Coordinate work of various sections having interdependent responsibilities for installing, connecting to, and placing in service, such equipment.
- D. Coordinate space requirements, supports, and installation of mechanical and electrical work that are indicated diagrammatically on drawings. Follow routing indicated for pipes, ducts, and conduit, as closely as practicable; place runs parallel with lines of building. Utilize spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs.
- E. In finished areas except as otherwise indicated, conceal pipes, ducts, and wiring within the construction. Coordinate locations of fixtures and outlets with finish elements.
- F. Coordinate completion and clean-up of work of separate sections.
- G. After Owner occupancy of premises, coordinate access to site for correction of defective work and work not in accordance with Contract Documents, to minimize disruption of Owner's activities.

**PART 2 PRODUCTS**

**2.01 PATCHING MATERIALS**

- A. New Materials: As specified in product sections; match existing products and work for patching and extending work.

- B. Type and Quality of Existing Products: Determine by inspecting and testing products where necessary, referring to existing work as a standard.
- C. Product Substitution: For any proposed change in materials, submit request for substitution described in Section 01 6000 - Product Requirements.

### **PART 3 EXECUTION**

#### **3.01 EXAMINATION**

- A. Verify that existing site conditions and substrate surfaces are acceptable for subsequent work. Start of work means acceptance of existing conditions.
- B. Verify that existing substrate is capable of structural support or attachment of new work being applied or attached.
- C. Examine and verify specific conditions described in individual specification sections.
- D. Take field measurements before confirming product orders or beginning fabrication, to minimize waste due to over-ordering or misfabrication.
- E. Verify that utility services are available, of the correct characteristics, and in the correct locations.
- F. Prior to Cutting: Examine existing conditions prior to commencing work, including elements subject to damage or movement during cutting and patching. After uncovering existing work, assess conditions affecting performance of work. Beginning of cutting or patching means acceptance of existing conditions.

#### **3.02 PREPARATION**

- A. Clean substrate surfaces prior to applying next material or substance.
- B. Seal cracks or openings of substrate prior to applying next material or substance.
- C. Apply manufacturer required or recommended substrate primer, sealer, or conditioner prior to applying any new material or substance in contact or bond.

#### **3.03 GENERAL INSTALLATION REQUIREMENTS**

- A. Install products as specified in individual sections, in accordance with manufacturer's instructions and recommendations, and so as to avoid waste due to necessity for replacement.
- B. Make vertical elements plumb and horizontal elements level, unless otherwise indicated.
- C. Install equipment and fittings plumb and level, neatly aligned with adjacent vertical and horizontal lines, unless otherwise indicated.
- D. Make consistent texture on surfaces, with seamless transitions, unless otherwise indicated.
- E. Make neat transitions between different surfaces, maintaining texture and appearance.

#### **3.04 ALTERATIONS**

- A. Drawings showing existing construction and utilities are based on casual field observation only.
  - 1. Verify that construction and utility arrangements are as indicated.
  - 2. Report discrepancies to Architect before disturbing existing installation.
  - 3. Beginning of alterations work constitutes acceptance of existing conditions.
- B. Keep areas in which alterations are being conducted separated from other areas that are still occupied.
  - 1. Provide, erect, and maintain temporary dustproof partitions of construction specified in Section 01 5000 in locations indicated on drawings.
- C. Remove existing work as indicated and as required to accomplish new work.
  - 1. Remove items indicated on drawings.
  - 2. Relocate items indicated on drawings.
  - 3. Where new surface finishes are to be applied to existing work, perform removals, patch, and prepare existing surfaces as required to receive new finish; remove existing finish if

- necessary for successful application of new finish.
4. Where new surface finishes are not specified or indicated, patch holes and damaged surfaces to match adjacent finished surfaces as closely as possible.
- D. Services (Including but not limited to HVAC, Plumbing, Fire Protection, Electrical, and Telecommunications): Remove, relocate, and extend existing systems to accommodate new construction.
1. Maintain existing active systems that are to remain in operation; maintain access to equipment and operational components; if necessary, modify installation to allow access or provide access panel.
  2. Where existing systems or equipment are not active and Contract Documents require reactivation, put back into operational condition; repair supply, distribution, and equipment as required.
  3. Where existing active systems serve occupied facilities but are to be replaced with new services, maintain existing systems in service until new systems are complete and ready for service.
    - a. Disable existing systems only to make switchovers and connections; minimize duration of outages.
    - b. Provide temporary connections as required to maintain existing systems in service.
  4. Verify that abandoned services serve only abandoned facilities.
- E. Protect existing work to remain.
1. Prevent movement of structure; provide shoring and bracing if necessary.
  2. Perform cutting to accomplish removals neatly and as specified for cutting new work.
  3. Repair adjacent construction and finishes damaged during removal work.
- F. Adapt existing work to fit new work: Make as neat and smooth transition as possible.
1. When existing finished surfaces are cut so that a smooth transition with new work is not possible, terminate existing surface along a straight line at a natural line of division and make recommendation to Architect.
- G. Patching: Where the existing surface is not indicated to be refinished, patch to match the surface finish that existed prior to cutting. Where the surface is indicated to be refinished, patch so that the substrate is ready for the new finish.
- H. Clean existing systems and equipment.
- I. Remove demolition debris and abandoned items from alterations areas and dispose of off-site; do not burn or bury.
- J. Do not begin new construction in alterations areas before demolition is complete.
- K. Comply with all other applicable requirements of this section.

### **3.05 CUTTING AND PATCHING**

- A. Whenever possible, execute the work by methods that avoid cutting or patching.
- B. See Alterations article above for additional requirements.
- C. Perform whatever cutting and patching is necessary to:
  1. Complete the work.
  2. Fit products together to integrate with other work.
  3. Provide openings for penetration of mechanical, electrical, and other services.
  4. Match work that has been cut to adjacent work.
  5. Repair areas adjacent to cuts to required condition.
  6. Repair new work damaged by subsequent work.
  7. Remove samples of installed work for testing when requested.
  8. Remove and replace defective and non-complying work.
- D. Execute work by methods that avoid damage to other work and that will provide appropriate surfaces to receive patching and finishing. In existing work, minimize damage and restore to original condition.

- E. Employ original installer to perform cutting for weather exposed and moisture resistant elements, and sight exposed surfaces.
- F. Cut rigid materials using masonry saw or core drill. Pneumatic tools not allowed without prior approval.
- G. Restore work with new products in accordance with requirements of Contract Documents.
- H. Fit work air tight to pipes, sleeves, ducts, conduit, and other penetrations through surfaces.
- I. Patching:
  - 1. Finish patched surfaces to match finish that existed prior to patching. On continuous surfaces, refinish to nearest intersection or natural break. For an assembly, refinish entire unit.
  - 2. Match color, texture, and appearance.
  - 3. Repair patched surfaces that are damaged, lifted, discolored, or showing other imperfections due to patching work. If defects are due to condition of substrate, repair substrate prior to repairing finish.

### **3.06 PROGRESS CLEANING**

- A. Maintain areas free of waste materials, debris, and rubbish. Maintain site in a clean and orderly condition.
- B. Remove debris and rubbish from pipe chases, plenums, attics, crawl spaces, and other closed or remote spaces, prior to enclosing the space.
- C. Broom and vacuum clean interior areas prior to start of surface finishing, and continue cleaning to eliminate dust.
- D. Collect and remove waste materials, debris, and trash/rubbish from site periodically and dispose off-site; do not burn or bury.

### **3.07 PROTECTION OF INSTALLED WORK**

- A. Protect installed work from damage by construction operations.
- B. Provide special protection where specified in individual specification sections.
- C. Provide temporary and removable protection for installed products. Control activity in immediate work area to prevent damage.
- D. Provide protective coverings at walls, projections, jambs, sills, and soffits of openings.
- E. Protect finished floors, stairs, and other surfaces from traffic, dirt, wear, damage, or movement of heavy objects, by protecting with durable sheet materials.
- F. Prohibit traffic or storage upon waterproofed or roofed surfaces. If traffic or activity is necessary, obtain recommendations for protection from waterproofing or roofing material manufacturer.
- G. Remove protective coverings when no longer needed; reuse or recycle coverings if possible.

### **3.08 FINAL CLEANING**

- A. Use cleaning materials that are nonhazardous.
- B. Remove all labels that are not permanent. Do not paint or otherwise cover fire test labels or nameplates on mechanical and electrical equipment.
- C. Clean equipment and fixtures to a sanitary condition with cleaning materials appropriate to the surface and material being cleaned.
- D. Clean filters of operating equipment.
- E. Clean debris from roofs, downspouts, area drains, and drainage systems.
- F. Clean site; sweep paved areas, rake clean landscaped surfaces.
- G. Remove waste, surplus materials, trash/rubbish, and construction facilities from the site; dispose of in legal manner; do not burn or bury.

### **3.09 CLOSEOUT PROCEDURES**

- A. Make submittals that are required by governing or other authorities.
  - 1. Provide copies to Owner/Facility Management.
- B. Accompany Project Coordinator on preliminary inspection to determine items to be listed for completion or correction in the Contractor's Correction Punch List for Contractor's Notice of Substantial Completion.
- C. Notify Architect when work is considered ready for Architect's Substantial Completion inspection.
- D. Submit written certification containing Contractor's Correction Punch List, that Contract Documents have been reviewed, work has been inspected, and that work is complete in accordance with Contract Documents and ready for Architect's Substantial Completion inspection.
- E. Conduct Substantial Completion inspection and create Final Correction Punch List containing Architect's and Contractor's comprehensive list of items identified to be completed or corrected and submit to Architect.
- F. Correct items of work listed in Final Correction Punch List and comply with requirements for access to Owner-occupied areas.
- G. Notify Architect when work is considered finally complete and ready for Architect's Substantial Completion final inspection.
- H. Complete items of work determined by Architect listed in executed Certificate of Substantial Completion.

### **3.10 MAINTENANCE**

- A. Provide service and maintenance of components indicated in specification sections.
- B. Maintenance Period: As indicated in specification sections or, if not indicated, not less than one year from the Date of Substantial Completion or the length of the specified warranty, whichever is longer.
- C. Examine system components at a frequency consistent with reliable operation. Clean, adjust, and lubricate as required.
- D. Include systematic examination, adjustment, and lubrication of components. Repair or replace parts whenever required. Use parts produced by the manufacturer of the original component.
- E. Maintenance service shall not be assigned or transferred to any agent or subcontractor without prior written consent of the Owner.

**END OF SECTION**

**SECTION 01 7800  
CLOSEOUT SUBMITTALS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Project record documents.
- B. Operation and maintenance data.
- C. Warranties and bonds.

**1.02 RELATED REQUIREMENTS**

- A. Section 01 3000 - Administrative Requirements: Submittals procedures, shop drawings, product data, and samples.
- B. Individual Product Sections: Specific requirements for operation and maintenance data.
- C. Individual Product Sections: Warranties required for specific products or Work.

**1.03 SUBMITTALS**

- A. Project Record Documents: Submit documents to Architect with claim for final Application for Payment.
- B. Operation and Maintenance Data:
  - 1. For equipment, or component parts of equipment put into service during construction and operated by Owner, submit completed documents within ten days after acceptance.
  - 2. Submit one set of final documents in within 10 days after final inspection and before submitting final Application for Payment.
- C. Warranties and Bonds:
  - 1. For equipment or component parts of equipment put into service during construction with Owner's permission, submit documents within 10 days after acceptance.
  - 2. Make other submittals within 10 days after Date of Substantial Completion, prior to final Application for Payment.
  - 3. For items of Work for which acceptance is delayed beyond Date of Substantial Completion, submit within 10 days after acceptance, listing the date of acceptance as the beginning of the warranty period.

**PART 2 PRODUCTS - NOT USED**

**PART 3 EXECUTION**

**3.01 PROJECT RECORD DOCUMENTS**

- A. Maintain on site one set of the following record documents; record actual revisions to the Work:
  - 1. Drawings.
  - 2. Specifications.
  - 3. Addenda.
  - 4. Change Orders and other modifications to the Contract.
  - 5. Reviewed shop drawings, product data, and samples.
- B. Ensure entries are complete and accurate, enabling future reference by Owner.
- C. Store record documents separate from documents used for construction.
- D. Record information concurrent with construction progress.
- E. Specifications: Legibly mark and record at each product section description of actual products installed, including the following:
  - 1. Changes made by Addenda and modifications.
- F. Record Drawings: Legibly mark each item to record actual construction including:
  - 1. Field changes of dimension and detail.
  - 2. Details not on original Contract drawings.

### **3.02 OPERATION AND MAINTENANCE DATA**

- A. Source Data: For each product or system, list names, addresses and telephone numbers of Subcontractors and suppliers, including local source of supplies and replacement parts.
- B. Product Data: Mark each sheet to clearly identify specific products and component parts, and data applicable to installation. Delete inapplicable information.
- C. Drawings: Supplement product data to illustrate relations of component parts of equipment and systems, to show control and flow diagrams. Do not use Project Record Documents as maintenance drawings.
- D. Typed Text: As required to supplement product data. Provide logical sequence of instructions for each procedure, incorporating manufacturer's instructions.

### **3.03 OPERATION AND MAINTENANCE DATA FOR MATERIALS AND FINISHES**

- A. For Each Product, Applied Material, and Finish:
- B. Instructions for Care and Maintenance: Manufacturer's recommendations for cleaning agents and methods, precautions against detrimental cleaning agents and methods, and recommended schedule for cleaning and maintenance.
- C. Where additional instructions are required, beyond the manufacturer's standard printed instructions, have instructions prepared by personnel experienced in the operation and maintenance of the specific products.

### **3.04 ASSEMBLY OF OPERATION AND MAINTENANCE MANUALS**

- A. Submit electronic copies of all required information on a USB flash drive. Prior to assembly, confirm with Owner any requirements for a hard copy.
- B. Assemble operation and maintenance data into durable manuals for Owner's personnel use, with data arranged in the same sequence as, and identified by, the specification sections.
- C. Project Directory: Title and address of Project; names, addresses, and telephone numbers of Architect, Consultants, Contractor and subcontractors, with names of responsible parties.
- D. Table of Contents: List every item, using the same identification as the specification
- E. Text: Manufacturer's printed data, or typewritten data.
- F. Drawings: Provide digital copy of as-built drawings on the same USB flash drive
- G. Drawings: Provide with reinforced punched binder tab. Bind in with text; fold larger drawings to size of text pages.
- H. Arrangement of Contents: Organize each volume in parts as follows:
  - 1. Project Directory.
  - 2. Table of Contents, of all volumes, and of this volume.
  - 3. Operation and Maintenance Data: Arranged by system, then by product category.
    - a. Source data.
    - b. Product data, shop drawings, and other submittals.
    - c. Operation and maintenance data.
    - d. Field quality control data.
    - e. Photocopies of warranties and bonds.

### **3.05 WARRANTIES AND BONDS**

- A. Obtain warranties and bonds, executed in duplicate by responsible Subcontractors, suppliers, and manufacturers, within 10 days after completion of the applicable item of work. Except for items put into use with Owner's permission, leave date of beginning of time of warranty until Date of Substantial completion is determined.
- B. Verify that documents are in proper form, contain full information, and are notarized.
- C. Co-execute submittals when required.
- D. Retain warranties and bonds until time specified for submittal.

- E. Include originals of each in operation and maintenance manuals, indexed separately on Table of Contents.

**END OF SECTION**

**SECTION 07 0150.19  
PREPARATION FOR RE-ROOFING**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Partial replacement of existing roofing system in preparation for replacement roofing system in designated areas as indicated on drawings.
- B. Removal of existing flashing and counterflashings.
- C. Temporary roofing protection.

**1.02 RELATED REQUIREMENTS**

- A. Section 07 5400 - Thermoplastic Membrane Roofing.
- B. Section 07 6200 - Sheet Metal Flashing and Trim: Replacement of flashing and counterflashings.

**1.03 ADMINISTRATIVE REQUIREMENTS**

- A. Coordinate with affected mechanical and electrical work associated with roof penetrations.
- B. Schedule work to coincide with commencement of installation of new roofing system.

**1.04 FIELD CONDITIONS**

- A. Existing Roofing System to be removed: standing seam metal roofing. Existing ballasted roofing will remain in place.
- B. Do not remove existing roofing membrane when weather conditions threaten the integrity of building contents or intended continued occupancy.
- C. Maintain continuous temporary protection prior to and during installation of new roofing system.
- D. Provide notice at least three days before starting activities that will affect normal building operations.

**PART 2 PRODUCTS**

**2.01 COMPONENTS**

- A. See the following sections for additional information on components relating to this work:

**2.02 MATERIALS**

- A. Temporary Roofing Protection Materials:
  - 1. Plastic Sheeting: Provide polyethylene sheets; use weights to retain sheeting in position.

**PART 3 EXECUTION**

**3.01 EXAMINATION**

- A. Verify that existing roof surface has been cleared of materials being removed from existing roofing system and ready for next phase of work as required.

**3.02 PREPARATION**

- A. Sweep roof surface clean of loose matter.
- B. Remove loose refuse and dispose of properly off-site.

**3.03 MATERIAL REMOVAL**

- A. Remove only existing roofing materials that can be replaced with new materials the same day.
- B. Remove metal counter flashings.
- C. Cut and lay flat any membrane blisters.
- D. Remove damaged insulation and fasteners, cant strips, blocking.
- E. Repair existing wood deck surface to provide smooth working surface for new roof system to provide smooth working surface for new roof system.

**3.04 INSTALLATION**

- A. Coordinate scope of this work with requirements for installation of new roofing system, see Section 07 5400 for additional requirements.

**3.05 PROTECTION**

- A. Provide protection of existing roofing system that is not having work performed on it.
- B. Provide temporary protective sheeting over uncovered deck surfaces.
- C. Turn sheeting up and over parapets and curbing. Retain sheeting in position with weights.
- D. Provide for surface drainage from sheeting to existing drainage facilities.
- E. Do not permit traffic over unprotected or repaired deck surface.

**END OF SECTION**

**SECTION 07 5400  
THERMOPLASTIC MEMBRANE ROOFING**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Adhered system with thermoplastic roofing membrane.
- B. Cover boards.
- C. Flashings.
- D. Roofing accessories.

**1.02 REFERENCE STANDARDS**

- A. ASTM C1177/C1177M - Standard Specification for Glass Mat Gypsum Substrate for Use as Sheathing; 2017.
- B. ASTM D4434/D4434M - Standard Specification for Poly(Vinyl Chloride) Sheet Roofing; 2021.
- C. NRCA (RM) - The NRCA Roofing Manual; 2024.
- D. NRCA (WM) - The NRCA Waterproofing Manual; 2021.

**1.03 SUBMITTALS**

- A. See Section 01 3000 - Administrative Requirements for submittal procedures.
- B. Samples for Verification: Submit two samples 4 by 4 inches in size illustrating colored coating.
- C. Installer's qualification statement.
- D. Warranty Documentation:
  - 1. Submit manufacturer warranty and ensure that forms have been completed in Owner's name and registered with manufacturer.

**1.04 QUALITY ASSURANCE**

- A. Installer Qualifications: Company specializing in performing work of this section with at least three years of documented experience.

**1.05 WARRANTY**

- A. System Warranty: Provide manufacturer's system warranty agreeing to repair or replace roofing that leaks or is damaged due to wind or other natural causes.
  - 1. Warranty Term: 20 years.
  - 2. For repair and replacement include costs of both material and labor in warranty.

**PART 2 PRODUCTS**

**2.01 MANUFACTURERS**

- A. Thermoplastic Polyvinyl Chloride (PVC) Membrane Roofing Materials:
  - 1. Basis-of-Design: Sika Sarnafil PVC. Any approved manufacturers listed below must meet color and rib profile requirements.
  - 2. Carlisle Roofing Systems, Inc; Sure-Flex PVC: [www.carlisle-syntec.com/#sle](http://www.carlisle-syntec.com/#sle).
  - 3. Sika Corporation Roofing; Sarnafil PVC: [usa.sika.com/sarnafil/#sle](http://usa.sika.com/sarnafil/#sle).
  - 4. Versico Roofing Systems; VersiFleece PVC Polyester Reinforced Membrane: [www.versico.com/#sle](http://www.versico.com/#sle).
  - 5. Substitutions: See Section 01 6000 - Product Requirements.

**2.02 MEMBRANE ROOFING AND ASSOCIATED MATERIALS**

- A. Membrane Roofing Materials:
  - 1. PVC: Polyvinyl chloride (PVC) complying with ASTM D4434/D4434M, Type II, sheet contains reinforcing fibers or reinforcing fabrics.
    - a. Thickness: 60 mil, 0.060 inch, minimum.

2. Color: Basis-of-Design: Sika Sarnafil Evergreen. Note: any approved manufacturer must be able to provide similar color.
- B. Seaming Materials: As recommended by membrane manufacturer.
  - C. Membrane Fasteners: As recommended and approved by membrane manufacturer.
  - D. Flexible Flashing Material: Same material as membrane.

### **2.03 COVER BOARDS**

- A. Cover Boards: Glass-mat faced gypsum panels complying with ASTM C1177/C1177M.
  1. Thickness: 1/4 inch, fire-resistant.
  2. Products:
    - a. Georgia-Pacific; DensDeck: [www.densdeck.com/#sle](http://www.densdeck.com/#sle).
    - b. Substitutions: See Section 01 6000 - Product Requirements.

### **2.04 ACCESSORIES**

- A. Membrane Adhesive: As recommended by membrane manufacturer.
- B. Profile Rib: PVC extruded rib hot-air welded to the membrane to simulate the look of a standing seam metal roof.
  1. Basis-of-Design: Sika Sarnafil Decor Profile Rib
    - a. Color - Evergreen.

## **PART 3 EXECUTION**

### **3.01 EXAMINATION**

- A. Verify that surfaces and site conditions are ready to receive work.
- B. Verify deck is supported and secure.
- C. Verify deck is clean and smooth, flat, free of depressions, waves, or projections, properly sloped and suitable for installation of roof system.
- D. Verify deck surfaces are dry and free of snow or ice.
- E. Verify that roof openings, curbs, and penetrations through roof are solidly set, and cant strips are in place.

### **3.02 PREPARATION - WOOD DECK**

- A. Verify flatness and tightness of joints of wood decking. Fill knot holes with latex filler.

### **3.03 INSTALLATION, GENERAL**

- A. Perform work in accordance with manufacturer's instructions, NRCA (RM), and NRCA (WM) applicable requirements.
- B. Do not apply roofing membrane during cold or wet weather conditions.
- C. Do not apply roofing membrane when ambient temperature is outside the temperature range recommended by manufacturer.
- D. Do not apply roofing membrane to damp or frozen deck surface or when precipitation is expected or occurring.
- E. Do not expose materials vulnerable to water or sun damage in quantities greater than can be weatherproofed the same day.

### **3.04 INSTALLATION - MEMBRANE**

- A. Roll out membrane, free from wrinkles or tears. Place sheet into place without stretching.
- B. Shingle joints on sloped substrate in direction of drainage.
- C. Fully Adhered Application: Apply adhesive to substrate at rate of as recommended by manufacturer. Fully embed membrane in adhesive except in areas directly over or within 3 inches of expansion joints. Fully adhere one roll before proceeding to adjacent rolls.

