



AGENDA
MANDAN CITY COMMISSION
JANUARY 21, 2020
ED "BOSH" FROEHLICH MEETING ROOM,
MANDAN CITY HALL
5:00 P.M.
www.cityofmandan.com

-
- A. ROLL CALL:
1. Roll call of all City Commissioners.
- B. APPROVAL OF AGENDA:
- C. MINUTES:
1. Consider approval of the minutes from the January 7, 2020 Board of City Commission regular meeting.
- D. PUBLIC HEARING:
- E. BIDS:
- F. CONSENT AGENDA:
1. Consider approval of monthly bills.
 2. Consider designation of financial institutions as depositories for funds.
 3. Consider letter of interest from Arntson Stewart Wegner to serve as bond counsel.
 4. Consider approval of an amendment to our agreement with Moore Engineering to include final design and bidding services for the Mid-Town East Street Improvement District project.
 5. Consider approval of an agreement with AE2S to provide engineering and bidding services for our Emergency Generators project.
 6. Consider approval of submission of 'Bicycle Friendly Community' designation renewal application.
 7. Consider payment of bills for Morton Mandan Public Library / Downtown Parks Project.
 8. Consider approval of a gaming site authorization for the Mule Deer Foundation at Baymont Inn on Feb. 8, 2020.
 9. Consider approval of a charity raffle for the Kiwanis Club at Midway Lanes on Feb. 8, 2020.
- G. OLD BUSINESS:
1. Consider approval of an amendment to the purchase and sale agreement for parcel 65-3156000.
- H. NEW BUSINESS:

*Agenda
Mandan City Commission
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1. Consider approval of the selection committee's choice of KLJ as our project engineer for the Downtown Street Improvement project and authorize the Engineering department to negotiate an agreement with them.
2. Consider entering into agreement with Kadrmass, Lee & Jackson (KLJ) and Braun Intertec for services related to potential spring flooding protections.

I. RESOLUTIONS AND ORDINANCES:

1. Second Consideration and Final Passage of Ordinance 1333 to amend and re-enact Chapter 10, Fire Prevention and Protection, of the Mandan Code of Ordinances. The purpose of this ordinance is to adopt the 2018 International Fire Code (IFC) with proposed amendments.
2. Second Consideration and Final Passage of Ordinance 1331 pertaining to Building Codes. Updating the Mandan Building code to supplement the adoption of the State Building code on January 1, 2020.
3. First Consideration of Ordinance No. 1334 granting a franchise to Montana-Dakota Utilities Co., to construct, maintain and operate, within, upon, in and under the streets, alleys and public grounds of the City of Mandan, a gas distribution system for transmitting and distributing natural or manufactured gas or mixture of both for public and private use.

II. OTHER BUSINESS:

1. Announcement of the Metropolitan Transportation Plan, Arrive 2045, final Public Input Meetings. Three meetings over two days with on at Mandan City Hall from 11:30-1:00PM on January 23rd.
 - www.Arrive2045.com
2. Announcement of the Intersection Analysis Study first Public Input Meeting. Two meetings on January 28th with one at Mandan City Hall from 5:00 – 6:30 PM on January 28th.
3. The Mandan Remediation Trust (MRT) will meet on Wednesday, January 22, 2020, 6:00 p.m. Mandan City Hall, Veterans' Conference Room, to discuss closure of the Mandan remediation site.
4. Consider moving into executive session pursuant to North Dakota Century Code Code § 44-04-19.1(9) and 44-04-19.2(2) to discuss negotiation strategy related to possible property acquisition.

III. FUTURE MEETING DATES FOR BOARD OF CITY COMMISSIONERS:

1. February 4, 2020
2. February 18, 2020
3. March 3, 2019

IV. ADJOURN

The Mandan City Commission met in regular session at 5:30 p.m. on January 7, 2020 in the Ed “Bosh” Froehlich Room at City Hall, Mandan, North Dakota. Mayor Helbling called the meeting to order.

A. ROLL CALL:

1. *Roll Call of All City Commissioners.* Present were Mayor Helbling, Commissioners Braun, Davis, Larson and Rohr. Department Heads present were, Finance Director Welch, Fire Chief Nardello, Planning & Engineering Director Froseth, Principal Planner Van Dyke, Police Chief Ziegler, City Administrator Neubauer, Assessor Markley, Human Resource Director Cullen, Building Official Ouradnik, Director of Public Works Bitz and Attorney Oster. Absent: Business Development and Communications Director Huber.

B. APPROVAL OF AGENDA:

C. MINUTES:

1. *Consider approval of the minutes from the December 17, 2019 Board of City Commission regular meeting.* Commissioner Larson moved to approve the minutes as presented. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

D. PUBLIC HEARING:

1. *Public hearing and consideration of sufficiency of protests for Mid-Town East Street Improvement District 215.* Planning and Engineering Director Froseth presented a request to move forward with the resolution determining insufficiency of protest for the Mid-Town East Street Improvement District project. He summarized the previous action taken on this matter stating that at the December 3, 2019 City Commission meeting, the resolution creating the district, the engineer’s report, the feasibility report and the resolution of necessity were all approved for this project. The Resolution of Necessity was published in the Mandan News on December 6 and 13, 2019 and per city policy notification letters were sent out to the property owners (490 properties) within the district. The 30 day protest period started on December 6, 2019 and ended January 6, 2020. Property owners were given until Monday, January 6, 2020 at 4:30 p.m. to submit letters of protest.

Director Froseth reported that the protests that came in by the deadline on January 6, 2020 tallied 18 of 490 properties submitted letters of protest. The percentage of the district by area (not including public properties as is viewed by the NDCC) was at 4.1% protest of the project wherein 3.7% would be the percentage rate of protest of the project. He provided a map of the project area on the overhead however; there was no strong pattern to the results. For example, 9 of the 18 protests were in the upper region however those areas will not get any direct improvements on the streets in front of them but because they are located within the watershed where the pipes are located for this project those properties are included in the district and will be assessed a portion of the storm water cost. To the south of the project area, 9 letters of protest were received for that area. The main reasons for the protests were the costs to be assessed to pay for the project and also the fairness of the assessments of those who would not have work done on their street.

Director Froseth recommended approving the resolution determining insufficiency of protest and authorize the project to move forward. He indicated that if the Commission approves moving forward with the project the next step would be to seek an amendment to the agreement with Moore Engineering that would authorize them to move forward to final design. That amendment would come before the Board for approval and it is reflected in all of the previous estimates provided that was available for review.

Mayor Helbling commented that his concern is that the last special assessment district that occurred to the east of this project and now this project will go back into that area, it is his opinion that as a city or the engineer, the storm sewer should have been planned for in that area when the project was initially done by increasing the size through that area and then moved into this project. He does not feel it is fair to go back to the residents (to the east) who just had a street project done and then now, impose another assessment. That should have been planned for in their special assessment. It is understood there is a different engineering firm on this project and there are different circumstances. He stated he has received a lot of calls on this project. It is a financial burden and it needs to be completed however he believes that the City will have to take some responsibility.

Mayor Helbling announced this is a public hearing an invited anyone to come forward to speak for or against the consideration of sufficiency of protests for Mid-Town East Street Improvement District 215.

Gary Swensrud, a Mandan resident, came forward and stated that he owns a property at 206 4th Street Northeast in Mandan, the lot size is 50' x 70' and the house is 900 sq. ft. The City assessed the property value at \$115,000. He said that the specials on this house are estimated at \$16,724 but could be 40% over the budget and still be approved, which in his opinion is excessive and will devalue his property. He said that he contacted Director Froseth today and who suggested that he attend this meeting to express his concerns. He said that he agrees the streets need to be repaired and his recommendation to the Commission is to find funds to offset the costs for the property owners. He inquired if he pays these specials if it will be possible that the other specials he owes would be offset? Mayor Helbling replied that generally, the City does not see a lot of devaluation due to special assessment districts. Generally the values go up because residents tend to clean up and upgrade their property due to having a new street. If there is devaluation it will be taken care of at the time of the assessment. Mayor Helbling stated the City has reviewed this project thoroughly and he said that approximately \$1.5 million from the Prairie Dog funds or 20% of the street/storm sewer costs will be applied towards this street project and in addition, the water, sewer utility improvements are being taken care of through the utility fund so there will not be special assessments on those so it will basically be the street and storm sewer project that are being special assessed.

Mayor Helbling announced again that this is a public hearing to approve the Resolution determining insufficiency of protests for Street Improvement District No. 215, Project No. 2019-05 (Mid-Town East) and invited anyone to come forward to speak for or against the project. A third and final announcement was made for anyone to come forward to speak for or against the project. Hearing none, this portion of the public hearing was closed.

Commissioner Davis requested clarification of the buy down rate of 20% of Prairie Dog fund, if that is a statute policy, in particular, why 20% vs. 25%? Director Froseth explained that 20% is approximately the percentage that the Southside buy down was determined to be and that \$1.5 million was pledged towards that and thereby the buy down was approximately 20%. That percentage figure was the Engineer's Department recommendation given that precedence on the south side to go forward with this. Mayor Helbling recalled that was set as precedence for the Southside considering there would be future projects, thus the 20% was agreed on.

Commissioner Rohr commented on delaying projects, and provided the reminder that sometimes delays can be difficult to do because many of the street improvement projects are on arterial or state roads, wherein the City receives 80% or 90% paid for. When the City is told by the state that this is the year they are going to do the project, the City is bound to take the project on for that particular year. The City does not have the option to defer projects scheduled by the state or federal governments. Mayor Helbling commented that the area west of Collins Avenue has been put off for too many years. (See Resolutions and Ordinances No. 4.)

2. *Consider approval of a variance to the front setback from 20' to 9' on Lot 2, Block 2, Diane's 1st Addition for the construction of an accessibility ramp.* City Planner Van Dyke presented a request to consider approval of a variance to the front setback from 20' to 9' on Lot 2, Block 2, Diane's 1st Addition for the construction of an accessibility ramp. He stated that the property owners, Mr. and Mrs. Kerzman are seeking a variance to the front setback from twenty (20) feet to nine (9) feet to install an accessibility ramp. The residence as constructed and lot topography prohibit alternative construction of the ramp. The applicant has provided pictures and a sketch of the ramp to be constructed with their application, if the variance is approved as shown on Exhibit 1.

He provided the requirements under the Mandan Code of Ordinances in granting a variance. Variance may be granted under the following circumstances (See Sec. 105-1-12) (italicized):

1. *There are special circumstances or conditions, fully described in the findings of the board, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or building, and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of the applicant taken subsequent to the adoption of this chapter, whether in violation of the provisions of the chapter, or not.*

Planner Van Dyke stated that the building is a split level design and explained that the attached garage for the dwelling resides at a different elevation than the main floor for which the ramp is desired. Locating the ramp within the garage would therefore provide no benefit to the applicant and the sloping topography would require substantial excavation and create additional storm water runoff issues that would need to be addressed if the ramp were installed running parallel to the street.

2. *For reasons fully set forth in the findings of the board, the circumstances or conditions so found are such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of said land or building, and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance as granted by the board is the minimum variance that will accomplish the relief sought by the applicant.*

The existing dwelling construction coupled with the topography of the land creates a unique circumstance that does not apply to every building or property individually. A strict application of the front setback would require a substantial excavation resulting in additional storm water mitigation measures being required.

3. *The granting of the variance will be in harmony with the general purposes and intent of this chapter, and not be injurious to the neighborhood or otherwise detrimental to the public welfare.* Planner Van Dyke stated that the granting of the variance will be in harmony and not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Planning and Zoning Commission recommended approval of the variance to the front setback from 20' to 9' for the purposes of accessibility ramp construction based on the findings in Exhibit 2. It was recommended that a refund of fees be provided to the applicant.

Mayor Helbling announced this is a public hearing and invited anyone to come forward to speak for or against the variance to the front setback from 20' to 9' for the purposes of accessibility ramp construction based on the findings in Exhibit 2 and to refund the application fees. A second announcement was made inviting anyone to come forward to speak for or against the variance. A third and final announcement was made to come forward, hearing none, this portion of the public hearing was closed.

Commissioner Davis moved to approve the variance to the front setback from 20' to 9' for the purposes of accessibility ramp construction based on the findings in Exhibit 2 and to refund the application fees. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

E. BIDS:

F. CONSENT AGENDA

1. *Consider approval of a raffle permit for Lewis & Clark School PTO on 1-15-20 to 3-31-20 at the Lewis & Clark School.*
2. *Consider reduction in 2019 value of the property at 3721 Gale Circle owned by Spence Koenig.*
3. *Consider appointment of Malcolm Brown as City Attorney, Amy Oster as Assistant City Attorney and legal retainer agreement.*
4. *Consider approval of the voting locations for the June 9, 2020 election.*
5. *Consider approval of the transfer of General Fund operating savings from the 2019 budget to the Police Department 2020 budget for the purchase of 2 Ford Interceptor vehicles.*
6. *Consider approval of a raffle permit for Guardian Warrior Foundation on 7/18/2020 at the Mandan Eagles Club.*
8. *Consider approval of acceptance of a FEMA grant as administered through the North Dakota Department of Emergency Services (NDDDES) for the installation of two generators at select facilities.*

Commissioner Larson requested Consent Agenda Item No. 7 be removed for discussion.

Commissioner Rohr moved to approve the Consent Agenda items No. 1 through 6 and No. 8 as presented. Commissioner Davis seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

Consent Agenda Item No.7: Consider approval of Indigent Defense and Prosecution contracts along with 2020 budget amendment. Commissioner Larson requested clarification of the revised document regarding the decrease in prosecution budget but the amount set forth for the prosecution shows an increase in 2020 and beyond that in 2021 and 2023.

Administrator Neubauer explained that there are two indigent defense contractors, Steve Balaban and Thomas Glass and that was indicated in the paragraph in the background but missed in the middle paragraph. He stated that the intent is for each individual to be compensated at \$1,750 per month. The overall numbers show that because the budget for 2020 had been set prior to the negotiations with the attorneys is why there is an increase in the indigent defense contract and there is to be a decrease in the prosecution contract. In summary there is an increase by \$13,200 to the indigent defense contract and a decrease by \$6,000 in the prosecution contract. Those adjustments will be correctly reflected in the 2021, 2022 and 2023 budgets and those contracts run through 2023. Commissioner Larson recalled discussing an increase in the prosecution budget which already went into the 2020 budget which allows for the decrease.

Commissioner Larson moved to approve Consent Agenda Item No. 7 Indigent Defense and Prosecution contracts along with 2020 budget amendment. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

G. OLD BUSINESS:

H. NEW BUSINESS

I. RESOLUTIONS AND ORDINANCES

Mayor Helbling stated that there has been a request to table Ordinance 1333 until after January 15, 2020 in order to allow additional time for Bismarck and Mandan to discuss uniformity amongst the two cities before adopting the ordinance.

1. *Introduction and First Consideration of Ordinance 1333 to amend and re-enact Chapter 10, Fire Prevention and Protection, of the Mandan Code of Ordinances. The purpose of this ordinance is to adopt the 2018 International Fire Code (IFC) with proposed amendments.* Commissioner Rohr moved to table Ordinance 1333 until after January 15, 2020. Chief Nardello stated that he has been informed that it would be possible to approve the First Consideration of Ordinance 1333 and when it comes back for the second passage, any amendments could be made at that time. It is up to the City Commission if they want to proceed with the First reading because there is a requirement to have a second.

Commissioner Rohr withdrew his motion to table Ordinance 1333 until after January 15, 2020 and moved to amend the motion to approve the Introduction and First Consideration of Ordinance 1333 to amend and re-enact Chapter 10, Fire Prevention and Protection, of the Mandan Code of Ordinances. The purpose of this ordinance is to adopt the 2018 International Fire Code (IFC) with proposed amendments. Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

2. *Second and final passage of Ordinance 1331pertaining to Building Codes.*

Commissioner Davis moved to table the Second and final consideration of Ordinance of Ordinance 1331pertaining to Building Codes until further notice, to allow the cities of Bismarck and Mandan additional time to discuss aligning the codes so they are in uniform.

Commissioner Braun seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

3. *Second Consideration and passage of Ordinance 1332 to Amend and Re-enact the Mandan Code of Ordinances Relating to Criminal Trespass.* Police Chief Ziegler reported this was presented by Attorney Brown, however, there have been no comments or opposition received since the first presentation and he recommended approval. Commissioner Larson moved to approve the Second Consideration and passage of Ordinance 1332 to Amend and Re-enact the Mandan Code of Ordinances Relating to Criminal Trespass. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

4. *Resolution determining insufficiency of protests for Street Improvement District No. 215.*

Commissioner Larson moved to approve the Resolution determining insufficiency of protests for Street Improvement District No. 215, Project No. 2019-05 (Mid-Town East) and authorize the project to move forward. Commissioner Rohr seconded the motion. Roll call vote: Commissioner Rohr: Yes; Commissioner Davis: Yes; Commissioner Larson: Yes; Commissioner Braun: Yes; Mayor Helbling: Yes. The motion passed.

J. OTHER BUSINESS:

Commissioner Larson announced that there is a new coffee shop that opened up that in addition to specialty coffees, it will offer Yoga classes too. It is located on north Sunset, by Arby's and Bennigan's. She commented that new businesses continue to open up in Mandan and extended a thank you to business owners for choosing Mandan for their business operations.

K. ADJOURNMENT:

There being no other business to come before the Board, Commissioner Braun motioned to adjourn the meeting at 6:00 pm. Commissioner Davis seconded the motion. The motion received unanimous approval of the members present.

James Neubauer
City Administrator

Tim Helbling, Mayor
Board of City Commissioners



Board of City Commissioners

Agenda Documentation

MEETING DATE: January 21, 2020
PREPARATION DATE: January 17, 2020
SUBMITTING DEPARTMENT: Finance
DEPARTMENT DIRECTOR: Greg Welch
PRESENTER: Greg Welch, Finance Director
SUBJECT: Depositories of Public Funds

PURPOSE

To designate depositories of public funds which meet the pledge of security requirements.