- D. Overlap edges and ends and seal seams by contact adhesive, minimum 3 inches. Seal permanently waterproof. Apply uniform bead of sealant to joint edge.
- E. At intersections with vertical surfaces:
  - 1. Extend membrane over cant strips and up a minimum of 4 inches onto vertical surfaces.
  - 2. Fully adhere flexible flashing over membrane and up to nailing strips.
- F. Around roof penetrations, seal flanges and flashings with flexible flashing.

### **3.05 CLEANING**

- A. Remove bituminous markings from finished surfaces.
- B. In areas where finished surfaces are soiled by work of this section, consult manufacturer of surfaces for cleaning advice and comply with their documented instructions.
- C. Repair or replace defaced or damaged finishes caused by work of this section.

### **3.06 PROTECTION**

- A. Protect installed roofing and flashings from construction operations.
- B. Where traffic must continue over finished roof membrane, protect surfaces using durable materials.

**END OF SECTION**

**SECTION 07 6200**  
**SHEET METAL FLASHING AND TRIM**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Fabricated sheet metal items, including flashings, counterflashings and other items indicated in Schedule.
- B. Sealants for joints within sheet metal fabrications.

**1.02 RELATED REQUIREMENTS**

- A. Section 07 5300: Roofing system.

**1.03 REFERENCE STANDARDS**

- A. AAMA 2605 - Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels (with Coil Coating Appendix); 2022.
- B. ASTM A653/A653M - Standard Specification for Steel Sheet, Zinc-Coated (Galvanized) or Zinc-Iron Alloy-Coated (Galvannealed) by the Hot-Dip Process; 2023.
- C. ASTM C920 - Standard Specification for Elastomeric Joint Sealants; 2018.
- D. CDA A4050 - Copper in Architecture - Handbook; current edition.
- E. SMACNA (ASMM) - Architectural Sheet Metal Manual; 2012.

**1.04 SUBMITTALS**

- A. See Section 01 3000 - Administrative Requirements for submittal procedures.
- B. Shop Drawings: Indicate material profile, jointing pattern, jointing details, fastening methods, flashings, terminations, and installation details.

**1.05 QUALITY ASSURANCE**

- A. Perform work in accordance with SMACNA (ASMM) and CDA A4050 requirements and standard details, except as otherwise indicated.

**1.06 DELIVERY, STORAGE, AND HANDLING**

- A. Stack material to prevent twisting, bending, and abrasion, and to provide ventilation. Slope metal sheets to ensure drainage.
- B. Prevent contact with materials that could cause discoloration or staining.

**PART 2 PRODUCTS**

**2.01 SHEET MATERIALS**

- A. Galvanized Steel: ASTM A653/A653M, with G90/Z275 zinc coating; minimum 24-gauge, 0.0239-inch thick base metal.
- B. Pre-Finished Galvanized Steel: ASTM A653/A653M, with G90/Z275 zinc coating; minimum 24-gauge, 0.0239-inch thick base metal, shop pre-coated with PVDF coating.
  - 1. Polyvinylidene Fluoride (PVDF) Coating: Superior performing organic powder coating, AAMA 2605; multiple coat, thermally cured fluoropolymer finish system.
  - 2. Color: to match existing.
- C. Sealant: Type JS-1 specified in Section 07 9005.

**2.02 FABRICATION**

- A. Form sections true to shape, accurate in size, square, and free from distortion or defects.
- B. Form pieces in longest possible lengths.
- C. Hem exposed edges on underside 1/2 inch; miter and seam corners.

- D. Form material with flat lock seams, except where otherwise indicated; at moving joints, use sealed lapped, bayonet-type or interlocking hooked seams.
- E. Fabricate corners from one piece with minimum 18-inch long legs; seam for rigidity, seal with sealant.

### **PART 3 EXECUTION**

#### **3.01 EXAMINATION**

- A. Verify roof openings, curbs, pipes, sleeves, ducts, and vents through roof are solidly set, reglets in place, and nailing strips located.
- B. Verify roofing termination and base flashings are in place, sealed, and secure.

#### **3.02 PREPARATION**

- A. Install starter and edge strips, and cleats before starting installation.
- B. Back paint concealed metal surfaces with protective backing paint to a minimum dry film thickness of 15 mil, 0.015 inch.

#### **3.03 INSTALLATION**

- A. Secure flashings in place using concealed fasteners, and use exposed fasteners only where permitted.
- B. Apply plastic cement compound between metal flashings and felt flashings.
- C. Fit flashings tight in place; make corners square, surfaces true and straight in planes, and lines accurate to profiles.
- D. Solder metal joints for full metal surface contact, and after soldering wash metal clean with neutralizing solution and rinse with water.
- E. Connect downspouts to downspout boots and grout connection watertight.

**END OF SECTION**

**SECTION 07 9200  
JOINT SEALANTS**

**PART 1 GENERAL**

**1.01 SECTION INCLUDES**

- A. Nonsag gunnable joint sealants.
- B. Joint backings and accessories.

**1.02 REFERENCE STANDARDS**

- A. ASTM C1193 - Standard Guide for Use of Joint Sealants; 2016 (Reapproved 2023).
- B. ASTM C1311 - Standard Specification for Solvent Release Sealants; 2022.

**1.03 SUBMITTALS**

- A. See Section 01 3000 - Administrative Requirements for submittal procedures.
- B. Product Data: Submit manufacturer's technical datasheets for each product to be used; include the following:
  - 1. Physical characteristics, including movement capability, VOC content, hardness, cure time, and color availability.
  - 2. List of backing materials approved for use with the specific product.
  - 3. Substrates that product is known to satisfactorily adhere to and with which it is compatible.
  - 4. Substrates the product should not be used on.

**PART 2 PRODUCTS**

**2.01 MANUFACTURERS**

- A. Nonsag Sealants:
  - 1. Bostik Inc: [www.bostik-us.com/#sle](http://www.bostik-us.com/#sle).
  - 2. Dow Chemical Company: [consumer.dow.com/en-us/industry/ind-building-construction.html/#sle](http://consumer.dow.com/en-us/industry/ind-building-construction.html/#sle).
  - 3. Hilti, Inc: [www.us.hilti.com/#sle](http://www.us.hilti.com/#sle).
  - 4. Master Builders Solutions by BASF: [www.master-builders-solutions.basf.us/en-us/#sle](http://www.master-builders-solutions.basf.us/en-us/#sle).
  - 5. Pecora Corporation: [www.pecora.com/#sle](http://www.pecora.com/#sle).
  - 6. Sika Corporation: [www.usa.sika.com/#sle](http://www.usa.sika.com/#sle).
  - 7. Tremco Commercial Sealants & Waterproofing: [www.tremcosealants.com/#sle](http://www.tremcosealants.com/#sle).
  - 8. W.R. Meadows, Inc: [www.wrmeadows.com/#sle](http://www.wrmeadows.com/#sle).
  - 9. Substitutions: See Section 01 6000 - Product Requirements.

**2.02 JOINT SEALANT APPLICATIONS**

- A. Scope:
  - 1. Exterior Joints: Seal open joints, whether or not the joint is indicated on drawings, unless specifically indicated not to be sealed. Exterior joints to be sealed include, but are not limited to:
    - a. Wall expansion and control joints.
    - b. Joints between different exposed materials.
    - c. Other joints indicated below.
  - 2. Do not seal the following types of joints:
    - a. Joints indicated to be treated with manufactured expansion joint cover, or some other type of sealing device.
    - b. Joints where sealant is specified to be provided by manufacturer of product to be sealed.
    - c. Joints where installation of sealant is specified in another section.
- B. Exterior Joints:
  - 1. Lap Joints in Sheet Metal Fabrications: Butyl rubber, noncuring.

**2.03 NONSAG JOINT SEALANTS**

- A. Noncuring Butyl Sealant: Solvent-based, single component, nonsag, nonskinning, nonhardening, nonbleeding; non-vapor permeable; intended for fully concealed applications.
  - 1. Products:
    - a. Pecora Corporation; Pecora BA-98 Non-Skinning Butyl Sealant: [www.pecora.com/#sle](http://www.pecora.com/#sle).
    - b. Substitutions: See Section 01 6000 - Product Requirements.

### **PART 3 EXECUTION**

#### **3.01 EXAMINATION**

- A. Verify that joints are ready to receive work.
- B. Verify that backing materials are compatible with sealants.

#### **3.02 PREPARATION**

- A. Remove loose materials and foreign matter that could impair adhesion of sealant.
- B. Clean joints, and prime as necessary, in accordance with manufacturer's instructions.
- C. Perform preparation in accordance with manufacturer's instructions and ASTM C1193.
- D. Mask elements and surfaces adjacent to joints from damage and disfigurement due to sealant work; be aware that sealant drips and smears may not be completely removable.

#### **3.03 INSTALLATION**

- A. Install this work in accordance with sealant manufacturer's requirements for preparation of surfaces and material installation instructions.
- B. Provide joint sealant installations complying with ASTM C1193.
- C. Install bond breaker backing tape where backer rod cannot be used.
- D. Install sealant free of air pockets, foreign embedded matter, ridges, and sags, and without getting sealant on adjacent surfaces.
- E. Do not install sealant when ambient temperature is outside manufacturer's recommended temperature range, or will be outside that range during the entire curing period, unless manufacturer's approval is obtained and instructions are followed.
- F. Nonsag Sealants: Tool surface concave, unless otherwise indicated; remove masking tape immediately after tooling sealant surface.

**END OF SECTION**



# City of Bismarck

## Bismarck-Mandan Convention and Visitors Bureau Roof Replacement

Bismarck, ND

Contract Documents

February 1, 2024

### INDEX

### VICINITY MAP

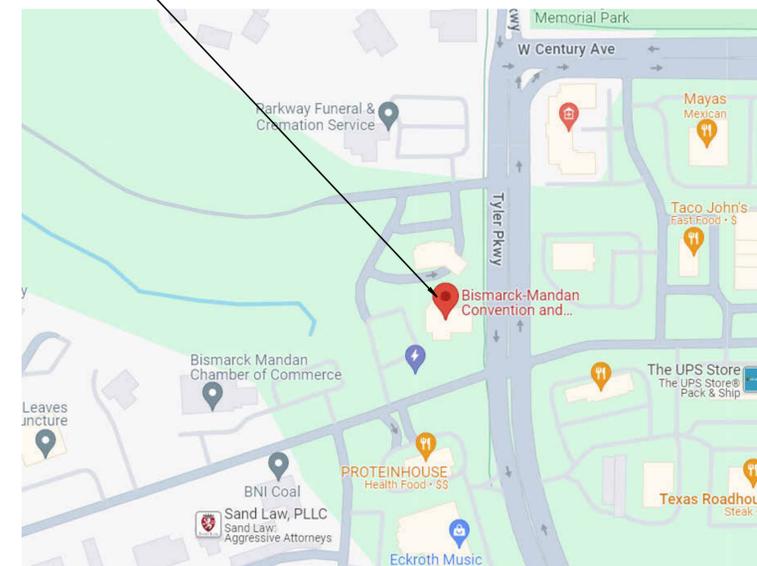
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COVER SHEET

ARCHITECTURAL

- A101 Roof Plan and Details
- A102 Roof Details

CITY OF BISMARCK  
 BISMARCK-MANDAN CONVENTION AND VISITORS BUREAU ROOF REPLACEMENT  
 1600 BURNT BOAT DRIVE  
 BISMARCK, ND 58503



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 Contract Documents

### ARCHITECT

### OWNER



J2 STUDIO ARCHITECTURE + DESIGN, PC

925 BASIN AVENUE, SUITE 5  
 BISMARCK, ND 58504  
 CONTACT: JAMES DEVINE, AIA, NCARB, LEED AP  
 PHONE: (701) 255-1622



CITY OF BISMARCK PUBLIC WORKS

601 S. 26TH STREET  
 BISMARCK, ND 58504  
 CONTACT: BRUCE SCHIRADO  
 PHONE: (701) 355-1743

City of Bismarck Bismarck-Mandan Convention and Visitors Bureau Roof Replacement  
 February 1, 2024  
 J2 Studio Project #: J22321

REVISIONS		
MARK	DATE	DESCRIPTION

# Contract Documents

February 1, 2024  
J2 Project No. J22321



## City of Bismarck Bismarck-Mandan Convention and Visitors Bureau Roof Replacement Bismarck, ND



925 Basin Avenue, Suite #5  
Bismarck, ND 58504  
(701) 255-1622

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### Roof Plan and Details

# A101

#### GENERAL ROOF PLAN NOTES:

- THE FOLLOWING REFERENCES HAVE BEEN USED AS A BASIS OF DESIGN FOR THE ROOFING WORK OF THE PROJECT AND SHALL BE USED BY THE CONTRACTOR TO DETERMINE REQUIREMENTS FOR FABRICATION AND/OR INSTALLATION WHEN NOT SPECIFICALLY INDICATED IN THE CONTRACT DOCUMENTS:
  - 2021 INTERNATIONAL BUILDING CODE
  - MATERIAL MANUFACTURER'S MOST RECENT PRINTED SPECIFICATIONS AND DETAILS.
  - ALL OTHER APPLICABLE CODES AND REGULATIONS FOR THE CITY OF BISMARCK.
- PRIOR TO THE START OF WORK, THE CONTRACTOR SHALL PROVIDE AND INSTALL PROTECTION OVER, UNDER, AND/OR AROUND ALL SERVICE LINES, BUILDING COMPONENTS, SIDEWALKS, PAVEMENT, AND LANDSCAPING WHICH COULD BE DAMAGED OR SOILED WHILE PERFORMING THE WORK OF THE CONTRACT.
- DETAILS IN THE PROJECT DRAWINGS ARE SHOWN AT SPECIFIC LOCATIONS AND ARE INTENDED TO SHOW GENERAL REQUIREMENTS THROUGHOUT.
- DETAILS NOTED ARE 'TYPICAL' AND IMPLY SIMILAR CONDITIONS TREATED SIMILARLY. MODIFICATIONS TO BE MADE BY THE CONTRACTOR TO ACCOMMODATE MINOR VARIATIONS WITHOUT ADDITIONAL COST TO THE OWNER.
- ALL PENETRATION DETAILS PER MANUFACTURER'S STANDARD DETAILS.

#### SPECIFIC ROOF PLAN NOTES:

- EXISTING ROOF TO REMAIN; NO WORK AT THIS AREA
- REMOVE EXISTING STANDING SEAM METAL ROOF SYSTEM AND REPLACE WITH NEW SIKA SARNAFIL DECOR FULLY ADHERED PVC MEMBRANE ROOF SYSTEM; COLOR - EVERGREEN
- REMOVE EXISTING ROOF FASCIA AT PERIMETER (TYP.); INSTALL NEW PRE-FINISHED METAL FASCIA TO MATCH EXISTING PROFILE AND COLOR
- INSTALL NEW PRE-FINISHED METAL COPING OVER EXISTING EIFS ARCHWAY; COLOR TO MATCH EXISTING EIFS
- REMOVE SIDING AT INSIDE CORNER AND INSPECT FOR WATER DAMAGE. REPLACE ALL DAMAGED SHEATHING AND AIR BARRIER PRIOR TO INSTALLING NEW MEMBRANE FLASHING. DASHED LINE INDICATES APPROXIMATE AREA TO REPAIR

SHADED AREAS = EXISTING CONDITIONS TO REMAIN

- NEW DECOR PROFILE: HOT AIR WELDED TO PVC MEMBRANE
- NEW FULLY ADHERED PVC ROOF MEMBRANE
- NEW 1/4" COVERBOARD, INSTALLED OVER EXISTING WEATHERPROOF MEMBRANE
- EXISTING PLYWOOD SHEATHING TO REMAIN
- EXISTING ROOF CONSTRUCTION

#### 2 Typical Roof Section

Scale: 3" = 1'-0"

SHADED AREAS = EXISTING CONDITIONS TO REMAIN

- FULLY ADHERED PVC ROOF MEMBRANE; LAP DOWN FACE OF FASCIA MIN. 4"
- FULLY ADHERED ROOF MEMBRANE FLASHING
- NEW 1/4" COVERBOARD, INSTALLED OVER EXISTING WEATHERPROOF MEMBRANE
- REMOVE EXISTING METAL FASCIA; INSTALL NEW 24 GA. PRE-FINISHED METAL FASCIA TO MATCH EXISTING COLOR AND PROFILE
- EXISTING PLYWOOD SHEATHING TO REMAIN
- NEW 22 GAUGE GALVANIZED CONTINUOUS CLEAT
- EXISTING ROOF CONSTRUCTION
- EXISTING WALL CONSTRUCTION

#### 3 Fascia Detail

Scale: 3" = 1'-0"

SHADED AREAS = EXISTING CONDITIONS TO REMAIN

- NEW DECOR PROFILE: HOT AIR WELDED TO PVC MEMBRANE
- NEW FULLY ADHERED ROOF MEMBRANE FLASHING
- NEW FULLY ADHERED PVC ROOF MEMBRANE; LAP DOWN FACE OF FASCIA MIN. 4"
- NEW 1/4" COVERBOARD, INSTALLED OVER EXISTING WEATHERPROOF MEMBRANE
- NEW 22 GAUGE GALVANIZED CONTINUOUS CLEAT
- REMOVE EXISTING METAL FASCIA; INSTALL NEW 24 GA. PRE-FINISHED METAL FASCIA TO MATCH EXISTING COLOR AND PROFILE
- EXISTING PLYWOOD SHEATHING TO REMAIN
- CONTINUOUS SEALANT
- REMOVE EXISTING METAL FASCIA TRIM; INSTALL NEW 24 GA. PRE-FINISHED METAL FASCIA TO MATCH EXISTING COLOR AND PROFILE
- EXISTING ROOF CONSTRUCTION
- REMOVE EXISTING SOFFIT; INSTALL NEW 24 GAUGE PRE-FINISHED SOFFIT TRIM TO MATCH EXISTING COLOR AND PROFILE
- EXISTING SIDING

#### 5 Fascia Detail

Scale: 3" = 1'-0"

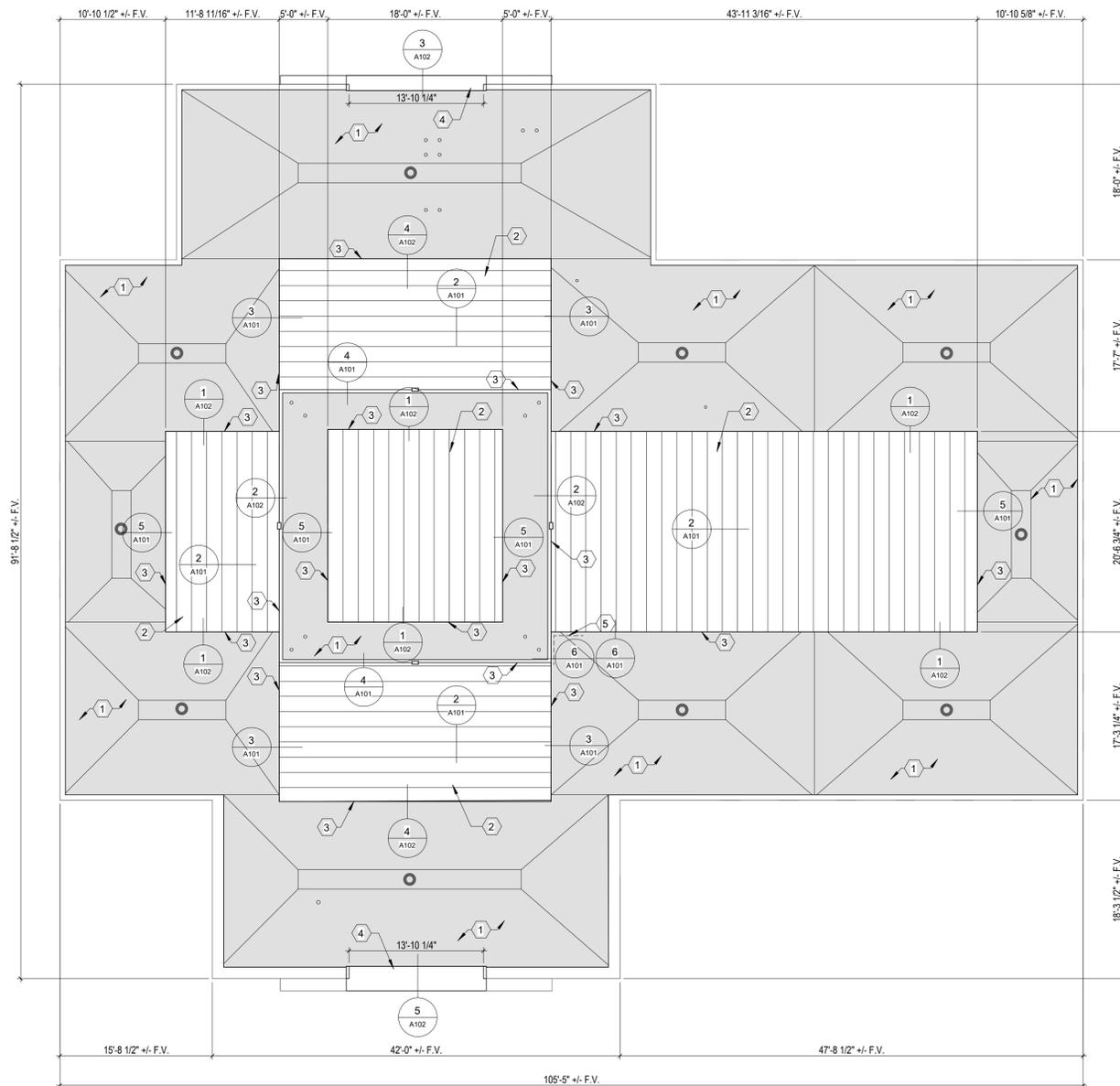
SHADED AREAS = EXISTING CONDITIONS TO REMAIN

- REMOVE AND RE-INSTALL EXISTING SIDING AS REQUIRED FOR MEMBRANE FLASHING
- NEW FULLY ADHERED ROOF MEMBRANE FLASHING; EXTEND 12" ABOVE ROOF MINIMUM
- NEW FULLY ADHERED ROOF MEMBRANE FLASHING TO BE INSTALLED OVER METAL WALL BASE FLASHING
- EXISTING BASE TRIM, REMOVE AND RE-INSTALL AS REQUIRED FOR MEMBRANE FLASHING
- EXISTING PLYWOOD SHEATHING TO REMAIN
- EXISTING FASTENER AND SEAM FASTENER PLATE, MAX 12" O.C.
- REMOVE AND RE-INSTALL EXISTING BALLAST AS REQUIRED FOR MEMBRANE FLASHING INSTALLATION
- NEW MEMBRANE FLASHING; LAP ONTO EXISTING ROOF MEMBRANE AND SEAL PER MANUFACTURER'S RECOMMENDATIONS
- EXISTING FULLY ADHERED ROOF MEMBRANE
- EXISTING TAPERED INSULATION
- EXISTING ROOF CONSTRUCTION
- EXISTING WALL CONSTRUCTION