BACKGROUND

Public funds belonging to or in the custody of any public corporation must be deposited in the Bank of North Dakota or in financial institutions which have been duly designated as depositories in the manner prescribed in this chapter (NDCC 21-04-03).

Any financial institution duly incorporated in this state under and pursuant to the laws governing the incorporation of financial institutions, and any financial institution situated and doing business within this state, and the Bank of North Dakota, may be designated a depository of public funds by the proper board as herein defined. The board may select two or more financial institutions in the same county as depositories, but if more than one financial institution is designated, the board shall deal with the financial institutions selected and designated impartially, both as to the deposit of funds and the withdrawal of funds and the requirement as to bonds. The board shall take into consideration, in selecting and designating the depository or depositories, the condition of each financial institution and the capital, surplus, and general credit thereof (NDCC 21-04-05).

The governing board of any public corporation, except the board of supervisors of any township and the school board of any common school district, at its regular meeting in January of each even-numbered year, shall assemble and examine all outstanding bonds and require new bonds whenever necessary in order to comply with the provisions of this chapter. If no regular meeting of the board in January is required by any other law, the board shall assemble for said purpose not later than the third Tuesday in January. At such meeting, the board shall designate depositories of public funds in accordance with the provisions of this chapter (NDCC 21-04-13).

The City of Mandan currently utilizes the following financial institutions as depositories for the City's funds:

- Wells Fargo Bank
- Starion Bank
- Bank of North Dakota

The City may also designate other financial institutions as depositories throughout the year, if necessary, upon City Commission approval.

ATTACHMENTS

None

FISCAL IMPACT

None

STAFF IMPACT

None

LEGAL REVIEW

In accordance with the provisions of NDCC 21-04.

RECOMMENDATION

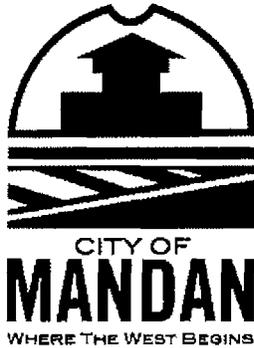
To continue to designate the following financial institutions as depositories for the City's funds:

- Wells Fargo Bank
- Starion Bank
- Bank of North Dakota

SUGGESTED MOTION

Move to continue to designate the following financial institutions as depositories for the City's funds:

- Wells Fargo Bank
- Starion Bank
- Bank of North Dakota



Board of City Commissioners

Agenda Documentation

MEETING DATE: January 21, 2020
PREPARATION DATE: January 17, 2020
SUBMITTING DEPARTMENT: Finance
DEPARTMENT DIRECTOR: Greg Welch
PRESENTER: Greg Welch, Finance Director
SUBJECT: Bond Counsel Services

PURPOSE

To consider the letter of interest from Arntson Stewart Wegner to serve as bond counsel for the City of Mandan.

BACKGROUND

According to the Government Finance Officers Association; “an essential member of a governmental issuers bond financing team is bond counsel. Bond counsel renders an opinion on the validity of the bond offering, the security for the offering, and whether and to what extent interest on the bonds is exempt from income and other taxation. The opinion of bond counsel provides assurance both to issuers and to investors who purchase the bonds that all legal and tax requirements relevant to the matters covered by the opinion are met. An issuer should assure itself that its bond counsel has the necessary expertise to provide an opinion that can be relied on and will be able to assist the issuer in completing the transaction in a timely manner.”

The City of Mandan’s current bond counsel attorney indicated that he will be stepping down after providing more than twenty years of service to the City.

According to the letter of interest from Arntson Stewart Wegner, Scott Wegner and James Stewart will act as bond counsel to the City, with the assistance of Jon Arntson. Each attorney is licensed in North Dakota, a member of the National Association of Bond Lawyers, and a nationally recognized bond lawyer. Below are examples of work with the City they have performed in the past few years:

- (1) research and discussion with City Administration in 2018 regarding hospitality tax revenue bonds for the City's library and event center project;
- (2) bond counsel for the City's Park Facilities Sales Tax Revenue Bonds, Series 2016;

- (3) preparation for the City in 2016 of the Post-Issuance Compliance Procedure and Policy for Bond Issues; and
- (4) in 2015, at the City's request, we provided information on financing options to facilitate economic development.

In addition, they have served as bond counsel to the Mandan Airport Authority, the Mandan Public School District, Morton County, the Morton County WRD, the Morton County Housing Authority, and several nonprofit organizations in the City.

ATTACHMENT

Letter of interest from Arntson Stewart Wegner.

FISCAL IMPACT

According to the letter of interest from Arntson Stewart Wegner, their fee as bond counsel will be based on the terms, structure and size of each financing. Bond counsel fees are typically a flat fee based on the size and type of financing. Research projects or general matters not involving a bond issuance will be billed at the rate of \$325 per hour. In addition, they will charge for reimbursement of out-of-pocket expenses, such as preparation of bond transcripts and other necessary office disbursements. They will also enter into a fee agreement with the City for each Bond financing.

STAFF IMPACT

None

LEGAL REVIEW

Reviewed by Malcolm Brown, City Attorney.

RECOMMENDATION

To approve the letter of interest from Arntson Stewart Wegner to serve as bond counsel for the City of Mandan.

SUGGESTED MOTION

Move to approve the letter of interest from Arntson Stewart Wegner to serve as bond counsel for the City of Mandan.

ARNTSON STEWART WEGNER PC

ATTORNEYS AT LAW

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Fargo, ND 58102-1485
(701) 280-0195

*Also licensed in Minnesota

SCOTT D. WEGNER**
3811 Lockport Street, Suite 3
Bismarck, ND 58503-5554
(701) 255-1008

**Also licensed in Minnesota and South Dakota

January 6, 2020

Greg Welch
Finance Director
City of Mandan
205 2nd Avenue NW
Mandan, ND 58554

Re: City of Mandan – Bond Counsel Services

Dear Mr. Welch:

We appreciate the opportunity to serve as bond counsel to the City of Mandan (the "City") in connection with the issuance by the City of various types of debt instruments as may be determined necessary from time to time (the "Bonds"). The purpose of this letter is to set forth our proposed role and responsibilities as bond counsel with respect to future financings.

Bond counsel is engaged as a recognized expert whose primary responsibility is to render an objective legal opinion with respect to the authorization and issuance of bonds.

As bond counsel, we will:

- (1) examine applicable law;
- (2) prepare or review: (i) the authorizing resolution or ordinance, (ii) the resolution, indenture, loan agreement, lease agreement or other agreement pursuant to which the Bonds will be issued and secured, (iii) such other documents as may be required by the financing or which we deem necessary for rendering our opinion, and (iv) the forms of such closing documents, certificates, and opinions of counsel as may be required by the terms of the financing and applicable federal and state laws;
- (3) meet and consult with City Administration and other parties prior to and during the course of the issuance of the Bonds;
- (4) appear before the Board of City Commissioners as requested;
- (5) review certified proceedings; and

- (6) undertake such additional duties as are necessary to render our opinion.

Subject to the completion of proceedings to our satisfaction, we will render a customary bond counsel opinion as to validity of issuance and tax treatment of interest paid on the Bonds.

Scott Wegner and James Stewart will be act as bond counsel to the City, with the assistance of Jon Arntson. Each is licensed in North Dakota, a member of the National Association of Bond Lawyers and a nationally recognized bond lawyer. We are happy to provide references upon request.

We will detail our bond counsel experience if requested, but the following are examples of work with the City in the past few years:

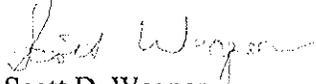
- (1) research and discussion with City Administration in 2018 regarding hospitality tax revenue bonds for the City's library and event center project;
- (2) bond counsel for the City's Park Facilities Sales Tax Revenue Bonds, Series 2016;
- (3) preparation for the City in 2016 of the Post-Issuance Compliance Procedure and Policy for Bond Issues; and
- (4) in 2015, at the City's request, we provided information on financing options to facilitate economic development.

In addition, we have served as bond counsel to the Mandan Airport Authority, the Mandan Public School District, Morton County, the Morton County WRD, the Morton County Housing Authority and several nonprofit organizations in the City.

Our fee as bond counsel will be based on the terms, structure and size of each financing. Bond counsel fees are typically a flat fee based on the size and type of financing. Research projects or general matters not involving a bond issuance will be billed at the rate of \$325 per hour. In addition, we charge for reimbursement of out-of-pocket expenses, such as preparation of bond transcripts and other necessary office disbursements. We will enter into a fee agreement with the City for each Bond financing.

We would be happy to review with you or provide more detail. Thank you for the opportunity to work with the City of Mandan.

Sincerely,
ARNTSON STEWART WEGNER PC


Scott D. Wegner



Board of City Commissioners

Agenda Documentation

MEETING DATE: January 21, 2020
PREPARATION DATE: January 16, 2020
SUBMITTING DEPARTMENT: Planning and Engineering
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: Justin Froseth, Planning and Engineering Director
SUBJECT: Amendment to Engineering Service Agreement with Moore Engineering for Mid-Town East

STATEMENT/PURPOSE: To amend our agreement with Moore Engineering for the final design and bidding services related to the Mid-Town East Street Improvement project.

BACKGROUND/ALTERNATIVES: At our September 3rd City Commission meeting, Commission approved the agreement with Moore Engineering for Mid-Town East. The original agreement included preliminary engineering, conducting a public meeting, other meeting and special assessment development support and other related services through the resolution of insufficiency of protests.

At our last Commission meeting, the protest rate was found to be insufficient at 4.1% and so it was decided to move forward to final design and bid of this project. The item before you today is to amend our contract with Moore Engineering to provide those final design and bid services through bid award. Our office has met with Moore to discuss the scope of services, schedule and cost of this amendment. The attached letter with scope of work details the tasks that this amendment will cover. It includes an updated schedule of the final design and bid tasks with the plan to open bids on April 14th for most construction to take place in 2020.

ATTACHMENTS:

- 1) Moore Engineering amendment letter with scope of work.

FISCAL IMPACT: The estimate for the services within this amendment is \$304,370. The original contract estimated a total of \$150,395 for everything done so far. The sum of the original plus this amendment brings the total agreement through bid to \$454,765. That amount is 7.3% of the current construction estimate. For a project of this size and scope, our office feels that this is a fair amount.

Board of City Commissioners

Agenda Documentation

Meeting Date: January 21, 2020

Subject: Amendment to Engineering Service Agreement with Moore Engineering for Mid-Town East

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STAFF IMPACT: Minimal

LEGAL REVIEW: All documents have been forwarded to the City Attorney.

RECOMMENDATION: Approve the amendment with Moore Engineering for final design and other services through award of bid for the Mid-Town Street Improvement project, SID 215.

SUGGESTED MOTION: I move to approve the amendment with Moore Engineering for final design and other services through award of bid for the Mid-Town Street Improvement project, SID 215.

Board of City Commissioners
Agenda Documentation
Meeting Date: January 21, 2020
Subject: Amendment to Engineering Service Agreement with Moore Engineering for
Mid-Town East
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2911 North 14th Street
Suite 301
Bismarck, ND 58503
P: 701.751.8360
F: 701.751.2954



January 16, 2020

Justin Froseth, PE
Planning and Engineering Director
City of Mandan
205 2nd Ave NW
Mandan, ND 58554

RE: Letter Agreement – Amendment for Design & Bidding Phase Services
Mid-Town East Street Improvement Project
Mandan, ND
MOORE Project No. 20834

Dear Mr. Froseth,

In accordance with the direction received by the Mandan City Commission ("Owner") on January 7, 2020, Moore Engineering, Inc. (MOORE) is pleased to submit our amendment to provide civil engineering services for your reconstruction project.

Project Understanding

BACKGROUND: The City of Mandan hired Moore to complete an engineering study and 30% design plans for the Mid-Town East neighborhood Street and utility replacement project so that the proposed improvement project could be presented to the public. After the project cleared the required public review process, the City of Mandan directed Moore to prepare an amendment to the original engineering agreement to complete final design for the Improvement project. It was requested that Moore put together a detailed list of tasks and estimated hours to complete the final design and bidding phases to complete the project. Answers to Moore's specific questions during this process were provided by City Engineer, Justin Froseth.

GENERAL DESCRIPTION OF PROJECT: The project consists of the scope of work identified within the final Project Concept Report (PCR) signed on November 26, 2019. The work specifically includes street and utility reconstruction throughout the 37 block neighborhood.

PROJECT OBJECTIVES: MOORE will provide Owner with final design engineering documents and bidding phase services as detailed in the attached scoping and task hours document.

Scope of Work

To meet the project objectives above, MOORE proposes to provide the following services:

1. Final Design Services

- Complete supplemental topographic survey (alleys & specific locations identified for open trench digging.)
 - Coordinate supplemental geotechnical investigation as needed (assume additional cores and Geotechnical Analysis where retaining wall would be needed for 3rd Ave street widening.)
 - Plan and profile sheets for entire identified project – 37 blocks of streets and 18 blocks of alleys
 - Incorporate City's design of water main replacement on 8th Ave into plans either to be bid within base bid or alternate
 - Design of water main replacement for approximately 20 blocks
 - Design of Sanitary Sewer Extension for 2 blocks and replacement for 2 blocks
 - Design of Storm Sewer extension and replacement as per report
 - Design Street and alley replacement project areas
 - Lighting Design
 - Structural design of retaining wall for roadway widening on 3rd Ave
 - Identify potential required right-of-way needs.
 - Conduct 60% & 90% Plan Submittals and review with owner
 - Prepare Drawings and Specifications indicating the scope, extent and character of the Work to be performed and furnished by Contractor as determined by the Report.
 - Traffic Control Plans prepared will offer general traffic control recommendations. No detailed detour plans for specific closures will be prepared in the drawings.
 - Plans will indicate milestone completion dates and areas.
 - Prepare Engineer's revised Opinion of Probable Construction Cost based on final plans.
 - Prepare and furnish Owner with one (1) set of pre-final bidding documents and Engineer's Opinion of Probable Construction Cost for review.
 - At the direction of the owner, hold up to two (2) meetings with interested parties (School, Post office or other.)
 - Hold weekly internal design meetings and bi-weekly meetings/conference calls with owner (estimated to be 1 hour each).
 - Specifications. Make minor revisions based on comments from the Owner.
 - Prepare Special Provisions document to supplement City's technical specifications.
 - Quality Control Review at 60%, 90% and final review
 - Prepare Design Bid Alternates (3) as identified by owner.
 - Prepare and furnish Owner with three (3) sets of final bidding documents and final Engineer's Opinion of Probable Construction Cost.
 - Attend one (1) City Commission meeting for approval of the final Plans and Specifications.
 - Engineer's services under the Design Services phase will be considered complete on the date when the submittals required by this paragraph have been delivered to Owner.
 - The number of prime contracts for Work designed or specified by Moore upon which the Engineer's compensation has been established under this Agreement is one (1). If more prime contracts are required/desired, Moore shall be entitled to an equitable increase in its compensation under this Agreement.
2. Bidding & Negotiation
- After acceptance by Owner of the bidding documents and the most recent Opinion of Probable Construction Cost as determined in the Design Services phase, and upon written authorization by Owner to proceed, Engineer shall:
 - Upload PDF Bidding Document on Moore's bidding site and maintain a record of prospective bidders to whom Bidding Documents have been issued.
 - Provide Advertisement for Bids to Official Newspaper and Weekly Newspaper for publication for obtaining bids for the Work. The Owner shall pay for the publications.
 - Issue no more than four (4) addenda as appropriate to clarify, correct, or change the bidding documents.

- Evaluating and determining the acceptability of "or equals" and substitute materials proposed by bidders is not included in this scope of work.
 - Attend the Bid opening in Mandan and prepare the Bid tabulation.
 - Prepare a Recommendation to Award letter, Notice of Award form and Engineer's Statement of Estimated Cost with Total Project Cost, and present documents to City Commission for an award of contract.
 - Assemble the contracts (up to 5 copies) for the Work between the Owner and Contractor.
 - Provide contractor contract documents for requesting required securities, Insurance and other miscellaneous documents.
 - Provide a general review of documents received by contractor to ensure requested documents are received. This review will not be of the content within the documents (in substitution of the City Attorney's regular duties). We will submit the documents to the City Attorney to review the content within the documents.
 - Provide Owner assembled contracts for execution. Return one (1) fully executed contract to the contractor.
 - The fully executed contract will be assembled into a PDF format and provided to the Owner via email.
 - The Bidding & Negotiation phase will be considered complete upon the contracts being fully executed or upon cessation of negotiations with prospective contractors.
 - Re-bidding, including revisions to the Bidding Documents, is not included in this Scope of Work.
3. Miscellaneous Services
- Special Assessment District Services
 - Support or revisions to proposed preliminary special assessment footage, area, list or methods as directed by owner.
 - Professional Land Surveying
 - Boundary Surveys
 - Easement Legal Descriptions
 - It is anticipated that temporary easements may be needed to address utility replacement in the narrow 20' wide alleys or to install ADA ramp improvements in some locations. Moore will identify the locations, and provide the addresses (based on City's GIS parcel map). Moore will complete the temporary construction easement forms (generic copy) and attempt to contact the property owners by sending certified letters requesting execution of the temporary easements. Moore will also attend up to 2 special meetings (up to 1 hour) to meet with homeowners if requested.
 - It is anticipated that permanent right-of-way may be needed where the 3rd Ave Road widening will occur. Moore will complete a boundary survey, and property descriptions for the right-of-way acquisition as needed.
 - Right-of-Way acquisition and/or Negotiation
 - Moore will participate in up to 10 hours of right-of-way negotiation with land owners for easements on behalf of or in conjunction with the City.
 - Additional public information meetings, presentations.
 - It is assumed that 1 additional post-bid public presentation will be requested. Moore will conduct additional meetings at the direction of the owner.