NOTE: UPON REMOVAL OF EXISTING SIDING, REVIEW EXISTING SUBSTRATE FOR WATER DAMAGE. REPLACE ANY DAMAGED SHEATHING AND AIR INFILTRATION BARRIER PRIOR TO RESEALING WITH NEW MEMBRANE FLASHING AS SHOWN

#### 6 Roof to Wall Detail

Scale: 3" = 1'-0"



#### 1 Roof Plan

Scale: 1/8" = 1'-0"

- MEMBRANE FLASHING AT NEW FASCIA. LAP ONTO EXISTING ROOF AND SEAL PER MANUFACTURER'S RECOMMENDATIONS
- EXISTING WATER DAM TO REMAIN; PROTECT FROM DAMAGE
- REMOVE EXISTING METAL FASCIA; INSTALL NEW 24 GA. PRE-FINISHED METAL FASCIA TO MATCH EXISTING COLOR AND PROFILE
- REMOVE AND RE-INSTALL EXISTING BALLAST AS REQUIRED FOR MEMBRANE FLASHING INSTALLATION
- NEW 22 GAUGE GALVANIZED CONTINUOUS CLEAT
- NEW FASTENER AND SEAM FASTENER PLATE, MAX 12" O.C.
- EXISTING ROOF CONSTRUCTION
- REMOVE AND RE-INSTALL EXISTING SIDING AS REQUIRED FOR MEMBRANE FLASHING
- NEW FULLY ADHERED ROOF MEMBRANE FLASHING; EXTEND TO TOP OF WALL
- NEW FULLY ADHERED ROOF MEMBRANE FLASHING TO BE INSTALLED OVER METAL WALL BASE FLASHING
- NEW FULLY ADHERED ROOF MEMBRANE FLASHING; EXTEND TO TOP OF WALL
- NEW FULLY ADHERED PVC ROOF MEMBRANE

#### 4 Fascia Detail

Scale: 3" = 1'-0"

- EXISTING WALL CONSTRUCTION
- EXISTING BASE TRIM, REMOVE AND RE-INSTALL AS REQUIRED FOR MEMBRANE FLASHING
- EXISTING PLYWOOD SHEATHING TO REMAIN
- EXISTING ROOF CONSTRUCTION

NEW 1/4" COVERBOARD, INSTALLED OVER EXISTING WEATHERPROOF MEMBRANE

REVISIONS		
MARK	DATE	DESCRIPTION

**Contract Documents**

February 1, 2024  
J2 Project No. J22321



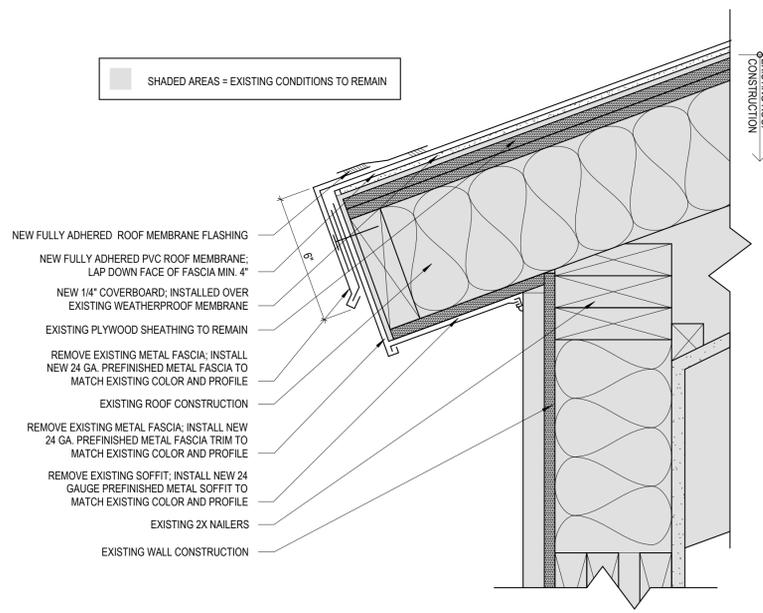
**City of Bismarck**  
Bismarck-Mandan Convention and Visitors Bureau Roof Replacement  
Bismarck, ND



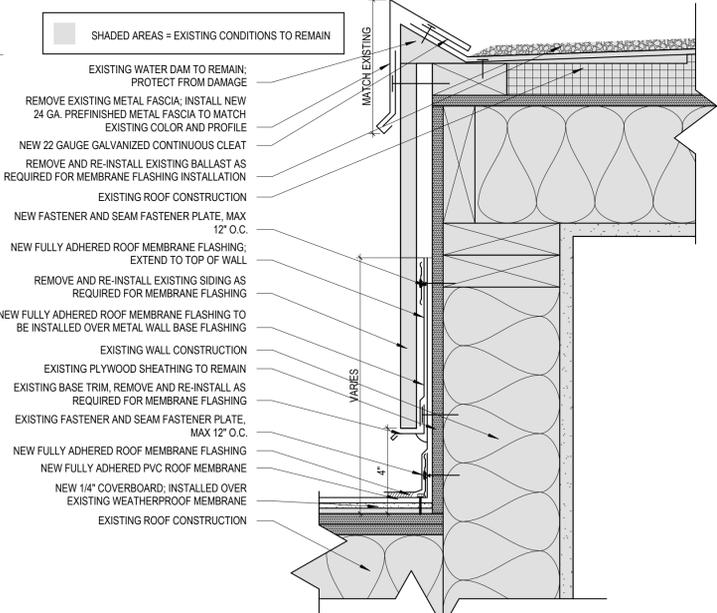
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Roof Details

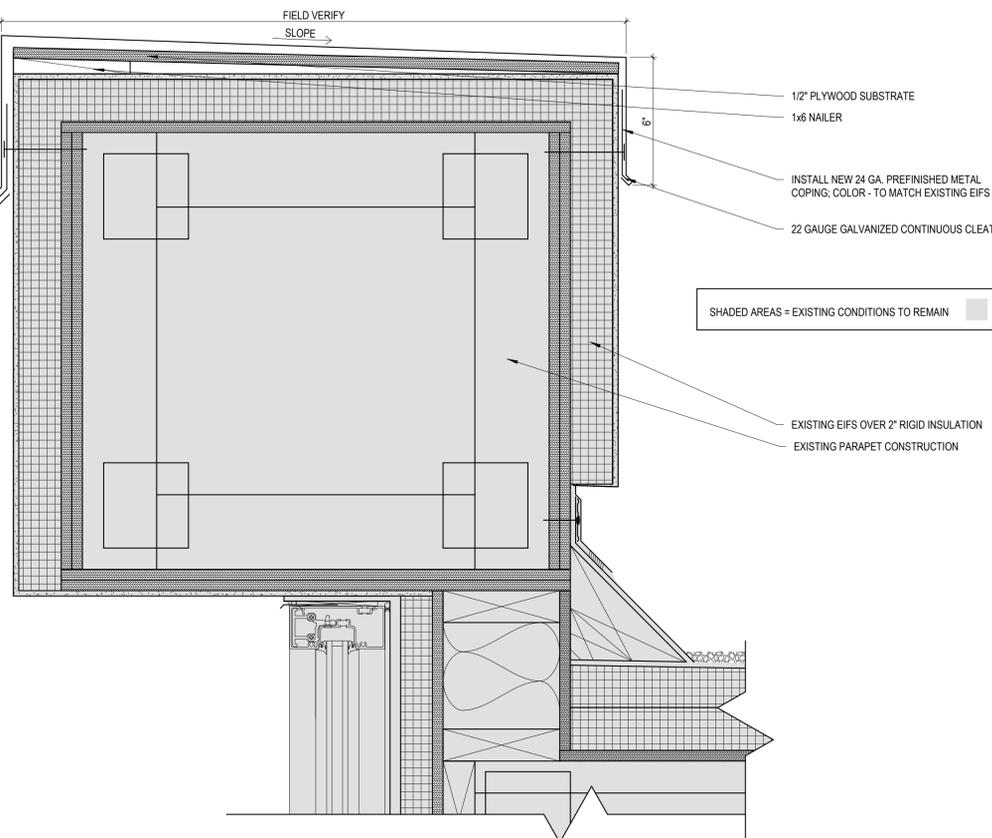
**A102**



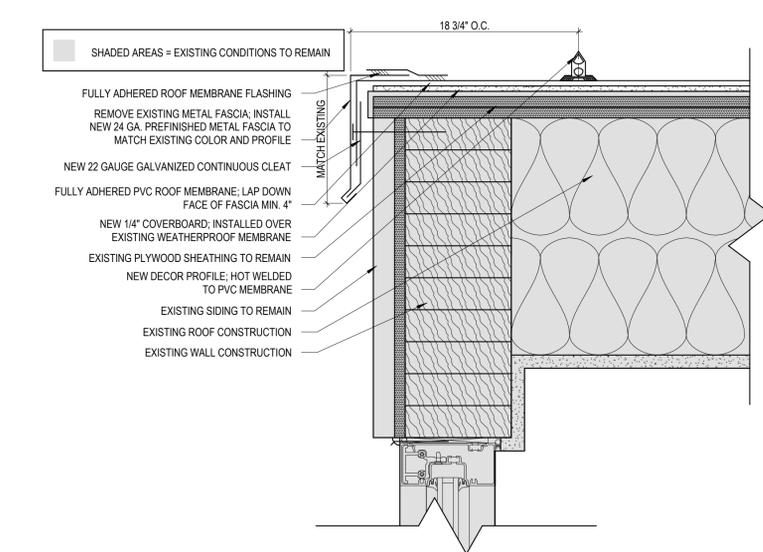
**1 Fascia Detail**  
Scale: 3" = 1'-0"



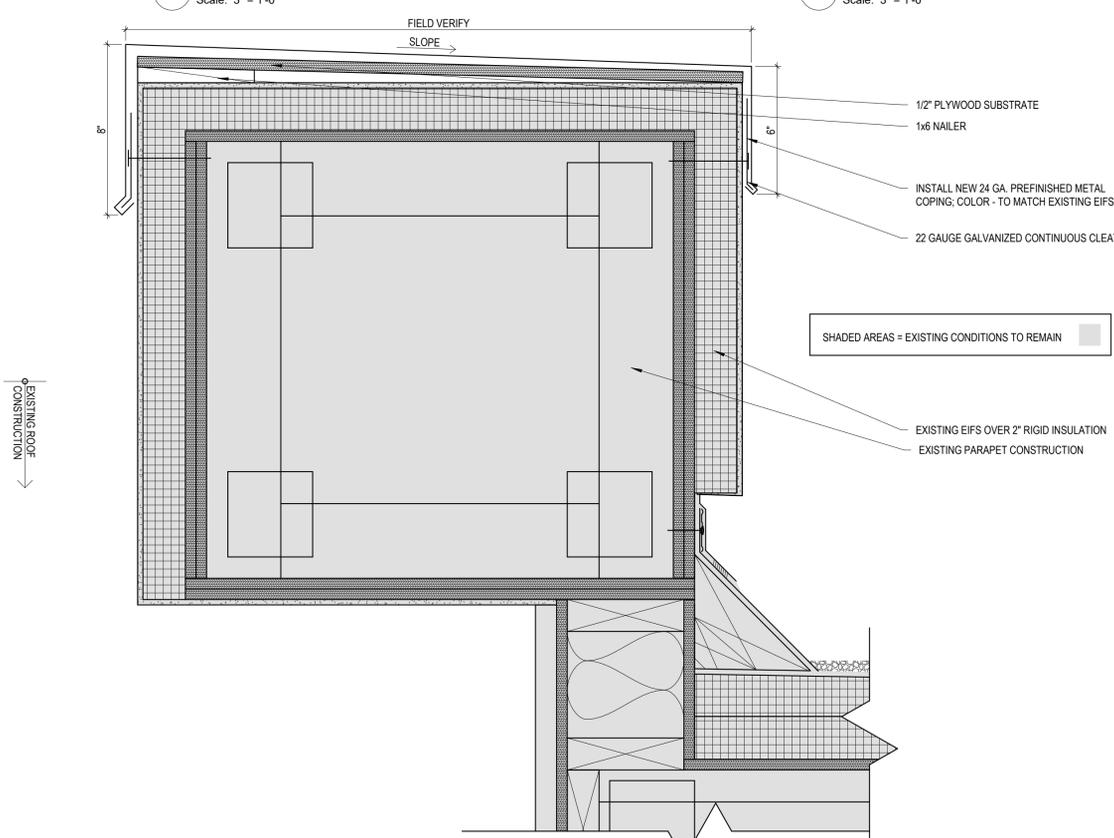
**2 Roof to Wall Detail**  
Scale: 3" = 1'-0"



**3 Flashing at Parapet Detail**  
Scale: 3" = 1'-0"



**4 Fascia Detail**  
Scale: 3" = 1'-0"



**5 Flashing at Parapet Detail**  
Scale: 3" = 1'-0"



## Public Works Service Operations

**DATE:** April 9, 2024

**FROM:** Steven Salwei, Director Public Works Services

**ITEM:** Type BL LED Luminaires Bid Award

**REQUEST:**

Award bid for Type BL LED Luminaires to Border States Industries, Inc.

**BACKGROUND INFORMATION:**

The Public Works Service Operations Department opened bids on Friday, March 22, 2024, for Type BL LED Luminaires. One bid was received. The recommendation is to award the bid to Border States Industries, Inc. in the amount of \$61,875.00. The bid tabulation and RFB is attached.

**RECOMMENDED CITY COMMISSION ACTION:**

Award bid for Type BL LED Luminaires to Border States Industries, Inc. in the amount of \$61,875.00.

**STAFF CONTACT INFORMATION:**

**ATTACHMENTS:**

1. BID TAB 2024 Type BL LED Luminaires 3.22.2024
2. 2024 Type BL LED Luminaires Request for Bids

**OFFICE OF THE CITY ADMINISTRATOR  
PO BOX 5503 (221 N 5TH STREET)  
BISMARCK ND 58506-5503**

**TYPE BL LED LUMINAIRES - BID TABULATION  
FRIDAY, MARCH 22, 2024  
BIDS RECEIVED BY 9:00 AM CT  
BIDS OPENED BY 10:00 AM CT**

VENDORS			Border States	
BID BOND & ND CONTRACTOR'S LICENS			Yes	
ITEM	UNIT	QUANTITY	UNIT COST	TOTAL COST
Special Provision 1 Type BL LED Luminaires	Each	55	\$1,125.00	\$61,875.00
Total Sum			Total Sum	\$61,875.00

**REQUEST FOR BIDS  
TO  
PROVIDE  
TYPE BL LED LUMINAIRES**

**BIDS RECEIVED BY 10:00 AM. CT  
BIDS OPENED BY 11:00 AM. CT  
WEDNESDAY, MARCH 22, 2024**

OFFICE OF THE CITY ADMINISTRATOR  
PO BOX 5503 (221 N 5TH STREET)  
BISMARCK ND 58506-5503

DEPARTMENT OF PUBLIC WORKS  
SERVICE OPERATIONS – ELECTRICAL DIVISION  
PO BOX 5503  
BISMARCK ND 58506-5503  
(701) 355-1700, option 3

## ADVERTISEMENT

The City of Bismarck Public Works Service Operations is seeking bids for is seeking bids to provide Type BL LED Luminaires.

Sealed bids will be received in the office of the City Administrator, until 10:00 a.m. CT on Friday, March 22, 2024. Bids will be publicly opened and reviewed at 11:00 a.m. CT on Friday, March 22, 2024.

The sealed bid must be mailed to the City Administrator (PO Box 5503, Bismarck ND 58506-5503) or otherwise deposited with the City Administrator (221 North Fifth Street, Bismarck ND 58501) and shall be sealed and endorsed:

“Bid to provide LED Luminaires”

Name of the person, firm or corporation submitting the bid.

If a bid is to be faxed, the bid must be sent to a bidder’s agent independent of the City of Bismarck, placed in a sealed envelope, labeled according to this specification, and delivered to the office of the City Administrator prior to the bid deadline.

Bids must be submitted on blanks furnished by the City of Bismarck and in accordance with specifications and conditions contained therein. Copies of proposal blanks and specifications may be downloaded from the website or obtained from the Public Works Service Operation, 601 S 26th St, Bismarck ND 58504, or Gale Nicholson, [publicworksservice@bismarcknd.gov](mailto:publicworksservice@bismarcknd.gov) or 701-355-1707. All bidders are invited to be present at the opening of the proposal. Contractor may bid on any or all proposals.

In accordance with North Dakota state law, a separate envelope containing a current **North Dakota contractor’s license** and a **bid bond or certified check** in the amount of five (5) percent of the total amount bid must be attached to the proposal/bid envelope and labeled “Bid Bond.” An application for a North Dakota contractor’s license is not sufficient to fulfill this requirement. Checks or bonds of the unsuccessful bidders will be returned to them after making the award.

The City, in its sole discretion, may extend the work completion deadline due to unforeseen circumstances, if it is determined to be in the best interest of the City to do so. The City shall reserve the right to hold all bids for a period of forty-five (45) days, to reject any and all bids, to waive irregularities or to accept such as may be determined to be for the best interest of the City of Bismarck. However, bids which do not comply with mandatory requirements imposed by law or late bids must be rejected.

CITY OF BISMARCK  
*Jason Tomanek*  
*City Administrator*

Adv 3/5, 3/12

## GENERAL SPECIFICATIONS

1. Bids may be accepted or rejected in the best interest of the City of Bismarck.
2. The bid will be awarded on the lowest Total Sum based on the fixture quantities and descriptions listed on the proposal sheet.
3. Bids may be rejected if they show any alteration of form, additions not called for, conditional or alternate bids, incomplete bids, or irregularities of any kind, or if they contain a clause in which the bidder reserves the right to accept or reject a contract awarded to him. Bids in which the prices are obviously unbalanced or bids otherwise regular which are not accompanied by a satisfactory bid bond will be rejected.
4. No bid will be considered unless accompanied by a bidder's bond or certified check in an amount equal to five (5) percent of the gross sum bid, attached to the outside of the bid envelope, which bond or check will be forfeited should the bidder fail to effect a contract within ten (10) days after a notice of award.
5. The total price is to be less federal excise tax for which exemption certificates will be furnished.
6. The bidder must submit Detailed Manufacturer's Specifications along with its bid or they will be rejected.
7. All luminaires shall be delivered to the City of Bismarck no later than **July 30, 2024**, a maximum of 16 weeks after award.
8. Purchases by the City of Bismarck are not subject to the North Dakota State Sales Tax.
9. Bids shall be on the bid forms furnished in the specifications packet.
10. Liquidated Damages. Owner and Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer inconvenience and financial loss if the delivery date is not met. The parties recognize the difficulties of estimating or proving the financial loss and/or inconvenience of the Owner by the failure to meet the delivery date. Both the Owner and Contractor agree that the Owner has made a reasonable estimate of financial loss and inconvenience caused by a delay that the stated damages are reasonable in amount and reasonably related to the actual damages that would be suffered by the Owner as a result of delayed delivery. Accordingly, instead of requiring any actual proof of damages, Owner and Contractor agree to the sum of \$50 per each day of non-delivery beyond the delivery deadline as reasonable liquidated damages (and not as a penalty) and also agree that the recitals in this paragraph are conclusive presumptions pursuant to NDCC Section 31-11-02.
11. The City reserves the right to waive all technicalities or deviations from specifications, if deemed not material, in the City's sole discretion.
12. As a political subdivision, the City of Bismarck will not agree to indemnify or hold harmless any bidder or contractor for any actions or negligence of the bidder or contractor or for any third-party liability. The City of Bismarck will agree to be responsible for its own actions and for the actions

of its officials, officers, employees, or agents. By submitting a response to this RFP, the bidder or contractor agrees that it will not ask the City of Bismarck to indemnify or hold harmless the bidder or contractor.

13. It is the policy of the City of Bismarck to comply with all laws, rules, regulations, and orders with respect to local preference, non-discrimination, wages and hours and all other applicable laws, rules, regulations, and orders. All suppliers, contractors, and service providers doing business with the City of Bismarck must certify 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. Failure of compliance may result in the cancellation of any City of Bismarck contract and exclusion from consideration for future contracts.

**SPECIAL PROVISION NO. 1  
PROVIDE  
TYPE BL LED LUMINAIRES**

Prices provided shall include shipping to the City of Bismarck Public Works Department.

The luminaires shall be furnished per City of Bismarck Standard Specification with the following provisions:

- a. Type BL Luminaire, post top fixture having the following features:
  1. Type and style of fixture to equal to Holophane, model PTUE3 series.
  2. Heavy grade cast aluminum, non-photocell type housing with tool-less access to electrical components, integral slip-fitter for 3-inch OD tenon for mounting to the pole having a total of 6 tenon set screws, black polyester powder coat finish to meet a 5000 hours salt spray test.
  3. High CRI LEDs with IES Type III photometrics with a semi cutoff distribution glass refractor, BUG rating not to exceed B3-U3-G3
  4. Luminaire to operate LED's at 4000K with minimum lumen output of 7000 lumens, a maximum rated power of 60W, and a maximum driver current of 1075 mA.
  5. The fixture shall be L70 rated, have a full 10-year manufacturer's warranty, and UL Listed or CSA Certified to UL Standards.
  6. Surge protection shall protect against a 22kA 8/20 microSec wave with clamping voltage of 320V and surge rating of 273J per ANSI C.62.
  7. Manufacturer:  
Holophane, PTUE3-P40-40K-MVOLT-GL3-BK-BL.

Submission for preapprove equals shall be per Section 1004 of the Standard Specifications.

PROPOSAL

Bidder: \_\_\_\_\_

Date \_\_\_\_\_, 2024

To The Honorable Board of City Commissioners  
Bismarck, North Dakota

We the undersigned agree to furnish to the City of Bismarck the following: Provide Luminaires conforming to the General Specifications and the Special Provisions at bid prices listed below.

ITEM	UNIT	UNIT COST	QTY	TOTAL COST
<b>Special Provision 1</b>				
<b>Type BL LED Luminaires</b>	EA	\$ _____	55	\$ _____
		<b>Total Sum</b>	55	\$ _____

Firm (Legal Name) \_\_\_\_\_

Signature (Authorized) \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Mailing Address \_\_\_\_\_

City State Zip

Email Address \_\_\_\_\_

Telephone ( ) \_\_\_\_\_

Cell Phone ( ) \_\_\_\_\_

Contractor's License Type \_\_\_\_\_

Number \_\_\_\_\_



## Public Works Utility Operations

**DATE:** April 9, 2024

**FROM:** Michelle Klose, Director Public Works Utilities  
Steven Salwei, Director Public Works Services

**ITEM:** Service Operations and Utility Operations Payment Convenience Fee and Credit Card Processing Fee

**REQUEST:**

Approve all Service Operations and Utility Operations payment convenience fees and credit card processing fees to be paid by the customer.

**BACKGROUND INFORMATION:**

City of Bismarck customers have multiple options to make payments for Service Operations and Utility Operations fees. The customers have options to pay by check or cash with no fee, both in person and online. There are additional charges for convenience and credit card processing fees charged by vendors, and these will be paid by the customer. The fees are currently set at market prices by each vendor, such as Visa and Mastercard, and are subject to change.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve Public Works Service Operations and Utility Operations third party payment convenience and credit card processing fees to be paid by the customer.

**STAFF CONTACT INFORMATION:**

Amber Araujo, Executive Assistant, 701-355-1739, [aaraujo@bismarcknd.gov](mailto:aaraujo@bismarcknd.gov)  
Gale Nicholson, Executive Assistant, 701-355-1707, [gnicholson@bismarcknd.gov](mailto:gnicholson@bismarcknd.gov)

**ATTACHMENTS:**

None



## Public Works Utility Operations

**DATE:** April 9, 2024

**FROM:** Michelle Klose, Director Public Works Utilities

**ITEM:** Amendment No. 1 for Apex Engineering Hay Creek Interceptor Main-Divide

**REQUEST:**

Approval of Amendment No. 1 for Apex Engineering Task Order 4 for Hay Creek Interceptor Main to Divide.

**BACKGROUND INFORMATION:**

As the Main Ave to Divide Ave section of the Hay Creek Interceptor Project preconstruction design nears completion, the project focus is moving towards the construction phase. Apex Engineering has submitted Amendment No. 1 to Task Order 4 to the preconstruction design contract for services to include the Construction Administration phase in the amount of \$904,412. The amendment is attached.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve Amendment No. 1 for Apex Engineering Task Order 4 for the Hay Creek Interceptor Main-Divide in the amount of \$904,412.

**STAFF CONTACT INFORMATION:**

Amber Araujo, Executive Assistant, 701-355-1739, [aaraujo@bismarcknd.gov](mailto:aaraujo@bismarcknd.gov)

**ATTACHMENTS:**

1. Task Order amendment 1, draft

## **Amendment To Task Order No. 4**

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### **1. Background Data:**

- a. Effective Date of Task Order: April 1, 2024
- b. Owner: City of Bismarck
- c. Engineer: Apex Engineering Group, Inc.
- d. Specific Project: Hay Creek Interceptor – Main Avenue to Divide Avenue

### **2. Description of Modifications**

- a. Engineer shall perform the following Services:

- Construction Administration
  - Pre-Construction Meeting
  - Construction Progress Meetings
  - Shop Drawing & Submittal Review
  - Pay Requests
  - Change Proposals
  - Inspections
  - Determination of Substantial and Final Completions
- Resident Project Representative
- Post Construction Investigations of Work
- Record Drawings

- b. The Engineer shall For the Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: \$904,412 Hourly-Not-To-Exceed.

### **3. Additional Owner Responsibilities:**

- a. None

### **4. Task Order Summary (Reference only)**

- a. Original Task Order amount: \$596,684
- b. Net change for prior amendments: \$0
- c. This amendment amount: \$904,412
- d. Adjusted Task Order amount: \$1,501,096

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

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

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

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

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

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

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



## Public Works Utility Operations

**DATE:** April 9, 2024

**FROM:** Michelle Klose, Director Public Works Utilities

**ITEM:** Bid award for Mandan Street Water Tower Removal

**REQUEST:**

Approval of bid award for Mandan Street water tower removal to Iseler Demolition Inc.

**BACKGROUND INFORMATION:**

Bids were opened on March 18, 2024, for the Mandan Street water tower removal by Bartlett & West. The work consists of above-ground removal and disposal of the entire water tower steel structure, cathodic protection items, electrical items, and all piping associated with the tower. Only the natural gasoline and a water service riser shall be protected and left above ground. Two bids were received and are below the engineer's estimate, with the lowest bidder being Iseler Demolition Inc., in the amount of \$94,300.00, with substantial completion by October 1, 2024, with final completion of November 1, 2024.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve bid award for removal of the Mandan Street water tower to Iseler Demolition Inc. in the amount of \$94,300.00 with final completion of November 1, 2024.

**STAFF CONTACT INFORMATION:**

Amber Araujo, Executive Assistant, 701-355-1739, [aaraujo@bismarcknd.gov](mailto:aaraujo@bismarcknd.gov)

**ATTACHMENTS:**

1. City of Bismarck Contract 2024-1 RECOMMEND AWARD LTR



3456 E Century Avenue  
 Bismarck, ND 58503  
 ph (701) 258-1110  
[www.bartwest.com](http://www.bartwest.com)

March 21, 2024

City of Bismarck – Public Works  
 Attn: Michelle Klose – Director Utility Operations  
 601 South 26<sup>th</sup> Street  
 PO Box 5503  
 Bismarck, ND 58504

**SUBJECT: Contract 2024-1 – City of Bismarck – Mandan Street Tank Demolition  
 Recommendation of Award  
 W.O. 19992.004**

Dear Michelle:

On Monday March 18, 2024, bids were opened for the City of Bismarck’s Mandan Street Tank Demolition, Contract 2024-1. The scope of Work generally consists of furnishing all labor and materials required to Remove and Dispose of an existing 500,000 gallon Multi-Legged Water Tower. The Work at the Mandan Elevated Tank shall consist of removal and disposal of the entire Water Tower Steel Structure, cathodic protection items, electrical items, and all piping associated with the Tower. The concrete foundation for all 10 tank legs will not be removed, the above grade building must have the walls cut or removed down to the floor slab grade. The fill pipe can be cut off at the floor slab grade or removed farther into the control vault. The pipe and below grade vault areas must be filled with flowable fill to ensure no voids are present and shall be at the same grade as the floor slab elevation. No additional payment will be made for disposal of any materials removed from the site. All abandoned communication concrete pads will be left onsite and is not part of this contract. All cable pipe support system, conduits, anchor bolts, or any other material sticking up above the ground level or top of slab level shall be cut off. Only a natural gasoline and a water service riser shall be protected and left above ground. Once all items have been removed from the site a magnet must be used to remove all metal cuttings or materials from the soil. The Project is located in Bismarck, North Dakota.

Two (2) bid packages were received for Contract 2024-1. A tabulation of the bid results is attached. A copy of the bid tab has been provided to all bidders and other interested parties. All of the bid packages received were considered responsive bids and were read aloud at the bid opening.

A summary of the bids received on Contract 2024-1 is as follows:

<b>CITY OF BISMARCK CONTRACT 2024-1</b>			
<b>Mandan Street Tank Demolition</b>			
<b>Bidder</b>	<b>Bid Amount</b>	<b>Comparison to Low Bidder</b>	<b>Comparison to Engineers Estimate</b>
<b>Iseler Demolition Inc., Kinde, MI</b>	\$94,300	-	38%
<b>RTS Shearing, Jamestown, ND</b>	\$217,600	\$123,300	87%
<b>Engineer's Estimate</b>	\$250,000	\$155,700	-

Page 2

The apparent low bid received for Contract 2024-1 was from Iseler Demolition, Inc. of Kinde, Michigan. The contract documents stipulate that the City of Bismarck reserves the right to award the contract, if awarded, based on the bid that is in its best interest and most advantageous to the Owner. Based upon our review, the bid received from Iseler Demolition Inc., for the construction of Contract 2024-1 appears to be in accordance with the Advertisement for Construction Bids and the Bid Documents. Bartlett & West has had successful past experiences with Iseler Demolition Inc. on tank demolition projects. We have also reached out to several references that were provided by Iseler Demolition Inc., all of which gave positive reviews. We believe that Iseler Demolition is a competent contractor that is capable of completing the project successfully. Subject to approval by your legal counsel that the bid documents are in order, we recommend you award Contract 2024-1 to Iseler Demolition Inc.

The contract documents require that the City award the contract within 61 calendar days after the bid opening as stipulated in the Advertisement for Construction Bids and the Information for Bidders. We understand that the City will consider the awarding of this contract at the upcoming City Commission meeting to Iseler Demolition Inc. as the lowest and best bidder for the construction of Contract 2024-1.

The award of the contract and the Notice to Proceed are dependent on the satisfactory completion and submission of the contract documents by the contractor and your legal counsel's review. The work for this project must be completed by the Substantial Completion date of October 1, 2024, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before November 1, 2024.

If you have any questions or comments, please contact us.

Sincerely,

**BARTLETT & WEST, INC.**

Jack Fletcher  
Project Manager

cc: BW – Jame Todd, Noah Krebs  
File: City of Bismarck Contract 2024-1: 10.0





## Public Works Utility Operations

**DATE:** April 9, 2024

**FROM:** Michelle Klose, Director Public Works Utilities

**ITEM:** Bid Award for Water Treatment Plant Expansion GMP3A-UPS Replacement

**REQUEST:**

Approval to award bid for Water Treatment Plant Expansion GMP3A for the UPS replacement.

**BACKGROUND INFORMATION:**

As part of the Water Treatment Plant Expansion Project, it is necessary to replace the existing industrial uninterruptable power supply (UPS). Bids were opened on February 29, 2024 by the CMAR and the bid tabulation and supporting documentation is attached. The cost for this project has a guaranteed maximum price (GMP) in the amount of \$88,955 and is GMP3A for the WTP Expansion Project.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve bid award for WTP Expansion GMP3A for UPS Replacement to PKG in the amount of \$88,955.

**STAFF CONTACT INFORMATION:**

Amber Araujo, Executive Assistant, 701-355-1739, [aaaraujo@bismarcknd.gov](mailto:aaaraujo@bismarcknd.gov)

**ATTACHMENTS:**

1. PKG - GMP 3A WA1 UPS GMP Proposal - 040306



March 6, 2024

Michelle Klose, Director  
Bismarck Public Works Utility Operations  
601 South 26th Street  
Bismarck, ND 58504

Re: UPS Replacement Project  
Bismarck Water Treatment Facility  
Sub: Guarantee Maximum Price (GMP 3A) Proposal

Dear Ms. Klose:

We are pleased to submit our Guaranteed Maximum Price (GMP) to provide all necessary labor, materials, and equipment to replace the existing industrial Uninterruptable Power Supply (USP) for the Bismarck Water Treatment Facility per the Construction Documents issued by HDR, dated January 22, 2024, including one Addendum, for the following price.

Guaranteed Maximum Price .....**\$88,955**

Attached is the Bid Tabulation and Exhibit B documents to reflect the low bid, including the bonds, insurance, fees, and contingency dollars captured in the GMP. Note PKG will not include general conditions as the scope of the project does not require it. PKG and HDR have vetted the equipment and contractor, and we intend to subcontract the work to Edling Electric for the bid price of \$80,700.

Please feel free to call my direct cell phone number at 701 527-2451 or email [russ@pkg-inc.com](mailto:russ@pkg-inc.com) or Darin Pfingsten [darin@pkg-inc.com](mailto:darin@pkg-inc.com) if any questions arise.

Thank you for your time,

A handwritten signature in blue ink that reads 'Russell Sorenson'.

Russell Sorenson, CMAR Manager  
PKG Collaborative

Cc: Darin Pfingsten, President PKG  
Jeremy Johnson, Project Manager PKG  
Jarrett Hillius, HDR

Office: 701-232-3878  
Fax: 701-232-3935  
4301 S University Drive  
Fargo, ND 58104  
[www.pkg-inc.com](http://www.pkg-inc.com)

Project:  
Owner:

UPS Replacement  
City of Bismarck, Water Treatment Facility

Exhibit B - Work Authorization Compensation

Work Authorization No.: GMP 3A WA1 Work Authorization: UPS Replacement

Phased GMPs: Use the following table for early procurement of equipment and for early Bid Packages for construction work to be performed prior to the final bidding and 100% GMP

Early Phased Guaranteed Maximum Price

Bid Package	Description	Units	Quantity	Unit Price	Amount
<b>Phased Guaranteed Maximum Price</b>					\$ -
CMAR Fee and Contingency will be totaled at 100% GMP					
CMAR Fee					\$ -
CMAR Contingency Allowance				% or Fixed Cost	\$ -
<b>Guaranteed Maximum Price (Total Cost of the Work, CMAR Fee and CMAR Contingency Allowance)</b>					\$ -

100% GMP - Single % Fee: the CMAR Fee is calculated as a percentage of the Estimated Cost of the Work use the following rows to calculate the Cost of the Work with CMAR Fee. Attach 100% Cost Model, Bid Tabs, and General Conditions breakdown

Guaranteed Maximum Price

Bid Package Subtotal				\$	80,700
CMAR Costs: <del>General Conditions</del> , Bonds, and Insurance				\$	936
Subtotal				\$	<b>81,636</b>
CMAR Fee		6%		\$	4,898
CMAR Contingency Allowance		3%	% or Fixed Cost	\$	2,421
<b>Guaranteed Maximum Price (Total Cost of the Work, CMAR Fee and CMAR Contingency Allowance)</b>					\$ <b>88,955</b>





## Public Works Utility Operations

**DATE:** April 9, 2024

**FROM:** Michelle Klose, Director Public Works Utilities

**ITEM:** Engineering contracts for utility operations and maintenance activities

**REQUEST:**

Approval of contracts with seven engineering consulting firms for operations and maintenance activities for Utility Operations.

**BACKGROUND INFORMATION:**

An RFQ was released in December 2023 and a review committee scored eleven proposals from engineering firms and selected the firms of Apex Engineering Group, Inc., AE2S, HDR Engineering, Inc., Houston Engineering, Inc., Moore Engineering, Inc., Stantec, and Bartlett & West to provide engineering consulting services for operations and maintenance activities for Utility Operations. The contracts cover engineering services through December 31, 2027, and includes providing analysis, design, construction, and technical support services for operation and maintenance activities for the water and wastewater treatment plants, water distribution, wastewater collection and storm water collection systems. All contracts will follow the same format and allow the Director of Utility Operations to execute task orders for work within the operation and maintenance budget that do not exceed \$20,000 per task and provides any task orders exceeding \$20,000 to be presented to the City Commission for approval.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve contracts through December 31, 2027, with Apex Engineering Group, Inc., AE2S, HDR Engineering, Inc., Houston Engineering, Inc., Moore Engineering, Inc., Stantec, and Bartlett & West for operation and maintenance activities and delegate signing authority to execute task orders for work within the operation and maintenance budget that do not exceed \$20,000 per task to the Director of Utility Operations.

**STAFF CONTACT INFORMATION:**

Amber Araujo, Executive Assistant, 701-355-1739, [aaraujo@bismarcknd.gov](mailto:aaraujo@bismarcknd.gov)

**ATTACHMENTS:**

1. Draft Engineering Contracts for Utility O&M

**SHORT FORM OF TASK ORDER AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between City of Bismarck, North Dakota (“Owner”) and \_\_\_\_\_ (“Engineer”).

Engineer’s services under this Agreement are generally identified as professional services as described in the Request for Qualifications for Engineering Services issued by the Public Works Department on December 26, 2023, and may include services as follows: Provide instrumentation and control services, general engineering services, and design, bidding and construction services as requested for the Water Treatment Plant (WTP) and Waste Water Treatment Plant (WWTP), water distribution system, wastewater collection system and storm water collection system. Work can include repair or replacement of existing equipment and evaluation of treatment and conveyance processes.

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

*1.01 Basic Agreement and Period of Service*

- A. Engineer’s services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided. If authorized by Owner, or if required because of changes in a Specific Project, Engineer shall furnish services in addition to those set forth in a Task Order. Owner shall pay Engineer for its services as set forth in Paragraph 7.01.
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.
- D. This Agreement shall be effective and applicable to Task Orders issued hereunder from the Effective Date of the Agreement until December 31, 2027.
- E. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

## 1.02 Task Order Procedure

- F. Owner's Director of Utility Operations and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order not exceeding \$20,000 per task. Task Orders that exceed \$20,000 will be presented to Owner for approval. Total costs for the Task Orders must remain within the approved Utility Budget for engineering, operations and maintenance. With respect to the scope of Engineer's services, each specific Task Order shall state the scope of services in the Task Order document itself. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- G. Engineer will commence performance as set forth in the Task Order.
- H. Engineer shall provide, or cause to be provided, the services set forth in the Task Order.

## 2.01 Payment Procedures

- A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.75% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal. All payments under this Agreement shall be in United States Dollars.
- B. *Obligation to Pay:* Owner's obligation to pay for Engineer's services under this Agreement is not contingent on Owner's ability to obtain financing, third-party payments, governmental or regulatory agency approval, permits, final adjudication of lawsuit in which Engineer is not involved, Owner's successful completion of a project, or any other event. No retainage will be withheld.

## 3.01 Termination

- A. The obligation to continue performance under this Agreement may be terminated:
  - 1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Specific Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph

3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Specific Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination insofar as the work performed is usable in furtherance of the project.

*4.01 Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement or any Task Order without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

*5.01 General Considerations*

- A. 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. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and

the publishers of technical standards.

- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at a Specific Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2013 Edition) except as provided in this Agreement and unless the parties agree otherwise in writing.
- F. All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. OWNER and ENGINEER shall co-own all such documents with no duty to account to the other. None of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.
- G. **ALLOCATION OF RISK. OWNER AND ENGINEER HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING ENGINEER'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF ENGINEER (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE TOTAL INSURANCE PROCEEDS PAID ON BEHALF OF OR TO ENGINEER BY ENGINEER'S INSURERS IN SETTLEMENT OR SATISFACTION OF OWNER'S CLAIMS UNDER THE TERMS AND CONDITIONS OF ENGINEER'S INSURANCE POLICIES APPLICABLE THERETO (EXCLUDING FEES, COSTS AND EXPENSES OF INVESTIGATION, CLAIMS ADJUSTMENT, DEFENSE, AND APPEAL), UP TO THE AMOUNT OF INSURANCE LIMITS SPECIFIED UNDER THIS AGREEMENT, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF ENGINEER'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY.**
- H. 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 as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or

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 Specific Project affected thereby until Owner:

(1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- I. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute, after which, if such negotiations are unsuccessful, the parties may exercise their rights at law.
- J. This Agreement is to be governed by the law of the State of North Dakota.
- K. If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

*6.01 Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.
- B. The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

*7.01 Insurance Requirements.*

- A. The Company shall provide insurance during all times covered by this agreement, at the following levels:

Workers' Compensation, etc.:

(1) State: Statutory Level

Comprehensive General Liability:

(1) Bodily Injury:	
\$2,000,000	Each Occurrence
\$2,000,000	Aggregate
(2) Property Damage:	
\$2,000,000	Each Occurrence
\$2,000,000	Aggregate

- |     |   |                              |
|-----|---|------------------------------|
| (3) | Pollution Liability<br>\$1,000,000<br>\$1,000,000 | Each Occurrence<br>Aggregate |
|-----|---|------------------------------|

Comprehensive Automobile Liability:

- |     |  |                              |
|-----|--|------------------------------|
| (1) | Bodily Injury:<br>\$1,000,000<br>\$1,000,000 | Each Person<br>Each Accident |
| (2) | Property Damage:<br>\$1,000,000              | Each Occurrence              |

- B. The Owner shall be named as an additional insured on the policies for the work under this Agreement. The Owner shall be immediately notified of any cancellation or cessation of insurance coverage. Engineer shall provide a certificate of insurance prior to starting the work.

8.01 *Basis of Compensation*

- A. The basis of compensation for Services shall be identified in each specific Task Order. Owner shall pay Engineer for services in accordance with the applicable basis of compensation.

- A. The following basis of compensation are used for services under the Task Orders, as identified in each specific Task Order:

1. Lump Sum (plus any expenses expressly eligible for reimbursement)

- a. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Consultant charges.

2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)

- a. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

- 1) An amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Specific Project, plus reimbursable expenses and Engineer's consultants' charges, if any.
- 2) Engineer's Reimbursable Expense Rates & Standard Hourly Rates Schedules are attached as Appendix 1
- 3) Engineer's Reimbursable Expense Rates & Standard Hourly Rates Schedules are subject to revision on January 1 of each year.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

ENGINEER:

By: Michael T. Schmitz

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

Title: President of Board of City Commissioners

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

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

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

Address for giving notices:

Address for giving notices:

City of Bismarck

221 North 5<sup>th</sup> St

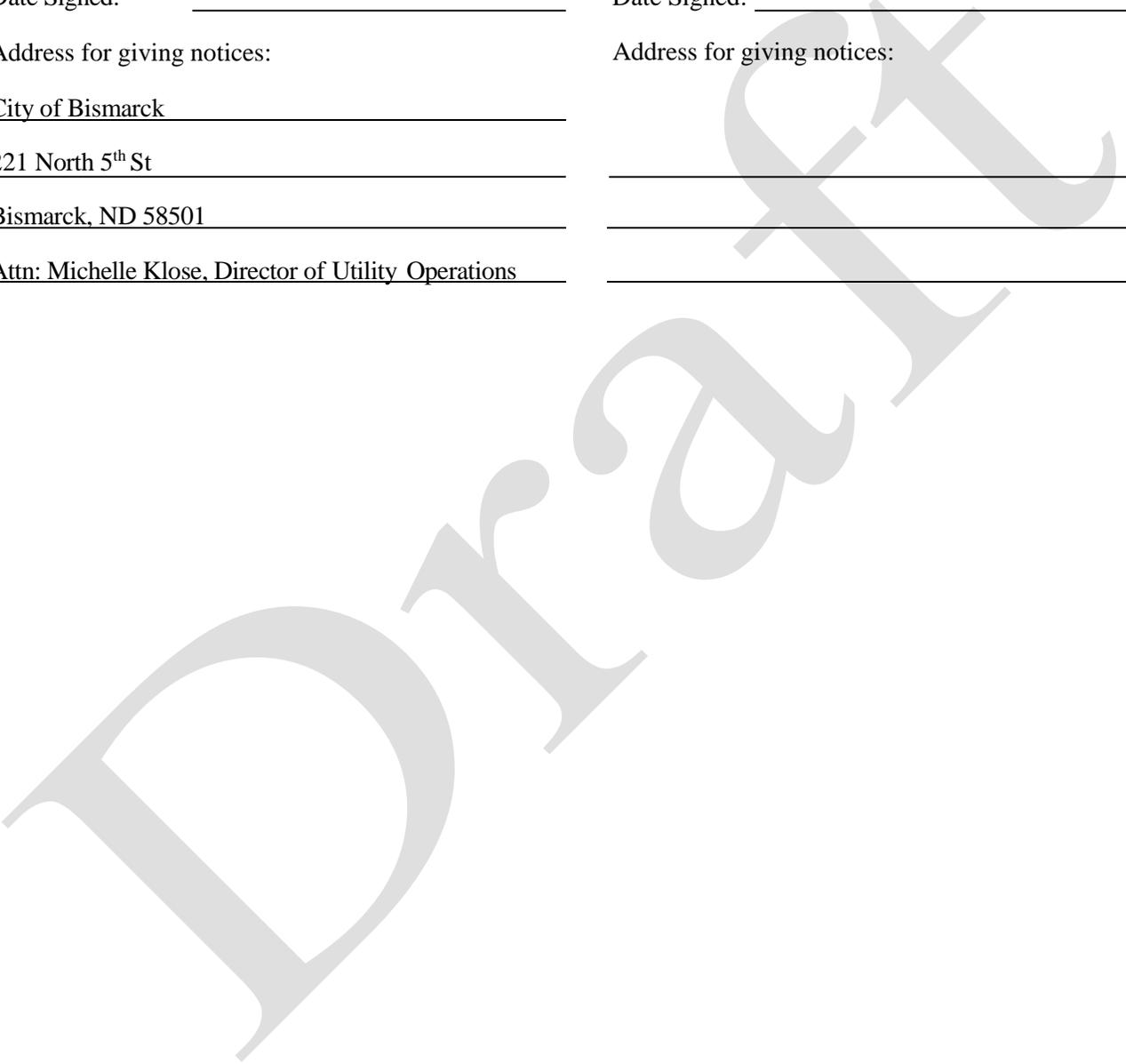
Bismarck, ND 58501

Attn: Michelle Klose, Director of Utility Operations

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



This is Task Order  
No. \_\_\_\_\_, consisting of  
\_\_\_\_\_ pages.