Basis of Proposal

The following items form the basis of this Proposal:

- No environmental permitting or hazard/site assessment is included in this proposal.
- Addressing unknown utility conflicts during design will be considered additional services and would be billed under phase 600, "Miscellaneous Services".

- Hold design meetings (Estimate 8 Total: 6 in person and 2 conference call) with engineering department in order to provide updates and request decisions from the City.
- Geotechnical services will be contracted as a subconsultant under Moore Engineering. After discussion with Geotechnical Engineer, it is assumed that 3 shallow soil borings, several deep investigative borings and report will be needed in order to perform the structural design of the retaining wall on 3rd Ave widening. This will be billed under phase 320 Final Design Services.
- The design for street improvements will have a level of effort to address drainage issues known and identified by the Owner and Engineer, but it cannot be expected that all drainage issues will be entirely resolved.
- Proposed street sections used will be based on recommendations provided by the geotechnical engineer. Design will be based on the information obtained from the soil borings. Unknown soil conditions may be encountered during construction, thus a contingency fund will need to be established to address those areas if encountered.
- Streets not fully reconstructed with new curb and gutter will retain their existing profile, cross slopes and ride quality. Streets milled and overlaid typically will have improvements of ride quality.
- Lighting Design will be completed by Prairie Engineering, PC as a subconsultant to Moore Engineering and will be billed under 320 Final Design Services.
- The following items are specifically excluded, but could be performed by the engineer as an additional service if requested by the owner:
 - Detailed Boundary survey to determine existing property lines.
 - Utility Coordination meeting
 - Cultural Resource Work
 - Wetland Delineation
 - Pavement Life Cycle Cost Analysis
 - From the preliminary soil boring logs, it has been determined that soils within or adjacent to the project area are oversaturated. This could create circumstances where soils are susceptible to erosion or sliding. Slope stabilization geotechnical design services along 3rd Ave, in the existing pond area or anywhere throughout the project are not included. There will be no effort to search for, identify slip planes, or investigate potential unstable problem areas. No design will be included to anchor soils or prevent future earth slides in these areas. The design will be limited to restoring vegetation within disturbed areas and we will select a pre-engineered product, utilizing manufacturer's recommendations, for which product would be most effective given the type of soil and slopes in the areas encountered. It is anticipated that unknown soil conditions may be encountered during construction, thus a contingency fund will need to be established to address those areas if encountered. If slope stability issues are discovered, Moore will provide additional design and construction phase services under 600 Additional Services Phase as directed by the owner.
- Tasks and estimated hours are included as an attachment that provide further information to the basis of our proposal.
- Construction engineering services are not included. It is anticipated that an amendment to this Agreement for Construction Engineering Services will be provided to the Owner once a construction contract is awarded.

Schedule

MOORE will perform the Scope of Work listed above in accordance with the following schedule:

- Notice to Proceed – January 21, 2020



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- 60% Design Review Submittal – February 24, 2020
- 90% Design Review Submittal – March 11, 2020
- Final Plans to City of Mandan – March 19, 2020
- Council Approval & Authorization to Bid – March 17, 2020
- Bidding & Negotiation – Bid date tentatively scheduled for April 14, 2020.
- Owner to award a contract on April 21, 2020.
- Notice to proceed – May 6, 2020

Fee

MOORE will perform the tasks specified in the Scope of Work above for the following:

- Final Design Services Phase – Estimated to be \$269,430
- Bidding & Negotiating Phase – Estimated to be \$14,930
- Miscellaneous Services (As Directed) Phase – Estimated to be \$20,310

Total fees for this agreement is estimated to be \$304,370. The total contract compensation is a not-to-exceed amount unless approved in writing by the Owner.

Attachment B includes a full listing of all identified tasks and budgeted hours for each task and is an integral part of this agreement. If a difference arises between the list above and the full list, the information in attachment B will govern.

MOORE will perform the tasks specified in the Scope of Work above on a Category Billing Rate basis using the actual hours worked times the appropriate Category Billing Rate plus the actual direct expenses incurred, including subconsultant fees, times a multiplier of 1.15. Category Billing Rates are the same as the previously approved rates under the Study Phase contract. Rates are valid through the end of the current year and may be adjusted to meet market conditions on January 1 of each year. If billed to Owner, invoices will be submitted monthly based on the hours of work completed for the Hourly tasks. Moore may alter the distribution of compensation between individual phases listed above to be consistent with services actually rendered, but shall not exceed the total contract compensation amount unless approved in writing by the City.

Standard Terms and Conditions

Our services will be provided in accordance with our "Standard Terms and Conditions for Professional Services," which are integral to this proposal, and were provided with the Study Phase contract.

Closing

Should you find this Proposal acceptable, please have an authorized representative of the City of Mandan sign the Acceptance portion of this letter below and return one (1) fully executed copy of this Proposal to me. Receipt of a fully executed copy of this Proposal will serve as our Agreement and our Notice to Proceed.

We appreciate the opportunity to submit this Proposal and we look forward to working with you on this Project. Should you have any questions or need additional information, please contact me by phone at 701.751.8380 or by email at jerod.klabunde@mooreengineeringinc.com.



mooreengineeringinc.com

Sincerely,



Jerod Klabunde, PE
Senior Project Manager



Kyle J. Meyer, PE
North Dakota Regional Manager

Enclosures: As noted

Acceptance for the City of Mandan

I hereby authorize Moore Engineering, Inc. to proceed with the work described above.

Signature: _____

Name: Justin Froseth, PE

Title: Planning and Engineering Director

Date: _____

Address for Giving Notices: 205 2nd Ave NW

Mandan, ND 58554



Board of City Commissioners

Agenda Documentation

MEETING DATE: January 21, 2020
PREPARATION DATE: January 16, 2020
SUBMITTING DEPARTMENT: Planning and Engineering
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: Justin Froseth, Planning and Engineering Director
SUBJECT: Agreement with AE2S to provide Engineering Services for 2020 Generators project.

STATEMENT/PURPOSE: To enter into an agreement with AE2S for them to provide design, bidding and construction engineering services through the completion of the 2020 Generators project.

BACKGROUND/ALTERNATIVES: At our last City Commission meeting, our office brought forward an item to accept a ND Department of Emergency Services grant to install two generators at select locations. Following the approval of that, we are now bringing this item forward to authorize AE2S to proceed with the design of plans and specifications of generators needed as well as construction engineering services through the completion of the project. The schedule would be to bid sometime this summer with the generators expected in place by the end of the year.

ATTACHMENTS:

- 1) Task order #1 which includes scope of services and cost.

FISCAL IMPACT: The estimate for services under this contract is for \$129,000. The engineering was figured in to the total project amount when the grant was applied for and will be reimbursed along with the construction and installation of the generators. It is considered under the total amount budgeted for the project in 2020.

STAFF IMPACT: Minimal

LEGAL REVIEW: All documents have been forwarded to the City Attorney.

RECOMMENDATION: Approve the agreement with AE2S to provide engineering services for the 2020 Generators project.

SUGGESTED MOTION: I move to approve the agreement with AE2S to provide engineering services for the 2020 Generators project.

Task Order No. 1

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated January 21, 2020 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: January 21, 2020
- b. Owner: City of Mandan
- c. Engineer: Advanced Engineering and Environmental Services, Inc.
- d. Specific Project (title): Mandan 2020 Emergency Generators (FEMA)
- e. Specific Project (description): Design, bidding, construction, post-construction, instrumentation & control, and financial services in support of the addition of emergency generators at the Sunset Booster Station and 40th Ave Lift Station sites. Includes assistance with administration and compliance with FEMA grant funding.

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference:

- Final Design Phase (Exhibit A, Paragraph A1.03)

The Final Design Phase includes the primary tasks identified below:

- Engineer will attend, lead, and/or participate in the following anticipated meetings:
 - Project Kickoff Meeting
 - 90% Plan and Spec Review
- Plans, Specifications, and Bid Documents – Prepare plans, specifications, and bid documents for the construction of the project. Final design is anticipated to include:
 - Evaluation to incorporate generators and auto transfer switches as follows:
 - Mandan Sunset Booster Station: 300 kW diesel powered emergency generator in a skintight enclosure with 150 kW load bank and auto transfer switch.
 - 40th Ave Lift Station: 80 kW natural gas-powered emergency generator and auto transfer witch. Consider diesel powered as an option.
 - Prepare plans and specifications to outline work necessary to receive bids for the Project as described above.
- Opinion of Probable Construction Cost: Engineer will prepare Opinions of Probable Construction Cost and revise as required for 90% and 100% plan and specification reviews.

- Summary of Deliverables
 - 90% Plans, Specifications, and Opinion of Cost
 - 100% Plans, Specifications, and Opinion of Cost

- Bidding or Negotiating Services (Exhibit A, Paragraph A1.04)

The Bidding Phase includes the primary tasks identified below:

 - Electrical Bidding
 - Advertisement: Engineer to coordinate with the Owner for the advertisement of Bids in the official newspaper and regional construction plan exchanges.
 - Interpretation and Clarifications: Engineer to communicate with prospective bidders and issue addenda as required.
 - Meetings: Engineer to attend bid opening for the project.
 - Bid Evaluation and Recommendations: Engineer to prepare Bid Tab and Recommendations for City.
 - Notice of Award: Engineer will coordinate the execution of the Notice of Award.

- Construction Phase Services (Exhibit A, Paragraph A1.05)
 - including Resident Project Representative (RPR) services (A1.05.A.2) – Exhibit D of the Agreement is expressly incorporated in this Task Order by reference

The Construction Phase includes the primary tasks identified below:

- Contracts: Engineer will coordinate the execution of Contracts and Notice to Proceed.
- Shop Drawing Review: Engineer shall administer the submittal process and provide review of product submittals for the project.
- Construction: Engineer to provide adequate construction administration and construction observation, maintain records, provide assistance to manage project progress, problems, and potential scope changes, equipment startup assistance and complete project closeout procedures and Final Inspection and Acceptance for the project.
- Construction Progress Meeting: Engineer to coordinate and attend pre-construction meeting including preparation and distribution of meeting agenda and minutes. Engineer to coordinate and attend periodic construction progress meetings. Periodic construction meetings will be conducted not more than once a week and not less than once a month during times of construction and as mutually agreed. Engineer will maintain meeting agendas and minutes.
- Project Administration: Engineer will administer and process project activities such as pay requests, change order, shop drawing processing, and resource allocation.

- O&M Manuals: Engineer shall provide final Operation and Maintenance Manuals and shop drawings.
- Project Management: Engineer will provide project management services to monitor construction progress, work quality and project costs.

- Post-Construction Phase Services (Exhibit A, Paragraph A1.06)

The Post-Construction Phase includes the primary tasks identified below:

- Warranty: Engineer shall coordinate warranty items, monitor warranty period, assist owner with warranty items that might arise, and provide an end of warranty inspection.
- Record Drawings: Engineer shall revise contract drawings and provide final as-built record drawings.

B. Other Services

Engineer shall also provide the following services:

- Instrumentation and Control Phase includes the primary tasks identified below:
 - Programming: Engineer shall perform all control system programming necessary to fully integrate new systems into the existing Supervisory Control and Data Acquisition (SCADA) system, provide programming of PLCs to accommodate operation modes, including automatic control and various automatic or semi-automated operational sequences.
- Financial Services Phase includes the primary tasks identified below:
 - Hazard Mitigation Grant Program Compliance Requirements
 - Prepare quarterly progress reports.
 - Assist with grant program reporting and closeout documents.
 - Attend grantee project inspection if required.
 - Reimbursement Requests:
 - Prepare and submit reimbursement requests to Department of Emergency Services.

C. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services - None

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following:

N/A

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule: Enter specific date, number of days, or other qualifier for this particular phase

Final Design Phase: 3 months

Bidding or Negotiating Phase: 1 month

Construction Phase: 8 months

Post-Construction Phase: 12 months

Other Basis Services: TBD

6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services (Part 1 of Exhibit A)		
a. Study and Report Phase (A1.01)	\$0.00	Lump Sum
b. Preliminary Design Phase (A1.02)	\$0.00	Lump Sum
c. Final Design Phase (A1.03)	\$36,000.00	Hourly Not To Exceed
d. Bidding or Negotiating Phase (A1.04)	\$10,000.00	Hourly Not To Exceed
e. Construction Phase (A1.05)*	\$47,500.00	Hourly Not To Exceed
f. Resident Project Representative Services* (A1.05.A.2).	Included in paragraph e.	Hourly Not-To-Exceed
g. Post-Construction Phase (A1.06)	\$7,500.00	Hourly Not To Exceed
i. Other Services (see A1.08, and 2.D above)		
a. I&C Phase	\$13,000.00	Hourly Not to Exceed
b. Financial Services Phase	\$15,000.00	Hourly Not to Exceed
TOTAL COMPENSATION (lines 1.a-h)	\$129,000.00	
2. Additional Services (Part 2 of Exhibit A)	(N/A)	Estimated Hourly

*Based on a 8-month continuous construction period. Part-time observation.

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. Engineer may alter the distribution of compensation between individual phases (line items)

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to be consistent with services actually rendered. Engineer 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 Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order:

N/A

8. Other Modifications to Agreement and Exhibits:

N/A

9. Attachments:

N/A

10. Other Documents Incorporated by Reference:

N/A

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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 January 21, 2020.

OWNER:

ENGINEER:

By: _____

By: 

Print Name: Mayor Tim Helbling

Print Name: Lisa Ansley, PE

Title: President of Board of City Commissioners

Title: Chief Operating Officer

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Justin Froseth, PE

Name: Laith Hintz, PE

Title: Planning and Engineering Director

Title: Project Manager

Address: 205 2nd Ave NW
Mandan, ND 50554-3125

Address: 1815 Schafer St Ste 301
Bismarck, ND 58501

E-Mail Address: jfroseth@cityofmandan.com

E-Mail Address: laith.hintz@ae2s.com

Phone: (701) 667-3227

Phone: (701) 221-0530



Board of City Commissioners

Agenda Documentation

MEETING DATE:	January 21, 2020
PREPARATION DATE:	January 14, 2020
SUBMITTING DEPARTMENT:	Bis-Man MPO
DEPARTMENT DIRECTOR:	N/a
PRESENTER:	Rachel Drewlow, Transportation Planner
SUBJECT:	Submission of 'Bicycle Friendly Community' Renewal Application

STATEMENT/PURPOSE: To request permission of the Bis-Man MPO to submit a 'Bicycle Friendly Community' renewal application on behalf of the City of Mandan.

BACKGROUND/ALTERNATIVES: The Bismarck-Mandan MPO - on behalf of the Cities of Mandan, Bismarck and Lincoln - was awarded the designation of 'Bicycle Friendly Community' in 2016 by the League of American Bicyclist. Since this designation is valid for three years, the MPO is preparing a renewal application.

The previous application was awarded at a 'Bronze' level, and MPO staff is hopeful that the current application may be awarded a 'Silver' level. The application submittal deadline is February 4, 2020. City Planner, John Van Dyke, is part of the committee to prepare and review the application.

Questions about the application or this request may be sent to Rachel Drewlow, Bis-Man MPO, 701-355-1852.

ATTACHMENTS: N/a

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

LEGAL REVIEW: This item was provided to Malcolm Brown, City Attorney along with the agenda packet for review

RECOMMENDATION: Engineering and Planning recommend approval for the Metropolitan Planning Organization to submit the renewal application for the "Bicycle Friendly Community" designation to League of American Bicyclist.

Board of City Commissioners

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Subject: Submission of 'Bicycle Friendly Community' Renewal Application

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SUGGESTED MOTION: I move to approve Metropolitan Planning Organization to submit the renewal application for the "Bicycle Friendly Community" designation to League of American Bicyclist.



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MEETING DATE: January 21, 2020
PREPARATION DATE: January 17, 2020
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: Payment of Bills related to MMPL & Downtown Parks Project

STATEMENT/PURPOSE: To consider approval of the payment of bills related to the Morton Mandan Public Library (MMPL) & Downtown Parks Project.

BACKGROUND/ALTERNATIVES: Normal course of business would be for invoices to be submitted to the City of Mandan and in turn, those invoices presented with the schedule of bills to be approved by the City Commission the 2nd meeting of the month. Pursuant to the resolution passed by the City Commission and the MMPL Board of Trustees both boards need to approve the bills related to the library expansion and the City Commission approves the bills strictly related to the Downtown Parks project. Subsequent to those approvals, the invoices will be sent to the North Dakota Community Foundation for payment to the vendors.

There has been considerable work done including consultations with the steering committee, library staff, outreach from Stantec to outlying communities related to the library expansion, and pop up events soliciting input related to the park programming and amenities.

The second set of invoices consist of :
Bartlett & West – Professional Services, Schematic Design, Oct. 26 to Nov. 22, \$18,270
Bartlett & West – Professional Services, Schematic Design, Nov. 23 to Dec. 27, \$27,405

We remain on schedule with groundbreaking set for the spring 2020.

ATTACHMENTS: Bartlett & West Invoices.

FISCAL IMPACT: Amounts will be paid from the donation from Energy Transfer.

STAFF IMPACT: n/a

Board of City Commissioners

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Subject: Payment of Bills related to MMPL & Downtown Parks Project

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LEGAL REVIEW: n/a

RECOMMENDATION: I recommend the City Commission and MMPL Board of Trustees approve payment of the invoices as submitted, conditioned upon the MMPL Board of Trustees.

SUGGESTED MOTION: I recommend the City Commission and MMPL Board of Trustees approve payment of the invoices as submitted, conditioned upon the MMPL Board of Trustees

Bartlett & West

Driving Community and Industry Forward, Together.