## Task Order

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In accordance with Paragraph 1.02 of the Short Form of Task Order Agreement Between Owner and Engineer for Professional Services, dated [ ] ("Agreement"), Owner and Engineer agree as follows:

### 1. Background Data

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project (title):
- e. Specific Project (description):

### 2. Services of Engineer

The specific services to be provided or furnished by Engineer under this Task Order are as follows:

*[Insert scope of services here, or incorporate by reference a scope of services set out in a separate document such as a letter or proposal.]*

### 3. Additional Services

Additional Services that may be authorized or necessary under this Task Order are as follows:

*[Insert list of Additional Services here, or incorporate by reference a list of Additional Services set out in a separate document. Indicate whether advance authorization is needed, and include other governing terms and conditions.]*

### 4. Owner's Responsibilities

Owner shall have those responsibilities set forth in the Agreement, subject to the following: *[State any additions or modifications for this Specific Project here.]*

### 5. Task Order Schedule

The parties shall meet the following schedule: *[Insert schedule obligations of Owner and Engineer as applicable.]*

### 6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows: *[Insert description of compensation basis.]*

Compensation items and totals based in whole or in part on Hourly Rates are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit,

reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in the Agreement.

**7. Consultants retained as of the Effective Date of the Task Order:**

**8. Other Modifications to Agreement:**

**9. Attachments:**

**10. Other Documents Incorporated by Reference:**

**11. Terms and Conditions**

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is [  ].

OWNER:

ENGINEER:

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

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

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

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

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

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

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

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

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

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

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

Address: \_\_\_\_\_

Address: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_



## Public Works Utility Operations

**DATE:** April 9, 2024

**FROM:** Michelle Klose, Director Public Works Utilities

**ITEM:** Land Purchase Agreement for Future Lift Station

**REQUEST:**

Approval to finalize the purchase of property for future lift station.

**BACKGROUND INFORMATION:**

As the City of Bismarck continues to expand, a new lift station was planned as part of the Hay Creek Project. This project was approved by Commission in 2021. City departments have been working with a landowner to secure the property for this need. The discussion has advanced to the point of consensus of all parties regarding the terms of the purchase agreement. Funding for this purchase will be from Public Works Utility Operations.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve land purchase for future lift station and execute accordingly.

**STAFF CONTACT INFORMATION:**

Amber Araujo, Executive Assistant, 701-355-1739, [aaraujo@bismarcknd.gov](mailto:aaraujo@bismarcknd.gov)

**ATTACHMENTS:**

1. 6974



# Public Works Utility Operations Department

**DATE:** 11/16/2021  
**FROM:** Michelle Klose, Public Works Utility Water Director  
**ITEM:** Amendment to Task Order 2 to the Agreement with Apex Engineering Group, Inc. for Hay Creek Lift Station Improvements

**REQUEST:**

Request approval of the Amendment to Task Order 2 to the Agreement with Apex Engineering Group, Inc. for Hay Creek Lift Station Improvements

Please place this item on the November 23, 2021 City Commission meeting agenda.

**BACKGROUND INFORMATION:**

Amendment to Task Order 2 is for right-of-way services to secure property for a future Hay Creek Lift Station gravity sewer and forcemain for the City of Bismarck. Engineering fees for this amendment will not exceed \$198,700.00.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve Amendment to Task Order 2 for the agreement with Apex Engineering Group, Inc. in the amount not to exceed \$198,700.00 for the Hay Creek Lift Station Improvements.

**STAFF CONTACT INFORMATION:**

Michelle Klose, Director of Utility Operations, 355-1700, [mklose@bismarcknd.gov](mailto:mklose@bismarcknd.gov)

This is **EXHIBIT K**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated March 27<sup>th</sup>, 2018.

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**Amendment To Task Order No. 2**

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**1. Background Data:**

- a. Effective Date of Task Order: September 8<sup>th</sup>, 2020
- b. Owner: City of Bismarck
- c. Engineer: Apex Engineering Group, Inc.
- d. Specific Project: Hay Creek Lift Station Improvements

**2. Description of Modifications**

- a. Engineer shall perform the following Additional Services: As described in Attachment 1, Right-of-Way Services.
- b. The responsibilities of Owner with respect to the Task Order are modified as follows: As described in Attachment 1, Right-of-Way Services.
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: \$198,700 Hourly Not To Exceed

**3. Task Order Summary (Reference only)**

- a. Original Task Order amount: \$331,100
- b. Net change for prior amendments: \$0
- c. This amendment amount: \$198,700
- d. Adjusted Task Order amount: \$529,800

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is November 23<sup>rd</sup>, 2021.

OWNER:

ENGINEER:

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

By: Mike Berg

Print  
Name: Steve Bakken

Print  
Name: Mike Berg

Title: President of Board of City Commissioners

Title: Principle / Vice President

Date  
Signed: 11/23/2021

Date  
Signed: 11/5/21



Water | Transportation | Municipal | Facilities

## Attachment 1, Right-of-Way Services

### Hay Creek Lift Station

City of Bismarck, North Dakota

November 5<sup>th</sup>, 2021

Phase No.	Description
1	Right-Of-Way Services

### Project Background

A future Hay Creek Lift Station is planned to be located near the junction of the Hay Creek and Apple Creek sewersheds. This lift station will require a gravity sewer extension from the City's existing wastewater collection system and a forcemain that conveys wastewater to an existing trunk sewer near the airport.

## Right-Of-Way Services

### Objective:

The objective of the Right-Of-Way services will be to secure property and easements for a future Hay Creek Lift Station gravity sewer, and forcemain for the City of Bismarck.

### Activities:

#### Task 1, Lift Station Property Acquisition (assuming work on 2 properties)

- 1.1 Property Identification: Identify the preferred and alternative lift station property locations.
- 1.2 Preliminary Property Owner Contacts: Make the initial property owner contacts and reassess the preferred and alternative locations as needed.
- 1.3 Title Work: Obtain a preliminary and final title certificate. Provide title insurance as needed.
- 1.4 Preliminary Plat: Perform the property survey and provide the preliminary plat.
- 1.5 Valuation: Perform an accredited appraisal to determine fair market value of the lift station property.
- 1.6 Acquisition Documents: Prepare all right-of-way acquisition documents.
- 1.7 Negotiations: Meet and negotiate with the property owners.
- 1.8 Execution: Assist the City in reviewing and executing the property acquisition documents. Coordinate with the property owner to get the acquisition documents executed.
- 1.9 Recording: Record the final plat.

#### Task 2, Gravity Sewer and Forcemain Right-Of-Way Acquisition (assuming work on 8 properties plus the airport)

- 2.1 Final Determination of Pipeline Routes: Reevaluate the pipeline routes as needed based on the final lift station property location. Determine route adjustments as needed to accommodate new lift station property.
- 2.2 Preparation of Easement Figures: Prepare preliminary figures of the proposed easements for discussions with property owners.
- 2.3 Preliminary Property Owner Contacts: Make the initial property owner contacts and reassess the preferred pipeline route as needed.
- 2.4 Title Work: Obtain the preliminary and final title certificates. Provide title insurance if needed.
- 2.5 Preliminary Plats: Perform the property surveys and provide the preliminary plats.
- 2.6 Acquisition Documents: Prepare all right-of-way acquisition documents.
- 2.7 Negotiations: Meet and negotiate with the property owners.
- 2.8 Execution: Assist the City in reviewing and executing the easement acquisition documents. Coordinate with the property owners to get the acquisition documents executed.
- 2.9 Recording: Record the easements.

### City of Bismarck Responsibilities:

- ✓ Execute contract between Bismarck and Apex.
- ✓ Review right-of-way updates
- ✓ Execute right-of-way acquisition agreements.
- ✓ Make final payments to property owners for the purchase of property, permanent easements, and temporary easements.

### Project Team Responsibilities and Deliverables:

- ✓ Property surveys
- ✓ Title work
- ✓ Appraisals
- ✓ Property owner negotiations
- ✓ Preparation of right-of-way agreement documents
- ✓ Recording of documents

**Project Schedule:** Lift Station property acquisition activities will begin immediately upon authorization by the City. Gravity sewer and forcemain right-of-way acquisition activities will begin during the lift station property negotiation phase.



## *Public Works Utility Operations Department*

**DATE:** August 31, 2020

**FROM:** Michelle Klose, Utility Operations Director

**ITEM:** Task Order No. 2 to the Agreement with Apex Engineering Group, Inc. for Hay Creek Lift Station Improvements

### **REQUEST**

Request for approval to accept Task Order No. 2 to the Agreement with Apex Engineering Group, Inc. for Hay Creek Lift Station improvements.

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

### **BACKGROUND INFORMATION**

Task Order No. 2 is for engineering services related to improvements at the Hay Creek Lift Station and its associated forcemain. The preliminary design phase is to identify the basis of design and to resolve all major design decisions (\$147,200.00); and the final design phase is to produce final plans and specifications and updated cost estimates, and to conduct a public bid for the proposed improvements (\$183,900.00). The total estimated fee for Task Order No. 2 is not to exceed \$331,100.00.

### **RECOMMENDED CITY COMMISSION ACTION**

Approve Task Order No. 2 to the agreement with Apex Engineering Group, Inc. in the amount not to exceed \$331,100.00 for the Hay Creek Lift Station improvements.

### **STAFF CONTACT INFORMATION**

Michelle Klose, PE | Utility Operations Director, 355-1700 or [mklose@bismarcknd.gov](mailto:mklose@bismarcknd.gov).  
I will be available at the meeting to respond to questions.

**Bismarck Human Relations  
Committee Annual Report**



**January 2023-December 2023**

## **TABLE OF CONTENTS**

Mission of Committee .....	3
Goals of Committee .....	3
Establishment of Committee .....	3
Appointment to Committee .....	4
Committee Meeting Times and Location .....	4
Committee Members .....	4
Publications and Other Information .....	5
Contact Information .....	5
Humanitarian of the Year Awards.....	6-7
Activities of Committee .....	8-15

## **MISSION OF COMMITTEE**

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

## **GOALS OF COMMITTEE**

The Bismarck Human Relations Committee has the following goals and objectives as defined in its strategic plan:

- 1.** To exhibit leadership in the areas of civil and human rights:
  - a.** The committee will be comprised of individuals that represent and are knowledgeable of diverse populations.
  - b.** The committee members will practice and model actions that exemplify nondiscrimination, acceptance and respect of diversity.
- 2.** To educate the public about civil and human rights:
  - a.** The committee will implement a public education plan to identify and address issues.
  - b.** The committee will actively plan, sponsor and participate in events that promote and celebrate diversity.
- 3.** To identify issues of principal concern in the area of civil and human rights:
  - a.** The committee will provide access for public input.
  - b.** The committee will prioritize issues based on input received.
- 4.** To recommend priorities and objectives about issues of community concern to the City Commission:
  - a.** The committee will serve as a liaison in issues of civil and human rights between the community and the City Commissioners.
- 5.** To advocate for compliance with federal and state laws regarding civil and human rights, including North Dakota Century Code Chapters 14-02.4 (Human Rights) and 14-02.5 (Housing):
  - a.** The committee will provide information about current laws through multiple formats.
  - b.** The committee will maintain data regarding civil and human rights issues.

## **ESTABLISHMENT OF COMMITTEE**

Bismarck Ordinance 5208 created the Bismarck Human Relations Committee and received final passage on October 8th, 2002. The committee's purpose is to promote acceptance and respect for diversity through educational programs and activities and to discourage all forms of discrimination including protected class discrimination, ADA violations or other statutory or constitutional violations (Chapter 2-11).

## **APPOINTMENT TO COMMITTEE**

The committee consists of nine members who serve without pay. Member appointment is by the President of the Board of City Commissioners and is subject to confirmation by the Board of City Commissioners. Appointees serve three-year terms.

## **COMMITTEE MEETING TIMES AND LOCATION**

The Bismarck Human Relations Committee meets on the third Monday of each month (except on holidays) at 5:15 p.m. in the 4<sup>th</sup> Floor Mayor's Conference Room of the City/County Office Building, 221 North 5th Street in downtown Bismarck. Meetings are open to the public and accept public comment.

## **2023 COMMITTEE MEMBERS**

- Chair – Jason Grueneich
- Vice Chair – Thea Jorgensen
- Geraldine Ambe
- Darcy Andahl
- Nicole Ralph
- Sashay Schettler
- Sargianna Wutzke
- Carl Young
- Gabrielle Abouassaly

## **PUBLICATIONS AND OTHER INFORMATION**

A copy of the Human Relations Committee Ordinance, Strategic Plan, Annual Report, complaint filing forms and other information may be accessed online at [www.bismarcknd.gov](http://www.bismarcknd.gov) or by mailing:

Bismarck Human Relations Committee  
City of Bismarck  
PO Box 5503  
221 N 5th Street Bismarck,  
ND 58506-5503  
[www.bismarcknd.gov](http://www.bismarcknd.gov)



## Humanitarian of the Year Awards

# Sister Kathleen Atkinson

Sister Kathleen Atkinson is a nun from the Benedictine Sister of Annunciation Monastery, an author, and the founder of Ministry on the Margins (an organization that helps those struggling with transitions in their lives, including after prison terms and periods of homelessness). She was nominated for the award by Krista Rauch, who made the following statement regarding her efforts to help the people of Bismarck:

*“Through her work, Sr. Kathleen does what many people cannot or will not do – she looks beyond the sins of the past to help convicted felons and people as they recover and/or re-enter society, connecting them to crucial resources and helping them find meaningful employment,” said Rauch in her nomination. “She has sat with them in difficult times and celebrated alongside them in times of triumph. In addition to selflessly serving a population in need, she has influenced many to step up and make a difference in our community.”*



# The Dream Center

The Dream Center Bismarck opened in June 2019 and helps approximately 1,000 households within our area receive the food they need. In total, the center provides 750 breakfasts, 1,100 sack lunches, and 1,800 banquet meals to the community. The Dream Center was nominated to win the Humanitarian Award by Rhonda Styles-Rohde — who included the following explanation in her submission.

*“The Dream Center is such a blessing to our community and it, plus its founders (Jim and Cindy Barnhart), should be recognized. Food is the focus, but their hope is that a person will take in other services provided by partnering entities. Dream Center Bismarck is a non-profit organization whose main goal is to bring ‘Help for Today. Hope for Tomorrow’.”*



[Martin Luther King JR Day  
Celebration](#)

This event celebrated the dream and legacy of Martin Luther King Jr during a celebration held at Trinity Lutheran Church. The committee was one of the sponsors of the event and assisted with the event by promoting it, assisting with the set-up of the event, and having a booth at the event where committee members visited with attendees about the committee.



## Families Around the World

The Bismarck Human Relations Committee had a booth at the Families Around the World Event which was held at the Bismarck Veterans Memorial Public Library. This event celebrated diversity in Bismarck. At our booth, we offered the activity of rock painting. We talked to attendees about our mission of inclusion and diversity in our community and what we are doing to support this mission.



## Capital Pride

The Bismarck Human Relations Committee participated in the Capital Pride Event at the Bismarck State College Energy Center. This event is an annual, family-oriented summer event that celebrates the LGBTQIA2S+ community. During the Capital Pride event, the Bismarck Human Relations Committee had a booth and shared information on the mission and purpose of the committee which includes the importance of inclusion and diversity. Committee members had a great time talking with the people attending the event and sharing our mission along with handing out SWAG items and brochures detailing our mission.



## Considering Mathew Shepherd

The Bismarck Human Relations Committee was one of the sponsors of the Considering Matthew Sheperd Event that occurred on the anniversary of the death of Matthew Shepherd. This event was a concert musical that commemorated the 25<sup>th</sup> anniversary of the kidnapping and murder of Matthew Shepherd. The Bismarck Human Relations Committee had a booth at the event where they shared about the mission of the committee and how people can get involved.



## [These are Your Neighbors Podcast](#)

These are your Neighbors is a podcast hosted by Human Relations Committee Members, Thea Jorgensen and Sargianna Wutzke that began taping in January 2023. Through conversations with diverse change makers in the community, the podcast hopes to strengthen inclusivity amongst the Bismarck community, by encouraging others to get to know their neighbors. The podcast is taped at Dakota Media Access and airs on 102.5 on Tuesdays, Thursdays, and Saturdays at 10 am as well as on all major streaming platforms. Some of the change makers featured in 2023 include BHRC members Jason Grueneich and Sashay Schettler, Bill Patrie, Jasmine Tosseth-Smith, Commissioner Anne Cleary, Sister Kathleen Atkinson, Erin Oban, Stacy Shaffer, and Nancy Guy.



## Exciting things coming in 2024

### Humanitarian of the Year

The committee will name an individual and a business/non-profit Humanitarian of the Year. This award will be given to an individual and a group that exhibited leadership in the area of human rights. The award focuses on recognizing persons in the community that educate, identify, protect, and promote acceptance and respect for diversity, and discourage discrimination.

### Quarterly Community Events

The Bismarck Human Relations Committee continues to plan to participate in at least four events a year in our community as well as plan at least one event as a committee. We are very excited to discuss our mission of inclusion, equality and accessibility through education and outreach to recognize the value of a diverse community.

### Community Conversations Forum

The City of Bismarck's Human Relations Committee Community Conversations Forum is an opportunity to facilitate important conversations about the adversities that many of our neighbors face, here in Bismarck. A panel of subject matter experts will address various issues in the community, with the hopes of building an ongoing conversation with the City Commission, as well as other community organizations and members.









## Finance Department

**DATE:** April 9, 2024

**FROM:** Dmitriy Chernyak, Finance Director

**ITEM:** Public Hearing on Ordinance 6574 to Amend the 2023 Budget

**REQUEST:**

Public hearing, second reading, and approval of Ordinance 6574 to amend the 2023 budget ordinance.

**BACKGROUND INFORMATION:**

Attached is the amended 2023 budget ordinance for the Roads and Streets Fund, Streetlights and Traffic Signals Fund, and the Hotel and Motel Tax Fund. The amendments to the Roads and Streets Fund and Streetlights and Traffic Signals Fund are mainly due to weather conditions and snowfall in the first quarter of 2023, which caused increased unforeseen expenditures in 2023. The amendment to the Hotel and Motel Tax Fund is a result of collection of the Hotel and Motel Tax in excess of the budgeted amount in 2023.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve second reading and final passage of Ordinance 6574.

**STAFF CONTACT INFORMATION:**

Dmitriy Chernyak, Finance Director, 701-355-1601, [dchernyak@bismarcknd.gov](mailto:dchernyak@bismarcknd.gov)

**ATTACHMENTS:**

1. 2023 Budget Ordinance Amendment 6574 Amendment (March 26, 2024)

ORDINANCE NO. 6574

<i>First Reading</i>	<i>March 26, 2024</i>
<i>Second Reading</i>	
<i>Final Passage and Adoption</i>	
<i>Publication Date</i>	

AN ORDINANCE TO AMEND THE ANNUAL APPROPRIATIONS FOR EXPENDITURES OF THE CITY OF BISMARCK, NORTH DAKOTA FOR THE FISCAL YEAR COMMENCING JANUARY 1, 2023, AND ENDING DECEMBER 31, 2023.

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

Section 1. There are hereby amend the appropriation of the following sums of money for so much thereof that may be necessary for the purpose of paying expenses of the City of Bismarck, North Dakota for the fiscal year commencing January 1, 2023, and ending December 31, 2023.

The City will increase the total City budget appropriation for each fund as follows:

- Roads and Streets Fund increase in the amount of \$1,000,000 for a total of \$11,578,438 to account for the additional snow removal expenditures in the first quarter of 2023 and accounting for equipment financing purchase based on the GASB pronouncement No. 87, *Leases*.
- Streetlights and Traffic Signals Fund increase in the amount of \$200,000 for a total of \$4,098,982 to account for the replacement of the three traffic signals that were knocked down due to snow and weather conditions in 2023.
- Hotel and Motel Tax Fund increase in the amount of \$100,000 for a total of \$1,199,034 to account for the contracted distribution of Hotel and Motel Tax (2%) collections in excess of budgeted revenues. The purpose of this fund is to account for the contracted split between the Convention and Visitors' Bureau (75%) and the Bismarck Event Center (25%) of the collections in excess of budget in 2023, as allowed by state statutes.

Section 2. Repeal. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 3. Taking Effect. This ordinance shall be in full force and effect from and after its final passage and adoption.



## Engineering Department

**DATE:** April 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** City Concrete Contracts Parts A-1, A-2 and B.

**REQUEST:**

Consider Request for Resolution Receiving Bids, Ordering Preparation of the Engineer's Statement and Awarding Contracts for City Concrete Contracts Parts A-1, A-2 and B.

**BACKGROUND INFORMATION:**

This project is the annual city concrete contract to construct concrete sidewalks, curb and gutter, driveways, and other concrete as petitioned by land developers or homeowners and as needed by a city department during the 2024 construction season.

The project is divided into three separate contracts. Contractors will be permitted to submit a bid for any or all parts of the city concrete contract and are divided as follows:

- Part A-1 New Sidewalk and Driveway Aprons.
- Part A-2 Sidewalk Gaps.
- Part B Hazardous Sidewalks and Driveway Apron Repairs and Miscellaneous Concrete Repairs including Sidewalk Driveway Aprons and Curb & Gutter.

The bids will be opened on April 9, 2024. The bid summary will be distributed prior to the commission meeting.

The engineer's estimates for each part are as follows:

Part A-1:	\$1,350,000.
Part A-2:	\$ 221,520.
Part B:	\$ 747,380.

**Project Schedule**

Receipt and Opening of Bids  
Award of Bid  
Project Completion

April 9, 2024  
April 9, 2024  
June 1, 2025

**RECOMMENDED CITY COMMISSION ACTION:**

Approve Resolution Receiving Bids, Ordering Preparation of the Engineer's Statement and Awarding Contracts for City Concrete Contracts Parts A-1, A-2 and B.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

None



## Engineering Department

**DATE:** April 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** Project HC 167 - 2024 Pavement Crack Sealing Project

**REQUEST:**

Consider Request to Receiving Bids and Awarding Contract for Project HC 167.

**BACKGROUND INFORMATION:**

This project is the City's first annual pavement crack sealing project to crack seal snow emergency routes with a rubberized sealant. Each sealed roadway will be on a cycle to have the sealant maintained every three years.

The bids will be opened on April 8, 2024. The bid summary and project budget will be distributed prior to the commission meeting.

The engineer's estimate is \$168,000. The programmed cost in the 2024 CIP was \$200,000.

**Project Schedule**

Receipt and Opening of Bids

April 8, 2024

Award of Bid

April 9, 2024

Project Completion

November 1, 2024

**RECOMMENDED CITY COMMISSION ACTION:**

Receiving Bids and Awarding Contract for Project HC 167.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

None



## Engineering Department

**DATE:** April 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** Development Agreement and Sale of City Property

**REQUEST:**

Consider approval of development agreement and purchase agreement relating to 2712 Hamilton St

**BACKGROUND INFORMATION:**

The City is the owner of Lot 3, Block 1 Fairview Cemetery Addition adjacent to Century Avenue and Hamilton Street in north Bismarck addressed as 2712 Hamilton St. The City originally purchased the right of way for Hamilton Street to realign the roadway as part of the 2007 East Century Avenue reconstruction project and purchased the unplatted property in what is now Lot 3, Block 1 Fairview Cemetery Addition in 2011 to secure a stormwater channel across the property. The property was platted as Lot 1, Block 1 Revolutionary Addition in 2013 and subsequently replatted as Lot 3, Block 1 Fairview Cemetery Addition in 2022. All previous platting actions encumbered this property with the necessary stormwater and drainage easements and the City placed this property on the [available properties for sale list](#) on April 25, 2023.

The City has received an offer from the adjacent owner of Lot 2, Block 1 Fairview Cemetery Addition to purchase the property. The adjacent owner is Fairview Cemetery Association Inc. and they intend to lease a portion of Lot 2 for the development of a funeral home site. The funeral home site would include a driveway across Lot 3 to gain access to Hamilton Street. The parcel does not have an improved street, a watermain running along the length of the property, or a sewer within Hamilton Street. We would require these municipal improvements to be constructed prior to the development of the site. The lack of these facilities negatively affects the sale price of the property.

Also included in this action is a development agreement that would allow only a portion of Hamilton Street to be constructed initially (approximately 150') with the remainder constructed at such time as a neighbor to the southwest, south, or southeast of the subject property requests access and an improved roadway. Fairview Cemetery Association, Inc. would agree to participate in the special assessed costs of future water main extension and street improvements. The development agreement and purchase agreement are conditioned on the partial release of a non-access line granting access from Hamilton Street, through Lot 3 and to Lot 2, site plan and construction plan approval to the funeral home site.

The enclosed development agreement and purchase agreement are recommended for approval. There may be additional modifications to the agreements made prior to Commission action on April 9, 2024. If any are proposed, they will be shared with the Commission and discussed during the regular agenda item prior to any Board action. Following this agenda item is an executive session in the event the Commission wishes to table the purchase agreement to discuss negotiating strategy. In the event the purchase agreement is approved, the executive session would not be necessary.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve the development agreement and purchase agreement relating to 2712 Hamilton St, Lot 3 Block 1 Fairview Cemetery Addition.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

1. Purchase Agreement
2. Development Agreement
3. Fairview Cemetery Addition Plat
4. Hamilton Stormwater Exhibit
5. 2712 Hamilton St Exhibit

## PURCHASE AGREEMENT

**THIS PURCHASE AGREEMENT** is made and entered into on April \_\_\_\_\_, 2024 (the "Effective Date") by and between Fairview Cemetery Association, Inc., a non-profit North Dakota corporation or assignee hereinafter called "Buyer", Eastgate Funeral Services LLC, a North Dakota limited liability company, hereinafter called "Eastgate", and City of Bismarck hereinafter called "Seller". Seller agrees to sell and Buyer agrees to purchase, upon the terms and conditions hereinafter set forth, the following described real property, thereunto belonging, owned by Seller and located in the City of Bismarck, Burleigh County, State of North Dakota, to-wit with the legal description is:

Street Address: 2712 Hamilton St Bismarck ND

Legal Description: Lot 3, Block 1, Fairview Cemetery Addition

PID#: 2168-001-100 approximately 69,353 sf

together with all mineral, oil, gas, development rights, air rights, and water rights owned by Seller relating to the real property, and any improvements owned by Seller on the real property, and any appurtenance, or the operation, use or enjoyment of any of the foregoing, all rights of Seller in and to the sidewalks, alleys, driveways, parking areas, and areas adjacent thereto or used in connection therewith; any and all buildings, fixtures, structures, landscaping and other improvements located on the real property, if any. The real property, improvements, and personal property described herein are collectively referred to herein as the "Property". Any City right of ways, streets and utility easements and improvements are expressly exempted from the Property.

Seller, Buyer, and Eastgate all agree that Buyer is purchasing the Property with an aim toward leasing the Property to Eastgate in a triple net lease so that Eastgate can construct and operate a funeral home on adjacent real estate (part of Lot 2, Block 1, Fairview Cemetery Addition, hereinafter the "Funeral Home Site") with a convenient, reasonable, practical and cost-effective access over the Property to its funeral home. Accordingly, Eastgate is a party in interest that will work with Seller and Buyer to bring this Agreement to a successful Closing. Eastgate agrees to provide the Purchase Price (including Earnest Money), pay for all costs and fees, and take all action that this Agreement assigns to Buyer. In addition, Eastgate agrees to be responsible for and pay for all fees and costs set forth in the hereafter referenced development agreement between Seller and Eastgate and specifically Eastgate agrees to indemnify and hold harmless Buyer with respect to said fees and costs and all other rights, obligations or responsibilities set forth in said development agreement.

- 1. PURCHASE PRICE:** Buyer hereby agrees to purchase the above-described Property for **\$0.14 psf based on 69,353 sf for a sum of ten thousand dollars (\$10,000.00) Dollars** (the "Purchase Price"), subject to the Buyer's right to terminate this Purchase Agreement by the Contingency Date as set forth in Section 10 of this Purchase Agreement. The Purchase Price will be paid in US Dollars to Seller at Closing.
- 2. EARNEST MONEY:** The sum of **Two Thousand Five Hundred (\$2,500.00) Dollars** from Buyer as earnest money (the "Earnest Money") will be deposited with a mutually agreeable title company (the "Title Company") within five (5) business days after the Effective Date to the

Seller. The Earnest Money is part payment for the purchase of the Property. If the Buyer determines before the Contingency Date, it will not move forward with the purchase of the Property, Buyer shall receive a full refund of the Earnest Money and this Purchase Agreement shall be null & void.

- 3. GOVERNING LAW:** This Purchase Agreement shall be governed by, construed and interpreted in accordance with the laws of and under the jurisdiction of the State of North Dakota and any actions shall be venued in the state district court for Burleigh County, North Dakota. If any case, suit or proceeding shall be brought by one party to this Purchase Agreement against the other, the prevailing party shall be entitled to recover all reasonable, out-of-pocket costs actually incurred by the prevailing party related thereto, including reasonable attorney's fees and the costs of appeal.
- 4. PRORATIONS.** Real estate taxes and installments of special assessments certified for payment with the real estate taxes due and payable in the year of closing, based on the most current certified tax information available, shall be paid by Buyer as Seller is exempt from taxation as of date of closing. All prior year's real estate taxes and installments of special assessments shall be paid by the Seller. Real estate taxes and special assessments payable in the years subsequent to closing shall be paid by Buyer. No representations have been made concerning the amount of subsequent real estate taxes and special assessments. Rents from the property, if any, shall be prorated to the date of the closing. Any operating expenses or vendor contracts assumed by the Buyer and prepaid by the Seller shall be prorated to the date of closing.
- 5. CLOSING AND POSSESSION:** The closing of the transaction contemplated by this Purchase Agreement (the "Closing") shall be on June 27, 2024, or such earlier date as the parties may agree (the "Closing Date"). Seller shall deliver possession of Property at the time of Closing. At the time of Closing, Buyer and Seller agree Closing shall take place at or through the Title Company, either in person or by mail and electronic closing. As stated in Section 10 in this Agreement, the Closing may be postponed in the event certain contingencies have not yet been fulfilled.

  - a. DEED/MARKETABLE TITLE:** Upon performance by Buyer of all requirements under this Purchase Agreement, Seller shall deliver a Warranty Deed, conveying marketable title, subject only to: (A) building and zoning laws, ordinances, state and federal regulations; (B) restrictions of record relating to use or improvement of the Property; (C) installments of special assessments or assessments for completed special improvements which have not been certified to the County Auditor for collection; (D) prior reservation of any mineral rights; and (E) utility and drainage easements and all other matters of record.
  - b. TITLE AND EXAMINATION:** Seller shall promptly arrange for and shall promptly provide Buyer with a title commitment to the Property issued by the Title Company. Seller shall use commercially reasonable efforts to deliver such title commitment to Buyer no **later 30 days after the Effective Date** or such other time period as agreed to by Buyer, in writing. **Seller shall pay the entire cost of an underlying abstract update, if required by the Title Company, and obtaining a title commitment and title policy.** If Buyer's lender requires a lender's title insurance policy, Buyer shall be solely responsible for the incremental cost thereof. If Seller(s)'s title is not insurable, marketable and free of defect, other than the permitted encumbrances set forth in Section 5(a) or such exceptions to title Buyer waives pursuant to this Section 5(b), and cannot be made so by the Closing Date, or, if after examination of the title commitment, Buyer

determines that easements, restrictions, encumbrances or any other defects of title interfere with the Buyer's intended use of the property, Buyer, at Buyer's option, shall be authorized to terminate this Purchase Agreement and all Earnest Money shall be refunded to Buyer. Buyer shall notify Seller of Buyer's objection to the title within fourteen (14) days following the date Seller delivers a title commitment to Buyer. Buyer may waive defects and proceed to Closing, at Buyer's sole discretion. If Buyer does not object to the title defects in a writing delivered to Seller within the time period described herein, Buyer shall be deemed to have waived its right to so object. Seller shall have until the Closing Date to eliminate any title objections identified in writing by the Buyer to the satisfaction of the Buyer in such a manner as to delete title defects from the final standard owner's policy of title insurance, it being agreed that the Seller is not obligated or required to undertake any cure of any title objections identified by the Buyer; however, if Seller determines not to attempt to cure any title defects, Seller shall so advise Buyer within seven (7) days of the date Seller receives Buyer's written notice of the title defects. If Seller shall in fact eliminate any and all title objections identified in writing by the Buyer, the Closing shall take place on the Closing Date, subject to the Buyer's right to terminate as provided for in Section 9 of this Purchase Agreement. If Seller does not eliminate title objections identified by the Buyer, or Seller notifies Buyer that it will not attempt to eliminate any such objections, the Buyer may elect (as its sole remedy) to terminate this Purchase Agreement and have the Earnest Money returned within five (5) days of Buyer's written notice of termination of this Purchase Agreement to the Seller, which Buyer shall deliver within five (5) days of receipt of Seller's notice that Seller shall not attempt to eliminate such objections or, alternatively, the Buyer may waive the title objections and may elect to Close the purchase of the Property and accept the conveyance of the Property subject to all title objections which were identified by the Buyer, in which event the Closing shall take place on the Closing Date with no reduction to the Purchase Price. If by giving written notice to the Seller within the time allowed under the provisions of this Purchase Agreement, the Buyer elects to terminate this Purchase Agreement because the existence of uncured title objections identified by the Buyer, then Buyer shall have its sole remedy the return of the Earnest Money and upon the disbursement of the Earnest Money to the Buyer, this Purchase Agreement and all rights and obligations of the parties hereunder shall terminate and be null and void, subject to the survival of any provisions of this Purchase Agreement as set forth herein.

6. **RISK OF LOSS:** If there is any loss or damage to the Property between the date hereof and the Closing Date for any reason, including fire, vandalism, flood, hail, wind, earthquake, or act of God, the risk of loss shall be on the Seller. If the Property is destroyed or substantially damaged before the Closing Date, this Purchase Agreement shall become null and void and the Earnest Money shall be refunded to Buyer.
7. **SQUARE FOOTAGE AND/OR ACREAGE:** Buyer is aware that any reference to the square footage and/or acreage of the Property, both the real property (land) and improvements thereon, is approximate. If square footage and/or acreage is a material matter to the Buyer(s), it must be verified by the Buyer prior to closing.
8. **CONDITION OF PROPERTY:** Seller and Buyer agree that the Property, and all, fixtures, equipment, and other personal property located upon the Property and used in connection with the operation of the Property and conveyed hereby, shall be conveyed, on the Closing Date, "AS IS, WHERE IS, WITH ALL FAULTS", with no right of setoff or reduction of the Purchase Price, and that, except for the warranty of title to be given in the Warranty Deed, shall be without representation or warranty of any kind or nature whatsoever by the Seller, whether

express, implied, statutory, or otherwise, including without limitation, warranty of income potential, operating expenses, uses, merchantability, or fitness for a particular purpose, and Seller does hereby disclaim and renounce any and all such representations or warranty. By entering into this Purchase Agreement, Buyer represents and warrants that as of the Contingency Date, Buyer shall have satisfied itself as to the condition of the Property and its suitability for the purposes intended by the Buyer. The Property and personal property are sold in "AS IS" condition, including without limitation, as to any hazardous materials. In purchasing the Property and personal property, Buyer is relying solely upon Buyer's own inspection and investigation of the Property and personal property, including without limitation, as to hazardous materials contamination and geological conditions and not upon any representation, warranty, statement, study, report, description, guideline, or other information or materials made or furnished by Seller or any of Seller's agents or representatives, whether written or oral, express or implied, of any nature whatsoever. Buyer acknowledges that neither the Seller nor any agent or representative of the Seller has made any representation, warranty, or agreement as to any matters concerning the Property or the personal property. Any statement not expressly contained in this Purchase Agreement shall not bind the Seller, and Buyer expressly waives any right of rescission and/or claim for damages against the Seller or the Seller's agents or representatives by reason of any statement, representation, warranty, and/or promise not contained in this Purchase Agreement. Buyer's agreement to purchase the Property in its "AS IS" condition is a material inducement to the Seller to agree to sell the Property at the purchase price provided for herein.

**9. DEFAULT:** If all contingencies have been met and Buyer, contrary to this Purchase Agreement, fails, neglects or refuses to complete the purchase of the Property on the Closing Date set forth in Section 5, then, as Seller's sole remedy, the Earnest Money shall be forfeited to Seller as liquidated damages, and this Purchase Agreement shall be of no further force or effect, subject to the survival of any provisions of this Purchase Agreement as set forth herein. The parties agree the calculation of damages to Seller would be difficult to ascertain with certainty and since parties further agree that the amount of liquidated damages is a reasonable attempt to estimate damages which will be suffered by the Seller, if the Buyer fails, neglects, or refuses to perform, contrary to this Purchase Agreement. If the Seller, contrary to this Purchase Agreement, fails, neglects or refuses to perform as agreed, Buyer may terminate this Purchase Agreement and receive a full refund of the Earnest Money or demand and pursue specific performance of this Purchase Agreement. Any claim by Buyer for specific performance, or any demand by Seller for payment to Seller of the Earnest Money as liquidated damages, shall be commenced or made within three (3) months after scheduled Closing Date set forth in Section 6; further, unless the Seller delivers copies of documents evidencing the Seller's demand for payment to Seller of the Earnest Money within such 3- month period, the Earnest Money shall be returned to the Buyer, free of any claim by the Seller. Retention of earnest money in any Broker's trust account pending resolution of the default shall not constitute an election of remedies by either party or prejudice their rights to pursue any and all other remedies permitted in this Purchase Agreement.

**10. CONTINGENCIES / DUE DILIGENCE:** Buyer has until June 26 at five o'clock PM (the "Contingency Date") to perform any and all due diligence, and inspections to Buyer's sole satisfaction. Such due diligence and inspections may include, but shall not be limited to, review of Seller's disclosure statement, governmental site usage approval, governmental approval of site plans known as civil engineering, financing approval, survey of the property, physical property inspections, title review, and environmental assessments. Upon reasonable prior written notice from Buyer to Seller, and with a representative of Seller at

Seller's sole discretion, Buyer shall be provided with full unrestricted access to the entire Property for purposes of conducting investigations and inspections as deemed appropriate by Buyer, at Buyer's sole cost and risk. Buyer shall make reasonable efforts to not disrupt any ongoing operations at the Property, including the operations of any tenants or other occupants. Additionally, Buyer shall repair any damage to the Property caused by Buyer or its inspectors, agents, or employees. Buyer shall indemnify Seller for any losses or damages that Seller actually suffers as a result of Buyer's or its inspectors', agents', or employees' actions on the Property, which indemnification and repair obligations shall survive the termination of this Purchase Agreement. If Buyer gives written notice to Seller that Buyer is not satisfied with results of Buyer's due diligence/inspections on or before 5pm CDT on the Contingency Date, all Earnest Money shall be promptly returned to Buyer within no later than two (2) days, and this Purchase Agreement will be of no further force or effect. If Buyer fails to deliver timely notice of objection to Seller, then Buyer's due diligence contingency pursuant to this Section 10 shall be deemed waived and the Earnest Money shall be non-refundable to the Buyer, but such earnest money shall be applied to the Purchase Price at closing.

In addition, notwithstanding anything to the contrary in this Agreement, Buyer may terminate this Agreement, Close, or postpone the Closing with respect to the following contingencies:

- A. Seller takes all action that is required to allow an access road over the Property from Hamilton Street to the Funeral Home Site, which road will be located approximately 150 feet south of E. Century Ave. Said action may include, but is not limited to, the release or modification of non-access lines by a separate release or modification document, or modification of the Fairview Cemetery Addition Plat.
- B. Seller and Eastgate have executed a Development Agreement that is mutually acceptable to the parties with respect to Eastgate's construction of its funeral home on the Funeral Home Site.
- C. Eastgate has received assurances, approvals, or permits from Seller that are satisfactory to Eastgate as to Eastgate's site plans and construction plans and the providing of utility services, including, but not limited to sanitary sewer, storm sewer and water to and for the funeral home site.

In the event each of the above events/contingencies have not been completed to the satisfaction of Buyer and Eastgate by the time of Closing, in addition to Buyer's ability to continue with the Closing or terminate the Agreement, Buyer may postpone the Closing for such time as will allow said events/contingencies to be completed.

All termination or postponement notices shall be provided in writing to Seller and the Title Company.

- 11. SPECIAL BUYER AND SELLER CONDITIONS:** Seller shall cooperate with the Buyer in providing access to information reasonably necessary and in Seller's actual possession to complete any portion of due diligence/feasibility review. In that regard, within ten (10) calendar days of the Effective Date, Seller shall provide to Buyer and Eastgate the following documents, if available and in Seller's possession: environmental reports, geologic and soil condition reports.

- 12. COUNTERPARTS / FACSIMILE / ELECTRONIC SIGNATURES:** This Purchase Agreement may be executed in any number of counterparts, all of which taken together shall constitute one, complete Agreement. A copy of this Purchase Agreement delivered as or by .pdf, facsimile or other electronic means containing a party's signature shall be deemed such party's original, binding signature.
- 13. ASSIGNMENT:** No less than three (3) days prior to Closing, Buyer may, with simultaneous written notice to Seller but without the need for Seller's consent, assign this Purchase Agreement to any person or entity owned and controlled by Buyer (a "Buyer Affiliate"). Buyer shall not assign this Purchase Agreement to any party other than a Buyer Affiliate without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. In no event shall the original Buyer shall be relieved from any obligations as Buyer under this Purchase Agreement and the assignee shall be bound by any and all such obligations.
- 14. REPRESENTATION OF AUTHORITY OF PARTIES/SIGNATORIES:** Each of Buyer and Seller represents and warrants that he or she is duly authorized and validly existing under the laws of North Dakota and the person signing this Purchase Agreement has legal capacity to execute and deliver this Purchase Agreement. Each party represents and warrants to the other that the execution and delivery of the Purchase Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Purchase Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
- 15. TAX-FREE EXCHANGE:** Both parties reserve the right to transfer their respective interests in and to this Purchase Agreement to a Qualified Intermediary or other appropriate party pursuant to a 1031 tax-free exchange. Both parties agree to cooperate with the other to fully effectuate a 1031 tax-free exchange provided that such cooperation will not increase the expenses or obligations of the party attempting to facilitate and effectuate an electing party's 1031 tax-free exchange, nor shall such facilitating party be obligated to take title to any other property.
- 16. REAL ESTATE COMMISSIONS:** Sales commissions are not applicable with the sale of the Property described in this Purchase Agreement.
- 17. ADDITIONAL TERMS:** The term "day" or "days" in this Purchase Agreement shall be construed as calendar days.
- 18. TIMING:** Time is of the essence as to all dates and time periods set forth in this Purchase Agreement. With respect to computation of time periods provided in this Purchase Agreement, the day of the act or event on which the designated period of time begins to run is not to be included, and the last day of the period so computed is to be included, and any time period provided in this Purchase Agreement that ends on a day other than a Business Day shall automatically extend to, and end on, the next Business Day thereafter. "Business Day" means a day other than (i) a Saturday, Sunday or legal holiday on which banking institutions in the State of North Dakota are authorized to remain closed, or (ii) a day on which the New York Stock Exchange is closed. "Acceptance Date" shall mean the last day Buyer or Seller signs this Purchase Agreement, as reflected on the last page of this Purchase Agreement.
- 19. ENTIRE AGREEMENT:** This Purchase Agreement, and any addenda or amendments signed by the parties, and any attached exhibits shall constitute the entire agreement between

Seller and Buyer and supersedes any other written or oral agreements between Seller and Buyer. The Purchase Agreement can be modified only in writing signed by Seller and Buyer.

**20. CONSTRUCTION:** The parties acknowledge they have both had the opportunity to have this Purchase Agreement reviewed by their respective attorneys, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document shall be operative against either party.

**21. ALLOCATION OF CLOSING EXPENSES:** The parties shall apportion the closing expenses in the following manner:

- a. Seller's expenses - Seller shall be responsible for:
  - i. The recording fees for any corrective instruments.
  - ii. Its own attorney's fees.
  - iii. Any cost connected with the continuation of any abstracts of title, the cost of the title insurance commitment, title insurance premiums (except relating to lender policy related premiums) or the preparation of any corrective documents.
  - iv. The preparation costs of any documents that Seller is required to deliver to Buyer at or before closing.
  - v. Any brokerage fees connected with any broker hired by Seller.
  - vi. One-half the cost of the closing fee charged by the Title Company.
- b. Buyer's expenses - Buyer shall be responsible for:
  - i. Recording fees for the Deed.
  - ii. Its own attorney's fees, including fees for title opinions.
  - iii. The cost of lender's title insurance premiums.
  - iv. The preparation costs of any documents that Buyer is required to deliver to Seller at or before closing.
  - v. One-half the cost of the closing fee charged by the Title Company.
  - vi. All other costs specifically allocated to Buyer as set forth in this Agreement.
  - vii. Survey costs, UCC Searches, inspection fees, lender fees, appraisals, and environmental site assessments if ordered or required by Buyer.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the day and year first above written.