Invoice Remittance Address
For Payments Only:
P.O. Box 653
Wichita, KS 67201-0653

1200 SW Executive Drive
Topeka, KS 66615
785.272.2252 FAX 785.228.6210 888.200.6464
F.E.I.N 48-0770612

Jim Neubauer
City of Mandan
Mandan, ND 58554

December 16, 2019
Project No: 020133.000
Invoice No: 730073848

Project Manager: Joseph Larrivee
Client Contract No.:
PO Number:

Project 020133.000 Mandan Morton Public Library
Professional Services from October 26, 2019 to November 22, 2019
Fee

Total Fee 456,750.00

Billing Phase	Percent of Fee	Fee	Earned	Previous Fee Billing	Current Fee Billing
Schematic Design	20.00	91,350.00	45,675.00	27,405.00	18,270.00
Design Development	15.00	68,512.50	0.00	0.00	0.00
Construction Documents	40.00	182,700.00	0.00	0.00	0.00
Bidding	5.00	22,837.50	0.00	0.00	0.00
Construction Administration	20.00	91,350.00	0.00	0.00	0.00
Totals			45,675.00	27,405.00	18,270.00
Total Fee					18,270.00
Total this Invoice					\$18,270.00

Bartlett & West

Driving Community and Industry Forward, Together.

INVOICE Remittance Address
For Payments Only:
P.O. Box 653
Wichita, KS 67201-0653

1200 SW Executive Drive
Topeka, KS 66615
785.272.2252 FAX 785.228.6210 888.200.6464
F.E.I.N 48-0770612

Jim Neubauer
City of Mandan
Mandan, ND 58554

January 10, 2020
Project No: 020133.000
Invoice No: 730074126

Project Manager: Joseph Larrivee
Client Contract No.:
PO Number:

Project 020133.000 Mandan Morton Public Library
Professional Services from November 23, 2019 to December 27, 2019
Fee

Total Fee	456,750.00				
Billing Phase	Percent of Fee	Fee	Earned	Previous Fee Billing	Current Fee Billing
Schematic Design	20.00	91,350.00	73,080.00	45,675.00	27,405.00
Design Development	15.00	68,512.50	0.00	0.00	0.00
Construction Documents	40.00	182,700.00	0.00	0.00	0.00
Bidding	5.00	22,837.50	0.00	0.00	0.00
Construction Administration	20.00	91,350.00	0.00	0.00	0.00
	Totals		73,080.00	45,675.00	27,405.00
	Total Fee				27,405.00
				Total this Invoice	\$27,405.00

email invoice to: Jim Neubauer <jneubauer@cityofmandan.com>



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
SFN 17996 (02/2018)

G - _____ (_____) _____
Site License Number
(Attorney General Use Only)

Full, Legal Name of Gaming Organization Mule Deer Foundation

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

Name of Location Baymont Inn & Suites			
Street 2611 Old Red Trl NW	City Mandan	ZIP Code 58554	County Morton
Beginning Date(s) Authorized 2/8/2020	Ending Date(s) Authorized 2/8/2020	Number of twenty-one tables if zero, enter "0": 0	
Specific location where games of chance will be conducted and played at the site (required) Pier 7 & Fleet conference rooms			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known 02/08/2020			

RESTRICTIONS (City/County Use Only)

Days of week of gaming operations (if restricted)	Hours of gaming (if restricted)
---	---------------------------------

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

<input type="checkbox"/> Bingo	<input type="checkbox"/> Club Special	<input type="checkbox"/> Sports Pools
<input checked="" type="checkbox"/> ELECTRONIC Quick Shot Bingo	<input type="checkbox"/> Tip Board	<input type="checkbox"/> Twenty-One
<input checked="" type="checkbox"/> Raffles	<input type="checkbox"/> Seal Board	<input type="checkbox"/> Poker
<input type="checkbox"/> ELECTRONIC 50/50 Raffle	<input type="checkbox"/> Punchboard	<input type="checkbox"/> Calcuttas
<input type="checkbox"/> Pull Tab Jar	<input type="checkbox"/> Prize Board	<input type="checkbox"/> Paddlewheels with Tickets
<input type="checkbox"/> Pull Tab Dispensing Device	<input type="checkbox"/> Prize Board Dispensing Device	<input type="checkbox"/> Paddlewheel Table
<input type="checkbox"/> ELECTRONIC Pull Tab Device		

APPROVALS

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

INSTRUCTIONS:

1. City/County-Retain a copy of the Site Authorization for your files.
2. City/County-Return the original Site Authorization form to the Organization.
3. Organizations - Send the original, signed, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

RETURN ALL DOCUMENTS TO:

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



RENTAL AGREEMENT
 OFFICE OF ATTORNEY GENERAL
 LICENSING SECTION
 SFN 9413 (Rev. 05-2018)

License Number (Office Use Only)

Site Owner (Lessor) <u>Grand Hospitality</u>		Site Name <u>Baymont Mandan</u>		Site Phone Number <u>701-663-7401</u>	
Site Address <u>2611 Old Red Trail NW</u>		City <u>Mandan</u>	State <u>ND</u>	Zip Code <u>58554</u>	County <u>Morton</u>
Organization (Lessee) <u>Mule Deer Foundation</u>		Rental Period <u>2-8-20</u> to <u>2-8-20</u>		Monthly Rent Amount	
1. Is Bingo going to be conducted at this site? 1a. If "Yes" to number 1 above, is Bingo the primary game conducted? If "Yes," enter the monthly rent amount to be paid. Then answer questions 2 - 7 but do not enter any rent amounts.		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes		\$	
2. Is Twenty-One conducted at this site? Number of Tables with wagers up to \$5 _____ X Rent per Table \$ _____ Number of Tables with wagers over \$5 _____ X Rent per Table \$ _____		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$	
3. Is Paddlewheels conducted at this site? Number of Tables _____ X Rent per Table \$ _____		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$	
4. Is Pull Tabs involving either a jar bar, standard, or electronic dispensing device conducted at this site? Please check: <input type="checkbox"/> Jar Bar <input type="checkbox"/> Standard Dispensing Device <input type="checkbox"/> Electronic Dispensing Device Number of Electronic Devices _____ No additional rent is allowed for electronic pull tabs. Rent must be based on dispensing device requirements per NDCC 53-06.1-11 (5)(a)(b)		<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		\$	
Total Monthly Rent				\$ <u>0</u>	

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

TERMS OF RENTAL AGREEMENT:

This RENTAL AGREEMENT is between the Owner (LESSOR) and Organization (LESSEE) that will be leasing the site to conduct games of chance.

The LESSOR agrees that no game will be directly operated as part of the lessor's business.

The LESSOR agrees that the (lessor), (lessor's) spouse, (lessor's) common household members, (management), (management's) spouse, or an employee of the lessor who is in a position to approve or deny a lease may not conduct games at any of the organization's sites and, except for officers and board of directors members who did not approve the lease, may not play games at that site. However, a bar employee may redeem a winning pull tab, pay a prize board cash prize, and award a prize board merchandise prize involving a dispensing device and sell raffle tickets or sports pool chances on a board on behalf of an organization.

The LESSOR agrees that the lessor's on call or temporary or permanent employee will not, directly or indirectly, conduct games at the site as an employee of the lessee on the same day the employee is working in the area of the bar where alcoholic beverages are dispensed or consumed.

If the LESSEE provides the Lessor with a temporary loan of funds for redeeming pull tabs or prize boards, or both, involving a dispensing device, the Lessor agrees to repay the entire loan immediately when the lessee discontinues using the device at the site.

The LESSOR agrees not to interfere with or attempt to influence the lessee's selection of games, determination of prizes, including a bingo jackpot prize, or disbursement of net proceeds.

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

At the LESSOR'S option, the lessee agrees that this rental agreement may be automatically terminated if the lessee's gaming license is suspended at this site for more than fourteen days or revoked.

Signature of Lessor <u>[Signature]</u>	Title <u>Sales Manager</u>	Date <u>1/16/20</u>
Signature of Lessee <u>[Signature]</u>	Title <u>President / CEO</u>	Date <u>1-9-20</u>

(over)



LOCAL PERMIT OR CHARITY LOCAL PERMIT

NORTH DAKOTA OFFICE OF ATTORNEY GENERAL

LICENSING SECTION

SFN 17926 (10/2012)

Type: Local Permit * Charity Local Permit

Permit Number

2020-008

Name of Organization Kiwanis Club Of Mandan, Nd, Inc		Date(s) Authorized (Read instruction 2)		
Contact Person Todd Humphrey	Business Phone Number (701) 264-9562	2/8/2020 Beginning	to	2/8/2020 Ending
Mailing Address Po Box 117	City Mandan	State ND	Zip Code 58554-0000	
Site Name Midway Lanes	Site Address 3327 Memorial Hwy			
City Mandan	State ND	ZIP Code 58554-0000	County Morton County	
Check the Game(s) Authorized: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.				
<input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker* <input type="checkbox"/> Twenty-one* <input type="checkbox"/> Paddlewheels*				
Restriction:				
Requirement: For a "Charity Local Permit," the organization must file a "Report on a Charity Local Permit" with the city or county auditor <u>and</u> Office of Attorney General within 30 days of the event.				
Date 1/17/2020	Signature of: <input checked="" type="checkbox"/> City Auditor <input type="checkbox"/> County Auditor	Printed Name of City or County Auditor Lori Flaten		Auditor Telephone Number (701) 667-3455

Please see the instructions on the backside of this form on how to complete the Permit.

For a raffle or calendar raffle, read "Information Required to be Preprinted on a Standard Raffle Ticket" below.

cut along this line

INFORMATION REQUIRED TO BE PREPRINTED ON A STANDARD RAFFLE TICKET:

1. Name of organization;
2. Ticket number;
3. Price of the ticket, including any discounted price;
4. Prize, description of an optional prize selectable by a winning player, or option to convert a merchandise prize to a cash prize that is limited to the lesser of the value of the merchandise prize or four thousand dollars. However, if there is insufficient space on a ticket to list each minor prize that has a retail price not exceeding twenty dollars, an organization may state the total number of minor prizes and their total retail price;
5. For a licensed organization, print "office of attorney general" and license number. For an organization that has a permit, print the authorizing city or county and permit number;
6. A statement that a person is or is not required to be present at a drawing to win;
7. Date and time of the drawing or drawings and, if the winning player is to be announced later, date and time of that announcement. For a calendar raffle, if the drawings are on a same day of the week or month, print the day and time of the drawing;
8. Location and street address of the drawing;
9. If a merchandise prize requires a title transfer involving the department of transportation, a statement that a winning player is or is not liable for sales or use tax;
10. If a purchase of a ticket or winning prize is restricted to a person of minimum age, a statement that a person must be at least "___" years of age to buy a ticket, or win a prize;
11. A statement that a purchase of the ticket is not a charitable donation;
12. If a secondary prize is an unguaranteed cash or merchandise prize, a statement that the prize is not guaranteed to be won and odds of winning the prize based on numbers of chances; and
13. If a prize is live beef or dairy cattle, horse, bison, sheep or pig, a statement that the winning player may convert the prize to a cash prize that is limited to the lesser of the market value of the animal or four thousand dollars.

2020-008-



APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT
 OFFICE OF ATTORNEY GENERAL
 SFN 9338 (9-2009)

Application for: Local Permit * Charity Local Permit (one event per year)

Name of Non-profit Organization <i>Kiwanis Club of Mandan, North Dakota, Inc.</i>		Date(s) of Activity <i>2/8/2020</i> to <i>2/8/2020</i>	
Person Responsible for the Gaming Operation and the Disbursement of Net Income <i>Todd Humphrey</i>		Title <i>President</i>	Business Phone Number <i>cell 701-264-9562</i>
Business Address <i>P.O. Box 117</i>	City <i>Mandan</i>	State <i>ND</i>	Zip Code <i>58554</i>
Mailing Address (if different) <i>same</i>	City	State	Zip Code
Name of Site Where Game(s) will be Conducted <i>Midway Lanes</i>		Site Address <i>3327 Memorial Highway</i>	
City <i>Mandan</i>	State <i>ND</i>	Zip Code <i>58554</i>	County <i>Morton</i>
Check the Game(s) to be Conducted: *Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.			
<input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *			

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
<i>50/50 Raffle</i>	<i>Half of prize money collected</i>	<i>To be determined by sales</i>			
Total:					(Limit \$12,000 per year) \$

Intended uses of gaming proceeds: *This is a fundraising activity in conjunction with a bowling fundraiser for our Kiwanis club. Funds will be donated to support various youth activities in Mandan.*

Does the organization presently have a state gaming license? No Yes - If "Yes," the organization is not eligible for a local permit or charity local permit and should call the Office of Attorney General at 1-800-326-9240.

Has the organization received a charity local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," the organization does not qualify for a local permit or charity local permit.

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," indicate the total value of all prizes previously awarded: \$ _____ . This amount is part of the total prize limit of \$12,000 per year.

Signature of Organization's Top Executive Official <i>Todd Humphrey</i>	Date <i>1-15-2020</i>	Title <i>President</i>	Business Phone Number <i>701-264-9562</i>
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Board of City Commissioners

Agenda Documentation

MEETING DATE: January 21, 2020
PREPARATION DATE: January 15, 2020
SUBMITTING DEPARTMENT: Engineering and Planning
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: John Van Dyke, AICP, CFM
SUBJECT: Amendment to the Purchase and Sale Agreement of Parcel 65-3156000

STATEMENT/PURPOSE: Consider approval of an amendment to the purchase and sale agreement of parcel 65-3156000.

BACKGROUND/ALTERNATIVES:

Jake Axtman has provided an amendment to the purchase and sale agreement surrounding parcel 65-3156000 to change the price and closing date (See Exhibit 1). The revised offer from \$6,500 to \$1,900 is largely attributed to the proposed specials that may be placed on the property following the Mid-town East improvement district. The potential specials for that project on that property amount to \$4,639.79.

In addition, the property has title issues that need to be rectified and add to Mr. Axtman's risk. There is a question as to the properties total acreage as well – whether 0.73 acres or 1.3 acres. A survey will be required to determine the total acreage.

Given the specials potentially applied to this property coupled with the acreage question and title problems, staff is recommending approval of the amendment to the purchase and sale agreement as outlined in Exhibit 1.

The Commission may accept, deny, or counter the proposed amendment. If the Commission decides to deny the request, then staff recommends an additional motion to dissolve the original agreement and relist the property as active.

ATTACHMENTS:

Exhibit 1 – Addendum to Purchase and Sale Agreement
Exhibit 2 – Letter from Jake Axtman

Board of City Commissioners

Agenda Documentation

Meeting Date: January 21, 2020

Subject: Consider acceptance of an amendment to the purchase and sale agreement of parcel 65-3156000

Page 2 of 2

FISCAL IMPACT: N/a

STAFF IMPACT: N/a

LEGAL REVIEW: The addendum has been reviewed by Malcolm Brown, City Attorney.

RECOMMENDATION: Engineering and Planning recommend approval of the amendment to the purchase and sale agreement as provided in Exhibit 1.

SUGGESTED MOTION: I move to approve the amendment to the purchase and sale agreement as provided in Exhibit 1.

ADDENDUM

PROPERTY: **0000 6th Ave NE, Mandan, ND 58554**

The undersigned parties to a Purchase and Sale Agreement dated 10/21/19, by and between Jake Axtman(Purchaser) and the City of Mandan(Seller) for the purchase and sale of that certain property municipally known as 0000 6th Ave NE, parcel ID 65-3156000 ("Property"), hereby mutually agree to amend said Agreement as follows:

Extend Closing date to February 24, 2020 to allow the buyer a due-diligence period. specials will still be prorated as of the original close date of 12/27/2019

Purchase Price shall be \$1,900.00

Multiple horizontal lines for additional text or notes.

Date: _____

Date: _____

Jake Axtman
Signature



Signature

Date: _____

Date: _____

Signature

Signature

Addendum

1/2/2020

RE: Mandan Lot

Greetings:

I'm writing today in regards to my offer to purchase parcel 65-3156000, legally described as lots 3-4-5-6 - 4166, block 59. Several issues have come to light in the time since we made the offer for purchase.

1. It appears the property will be subject to \$4,639.79 in special assessments in 2020. I am grateful that the City of Mandan disclosed this before closing. I was unaware of this upcoming expense until after I signed the purchase offer.
2. It is not clear to me how much land I would be acquiring. City Parcel 65-3156000 includes 1.3 acres of land that may or may not include right of way on three sides. Alternatively, lots 3-4-5-6 -4166, block 59 includes 0.73 acres of land.
3. I learned this afternoon that there is likely a quiet title issue related to the property. If the property is conveyed to me through a quit claim deed, I will likely need to resolve the quiet title at my own expense.

Resolving the above listed concerns will take time and expense that I did not anticipate when writing an offer to purchase this parcel. I am still interested in purchasing the parcel, but will be revising my offer to reflect the currently understood circumstances. Thank you for your patience.

Sincerely,



Jake Axtman



Board of City Commissioners

Agenda Documentation

MEETING DATE: January 21, 2020
PREPARATION DATE: January 16, 2020
SUBMITTING DEPARTMENT: Planning and Engineering
DEPARTMENT DIRECTOR: Justin Froseth, PE
PRESENTER: Justin Froseth, Planning and Engineering Director
SUBJECT: Selection of Engineering Consultant for the
Downtown Street Improvement Project (SID 217)

STATEMENT/PURPOSE: To confirm the selection committee's qualifications based selection of KLJ for consulting engineering related to the Downtown Street Improvement project and enter into contract negotiations with them.

BACKGROUND/ALTERNATIVES: Last year we were notified of award of \$2.4M in urban grant program funds to address the poor conditions of 1st Street and Avenues in the downtown core area of Mandan as well as to enhance to bring vibrancy and walkability elements to downtown. The main intent of the project is to reconstruct 1st Street from 1st Avenue West to 6th West as well as 2nd-5th Avenues West from Main Street to 2nd Street. As per applied, the project would also include new sidewalks, street lighting and walkability focused improvements. We would also address underground needs as well such as replacing original watermain and addressing storm sewer and sanitary sewer as needed with the project. In November, City commission approved our request to issue a Request for Proposals (RFP) to select a consultant engineering firm to help us with this project's planning and preliminary design.