(Signature Pages to Follow)

**Signature page to Purchase Agreement between the City of Bismarck, the Fairview Cemetery Association, Inc. and Eastgate Funeral Services LLC**

**BUYER ACCEPTANCE:** Fairview Cemetery Association, Inc.

By \_\_\_\_\_

\_\_\_\_\_

Title

**THIS IS A LEGALLY BINDING CONTRACT. FOR LEGAL, TAX, STRUCTURAL OR ENVIRONMENTAL  
ADVICE CONSULT AN APPROPRIATE PROFESSIONAL.**

**Signature page to Purchase Agreement between the City of Bismarck, the Fairview Cemetery Association, Inc. and Eastgate Funeral Services LLC**

**SELLER ACCEPTANCE: City of Bismarck**

By \_\_\_\_\_

\_\_\_\_\_  
Title

**THIS IS A LEGALLY BINDING CONTRACT. FOR LEGAL, TAX, STRUCTURAL OR ENVIRONMENTAL  
ADVICE CONSULT AN APPROPRIATE PROFESSIONAL.**

**Signature page to Purchase Agreement between the City of Bismarck, the Fairview Cemetery Association, Inc. and Eastgate Funeral Services LLC**

**EASTGATE ACCEPTANCE: Eastgate Funeral Services LLC**

By \_\_\_\_\_

\_\_\_\_\_  
Title

**THIS IS A LEGALLY BINDING CONTRACT. FOR LEGAL, TAX, STRUCTURAL OR ENVIRONMENTAL  
ADVICE CONSULT AN APPROPRIATE PROFESSIONAL.**

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Above this line used for recordation purposes only.

## DEVELOPMENT AGREEMENT

The City of Bismarck (“City”) and Fairview Cemetery Association, a North Dakota Nonprofit Corporation (“Developer”) make this Development Agreement (“Agreement”) with regard to the development of parcels (the “Property”) located in Bismarck, North Dakota and described as follows:

Lot 2 and Lot 3, Block 1, Fairview Cemetery Addition, Bismarck, Burleigh County, North Dakota.

The Developer owns Lot 2 and has offered to purchase Lot 3 and develop the Property for commercial use. The Property is located on the southwest corner of East Century Avenue and Hamilton Street. The Property would not be operated as a cemetery and will not be so operated in the future and would be subject to special assessments as long as said improvement especially benefit the Property.

In exchange for the mutual agreements of the parties under this Agreement, the parties agree as follows:

### **A. MUNICIPAL UTILITIES**

The Property is served with sanitary sewer via a gravity sewer line within Revolutionary Addition. Sanitary sewer access is granted to Lot 2 through a sanitary sewer easement across Lot 3. The City will approve a sanitary sewer connection through the Hamilton Street right of way to access the sewer line as part of the site plan approval. As the Developer is the owner of Lot 1, Lot 2 and has offered to purchase Lot 3, sanitary sewer service lines will be allowed outside of the platted easement boundary so long as Lot 2

and Lot 3 are under common ownership. If Lot 2 and Lot 3 are held under separate ownership, the sanitary sewer service line would need to be placed within the platted sanitary sewer easement or through a separate easement recorded prior to site plan approval.

The Developer would be required to extend a 12" watermain within Hamilton Street right of way to a point south of any street improvements. The City will design the improvement and will allow the cost of this extension to be special assessed against the Property. The Developer acknowledges it would be responsible for future special assessed costs for the continuation of the 12" watermain within Hamilton Street right of way to the southern boundary of Fairview Cemetery Addition.

## **B. STREET IMPROVEMENTS**

The City would normally require the improvement of Hamilton Street to an urbanized curb and gutter street section adjacent to the site at the time of the development of the Property. The parties are in agreement that the improvement of all of Hamilton Street adjacent to the Property is not necessary for the further development of the site at this time and improvement of extended Hamilton Street to the south of an agreed access point to the funeral home site approximately 150 feet south of Century Avenue can be delayed until the City receives a petition to improve extended Hamilton Street from property owners of any property located adjacent to proposed extended Hamilton Street south of East Century Avenue or from owners of property south of Lot 1 Block 1 Fairview Cemetery Addition whose access to Hamilton Street is granted via an access easement through Lot 1 and Lot 3, Block 1 Fairview Cemetery Addition. The City will initiate a plat modification request to release a portion of the non-access line along the west side of Hamilton Street to facilitate access to Lot 2, through Lot 3 from the improved section of Hamilton Street.

The plat of Fairview Cemetery Addition includes an access easement traversing the southeast corner of Lot 1, Block 1 to gain access to the unplatted land south of the cemetery. If that entity platted their land with desire to develop, their access to the public road network would be through Lot 1, Block 1 and Lot 3, Block 3 back to Hamilton Street. That action would trigger the improvement of Hamilton Street. Because the land south of the cemetery is not platted, there would be public input and process prior to approval.

The City will approve the site plan and issue building permits in its normal course of business. Prior to such approvals or permits being issued, the Owner will execute and deliver petitions for the improvement of Hamilton Street for that portion adjacent to the Property. The first petition will be for the construction of Hamilton Street from East Century Avenue to an agreed access point to the funeral home site approximately 150

feet south of East Century Avenue. The second petition will be for the construction of Hamilton Street from said agreed access point to the funeral home site approximately 150 feet south of East Century Avenue to a southern limit of Hamilton Street which is located at a point adjacent to the easterly extended south line of Lot 1 within Fairview Cemetery Addition. The second petition will be conditioned that it will be deemed to be submitted upon the receipt of another valid petition for improvement from those property owners identified above as to the extension of any portion of Hamilton Street, south of East Century Avenue to a point adjacent to the easterly extended south line of Lot 1. The City agrees to waive the 40% prepayment typically required for street improvements. By entering into this Agreement, the Developer also agrees to waive their right to protest a special assessment district formed to construct Hamilton Street south of East Century Avenue as described herein. This agreement will be placed of record in the title for the Property, and all successors in interest agree to waive their right to protest said special assessment district under N.D.C.C. Ch 40-22 by accepting delivery of title. The City also agrees that in order to activate the petition, any project for the improvement of Hamilton Street south of East Century Avenue must include the entire width of the roadway. The assignment of benefit will utilize the special assessment policy in force at the time the district is created.

### **C. GENERAL TERMS**

- i. All work shall proceed only after the necessary permits and approvals have been obtained. Unless otherwise modified by this Agreement, all City development policies regarding public improvements must be followed.
- ii. It is the intention of the parties that this Agreement will run with the land as to the parcels within the plat and that the Owner will have the obligation to inform any successor in interest of the terms of this Agreement and the successor's obligation to abide by this Agreement and include compliance with this Agreement as a condition in any written instrument of conveyance of real property for the site.
- iii. The terms of this agreement shall be considered a covenant running with the land and bind all future owners in the same manner as if they had personally entered into this agreement.
- iv. Successors and Assigns. This Agreement shall apply to, inure to the benefit of, and be binding upon and enforceable against the parties hereto and their respective transferees, successors, and assigns.

- v. Developer has offered to purchase Lot 3 for \$10,000.00. Said offer will be memorialized in a formal Sale and Purchase Agreement (“SPA”). This Agreement and the SPA must both be executed to make both this Agreement and the SPA effective and enforceable.
- vi. This development agreement is conditioned on the successful release of a portion of the non-access line on Hamilton Street. Failure to release a portion of the non-access line on Hamilton Street will void this agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Owner’s Authorized Representative’s Name

Owner’s Title

Owner’s Legal Entity Name

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, before me personally appeared \_\_\_\_\_, known to be to be the person who is described in, and who executed the within and foregoing instrument, and severally acknowledged to me that they executed the same.

\_\_\_\_\_  
Notary Public

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

**City of Bismarck**

\_\_\_\_\_  
Michael T. Schmitz  
President, Board of City  
Commissioners

Attest: \_\_\_\_\_  
Jason Tomanek  
Acting City Administrator

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me personally appeared \_\_\_\_\_, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that s/he executed the same.

\_\_\_\_\_  
Notary Public  
State of North Dakota

(SEAL)

Exhibit "A"  
To  
Development Agreement

Exhibit "A" – Fairview Cemetery Addition  
(incorporated by reference as recorded document 950503)

**PETITION FOR WATERMAIN AND PERMANENT STREET IMPROVEMENT**

**DATE:** \_\_\_\_\_

To the Honorable Board of City Commissioners  
Bismarck, North Dakota  
Commissioners:

The undersigned owners of the property liable to be assessed for the improvement respectfully petition your Honorable Board to have watermain and permanent street improvements completed on:

Hamilton Street from E Century Avenue to 150' South of Century Avenue.

It is agreed that that 100% of the cost of said watermain and permanent street improvements be assessed to, or other funding arrangements made by, the benefitted property according to the Current Development Costs Policy. It is agreed that 100% of any temporary street improvements shall be prepaid by the benefitted petitioned property.

**PROPERTY DESCRIPTION  
(PROPERTY OWNER/S)**

Lot 2 and Lot 3, Block 1  
Fairview Cemetery Addition  
City of Bismarck, Burleigh County, North Dakota

**SIGNATURE**

\_\_\_\_\_  
Owner's Authorized Reps Name  
Owner's Title  
Owner's Legal Entity Name

-----  
For City Engineer Use Only

\_\_\_\_\_  
Approved by Gabe J. Schell, PE  
City Engineer, Bismarck, ND

\_\_\_\_\_  
Date

**PETITION FOR PERMANENT STREET IMPROVEMENT**

**DATE:** \_\_\_\_\_

To the Honorable Board of City Commissioners  
Bismarck, North Dakota  
Commissioners:

The undersigned owners of the property liable to be assessed for the improvement respectfully petition your Honorable Board to have permanent street improvements completed on:

Hamilton Street from 150' south of E Century Avenue to approximately 410' south of E Century Avenue and the westerly extension of the south lot line of Lot 1 of Fairview Cemetery Addition

It is agreed that 100% of the paving cost of said permanent street improvements be assessed to, or other funding arrangements made by, the benefitted property according to the Current Development Costs Policy. It is agreed that 100% of any temporary street improvements shall be prepaid by the benefitted petitioned property.

As stated in the Development Agreement between the City and the Undersigned Owners, the City has agreed to waive the 40% prepayment as to this project petition.

**PROPERTY DESCRIPTION  
(PROPERTY OWNER/S)**

Lot 2 and Lot 3, Block 1  
Fairview Cemetery Addition  
City of Bismarck, Burleigh County, North Dakota

**SIGNATURE**

\_\_\_\_\_  
Owner's Authorized Reps Name  
Owner's Title  
Owner's Legal Entity Name

-----  
For City Engineer Use Only

\_\_\_\_\_  
Approved by Gabe J. Schell, PE  
City Engineer, Bismarck, ND

\_\_\_\_\_  
Date



### FAIRVIEW CEMETERY ADDITION

AUDITOR'S LOT A OF THE N 1/2 OF THE NW 1/4 AND PART OF A SOUTHERLY PORTION OF CENTURY AVENUE RIGHT-OF-WAY & LOT 1 BLOCK 1 REVOLUTIONARY ADDITION AND PART OF THE WEST HALF OF HAMILTON STREET RIGHT-OF-WAY OF THE NE 1/4 OF SECTION 26 TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN

BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA

**DESCRIPTION**

AUDITOR'S LOT A OF THE N 1/2 OF THE NW 1/4 AND PART OF A SOUTHERLY PORTION OF CENTURY AVENUE RIGHT-OF-WAY & LOT 1 BLOCK 1 REVOLUTIONARY ADDITION AND PART OF THE WEST HALF OF HAMILTON STREET RIGHT-OF-WAY OF THE NE 1/4 OF SECTION 26 TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN, BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA

DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID AUDITOR'S LOT A; THENCE NORTH 89 DEGREES 49 MINUTES 19 SECONDS WEST, ALONG THE SOUTH LINE OF SAID AUDITOR'S LOT A, A DISTANCE OF 1987.25 TO THE EAST LINE OF THE OP RAILROAD RIGHT-OF-WAY; THENCE NORTH 26 DEGREES 03 MINUTES 24 SECONDS WEST, ALONG SAID EAST LINE, A DISTANCE OF 973.29 FEET; THENCE NORTHWESTERLY AND TO THE RIGHT, CONTINUING ALONG SAID EAST LINE, ON A 5679.65 FOOT RADIUS CURVE THE RADIUS WHICH BEARS NORTH 63 DEGREES 56 MINUTES 10 SECONDS EAST, AN ARC LENGTH OF 462.61 FEET; THENCE NORTH 21 DEGREES 23 MINUTES 50 SECONDS WEST A DISTANCE OF 23.61 FEET TO THE NORTH LINE OF SECTION 26; THENCE SOUTH 89 DEGREES 49 MINUTES 44 SECONDS EAST, ALONG SAID NORTH LINE, A DISTANCE OF 2663.05 FEET TO THE CENTERLINE OF HAMILTON STREET RIGHT-OF-WAY; THENCE SOUTH 00 DEGREES 35 MINUTES 18 SECONDS WEST, ALONG SAID CENTERLINE, A DISTANCE OF 142.05 FEET; THENCE SOUTHEASTERLY AND TO THE LEFT, CONTINUING ALONG SAID CENTERLINE, ON A 200.00 FOOT RADIUS CURVE, AN ARC LENGTH OF 187.59 FEET; THENCE SOUTH 53 DEGREES 07 MINUTES 45 SECONDS EAST, CONTINUING ALONG SAID CENTERLINE, A DISTANCE OF 99.82 FEET; THENCE SOUTHERLY AND TO THE RIGHT, CONTINUING ALONG SAID CENTERLINE, ON A 202.96 FOOT RADIUS CURVE THE RADIUS OF WHICH BEARS SOUTH 36 DEGREES 51 MINUTES 40 SECONDS WEST, AN ARC LENGTH OF 188.21 FEET TO THE BOUNDARY OF REVOLUTIONARY ADDITION; THENCE NORTH 89 DEGREES 57 MINUTES 42 SECONDS WEST, ALONG SAID BOUNDARY, A DISTANCE OF 99.91 FEET; THENCE SOUTH 38 DEGREES 10 MINUTES 37 SECONDS WEST, CONTINUING ALONG SAID BOUNDARY, A DISTANCE OF 161.84 FEET; THENCE SOUTHWESTERLY AND TO THE LEFT, CONTINUING ALONG SAID BOUNDARY, ON A 229.55 FOOT RADIUS CURVE, AN ARC LENGTH OF 84.11 FEET; THENCE SOUTH 17 DEGREES 02 MINUTES 00 SECONDS WEST, A DISTANCE OF 171.32 FEET TO THE EAST LINE OF SAID AUDITOR'S LOT A; THENCE SOUTH 00 DEGREES 35 MINUTES 18 SECONDS WEST, ALONG SAID EAST LINE, A DISTANCE OF 426.77 FEET TO THE POINT OF BEGINNING.

CONTAINING 72.17 ACRES, MORE OR LESS.

**SURVEYOR'S CERTIFICATE**

I, TERRY BALTZER, A PROFESSIONAL LAND SURVEYOR IN THE STATE OF NORTH DAKOTA, HEREBY CERTIFY THAT THE APPROVED PLAT IS A TRUE COPY OF THE NOTES OF A SURVEY PERFORMED UNDER MY SUPERVISION AND COMPLETED ON July 13, 2022. THAT ALL MONUMENTS SHOWN HEREON ARE CORRECT, THAT ALL REQUIRED MONUMENTS HAVE BEEN SET, AND THAT ALL DIMENSIONAL AND GEODETIC DETAILS ARE CORRECT.



SWENSON, HAGEN & CO. P.C.  
 909 BASIN AVENUE  
 BISMARCK, NORTH DAKOTA  
 58504

*Terry Baltzer*  
 TERRY BALTZER  
 PROFESSIONAL LAND SURVEYOR  
 N.D. REGISTRATION NO. 3595

**WESTERN AREA POWER ADMINISTRATION EASEMENT RESTRICTIONS**

THE UNITED STATES GOVERNMENT (WESTERN AREA POWER ADMINISTRATION) HOLDS TWO SEPARATE 125 FOOT WIDE EASEMENTS FOR THE RIGHT TO OPERATE, PATROL, REPAIR, MAINTAIN, USE, CONSTRUCT, AND RECONSTRUCT ELECTRICAL TRANSMISSION LINES.

THE FOLLOWING ACTIVITIES ARE PROHIBITED WITHIN THE TRANSMISSION LINE EASEMENTS, UNLESS REVIEWED AND APPROVED BY WESTERN AREA POWER ADMINISTRATION (IN WRITING).

1. OWNER SHALL NOT ERECT ANY STRUCTURES. STRUCTURES, BY WAY OF EXAMPLE, NOT BY LIMITATION, SHALL MEANS BUILDINGS, MOBILE HOMES, STORAGE TANKS, SEPTIC SYSTEMS, SWIMMING POOLS, TENNIS COURTS, OR SIMILAR FACILITIES.
2. OWNER SHALL NOT DRILL WELLS OR CONDUCT MINING OPERATIONS.
3. OWNER SHALL NOT GRANT PERMISSION TO THE PUBLIC FOR THE USE OF THE EASEMENT AREA. SUCH PROHIBITED USE SHALL INCLUDE ROADS, PARKING AREAS, STORAGE FACILITIES, AND RECREATION FACILITIES.
4. OWNER SHALL NOT APPRECIABLY CHANGE THE CHARACTER OF EXISTING TOPOGRAPHY. NORMAL GARDENING PRACTICES MAY BE CONDUCTED. HOWEVER, OWNER SHALL NOT PLANT ANY TREES WITHIN THE TRANSMISSION LINE EASEMENTS WITHOUT FIRST OBTAINING WRITTEN PERMISSION FROM THE WESTERN AREA POWER ADMINISTRATION (WAPA) OR ITS ASSIGNS.
5. OWNER SHALL NOT ERECT OR INSTALL FENCES ON OR ACROSS THE EASEMENT AREAS WITHOUT FIRST SUBMITTING THE FENCE PLANS TO WESTERN AND OBTAINING WESTERN'S WRITTEN APPROVAL.
6. OWNERS SHALL NOT PLANT TREES WITHIN THE RIGHT-OF-WAY.
7. REQUESTS FOR PERMISSION TO USE THE TRANSMISSION LINE RIGHT-OF-WAY SHOULD BE SUBMITTED TO:

WESTERN AREA POWER ADMINISTRATION  
 NORTH DAKOTA MAINTENANCE OFFICE  
 PO BOX 1173  
 BISMARCK, ND 58502-1173

PLEASE CONTACT THE MAINTENANCE OFFICE WITH ANY QUESTIONS

**APPROVAL OF CITY PLANNING COMMISSION**

THE SUBDIVISION OF LAND AS SHOWN ON THE PLAT HAS BEEN APPROVED BY THE PLANNING COMMISSION OF THE CITY OF BISMARCK, ON THE 25th DAY OF AUGUST, 2022, IN ACCORDANCE WITH LAWS OF THE STATE OF NORTH DAKOTA, ORDINANCES OF THE CITY OF BISMARCK AND REGULATIONS ADOPTED BY THE SAID PLANNING COMMISSION. IN WITNESS WHEREOF ARE SET THE HANDS AND SEALS OF THE CHAIRMAN AND SECRETARY OF THE PLANNING COMMISSION OF THE CITY OF BISMARCK.

*Michael J. Schwartz*  
 MICHAEL J. SCHWARTZ - CHAIRMAN

*Ben Ebreth*  
 ATTEST  
 BEN EBRETH - SECRETARY

**APPROVAL OF BOARD OF CITY COMMISSIONERS**

THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA, HAS APPROVED THE SUBDIVISION OF LAND AS SHOWN ON THE PLAT, HAS ACCEPTED THE DEDICATION OF ALL STREETS SHOWN THEREON, HAS APPROVED THE GROUNDS AS SHOWN ON THE APPROVED PLAT AS AN AMENDMENT TO THE MASTER PLAN OF THE CITY OF BISMARCK, NORTH DAKOTA, AND DOES HEREBY VACATE ANY PREVIOUS PLATTING WITHIN THE BOUNDARY OF THE APPROVED PLAT.

THE FOREGOING ACTION OF THE BOARD OF CITY COMMISSIONERS OF BISMARCK, NORTH DAKOTA, WAS TAKEN BY RESOLUTION APPROVED THE 26th DAY OF JULY, 2022.

*Keith J. Hunke*  
 ATTEST  
 KEITH J. HUNKE - CITY ADMINISTRATOR

**APPROVAL OF CITY ENGINEER**

I, GABRIEL J. SCHELL, CITY ENGINEER OF THE CITY OF BISMARCK, NORTH DAKOTA, HEREBY APPROVE "FAIRVIEW CEMETERY ADDITION", BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA AS SHOWN ON THE PLAT.

*Gabriel J. Schell*  
 GABRIEL J. SCHELL  
 CITY ENGINEER

**OWNER'S CERTIFICATE & DEDICATION**

KNOW ALL MEN BY THESE PRESENTS THAT FAIRVIEW CEMETERY ASSOCIATION & THE CITY OF BISMARCK, BEING THE OWNERS AND PROPRIETORS OF THE PROPERTY SHOWN HEREON HAVE CAUSED THAT PORTION DESCRIBED HEREON TO BE SURVEYED AND PLATTED AS "FAIRVIEW CEMETERY ADDITION", BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA, AND DO SO RE-DEDICATE STREETS AS SHOWN HEREON INCLUDING ALL SEWER, CULVERTS, WATER AND OTHER PUBLIC UTILITY LINES WHETHER SHOWN HEREON OR NOT TO THE PUBLIC USE FOREVER.

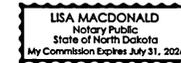
THEY ALSO DEDICATE EASEMENTS TO THE CITY OF BISMARCK TO RUN WITH THE LAND, FOR GAS, ELECTRIC, TELEPHONE OR OTHER PUBLIC UTILITIES OR SERVICES ON OR UNDER THOSE CERTAIN STRIPS OF LAND DESIGNATED HEREON AS UTILITY EASEMENTS.

THEY FURTHERMORE DEDICATE UNTO THE CITY OF BISMARCK "STORM WATER AND DRAINAGE EASEMENTS" TO RUN WITH THE LAND FOR THE PURPOSE OF STORM SEWER AND SURFACE WATER DRAINAGE UNDER, OVER, THROUGH AND/OR ACROSS THOSE AREAS DEDICATED HEREON AS "STORM WATER AND DRAINAGE EASEMENTS" FOR THE PURPOSE OF CONSTRUCTION, RECONSTRUCTION, REPAIR, ENLARGING AND MAINTAINING STORM WATER MANAGEMENT FACILITIES TOGETHER WITH NECESSARY APPURTENANCES THERETO FOR STORM WATER, STORM SEWER AND SURFACE WATER DRAINAGE AND MANAGEMENT OF SAID STORM WATER FLOW IN A MANNER THAT WILL PERMIT THE FREE AND UNOBSTRUCTED FLOW OF WATER UNDER, OVER AND/OR ACROSS THE EASEMENT AREA.

STATE OF NORTH DAKOTA )  
 COUNTY OF BURLEIGH )

*Joy Wezelman*  
 JOY WEZELMAN - BOARD OF DIRECTORS  
 FAIRVIEW CEMETERY ASSOCIATION  
 OWNER, LOTS 1-3 BLOCK 1 FAIRVIEW CEMETERY ADDITION

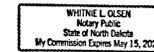
ON THIS 19th DAY OF August, 2022, BEFORE ME PERSONALLY APPEARED JOY WEZELMAN OF THE BOARD OF DIRECTORS OF FAIRVIEW CEMETERY ASSOCIATION, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.