By the proposal deadline, the selection committee received seven proposals. The selection committee reviewed and discussed these proposals in order to select three firms to move forward to in-person interviews with us. Those interviews were held on January 16th. We interviewed HDR, HEI (Houston) and KLJ. At the conclusion and after selection committee discussion, KLJ scored highest by our selection team. Notably, KLJ completed the Downtown Subarea study in 2018. They were also chosen for the Main Street Reallocation and Traffic Signals planning and design effort which is coming to a close for a bid opening in April and construction this summer.

If Commission approves our recommendation today, we would negotiate terms of agreement with KLJ to get them started on planning and design of this project. The preliminary planning and design efforts, including public outreach, would take place

starting in February and through the spring. We anticipate special assessment district action this summer and if the proposed district does not protest it out would finish design in late 2020 for a bid opening in early 2021 for 2021 construction.

ATTACHMENTS:

- 1) Selection team scoring results are available upon request.

FISCAL IMPACT: No direct cost at this time. Designing a project of this scope and size is expected to cost near 10% of the construction. The conceptual estimate at this time is for a total project cost of about \$6M.

STAFF IMPACT: Minimal

LEGAL REVIEW: All documents have been forwarded to the City Attorney.

RECOMMENDATION: Approve the selection of KLJ, and authorize engineering staff to negotiate for the Downtown Street Improvement project (SID 217) engineering services contract.

SUGGESTED MOTION: I move to confirm the selection of KLJ, and authorize engineering staff to negotiate for the Downtown Street Improvement project (SID 217) engineering services contract.



Board of City Commissioners

Agenda Documentation

MEETING DATE: January 21, 2020
PREPARATION DATE: January 17, 2020
SUBMITTING DEPARTMENT: Administration
DEPARTMENT DIRECTOR: Jim Neubauer, City Administrator
PRESENTER: Jim Neubauer, City Administrator
SUBJECT: Agreements, KLJ & Braun related to Flood Protection

STATEMENT/PURPOSE: Consider entering into agreements for potential flood protection items.

BACKGROUND/ALTERNATIVES: The weather outlook for the next few months remains with below average temperatures and higher than average precipitation and the saturated soil conditions certainly raise the possibility of spring flooding.

We have contacted Kadrmas, Lee & Jackson (KLJ) for a proposal as they did considerable work for the City of Mandan during the 2011 flood event in preparation and also removal of bay plugs etc. and feel they would be uniquely qualified to perform similarly related services should the need arise in 2020.

The agreement with KLJ provides for the following phases in order, Topographic Survey, Preliminary Design, Entitlements, Final Design and Bidding and Negotiating. This gets us to a point to bringing bids to the City Commission for consideration. Should the need arise after that point, a separate contract would be negotiated.

Unlike in 2011 whereby the bays (Bridgeview, Marina, Borden Harbor and Lakewood) were plugged with clay, we think the installation of plugs via sheetpiling would be the preferred method causing much less property and city infrastructure damage from the number of trucks hauling material.

Getting to a point of bidding the project would grant assurances the necessary contractors and material would be available should the installation of plugs be necessary.

The contract with Braun is for the geotechnical evaluation and design assistance of the sheetpile walls. The purpose of this evaluation will be to characterize subsurface geologic conditions at selected exploration locations, evaluate their impact on the design and construction of sheetpile walls, and provide a design section to resist the design loads.

NDCC 40-22-01.1 was specifically enacted to enable the creation of a special assessment districts for the assessing of flood protection costs and clean up against the benefitting properties. The creation of a special assessment district for assessment of flood protection costs does not require an emergency declaration. Unless there is a presidentially declared disaster, there would be no FEMA reimbursement.

The need to move on this expeditiously is considerable. Should the board determine to issue a request for proposals for these services, it could be 60 days out (advertise, interview, select) and the ability to secure necessary bid documents and secure materials prior to when flooding may occur would not be timely. We had hoped the weather forecast would forgo the need to take steps such as this.

Morton County Emergency Management is currently researching reimbursement options should the City enter into these contracts prior to a possible emergency declaration. Even if a declaration is not issued, the work done for these contracts would be valuable for years to come should the need arise.

ATTACHMENTS: KLJ Agreement & Braun Agreement

FISCAL IMPACT: Estimated cost not to exceed \$100,000 from the city sales tax fund with possible reimbursements, Federal, State or Local sources.

STAFF IMPACT: Staff time impacts will be to Administration, Engineering, Public Works and other city departments.

LEGAL REVIEW:

RECOMMENDATION:

- I recommend the City Commission waive the public bidding requirements for the selection of an engineering firm and geotechnical firm related to potential flood related projects.
- I recommend the approval of the proposed contract with KLJ to provide such engineering services.
- I recommend the approval of the proposed contract with Braun for geotechnical services.
- I recommend the funding source for such services to be \$100,000 to come from the City Sales Tax fund, with possible reimbursement from Federal/State or Local sources.

SUGGESTED MOTION:

- I move the City Commission waive the public bidding requirements for the selection of an engineering firm and geotechnical firm related to potential flood related projects.
- I move the approval of the proposed contract with KLJ to provide such engineering services.

Board of City Commissioners

Agenda Documentation

Meeting Date: January 21, 2020

Subject: Agreements, KLJ & Braun related to Flood Protection

Page 3 of 3

- I move recommend the approval of the proposed contract with Braun for geotechnical services.
- I move the funding source for such services to be \$100,000 to come from the City Sales Tax fund, with possible reimbursement from Federal/State or Local sources.

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of January 21, 2020 ("Effective Date") between
The City of Mandan, 205 2nd Ave NW, Mandan, ND 58554 ("Owner") and
Kadmas, Lee & Jackson, Inc., 4585 Coleman Street, Bismarck, ND 58503 ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Temporary Flood Protection ("Project").

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows: **Topographic Survey Phase, Preliminary Design Phase, Entitlements Phase, Final Design Phase, and Bidding and Negotiating Phase.** See Exhibit A for complete scope of services.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
1. any development that affects the scope or time of performance of Engineer's services;
 2. the presence at the Site of any Constituent of Concern; or

3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has 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.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

~~5.02 *Designing to Construction Cost Limit*[RESERVED]~~

- ~~A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.~~

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances

at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, 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.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;
 - c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2018 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor'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 Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's, failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraphs A1.07 and A1.08. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services 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 hereof through no fault of the terminating party.
 - 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 Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.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 thereof; 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 notice from Owner.

- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose

value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.06, 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. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *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 6.08.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, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated 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 in this Agreement:
 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
 2. 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.

3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."**
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations **and to the extent (if any) required in Exhibit I, "Limitations of Liability."**
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 - 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.

4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and

allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and

start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.

25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included*:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. [NOT USED]
- ~~D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. [NOT USED]~~
- ~~E. Exhibit E, Notice of Acceptability of Work. [NOT USED]~~
- ~~F. Exhibit F, Construction Cost Limit. [NOT USED]~~
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.

- I. Exhibit I, Limitations of Liability.
- ~~J. Exhibit J, Special Provisions. [NOT USED]~~
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) 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 written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Affirmative Action:*

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Mandan, North Dakota

Engineer: Kadrmas, Lee & Jackson, Inc.,

By: _____
Print name: Tim Helbling
Title: Mayor
Date Signed: _____

By: _____
Print name: Mark Anderson
Title: Vice President
Date Signed: _____

Engineer License or Firm's Certificate No. (if required):

061-C

State of: ND

Address for Owner's receipt of notices:
City of Mandan Engineering Department
205 2nd Ave NW
Mandan, ND 58554

Address for Engineer's receipt of notices:
Kadrmas, Lee & Jackson, Inc.
4585 Coleman Street
Bismarck, ND 58503

Designated Representative (Paragraph 8.03.A):
Jim Neubauer
Title: City Administrator
Phone Number: 701-667-3210
E-Mail Address: jneubauer@cityofmandan.com

Designated Representative (Paragraph 8.03.A):
Brad Krogstad
Title: Project Manager
Phone Number: 701-355-8437
E-Mail Address: brad.krogstad@kljeng.com

This is **EXHIBIT A**, consisting of 11 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 21, 2020.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

PART 1 – BASIC SERVICES

Project Understanding:

KLJ (Engineer) will assist the City of Mandan, North Dakota (Owner) with design and bidding for emergency flood protection, consisting of steel sheet pile walls, at each of the four sites along the Missouri River as illustrated on the attached **Exhibit A.1**. The overarching purpose of the sheet pile wall(s) will be to retain the Missouri River water levels during a flood event similar to the flood of 2011 and control water levels within each of the bays by pumping or other means. It is assumed that design elevations will be similar to those experienced during the flood of 2011. Sheet pile wall structures will be temporary in nature such that they will not be watertight, will not remain in place, and will not be certifiable by the US Army Corp of Engineers. The Owner will be responsible for maintaining water levels in the bays through pumping or other means within the design tolerances provided in the project plans and specifications throughout the flood event.

It is our understanding the Owner would like to develop plans and specifications to be ready for bidding in the spring of 2020. The intent is to have plans ready for implementation if significant flooding is forecasted and may or may not be bid in 2020. The bid will be structured such that there will be four phases to the project: the successful bidder(s) shall reserve the materials necessary to construct the project, purchase the materials to construct the project, construct the project, and finally remove steel pile from the sites. The Owner may choose to purchase materials for the successful bidder to install as an Alternate to Contractor provided materials.

KLJ will be the prime consultant on the project and will provide survey and engineering (civil and structural). The Owner shall be responsible for retaining the services of a geotechnical engineer with the assistance of KLJ.

Project Schedule:

Notice to Proceed: January 22, 2020

Kickoff Meeting: January 27, 2020

Topographic Survey: Two weeks following Notice to Proceed (approx. 1/24/20 to 2/7/2020)

Geotechnical Investigation: Four weeks following Notice to Proceed (approx. 1/23/20 to 2/21/2020)

Final Design: Three weeks from completion of Geotechnical Investigation (approx. 2/24/20 to 3/13/2020)

City Review and Approval: One week from completion of Final Design (approx. 3/13/20 to 3/20/2020)

Bidding: Three weeks from City Approval (approx. 3/23/20 to 4/14/20)

Project Award & Contract(s): Ten Days from City Approval of bid(s) (approx. 4/22/20 to 5/1/20)

Construction: TBD (approx. May/June 2020)

Parties:

Owner – City of Mandan, North Dakota

Engineer – Kadrmas, Lee, & Jackson, Inc

Geotechnical Engineer – Braun Intertec

Contractor – To Be Determined

Engineer shall provide Basic Services as set forth below.

A1.01 Study and Report Phase (Not Included)

A1.02 Topographic Survey Phase

A. Owner shall:

1. Coordinate with property owner(s) to obtain permission for Engineer to perform topographic survey.
2. Notify property owner(s) when topo survey will be performed.
3. Provide current title report and supporting documents for all potentially impacted properties.

B. Engineer shall provide:

1. Topographic Survey

- a. Provide topographic field survey to locate utilities, and surface features such as buildings, fences, trees, roadways, sidewalks, curb and gutter, etc.
- b. Identify and map existing recorded easements and rights-of-way on the property found within the Owner provided title searches.
- c. Survey geotechnical borings performed by the geotechnical engineer in the Preliminary Design Phase.
- d. Identify utilities on base map based on information provided by utility owners and located by ND One Call.
- e. Prepare base map of existing conditions of proposed development site.

C. Although coordination and notification to property owner(s) is excluded, Engineer is available to assist with these items as an Additional Service.

D. Engineer's services under the Topographic Survey Phase will be considered complete on the date when the topographic survey basemap has been delivered to Owner.

A1.03 Preliminary Design Phase

A. Owner shall:

1. Coordinate with property owner(s) to obtain permission for geotechnical engineer to perform soil borings
2. Notify property owner(s) when soil borings will be performed.
3. Furnish the services of geotechnical consultants/engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests,

evaluation of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and recommendations for sheet piling walls, and other construction considerations appropriate for the site, based on geotechnical sampling for design. The Engineer assumes no responsibility for assumptions made with regard to the services of the geotechnical consultant/engineer.

B. Engineer shall:

1. Coordinate with the geotechnical engineer to obtain design for sheet pilings.
 - a. Design of sheet pile wall section and embedment depth will be performed by the geotechnical engineer based on loads determined by Engineer.
 - b. Design loads for the sheet pile walls shall be determined utilizing the US Army Corp of Engineers (USACE) Manual No. 1110-2-2502: Design of Retaining and Flood Walls. However, the wall(s) itself will not be USACE certifiable.
2. Provide a copy of the topographic survey basemap to geotechnical engineer.
3. Review geotechnical report prepared for the project to obtain geotechnical parameters necessary to complete the design.

C. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the geotechnical report has been delivered to the Owner.

A1.04 Entitlements Phase

A. Owner shall:

1. Coordinate and negotiate with property owner(s) to obtain approval for easements necessary to construct the project.
2. Obtain signatures from easement grantors.
3. Provide legal counsel to review documents provided by Engineer and to prepare the necessary easement documents.
4. Record easements.

B. Engineer shall:

1. Together with Owner, attend up to eight (8) meetings with property owner(s), or other parties, to coordinate and negotiate easements.
 - a. Attendance of additional meetings or additional coordination and/or negotiation efforts outside of meetings will be considered an Additional Service
2. Prepare up to eight (8) easement exhibits and corresponding legal descriptions.
 - a. Preparation of additional easement exhibits and legal descriptions will be considered an Additional Service.

3. Upon completion of the documents above, the Engineer shall submit the documents to the Owner for their attorney to review and combine with the easement language.
 4. Following approval of easement documents by Owner and their attorney, Engineer is available to assist Owner with obtaining signatures or recording of documents as an Additional Service.
- C. Other Items to be Noted
1. The Owner assumes all risk of ownership discrepancies and conflicts with easements or encumbrances not included in the title work to be provided by the Owner.
- D. Engineer's services under the Entitlements Phase will be considered complete on the date when the easements identified above have been recorded.

A1.05 Final Design Phase

- A. Owner Shall:
1. Obtain necessary approvals and permits to construct the project.
 - a. It is assumed that permits may not be required until implementation/construction of the project occurs.
- B. After acceptance by Owner of the Preliminary Design Phase and Entitlements Phase documents, Engineer shall:
1. Prepare construction documents (plan drawings, details, and specifications) for the sheet pile wall systems based on geotechnical engineer's design performed in the Preliminary Design Phase for the four sites illustrated on the attached **Exhibit A.1**.
 - a. Plans are anticipated to include:
 - 1) Title Sheet
 - 2) Notes
 - 3) Basis of Estimate/Estimate of Quantities/Opinion of Cost
 - 4) Overall Site Plan
 - 5) Individual Site Plans
 - 6) Typical Sections
 - 7) Details
 - 8) Removal plan
 2. The overall site plan for the project will indicate where temporary levees were constructed in 2011. However, Engineer's services do not include design of levees, dikes, or impoundments other than the sheet pile wall systems described herein.
 3. Plans will identify location of circulation pipes which will require plugging as part of the temporary flood protection efforts. Means and methods to plug the circulation pipes will be the responsibility of the Owner and will not be specified by Engineer.

4. Engineer's scope does not include development of staging plans, sheet pile storage area plans, or sheet pile delivery logistic plans. The Contractor shall develop these plans under the guidance of the Owner.

C. Permitting (*Not Included*)

1. The following permits may be necessary for this construction project. The Engineer's services do not include applying for or obtaining these permits. The Engineer will refer the Owner or Contractor to the appropriate section(s) of the design plans, if applicable, to aid the Owner or Contractor in the permit applications.
 - a. US Army Corps of Engineers (USACE) coverage under Regional Permit No. RGP 9601-08, expiration Date 4/30/2024, or other applicable General Permit(s) deemed necessary by USACE.
 - b. North Dakota State Water Commission (ND SWC) Sovereign Lands Permit, or other applicable permit(s) deemed necessary by ND SWC.
 - c. North Dakota Department of Environmental Quality (DEQ) North Dakota Pollutant Discharge Elimination System (NDPDES) Construction Erosion Control Permit.
 - 1) The Owner or Contractor shall be responsible for completing the Notice of Intent (NOI) and developing the Stormwater Pollution Prevention Plan (SWPPP) as required by the Federal, State and local government. It is the responsibility of the Owner or Contractor to ensure compliance and to modify the SWPPP for actual schedule and construction methods.
 - d. City Permits
 - 1) The Contractor shall obtain any necessary City permits.
 - e. All permit fees shall be billed directly to the Contractor or Owner.
 - f. Engineer is available to assist Owner with permit applications as an Additional Service

D. Specifications

1. Technical specifications will be prepared for the project for the items included under Engineer's Services.
2. Procedural and contractual forms to be used for bidding purposes will be EJDC front end specifications, including construction contracts and supplemental conditions.
3. It is assumed the project will be bid with up to three (3) prime contracts as follows:
 - a. Reserve, Supply, and Install Sheet Piling
 - b. Reserve and Supply Sheet Piling (Alternate to item a.)
 - c. Install Owner supplied Sheet Piling (Alternate to item a.)
 - d. Remove Sheet Piling

E. Engineer's Opinion of Probable Construction Cost [Not Included]

F. Owner Coordination

1. It is assumed that the Engineer will attend up to a total of three (3) one-hour meetings with the Owner or other external parties during the final design phase. The Engineer will attend those meetings deemed appropriate for their scope of services either in person or through a telephone or video conference. These meetings are intended to discuss the scope and status of the project with the Owner and not for the purpose of coordination or negotiation with property owners.
2. The Engineer will be available to attend additional meetings as an Additional Service.
3. Engineer shall provide copies of drawings, reports, specifications and other necessary information to the Owner in either PDF or paper copy format.

G. Deliverables

1. Construction drawings and appropriate details for the above tasks identified in this Phase.
2. Technical Specifications

H. Other Items to be Noted

1. Engineer's fee does not include submittal, review, recording, permit, system development, or other fees. These fees are to be paid by Owner.
 2. Scope does not include drafting, obtaining, or recording any easements or common use agreements except as specifically stated in the Entitlements Phase above.
 3. The Owner will be responsible for maintaining water levels in the bays by pumping or other means within the design tolerances provided in the project plans and specifications throughout the flood event.
- i. Engineer's services under the Final Design phase will be considered complete on the date when the above deliverables have been submitted to the Owner for approval.

A1.06 Bidding or Negotiating Phase

A. After acceptance by Owner of the construction documents completed in the Final Design Phase, and upon authorization by Owner to proceed, Engineer shall:

1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.
 - a. Prepare advertisement for to be published by Owner
 - b. Assemble bid documents and upload them to QuestCDN and builder's exchanges.

2. Issue up to one (1) addendum as appropriate to clarify, correct, or change the bidding documents.
 3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
 4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
 5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders.
 6. If necessary, attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
 7. Assist Owner with issuance of Notice of Award(s) to Contractor(s).
 8. Bidding and Negotiating services shall be provided for the project to be awarded to up to three (3) Contractors.
- B. The Bidding or Negotiating Phase will be considered complete upon award of contract(s), commencement of the Construction Phase, or upon cessation of negotiations with prospective contractors.

A1.07 Construction Phase - Surveying (Not Included)

A1.08 Construction Phase – Observation & Administration (Not Included)

A1.09 Post-Construction Phase (Not Included)

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Authorization

- A. If authorized by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below. Engineer shall proceed with such Additional Services with the understanding that the Engineer will be paid hourly for such services at the Engineer's standard hourly rates unless an agreement has been reached between the parties for other methods of payment. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
1. Services in addition to those defined under Basic Services including but not limited to: study and report phase services, marketing exhibits, environmental studies, traffic impact analysis, opinions of probable construction cost, permitting, permit application materials, requests for zoning change or any deviation or variance from local standards or zoning regulations, or any entitlements services such as lot modifications, platting, etc.
 2. Design services in addition to those defined under Basic Services including but not limited to: water, sanitary sewer, storm sewer, electrical or telecommunication service, lighting, fencing, landscape, stormwater or sediment removal systems, dewatering systems, mechanical engineering services or pumping systems, or design of offsite improvements.

3. Construction Phase – Observation & Administration services including, but not limited to, Contractor/Owner Agreement review and coordination, shop drawing review, response to RFI's, observation of construction, site visits, review of payment applications.
4. Post Construction Phase services including, but not limited to, post construction survey, preparation of "Record" or "As-Built" drawings, preparation and issuance of certification(s) for any portion of the work.
5. Preparation or revision of construction documents or design changes during construction.
6. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
7. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
8. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer, or the Project's design requirements, including, but not limited to, changes in size, complexity, character of construction, method of financing, or Owner's schedule or coordination causing unreasonable delay in the orderly and sequential progress of the Engineer's services; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
9. Redesign services requested to meet the Owner's construction budget after approval of the Final Design phase of the Project.
10. Services resulting from Owner's request to modify previously approved deliverables or to evaluate additional alternative solutions beyond those agreed to under Basic Services.
11. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
12. Services resulting from conflicting direction from the Owner or from multiple representatives of the Owner.
13. Services provided beyond the dates specified in the Owner's original schedule.
14. Services required to provide copies of drawings, reports, specifications and other necessary information to the Owner and other consultants in a format other than PDF, or paper copy.
15. Providing renderings or models for Owner's or Contractor's use, including services in support of building information modeling or civil integrated management, other than specified under Basic Services.

16. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility studies and cash flow analyses, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed or furnished by Owner.
17. Furnishing services of Consultants for other than Basic Services.
18. Providing data or services that were to be provided by the Owner.
19. Services attributable to more prime construction contractors than specified under Basic Services.
20. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
21. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner, Contractor; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
22. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner, or Contractor for the Work or a portion thereof other than provided under Basic Services.
23. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services or making revisions to drawings for "or equal" items.
24. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
25. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
26. Modifying final approved design or digital files as may be required for Owner's or Contractor's use during construction.
27. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner other than provided under Basic Services.
28. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.

29. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
30. Preparation of operation, maintenance, or staffing manuals.
31. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
32. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
33. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
34. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, claim, dispute resolution, or other legal or administrative proceeding involving the Project.
35. Providing construction surveys and staking to enable Contractor to perform its work; any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys (except as agreed to under Basic Services).
36. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner or Contractor.
37. Extensive services required during any correction period, or with respect to monitoring Contractor's compliance with warranties and guarantees called for in the Construction Contract (except as agreed to under Basic Services).
38. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

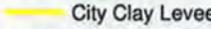
A2.02 Additional Services Not Requiring Owner's Authorization

- B. Engineer shall advise Owner that the Engineer is performing or furnishing the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance authorization from Owner. Engineer shall proceed with such Additional Services with the understanding that the Engineer will be paid hourly for such services at the Engineer's standard hourly rates unless an agreement has been reached between the parties for other methods of payment. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
 1. Attending meetings requested by Owner or Contractor in addition to those specified as Basic Services.
 2. Services in connection with work change directives and change orders to reflect changes requested by Owner or Contractor.

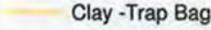
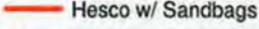
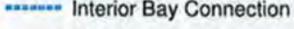
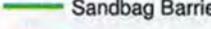
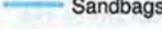
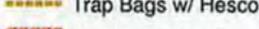
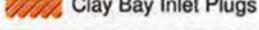
3. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after beginning the Bidding Phase of the Construction Documents in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
4. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
5. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
6. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
7. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
8. Services during the Construction Phase rendered after the original date for completion of the Work referred to in this Agreement.
9. Reviewing a Shop Drawing more than two (2) times, as a result of repeated inadequate submissions by Contractor.
10. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

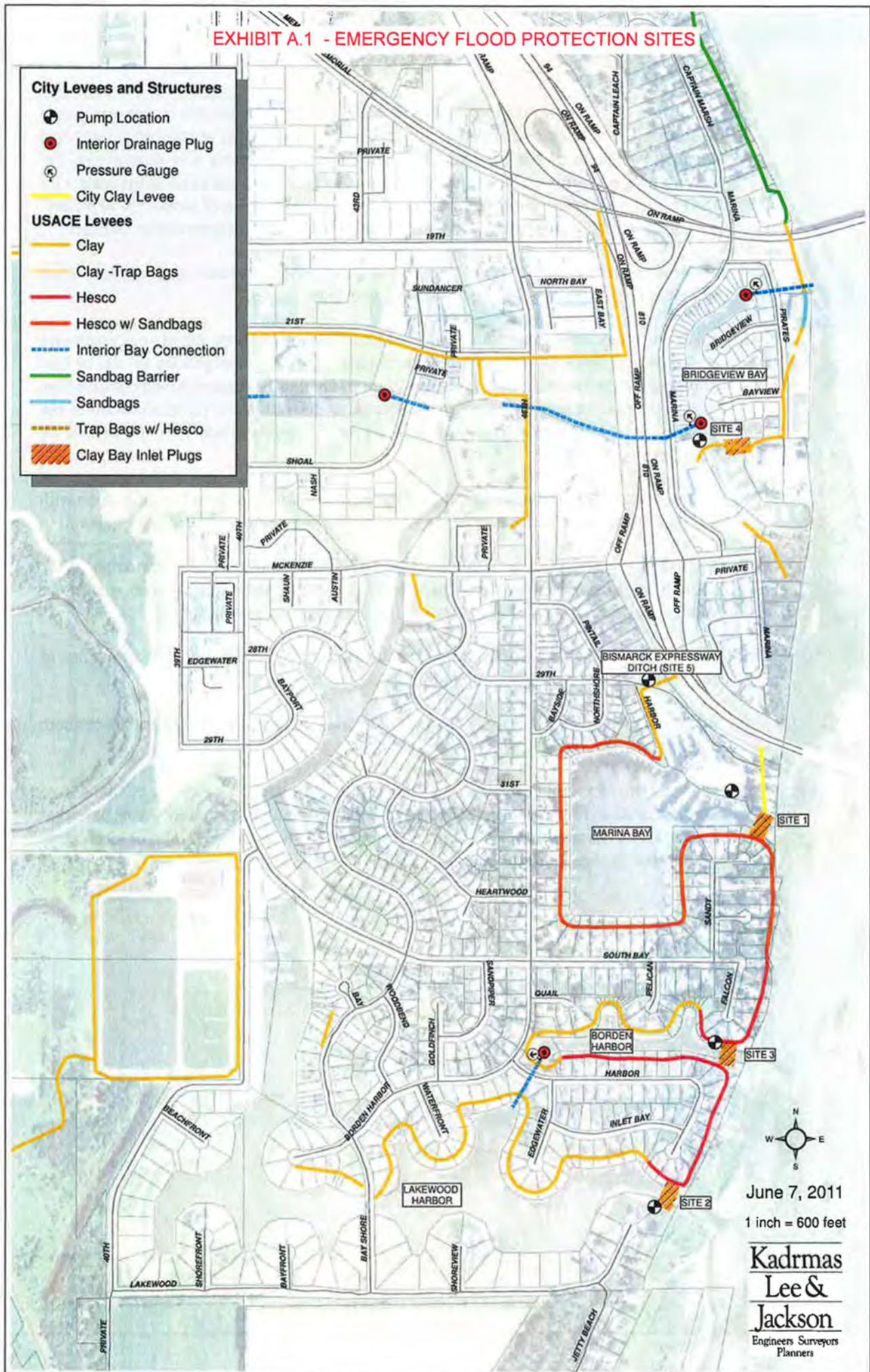
EXHIBIT A.1 - EMERGENCY FLOOD PROTECTION SITES

City Levees and Structures

-  Pump Location
-  Interior Drainage Plug
-  Pressure Gauge
-  City Clay Levee

USACE Levees

-  Clay
-  Clay -Trap Bags
-  Hesco
-  Hesco w/ Sandbags
-  Interior Bay Connection
-  Sandbag Barrier
-  Sandbags
-  Trap Bags w/ Hesco
-  Clay Bay Inlet Plugs



June 7, 2011

1 inch = 600 feet

**Kadmas
Lee &
Jackson**
Engineers Surveyors
Planners

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 21, 2020.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
- B. Give instructions to Engineer regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract, 2018 Edition), supplementary conditions, text, and related documents and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
- C. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
- D. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.

4. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site, and adjacent areas.
 6. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- F. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
- G. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- J. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this

Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, then designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- M. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- N. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
- O. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
- P. Place and pay for advertisement for Bids in appropriate publications.
- Q. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- R. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
- S. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

This is **EXHIBIT C (BC-1)**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 21, 2020.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Standard Hourly Rates

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.02 Compensation For Basic Services– Standard Hourly Rates Method of Payment

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A as follows:
1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any.
 2. The Standard Hourly Rates charged by Engineer constitute full and complete compensation for Engineer’s services, including labor costs, overhead, and profit; the Standard Hourly Rates do not include Reimbursable Expenses or Engineer’s Consultants’ charges.
 3. The total compensation for services under Paragraph C2.02 is estimated to be **\$64,200.00** based on the following estimated distribution of compensation:

a. Topographic Survey Phase	\$7,700.00
b. Preliminary Design Phase	\$2,800.00
c. Entitlements Phase	\$11,700.00
d. Final Design Phase	\$35,700.00
e. Bidding and Negotiating Phase	\$6,300.00
 4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03 and C2.04 below.
 5. The total estimated compensation for Engineer’s services included in the breakdown by phases as noted above incorporates all labor, overhead, profit, and assumed Reimbursable Expenses, and Engineer’s Consultants’ charges, if any.
 6. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of January 1, 2021) to reflect equitable changes in the compensation payable to Engineer.

- B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-2 is conditioned on a period of service not exceeding five (5) months from the effective date of the Agreement. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

C2.03 *Compensation For Reimbursable Expenses*

- A. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of 1.0.

C2.04 *Other Provisions Concerning Payment*

- A. The amounts payable to Engineer for the charges of Engineer's Consultants, if any, will be the amounts charged by Engineer's Consultants to Engineer times a factor of 1.1.
- B. *Factors:* The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
- C. *Estimated Compensation Amounts:*
1. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
 2. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.
 3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **EXHIBIT C (AS-1)**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 21, 2020.

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

D. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer’s personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer’s Consultant’s charges, if any.

E. *Compensation For Reimbursable Expenses:*

1. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.0.

F. *Other Provisions Concerning Payment for Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer’s Consultants, those charges shall be the amounts billed by Engineer’s Consultants to Engineer times a factor of 1.1.
2. *Factors:* The external Reimbursable Expenses and Engineer’s Consultant’s Factors include Engineer’s overhead and profit associated with Engineer’s responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer’s charges and upon Owner’s timely request, Engineer shall make copies of such records available to Owner at cost

This is **EXHIBIT G**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 21, 2020.

Insurance

Paragraph 6.05 of the Agreement is supplemented to include the following agreement of the parties:

G6.05 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.05.A and 6.05.B of the Agreement are as follows:

1. By Engineer:

- | | |
|--|-----------------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Bodily injury, each accident: | <u>\$1,000,000.00</u> |
| 2) Bodily injury by disease, each employee: | <u>\$1,000,000.00</u> |
| 3) Bodily injury/disease, aggregate: | <u>\$1,000,000.00</u> |
| c. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | <u>\$1,000,000.00</u> |
| 2) General Aggregate: | <u>\$2,000,000.00</u> |
| d. Excess or Umbrella Liability -- | |
| 1) Per Occurrence: | <u>\$5,000,000.00</u> |
| 2) General Aggregate: | <u>\$5,000,000.00</u> |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | <u>\$1,000,000.00</u> |
| f. Professional Liability -- | |
| 1) Each Claim Made | <u>\$5,000,000.00</u> |
| 2) Annual Aggregate | <u>\$5,000,000.00</u> |

2. Engineer and Engineer's Consultants shall be listed on Owner's policies of insurance as additional insureds as provided in paragraph 6.05.B.

3. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability policies of insurance.

This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 21, 2020.

Dispute Resolution

Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually agreed upon mediator. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 21, 2020.

Limitations of Liability

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

A. Limitation of Engineer's Liability

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by Laws and Regulations, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed 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 required under this Agreement.
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages:* To the fullest extent permitted by Laws and Regulations, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.11, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes, including but not limited to cost of replacement, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, and regulatory fines.

- B. *Indemnification by Owner:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is EXHIBIT K, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated January 21, 2020.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

The Effective Date of this Amendment is: _____.

Background Data

Effective Date of Owner-Engineer Agreement:

Owner:

Engineer:

Project:

Nature of Amendment: [Check those that are applicable and delete those that are inapplicable.]

- ___ Additional Services to be performed by Engineer
- ___ Modifications to services of Engineer
- ___ Modifications to responsibilities of Owner
- ___ Modifications of payment to Engineer
- ___ Modifications to time(s) for rendering services
- ___ Modifications to other terms and conditions of the Agreement

Description of Modifications:

Here describe the modifications, in as much specificity and detail as needed. Use an attachment if necessary.

Agreement Summary:

Original agreement amount:	\$ _____
Net change for prior amendments:	\$ _____
This amendment amount:	\$ _____
Adjusted Agreement amount:	\$ _____

Change in time for services (days or date, as applicable): _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNER:

ENGINEER:

By: _____
Print
name: _____

By: _____
Print
name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____



Braun Intertec Corporation
1502 Grumman Lane
Bismarck, ND 58504

Phone: 701.255.7180
Fax: 701.255.7208
Web: braunintertec.com

January 15, 2020

Proposal QTB113531

Mr. Jim Neubauer
City of Mandan
205 Second Ave NW
Mandan ND 58554

Re: Proposal for a Geotechnical Evaluation and Design Assistance
Temporary Sheetpile Walls
Southside
Mandan, North Dakota

Dear Mr. Neubauer:

Braun Intertec Corporation respectfully submits this proposal to complete a geotechnical evaluation for the proposed temporary sheetpile walls to resist flooding for the south side of Mandan.

Our Understanding of Project

Based on discussions with KLJ's Brad Krogstad, PE, and Cassie McNames, PE, we understand that you are considering closing 4 bays with temporary sheetpile walls in anticipation of spring flooding. The walls will be installed at the inlets shown on the attached Appendix A drawing. Elevation details need to be confirmed, but we understand that the anticipated flood level will be similar to the 2011 flooding. KLJ will estimate the water in the bays, and assist us in estimating the elevation of the bottom of the bays. We understand that the sheetpile wall may experience wave and ice loading in addition to the unbalanced hydrostatic pressure.

We intend to prepare a conceptual design based on nearby borings that we have performed at Fox Island in Bismarck. To confirm that the design is feasible, we will perform soil borings at 4 of the sites. You will also obtain boring logs from NDDOT for the Bismarck Expressway Bridge and the Veteran's Memorial Bridge. We will use the boring information from the sites, and additional survey information provided by KLJ, to develop a sheetpile section adequate to resist the water and ice loading. KLJ will provide the layout of the walls in plan, and provide design drawings that are suitable for a contractor to bid. Based on preliminary estimates, the sheetpile wall may require buttressing or a secondary support system, but we will initially evaluate the feasibility of installing a single row of cantilever sheetpiles for the flood protection.

Purpose

The purpose of our geotechnical evaluation will be to characterize subsurface geologic conditions at selected exploration locations and evaluate their impact on the design and construction of sheetpile walls, and provide a design section to resist the design loads.

AA/EOE

Scope of Services

The following tasks are proposed to help achieve the stated purpose. If unfavorable or unforeseen conditions are encountered at any point during the completion of the tasks that lead us to recommend an expanded scope of services, we will contact you to discuss the conditions before resuming work.