STATE OF NORTH DAKOTA )  
 COUNTY OF BURLEIGH )

*Lisa Macdonald*  
 LISA MACDONALD  
 NOTARY PUBLIC  
 BURLEIGH COUNTY, NORTH DAKOTA  
 MY COMMISSION EXPIRES July 31, 2024  
*Michael T. Schmitz*  
 MICHAEL T. SCHMITZ, MAYOR  
 CITY OF BISMARCK  
 221 N. 5TH ST  
 BISMARCK, ND 58506  
 OWNER, LOT 3 BLOCK 1 FAIRVIEW CEMETERY ADDITION

ON THIS 16th DAY OF September, 2022, BEFORE ME PERSONALLY APPEARED MICHAEL T. SCHMITZ, MAYOR OF THE CITY OF BISMARCK, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING CERTIFICATE AND HE ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

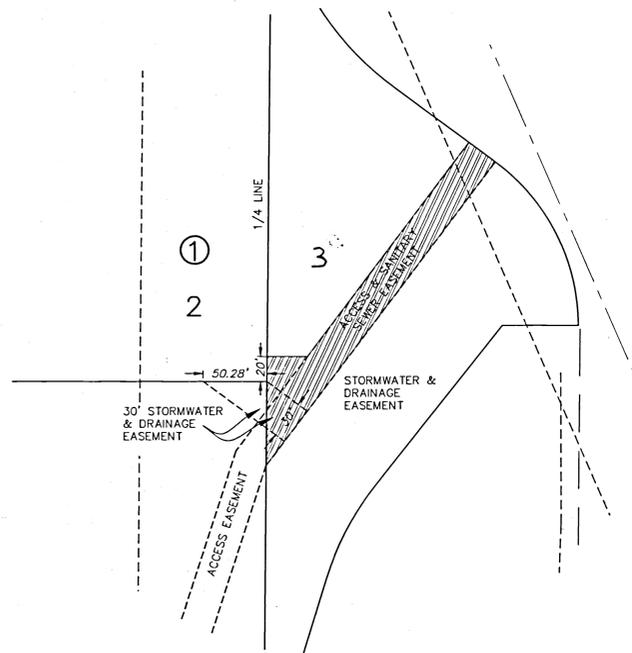


STATE OF NORTH DAKOTA )  
 COUNTY OF BURLEIGH )

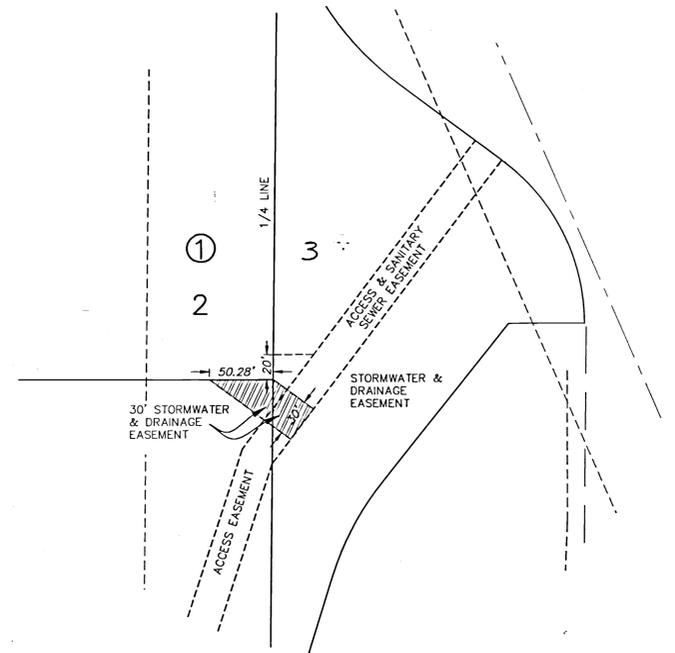
*Whitney L. Olsen*  
 WHITNEY L. OLSEN  
 NOTARY PUBLIC  
 BURLEIGH COUNTY, NORTH DAKOTA  
 MY COMMISSION EXPIRES 5/15/2023

Taxes and special assessments paid, all liens created under section 57-02-08.3 satisfied, if any, and TRANSFER accepted on 11/30/2022

*Erin Buchwitz*  
 Burleigh County Auditor  
 By Erin Buchwitz  
 Deputy, Burleigh County Auditor



ACCESS & SANITARY SEWER EASEMENT DETAILS (NOT TO SCALE)



STORMWATER & DRAINAGE DETAILS (NOT TO SCALE)



SWENSON, HAGEN & COMPANY P.C.

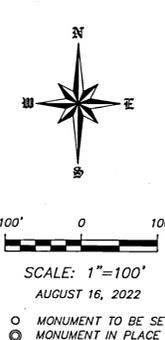
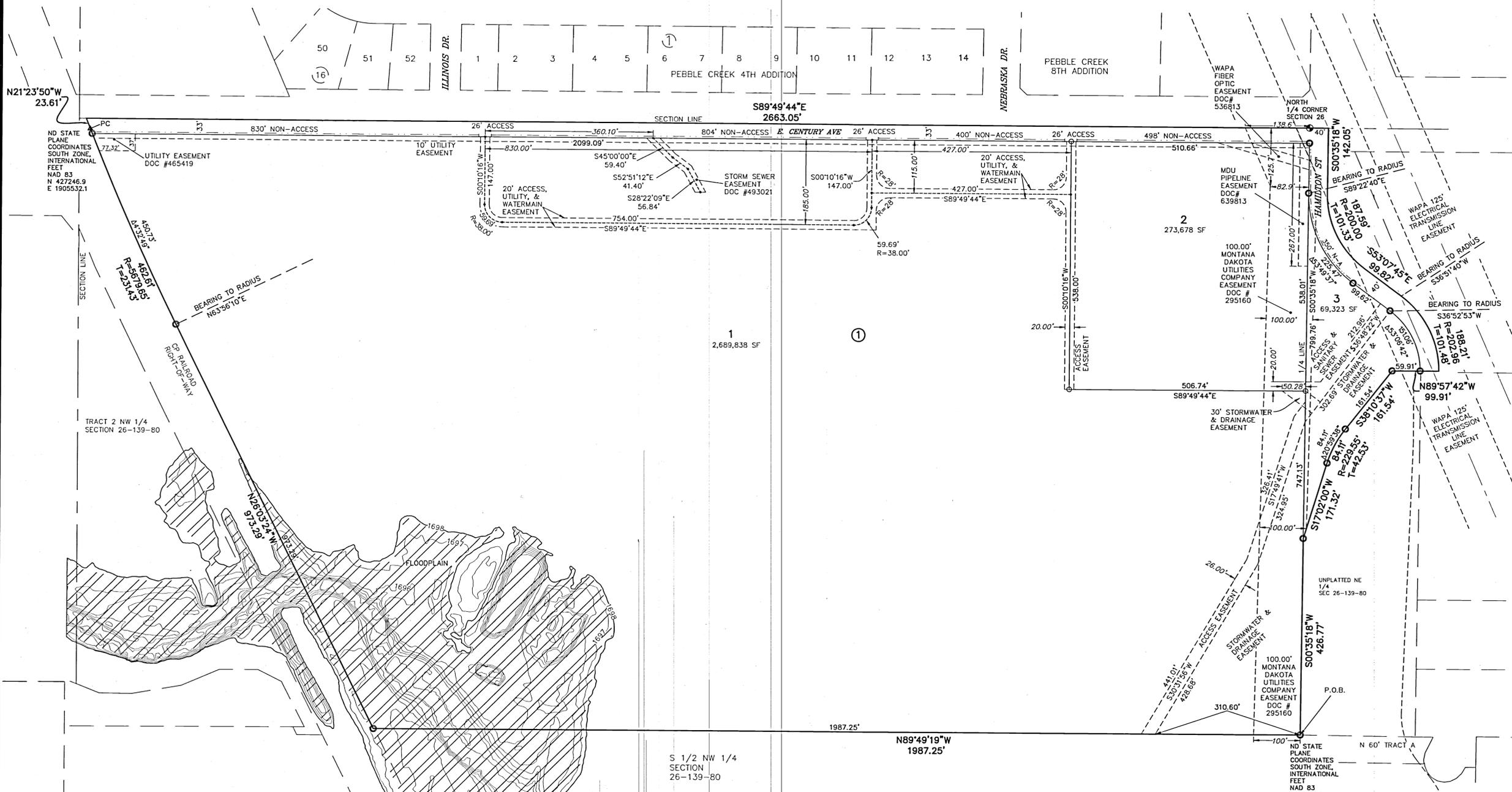
909 Basin Avenue  
 Bismarck, North Dakota 58504  
 sheng@swensonhagen.com  
 Phone (701) 223-2600  
 Fax (701) 223-2606

Surveying  
 Hydrology  
 Land Planning  
 Civil Engineering  
 Landscape & Site Design  
 Construction Management

# FAIRVIEW CEMETERY ADDITION

**AUDITOR'S LOT A OF THE N 1/2 OF THE NW 1/4 AND PART OF A SOUTHERLY PORTION OF CENTURY AVENUE RIGHT-OF-WAY & LOT 1 BLOCK 1 REVOLUTIONARY ADDITION AND PART OF THE WEST HALF OF HAMILTON STREET RIGHT-OF-WAY OF THE NE 1/4 OF SECTION 26 TOWNSHIP 139 NORTH, RANGE 80 WEST OF THE FIFTH PRINCIPAL MERIDIAN**

**BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA**



**NOTES**

**BASIS OF BEARING:**  
 NORTH DAKOTA STATE PLANE, SOUTH ZONE BY CITY ORDINANCE

**COORDINATE DATUM:**  
 NORTH DAKOTA STATE PLANE COORDINATE SYSTEM  
 NAD 83 SOUTH ZONE  
 ADJUSTMENT OF 1986  
 UNITS ARE INTERNATIONAL FEET

BEARINGS AND DISTANCES MAY VARY FROM PREVIOUS PLATS DUE TO DIFFERENT METHODS OF MEASUREMENTS.

**VERTICAL BENCHMARK:**  
 NE CORNER LOT 2 BLOCK 1 FAIRVIEW CEMETERY ADDITION  
 ELEV: 1765.48 (NAVD 88)

**AREA DATA**

LOTS	3,032,843 S.F.	69.82 ACRES
STREETS	111,038 S.F.	2.54 ACRES
TOTAL	3,143,881 S.F.	72.37 ACRES

**AREA DATA**

NE 1/4	94,020 S.F.	2.16 ACRES
NW 1/4	3,049,861 S.F.	70.01 ACRES

FEMA FLOOD INSURANCE RATE MAP  
 COMMUNITY PANEL NUMBER 38015C0805D  
 100 YR FLOODPLAIN ELEVATION (NAVD 88): 1698.0  
 DATED AUGUST 4, 2014

**WESTERN AREA POWER ADMINISTRATION  
 EASEMENT RESTRICTIONS**

THE UNITED STATES GOVERNMENT (WESTERN AREA POWER ADMINISTRATION) HOLDS TWO SEPARATE 125 FOOT WIDE EASEMENTS FOR THE RIGHT TO OPERATE, PATROL, REPAIR, MAINTAIN, USE, CONSTRUCT, AND RECONSTRUCT ELECTRICAL TRANSMISSION LINES.

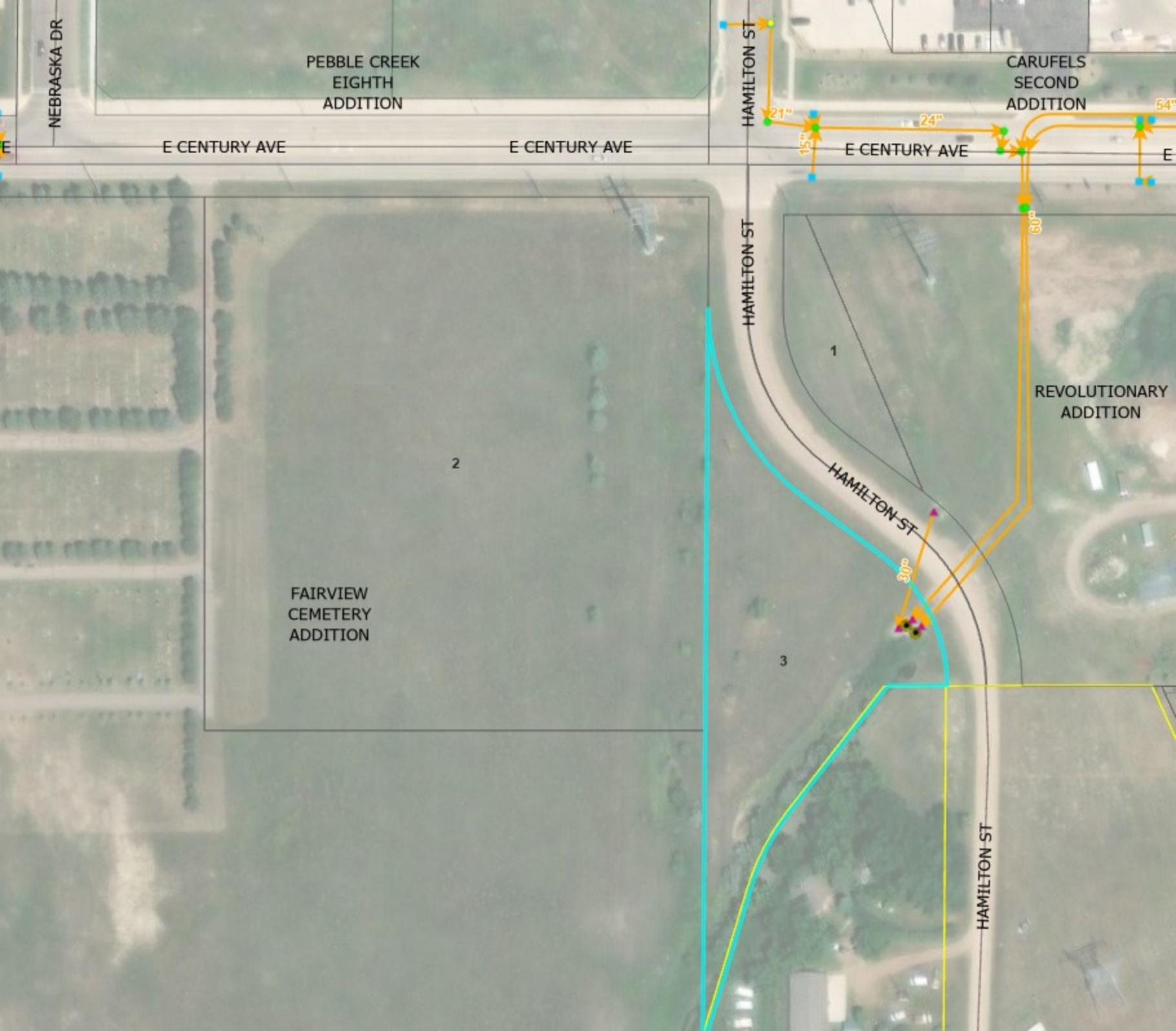
THE FOLLOWING ACTIVITIES ARE PROHIBITED WITHIN THE TRANSMISSION LINE EASEMENTS, UNLESS REVIEWED AND APPROVED BY WESTERN AREA POWER ADMINISTRATION (IN WRITING).

- OWNER SHALL NOT ERECT ANY STRUCTURES. STRUCTURES, BY WAY OF EXAMPLE, NOT BY LIMITATION, SHALL MEANS BUILDINGS, MOBILE HOMES, STORAGE TANKS, SEPTIC SYSTEMS, SWIMMING POOLS, TENNIS COURTS, OR SIMILAR FACILITIES.
- OWNER SHALL NOT DRILL WELLS OR CONDUCT MINING OPERATIONS.
- OWNER SHALL NOT GRANT PERMISSION TO THE PUBLIC FOR THE USE OF THE EASEMENT AREA. SUCH PROHIBITED USE SHALL INCLUDE ROADS, PARKING AREAS, STORAGE FACILITIES, AND RECREATION FACILITIES.
- OWNER SHALL NOT APPRECIABLY CHANGE THE CHARACTER OF EXISTING TOPOGRAPHY. NORMAL GARDENING PRACTICES MAY BE CONDUCTED. HOWEVER, OWNER SHALL NOT PLANT ANY TREES WITHIN THE TRANSMISSION LINE EASEMENTS WITHOUT FIRST OBTAINING WRITTEN PERMISSION FROM THE WESTERN AREA POWER ADMINISTRATION (WAPA) OR ITS ASSIGNS.
- OWNER SHALL NOT ERECT OR INSTALL FENCES ON OR ACROSS THE EASEMENT AREAS WITHOUT FIRST SUBMITTING THE FENCE PLANS TO WESTERN AND OBTAINING WESTERN'S WRITTEN APPROVAL.
- OWNERS SHALL NOT PLANT TREES WITHIN THE RIGHT-OF-WAY.
- REQUESTS FOR PERMISSION TO USE THE TRANSMISSION LINE RIGHT-OF-WAY SHOULD BE SUBMITTED TO:  
 WESTERN AREA POWER ADMINISTRATION  
 NORTH DAKOTA MAINTENANCE OFFICE  
 PO BOX 1173  
 BISMARCK, ND 58502-1173  
 PLEASE CONTACT THE MAINTENANCE OFFICE WITH ANY QUESTIONS

**SWENSON, HAGEN & COMPANY P.C.**

909 Basin Avenue  
 Bismarck, North Dakota 58504  
 sheng@swensonhagen.com  
 Phone (701) 223-2600  
 Fax (701) 223-2606

SHEET 2 OF 2



NEBRASKA DR

PEBBLE CREEK  
EIGHTH  
ADDITION

CARUFELS  
SECOND  
ADDITION

E CENTURY AVE

E CENTURY AVE

E CENTURY AVE

HAMILTON ST

HAMILTON ST

HAMILTON ST

HAMILTON ST

21"

15"

24"

54"

60"

30°

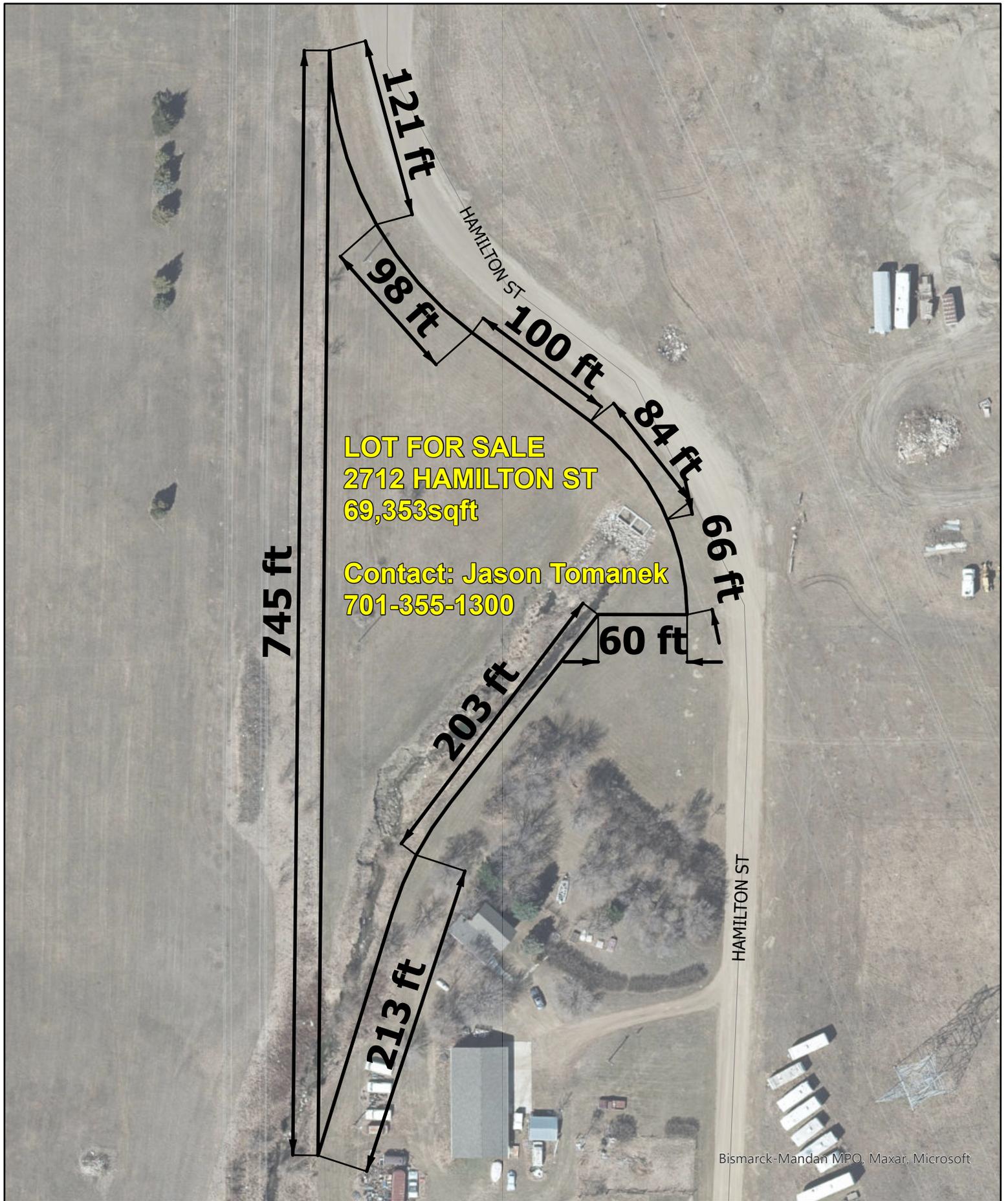
2

1

3

FAIRVIEW  
CEMETERY  
ADDITION

REVOLUTIONARY  
ADDITION



**Property For Sale**  
**2712 HAMILTON ST**

**Contact: Jason Tomanek**  
**701-355-1300**



Date Created: 4/25/2023 11:22 AM  
 by City of Bismarck GIS Division



## Engineering Department

**DATE:** April 9, 2024

**FROM:** Gabe Schell, City Engineer

**ITEM:** Executive Session

**REQUEST:**

Executive Session under North Dakota Century Code Section 44-04-19.2 regarding contract negotiation/negotiation strategy under NDCC Section 44-04-19.1 (9)

**BACKGROUND INFORMATION:**

The purpose of this request is to enter into an executive session for the consideration of land sale within city limits.

**RECOMMENDED CITY COMMISSION ACTION:**

Approve the request to enter an Executive Session under North Dakota Century Code Section 44-04-19.2 regarding contract negotiation/negotiation strategy under NDCC Section 44-04-19.1 (9) for the purpose of the consideration of potential sale of a property within city limits.

**STAFF CONTACT INFORMATION:**

Gabe Schell, City Engineer, 701-355-1507, [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

**ATTACHMENTS:**

None