Site Reconnaissance and Conceptual Design

We will review nearby soil borings and the preliminary project geometry to identify the depth and type of sheeting required to resist the loading. We will also visit the site to confirm site access and identify impediments that may limit our access to the drill rig.

Site Access, Staking and Utility Clearance

Drilling services will be performed by Braun Intertec Drilling, LLC, a subsidiary of Braun Intertec Corporation. Based on aerial images from Google Earth™, it appears that the sites are accessible to a truck-mounted drill rig.

Tree clearing, debris or obstruction removal, grading of navigable paths, and snow plowing are not included in our scope of services.

We will stake prospective subsurface exploration locations by measuring dimensions from building or other nearby site features with a cloth tape at approximate right angles from those references. If exploration locations are critical to the development of earthwork or the plans and specifications, we request that you retain the services of a registered surveyor.

Depending on access requirements, ground conditions or potential utility conflicts, our field crew may alter the exploration locations from those proposed to facilitate accessibility. We will need you to contact the homeowners and provide permission to access their properties, since the borings will be drilled on private property.

Prior to drilling or excavating, we will contact North Dakota One Call and arrange for notification to the appropriate utility vendors to mark and clear the exploration locations of public underground utilities. You, or your authorized representative, are responsible to notify us before we begin our work of the presence and location of any underground objects or private utilities that are not the responsibility of public agencies.

Penetration Test Borings

We propose to drill 4 standard penetration test borings to 50 feet. Standard penetration tests will be performed at 2 1/2-foot vertical intervals to a depth of about 20 feet, and at 5-foot intervals at greater depths.

We have also made provisions to obtain 4 thin-walled tube samples of the soils encountered for laboratory testing.

If groundwater is encountered in the boreholes, the depth where it is observed will be recorded on the boring logs.

If existing fill, organic materials or other structurally unfavorable soils are not penetrated above the intended boring termination depths, we will extend the borings to obtain at least 5 feet of penetration into more competent materials at greater depths. The additional information will help evaluate such issues as excavation depth, consolidation settlement, and foundation alternatives, among others. If deeper borings (or additional borings) are needed, we will contact you prior to increasing our total estimated drilled footage and submit a Change Order summarizing the anticipated additional effort and the associated cost, for your review and authorization.

Borehole Abandonment

Based on the intended exploration depths, we will backfill all of the borings with auger to the ground surface.

Over time, subsidence of borehole (core) backfill may occur, requiring surface grades to be re-leveled or bituminous or concrete patches to be replaced. Braun Intertec is not assuming responsibility for re-leveling or re-patching subsequent to initial backfilling and patching long term.

Our drilling activities may also impact the vegetation and may rut the surface to access boring locations. Restoration of vegetation and turf is not part of our scope of services.

Sample Review and Laboratory Testing

Recovered samples will be returned to our laboratory, where they will be visually classified and logged by a geotechnical engineer. To help classify the materials encountered and estimate their engineering properties, we have budgeted to perform 10 moisture content tests, 8 mechanical analyses (through a #200 sieve only), and 4 unit weight tests.

Reporting

Data obtained from the borings and laboratory tests will be used to evaluate the subsurface profile and groundwater conditions, perform engineering analyses related to structure design and performance and prepare a report, including:

- A CAD sketch showing project components, limits, and exploration locations.
- Logs of the borings describing the materials encountered and presenting the results of our groundwater measurements and laboratory tests.
- A summary of the subsurface profile and groundwater conditions.
- Discussion identifying the site conditions that will impact structure design and performance, qualifying the nature of their impact, and outlining alternatives for mitigating their impact.
- Recommendations for the design of the sheetpile wall, including estimates of unit weight, passive earth pressure, and active earth pressure.

Only an electronic copy of our report will be submitted to you unless you request otherwise. At your request, the report can also be sent to additional project team members.

Design Assistance

We will design a sheetpile wall that can resist the design conditions, based on the water level in the Missouri River (flood), protected area (bay), channel bottom, wave, and ice loading. We will provide the recommended minimum sheet pile section, sheet pile length, and required embedment depth. We will also provide recommended wale beam elevation and section, a secondary sheetpile wall, or sand buttressing, if required. We intend to provide one section. If conditions are found that would make a second section necessary, we will discuss the cost and benefit with you prior to proceeding. We would need to increase our design time, but the second section could potentially reduce material and installation costs.

Additional Services

If borings must be extended beyond their intended termination depths, or if additional borings are required, we will charge for the additional time and materials spent on the project (in excess of what we have budgeted) at the rates indicated in the attached Project Proposal. Additional costs for laboratory testing and engineering required due to the additional drilling will be also charged at the unit rates indicated in the attached Project Proposal.

Cost

We will furnish the services described in this proposal for an estimated fee of \$31,182. A tabulation showing hourly and/or unit rates associated with our proposed scope of services is attached.

Our work may extend over several invoicing periods. As such, for work that is performed during the course of each invoicing period, we will submit partial progress invoices.

Schedule

We anticipate the field exploration can begin within approximately 3 weeks of written authorization; the field exploration will take 4 days to complete. Sample classification, laboratory testing, engineering analyses and report preparation will likely take an additional 3 weeks. We will pass along results, however, as they are obtained and reviewed. We anticipate we can submit our report and design by the end of February.

If our proposed scope of services cannot be completed according to this schedule due to circumstances beyond our control, we may need to revise this proposal prior to completing the remaining tasks.

General Remarks

We will be happy to meet with you to discuss our proposed scope of services further and clarify the various scope components.

We appreciate the opportunity to present this proposal to you. **Please sign and return a copy to us in its entirety.** The proposed fee is based on the scope of services described and the assumptions that our services will be authorized within 30 days and that others will not delay us beyond our proposed schedule.

We include the Braun Intertec General Conditions, which provide additional terms and are a part of our agreement.

To have questions answered or schedule a time to meet and discuss our approach to this project further, please contact Wes Dickhut at 701.355.5430 or by email at wdickhut@braunintertec.com.

Sincerely,

BRAUN INTERTEC CORPORATION


Jeff Segar, PE

Technical Leader, Principal Engineer


Charles W. (Wes) Dickhut, PE

Group Manager, Principal Engineer

Attachments:

- Appendix A – Emergency Flood Protection Sites
- Project Proposal
- General Conditions (1/1/18)

c: Cassie McNames, PE, KLJ

The proposal is accepted, and you are authorized to proceed.

Authorizer's Firm

Authorizer's Signature

Authorizer's Name (please print or type)

Authorizer's Title

Date

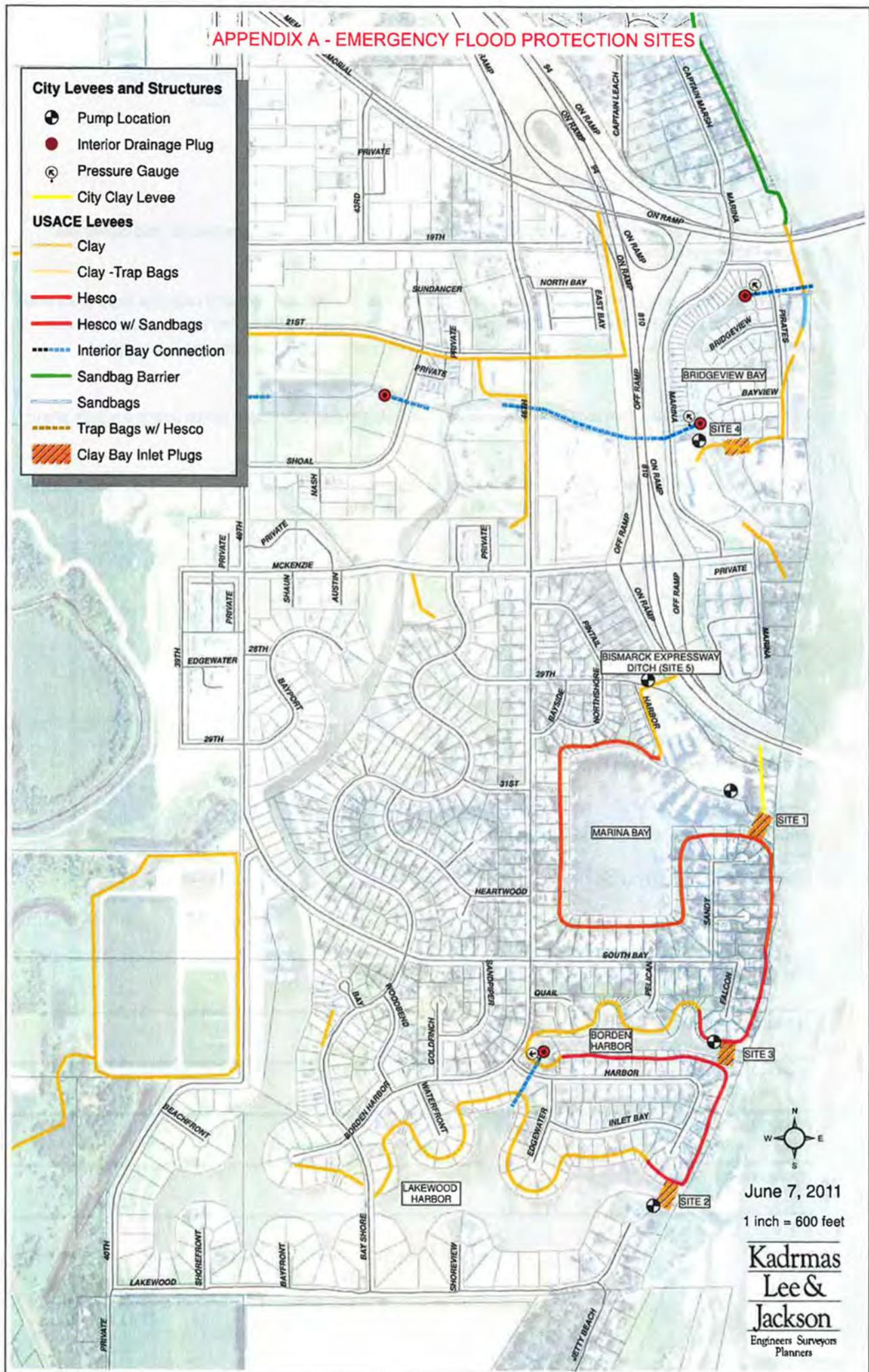
APPENDIX A - EMERGENCY FLOOD PROTECTION SITES

City Levees and Structures

-  Pump Location
-  Interior Drainage Plug
-  Pressure Gauge

USACE Levees

-  Clay
-  Clay - Trap Bags
-  Hesco
-  Hesco w/ Sandbags
-  Interior Bay Connection
-  Sandbag Barrier
-  Sandbags
-  Trap Bags w/ Hesco
-  Clay Bay Inlet Plugs



June 7, 2011

1 inch = 600 feet

**Kadmas
Lee &
Jackson**
Engineers Surveyors
Planners

Project Proposal

QTB113531

Mandan Sheetpile Wall Evaluation and Design

Client:

City of Mandan
Justin Forseth
205 Second Avenue NW
Mandan, ND 58554
(701) 667-3215
jonathan.mathisen@cityofmandan.com

Work Site Address:

Southern Levees
Mandan, ND

Service Description:

Geotechnical Evaluation

	Description	Quantity	Units	Unit Price	Extension
Phase 1	Geotechnical Evaluation				
Activity 1.1	Site Reconnaissance				\$2,225.00
1871	GEO Trip Charge	1.00	Each	25.00	\$25.00
130	Principal Engineer	8.00	Hour	275.00	\$2,200.00
Activity 1.2	Drilling Services				\$14,653.00
9000	Truck Mounted Drilling Services, per hour	40.00	Each	348.00	\$13,920.00
1022	Thin-walled sample tubes (ASTM D 15 87), each	4.00	Each	34.00	\$136.00
205	Site layout and utility clearance	2.00	Hour	126.00	\$252.00
371	CADD/Graphics Operator	2.50	Hour	138.00	\$345.00
Activity 1.3	Geotechnical Soil Tests				\$1,120.00
1152	Moisture content, per sample	10.00	Each	24.00	\$240.00
1154	Density of Soil Specimens, per sample	4.00	Each	40.00	\$160.00
1166	Loss by Washing Through #200 Sieve, per sample	8.00	Each	90.00	\$720.00
Activity 1.4	Evaluation/Analysis/Reports				\$3,144.00
138	Project Assistant	3.00	Hour	113.00	\$339.00
118	Staff Engineer	10.00	Hour	165.00	\$1,650.00
125	Project Manager	2.00	Hour	165.00	\$330.00
130	Principal Engineer	3.00	Hour	275.00	\$825.00
Activity 1.5	Design Assistance				\$10,040.00
128	Senior Engineer	20.00	Hour	227.00	\$4,540.00
130	Principal Engineer	20.00	Hour	275.00	\$5,500.00
	Phase 1 Total:				\$31,182.00

Proposal Total:	\$31,182.00
------------------------	--------------------

General Conditions

Section 1: Agreement

1.1 Our agreement with you consists of these General Conditions and the accompanying written proposal or authorization ("Agreement"). This Agreement is the entire agreement between you and us. It supersedes prior agreements. It may be modified only in a writing signed by us, making specific reference to the provision modified.

1.2 The words "you," "we," "us," and "our" include officers, employees, and subcontractors.

1.3 In the event you use a purchase order or other documentation to authorize our scope of work ("Services"), any conflicting or additional terms are not part of this Agreement. Directing us to start work prior to execution of this Agreement constitutes your acceptance. If, however, mutually acceptable terms cannot be established, we have the right to terminate this Agreement without liability to you or others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

Section 2: Our Responsibilities

2.1 We will provide Services specifically described in this Agreement. You agree that we are not responsible for services that are not expressly included in this Agreement. Unless otherwise agreed in writing, our findings, opinions, and recommendations will be provided to you in writing. You agree not to rely on oral findings, opinions, or recommendations without our written approval.

2.2 In performing our professional services, we will use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of our profession practicing in the same locality. If you direct us to deviate from our recommended procedures, you agree to hold us harmless from claims, damages, and expenses arising out of your direction. If during the one year period following completion of Services it is determined that the above standards have not been met and you have promptly notified us in writing of such failure, we will perform, at our cost, such corrective services as may be necessary, within the original scope in this Agreement, to remedy such deficiency. Remedies set forth in this section constitute your sole and exclusive recourse with respect to the performance or quality of Services.

2.3 We will reference our field observations and sampling to available reference points, but we will not survey, set, or check the accuracy of those points unless we accept that duty in writing. Locations of field observations or sampling described in our report or shown on our sketches are based on information provided by others or estimates made by our personnel. You agree that such dimensions, depths, or elevations are approximations unless specifically stated otherwise in the report. You accept the inherent risk that samples or observations may not be representative of things not sampled or seen and further that site conditions may vary over distance or change over time.

2.4 Our duties do not include supervising or directing your representatives or contractors or commenting on, overseeing, or providing the means and methods of their services unless expressly set forth in this Agreement. We will not be responsible for the failure of your contractors, and the providing of Services will not relieve others of their responsibilities to you or to others.

2.5 We will provide a health and safety program for our employees, but we will not be responsible for contractor, owner, project, or site health or safety.

2.6 You will provide, at no cost to us, appropriate site safety measures as to work areas to be observed or inspected by us. Our employees are authorized by you to refuse to work under conditions that may be unsafe.

2.7 Unless a fixed fee is indicated, our price is an estimate of our project costs and expenses based on information available to us and our experience and knowledge. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. Actual costs may vary. You should allow a contingency in addition to estimated costs.

Section 3: Your Responsibilities

3.1 You will provide us with prior environmental, geotechnical and other reports, specifications, plans, and information to which you have access about the site. You agree to provide us with all plans, changes in plans, and new information as to site conditions until we have completed Services.

3.2 You will provide access to the site. In the performance of Services some site damage is normal even when due care is exercised. We will use reasonable care to minimize damage to the site. We have not included the cost of restoration of damage in the estimated charges.

3.3 You agree to provide us, in a timely manner, with information that you have regarding buried objects at the site. We will not be responsible for locating buried objects at the site. *You agree to hold us harmless, defend, and indemnify us from claims, damages, losses, penalties and expenses (including attorney fees) involving buried objects that were not properly marked or identified or of which you had knowledge but did not timely call to our attention or correctly show on the plans you or others furnished to us.*

3.4 You will notify us of any knowledge or suspicion of the presence of hazardous or dangerous materials present on any work site or in a sample provided to us. You agree to provide us with information in your possession or control relating to such materials or samples. If we observe or suspect the presence of contaminants not anticipated in this Agreement, we may terminate Services without liability to you or to others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

3.5 Neither this Agreement nor the providing of Services will operate to make us an owner, operator, generator, transporter, treater, storer, or a disposal facility within the meaning of the Resource Conservation Recovery Act, as amended, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous substances. *You agree to hold us harmless, defend, and indemnify us from any damages, claims, damages, penalties or losses resulting from the storage, removal, hauling or disposal of such substances.*

3.6 Monitoring wells are your property, and you are responsible for their permitting, maintenance, and abandonment unless expressly set forth otherwise in this Agreement.

3.7 You agree to make all disclosures required by law. In the event you do not own the project site, you acknowledge that it is your duty to inform the owner of the discovery or release of contaminants at the site. *You agree to hold us harmless, defend, and indemnify us from claims, damages, penalties, or losses and expenses, including attorney fees, related to failures to make disclosures, disclosures made by us that are required by law, and from claims related to the informing or failure to inform the site owner of the discovery of contaminants.*

Section 4: Reports and Records

4.1 Unless you request otherwise, we will provide our report in an electronic format.

4.2 Our reports, notes, calculations, and other documents and our computer software and data are instruments of our service to you, and they remain our property. We hereby grant you a license to use the reports and related information we provide only for the related project and for the purposes disclosed to us. You may not transfer our reports to others or use them for a purpose for which they were not prepared without our written approval. *You agree to indemnify, defend, and hold us harmless from claims, damages, losses, and expenses, including attorney fees, arising out of such a transfer or use.*

4.3 If you do not pay for Services in full as agreed, we may retain work not yet delivered to you and you agree to return to us all of our work that is in your possession or under your control.

4.4 Samples and field data remaining after tests are conducted and field and laboratory equipment that cannot be adequately cleaned of contaminants are and continue to be your property. They may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

4.5 Electronic data, reports, photographs, samples, and other materials provided by you or others may be discarded or returned to you, at our discretion, unless within 15 days of the report date you give us written direction to store or transfer the materials at your expense.

Section 5: Compensation

5.1 You will pay for Services as stated in this Agreement. If such payment references our Schedule of Charges, the invoicing will be based upon the most current schedule. An estimated amount is not a firm figure. You agree to pay all sales taxes and other taxes based on your payment of our compensation. Our performance is subject to credit approval and payment of any specified retainer.

5.2 You will notify us of billing disputes within 15 days. You will pay undisputed portions of invoices upon receipt. You agree to pay interest on unpaid balances beginning 30 days after invoice dates at the rate of 1.5% per month, or at the maximum rate allowed by law.

5.3 If you direct us to invoice a third party, we may do so, but you agree to be responsible for our compensation unless the third party is creditworthy (in our sole opinion) and provides written acceptance of all terms of this Agreement.

5.4 Your obligation to pay for Services under this Agreement is not contingent on your ability to obtain financing, governmental or regulatory agency approval, permits, final adjudication of any lawsuit, your successful completion of any project, receipt of payment from a third party, or any other event. No retainage will be withheld.

5.5 If you do not pay us in accordance with this Agreement, you agree to reimburse all costs and expenses for collection of the moneys invoiced, including but not limited to attorney fees and staff time.

5.6 You agree to compensate us in accordance with our Schedule of Charges if we are asked or required to respond to legal process arising out of a proceeding related to the project and as to which we are not a party.

5.7 If we are delayed by factors beyond our control, or if project conditions or the scope or amount of work changes, or if changed labor conditions result in increased costs, decreased efficiency, or delays, or if the standards or methods change, we will give you timely notice, the schedule will be extended for each day of delay, and we will be compensated for costs and expenses incurred in accordance with our Schedule of Charges.

5.8 If you fail to pay us in accordance with this Agreement, we may consider the default a total breach of this Agreement and, at our option, terminate our duties without liability to you or to others, and you will compensate us for fees earned and expenses incurred up to the time of termination.

5.9 In consideration of our providing insurance to cover claims made by you, you hereby waive any right to offset fees otherwise due us.

Section 6: Disputes, Damage, and Risk Allocation

6.1 Each of us will exercise good faith efforts to resolve disputes without litigation. Such efforts will include, but not be limited to, a meeting(s)

attended by each party's representative(s) empowered to resolve the dispute. Before either of us commences an action against the other, disputes (except collections) will be submitted to mediation.

6.2 Notwithstanding anything to the contrary in this Agreement, neither party hereto shall be responsible or held liable to the other for punitive, indirect, incidental, or consequential damages, or liability for loss of use, loss of business opportunity, loss of profit or revenue, loss of product or output, or business interruption.

6.3 You and we agree that any action in relation to an alleged breach of our standard of care or this Agreement shall be commenced within one year of the date of the breach or of the date of substantial completion of Services, whichever is earlier, without regard to the date the breach is discovered. Any action not brought within that one year time period shall be barred, without regard to any other limitations period set forth by law or statute. We will not be liable unless you have notified us within 30 days of the date of such breach and unless you have given us an opportunity to investigate and to recommend ways of mitigating damages. You agree not to make a claim against us unless you have provided us at least 30 days prior to the institution of any legal proceeding against us with a written certificate executed by an appropriately licensed professional specifying and certifying each and every act or omission that you contend constitutes a violation of the standard of care governing our professional services. Should you fail to meet the conditions above, you agree to fully release us from any liability for such allegation.

6.4 For you to obtain the benefit of a fee which includes a reasonable allowance for risks, you agree that our aggregate liability for all claims will not exceed the fee paid for Services or \$50,000, whichever is greater. If you are unwilling to accept this allocation of risk, we will increase our aggregate liability to \$100,000 provided that, within 10 days of the date of this Agreement, you provide payment in an amount that will increase our fees by 10%, but not less than \$500, to compensate us for the greater risk undertaken. This increased fee is not the purchase of insurance.

6.5 You agree to indemnify us from all liability to others in excess of the risk allocation stated herein and to insure this obligation. In addition, all indemnities and limitations of liability set forth in this Agreement apply however the same may arise, whether in contract, tort, statute, equity or other theory of law, including, but not limited to, the breach of any legal duty or the fault, negligence, or strict liability of either party.

6.6 This Agreement shall be governed, construed, and enforced in accordance with the laws of the state in which our servicing office is located, without regard to its conflict of laws rules. The laws of the state of our servicing office will govern all disputes, and all claims shall be heard in the state or federal courts for that state. Each of us waives trial by jury.

6.7 No officer or employee acting within the scope of employment shall have individual liability for his or her acts or omissions, and you agree not to make a claim against individual officers or employees.

Section 7: General Indemnification

7.1 We will indemnify and hold you harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by our negligent acts or omissions or those negligent acts or omissions of persons for whom we are legally responsible. You will indemnify and hold us harmless from and against demands, damages, and expenses of others to the comparative extent they are caused by your negligent acts or omissions or those negligent acts or omissions of persons for whom you are legally responsible.

7.2 To the extent it may be necessary to indemnify either of us under Section 7.1, you and we expressly waive, in favor of the other only, any immunity or exemption from liability that exists under any worker compensation law.

7.3 You agree to indemnify us against losses and costs arising out of claims of patent or copyright infringement as to any process or system that is specified or selected by you or by others on your behalf.

Section 8: Miscellaneous Provisions

8.1 We will provide a certificate of insurance to you upon request. Any claim as an Additional Insured shall be limited to losses caused by our negligence.

8.2 You and we, for ourselves and our insurers, waive all claims and rights of subrogation for losses arising out of causes of loss covered by our respective insurance policies.

8.3 Neither of us will assign or transfer any interest, any claim, any cause of action, or any right against the other. Neither of us will assign or otherwise transfer or encumber any proceeds or expected proceeds or compensation from the project or project claims to any third person, whether directly or as collateral or otherwise.

8.4 This Agreement may be terminated early only in writing. You will compensate us for fees earned for performance completed and expenses incurred up to the time of termination.

8.5 If any provision of this Agreement is held invalid or unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

8.6 No waiver of any right or privilege of either party will occur upon such party's failure to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege or its waiver of any breach.



Board of City Commissioners

Agenda Documentation

MEETING DATE: January 21, 2020
PREPARATION DATE: January 15, 2020
SUBMITTING DEPARTMENT: Fire
DEPARTMENT DIRECTOR: Chief Nardello
PRESENTER: Chief Nardello
SUBJECT: Second and final consideration of Ordinance 1333 relating to Chapter 10 of the Mandan Code of Ordinances.

STATEMENT/PURPOSE: Second and final consideration of Ordinance 1333 to amend and re-enact Chapter 10, Fire Prevention and Protection, of the Mandan Code of Ordinances. The purpose of this ordinance is to adopt the 2018 International Fire Code (IFC) with proposed amendments.

BACKGROUND/ALTERNATIVES: The International Code Council reviews and adopts new fire codes every three years to ensure that we enforce current life safety procedures in public buildings. The Mandan Fire Department currently uses the 2015 IFC and we have compared the 2018 edition for any significant changes. The most significant change that our office found between the 2015 IFC and the 2018 IFC is the requirement of automatic sprinkler systems in all existing Group A-2 occupancies with an occupancy load of 300 people or more and where alcoholic beverages are consumed. Our review of the 2018 IFC could not find any additional significant changes that would have a major impact on business owners. We try to maintain uniformity with the City of Bismarck's adopted IFC so that business owners receive the same standards within the two communities. Our proposed amendments to the 2018 IFC are consistent with the City of Bismarck with exception of the allowance of fireworks within the City of Mandan.

ATTACHMENTS: Ordinance 1333

FISCAL IMPACT: None

STAFF IMPACT: Review changes from the 2015 to the 2018 International Fire Code and recommend amendments.

LEGAL REVIEW: City Attorney has reviewed the ordinance proposal

RECOMMENDATION: To amend and re-enact Chapter 10 of the Mandan Code of Ordinances Relating to Fire Code and adopting the 2018 International Fire Code including appendixes A, B, C, & D with recommended amendments as presented.

SUGGESTED MOTION: Move to approve ordinance 1333 an ordinance to amend and re-enact Chapter 10 of the Mandan Code of Ordinances Relating to Fire Code and adopting the 2018 International Fire Code including appendixes A, B, C, & D with recommended amendments as presented.

ORDINANCE NO. 1333

An Ordinance to Amend and Re-enact Chapter 10 of the Mandan Code of Ordinances Relating to Fire Code

Be it Ordained by the Board of City Commissioners as follows:

Section 10-2-1 of the Mandan Code of Ordinances is hereby amended and re-enacted to read as follows:

Section 10-2-1 Adoption of the International Fire Code.

That a certain document, at least one copy of which is on file in the office of the City Administrator of the City of Mandan, being marked and designated as the *International Fire Code*, including Appendix Chapters A, B, C, and D, as published by the International Code Council, be and is hereby adopted as the code of the City of Mandan for regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling, and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the City and providing for the issuance of permits for hazardous uses or operations; and each and all of the regulations, provisions, conditions and terms of such *International Fire Code*, ~~2015~~ 2018 edition, published by the International Code Council, on file in the offices of the City Administrator and Fire Chief are hereby referred to, adopted and made a part hereof as if fully set out in this chapter. The International Fire Code as adopted and amended by the Board of City Commissioners of the City and the provisions of Chapters 10-1 and 10-2 shall be known as the Fire Prevention Code.

(Code 1979, § 14-01-01; Code 1994, § 7-01-01; Ord. No. 669, § 1, 1983; Ord. No. 719, § 1, 1987; Ord. No. 757, § 1, 1989; Ord. No. 851, 1996; Ord. No. 953, § 1, 1-21-2003; Ord. No. 1092, 4-19-2011; Ord. No. 1172, 11-19-2013; Ord. No. 1255, § 1, 12-20-2016)

Cross reference — Amendments to International Fire Code, [§ 10-2-10](#).

Section 10-2-10 Amendments to International Fire Code.

The ~~2015~~ 2018 edition of the International Fire Code adopted by the provisions of this chapter and all subsequent editions adopted by resolution of the Board are amended, changed and altered as follows:

1. Code official means the fire chief appointed by the board of city commissioners and charged with the duties of administration and enforcement of the code, fire inspector, or other duly authorized representative as designated by the fire chief.
2. Fire prevention code means those portions of the International Fire Code adopted or amended by the city as well as this article.
3. Jurisdiction means the City of Mandan, North Dakota.
4. Whenever the word "municipality" or the word "city" is used in any code adopted pursuant to this title, it means the City of Mandan, North Dakota.
5. Whenever the words "corporate counsel" or "city attorney" is used in any code adopted pursuant to this title, it means the city attorney of the City of Mandan, North Dakota.
6. Whenever the term "International Building Code" is used in the International Fire Code, it shall mean the "Mandan Building Code."
7. Whenever the term "International Plumbing Code" is used in the International Fire Code, it shall mean the "North Dakota State Plumbing Code."
8. Whenever the term "ICC Electrical Code" is used in the International Fire Code, it shall mean the "Wiring Standards of North Dakota."

Chapter 1 Scope and Administration

Section 101 Scope and General Requirements, is amended as follows:

101.1 Title. These regulations shall be known as the *Fire Code* of ~~[NAME OF JURISDICTION]~~ the City of Mandan, hereinafter referred to as "this code."

Section 103 Department of Fire Prevention

Section 103 Department of Fire Prevention is deleted in its entirety.

Section 105 Permits, is amended as follows:

105.1.1 Permits Required. A property owner or owner's authorized agent who intends to conduct an operation or business, or install or modify systems and equipment which is regulated by this code, or to cause any such work to be performed, shall first make application to the *fire code official* and ~~obtain the~~ may be required to obtain a permit.

Sections 105.6.1 through 105.6.48 are amended as follows:

The specified permits identified in each operational section as “~~being required~~” are amended to “required upon the determination of the code official.”

Section 105.7 Required Construction Permits, is amended as follows:

Section 105.7 Required Construction Permits. The fire code official is authorized to issue constructions permits for work as set forth in Sections 105.7.1 through 105.7.25. The fire code official may utilize existing permitting and approval process already established in Building Inspections, Engineering or other department.

Section ~~109.4~~ 110 Violations, is amended as follows:

~~**109.4 110.4 Violation penalties.** Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the *approved construction documents* or directive of the *fire code official*, or of a permit or certificate used under provisions of this code, shall be guilty of a [SPECIFY OFFENSE] Class B misdemeanor, punishable by a fine of not more than [AMOUNT] dollars or by imprisonment not exceeding [number of days], or both such fine and imprisonment.~~

Section ~~111.4~~ 112 Stop Work Order, is amended as follows:

~~**111.4 112.4 Failure to comply.** Any *person* who shall continue any work after having been served with a stop work order, except such work as that *person* is directed to perform to remove a violation or unsafe condition, shall be charged with a Class B misdemeanor ~~liable to a fine of not less than [AMOUNT] or more than [AMOUNT] dollars.~~~~

Chapter 2 Definitions

Section 202 General Definitions, is amended as follows:

Commercial Motor Vehicles is amended to read as follows:

A motor vehicle used to transport passengers or proper, or motorized equipment where the motor vehicle(s) or equipment:

1. Has a gross vehicle weight rating of 10,000 pounds or more or
2. Have combined weights greater than 26,000 lbs. or
3. Is designed to transport 16 or more passengers, including the driver

Fireworks, 1.4G is deleted in its entirety and replaced with the following:

Small fireworks devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion or deflagration that complies with the construction, chemical composition and labeling regulations of the DOTn for Fireworks, UN 0336, and the U.S. Consumer Product Safety Commission as set forth in CPSC 16 CFR Parts 1500 and 1507, or otherwise listed and defined in NDCC 23-15-01.

Occupancy Classifications Educational Group E, day care facilities, is amended to read as follows:

Occupancy classifications Educational Group E, day care facilities.

Educational group E.

Occupancy classifications Educational Group E, day care facilities, is amended to read as follows:

This group includes buildings and structures or portions thereof occupied by more than ~~five~~ twelve children older than 2 ½ years of age who receive educational, supervision or personal care services for less than 24 hours per day.

Five or fewer children is amended to read:

~~Five~~ Twelve or fewer children. A facility having ~~five~~ twelve or fewer children receiving such day care shall be classified as part of the primary occupancy.

Educational Group E.

Occupancy classifications Educational Group E, Five or fewer children in a dwelling unit is amended to read as follows:

A facility such as the above within a dwelling unit and having ~~five~~ twelve or fewer children receiving such care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code.

Institutional Group I-4, day care facilities, is amend to read:

Institutional Group I-4 occupancy shall include buildings and structures occupied by more than ~~five~~ twelve persons of any age who receive custodial care for fewer than 24 hours per day by persons other than parents or guardians, relatives by blood, marriage or adoption, and in a place other than the home of the person cared for. This group shall include, but not be limited to, the following:

Adult day care.
Child day care.

Classification as Group E, is amend to read:

A child day care facility that provides care for more than ~~five~~ twelve but not more than 100 children 2 ½ years of age, where the rooms in which children are cared for are located on a level of exit discharge serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.

Five or fewer persons receiving care, is amend to read:

A facility having ~~five~~ twelve or fewer persons receiving custodial care shall be classified as part of the primary occupancy.

Five or fewer persons receiving care in a dwelling, is amend to read:

A facility such as above within a dwelling unit having ~~five~~ twelve or fewer persons receiving custodial care shall be classified as a

Group R-3 occupancy or shall comply with the International Residential Code.

Care Facilities within a dwelling, is amend to read:

Care facilities for five ~~five~~ twelve or fewer persons receiving personal care that are within a single-family dwelling are permitted to comply with the International Residential Code.

Chapter 3 General Requirements

Section 308 Open Flames, is amended as follows:

308.1.4 Open-flame cooking devices. Charcoal burners and other open-flame cooking devices shall not be operated on combustible balconies or within 10 feet (3048 mm) of combustible construction.

Exceptions:

1. One- and two-family *dwelling*s.
2. Where buildings, balconies and decks are protected by an *automatic sprinkler system*.
3. LP-gas cooking devices having LP-gas container with a water capacity not greater than ~~2-½ pounds [nominal 1-pound (0.454 kg)]~~ 47.8 pounds [nominal 20 pounds (9 kg)] LP-gas capacity].

~~**308.1.6.3 Sky Lanterns.** A person shall not release or cause to be released an untethered sky lantern. Deleted in its entirety to be consistent with fireworks definition and restrictions.~~

308.3 Group A Occupancies. Open-flame devices shall not be used in a Group A occupancy.

Exceptions:

1. Open-flame devices are allowed to be used in the following situations, provided that *approved* precautions are taken to prevent ignition of combustible material or injury to occupants:

1.1 Where necessary for ceremonial or religious purposes in accordance with Section 308.1.7.

1.2 On stages and platforms as a necessary part of a performance in accordance with Section 308.3.2.

1.3 Where candles on tables are securely supported on substantial noncombustible bases and the candle flames are protected.

1.4 Open-flame devices for food warming.

2. Heat-producing equipment complying with Chapter 6 and the *International Mechanical Code*.
3. Gas lights are allowed to be used provided that adequate precautions satisfactory to the *fire code official* are taken to prevent ignition of combustible materials.

Chapter 4 Emergency Planning and Preparedness

Section 403 Emergency Planning and Preparedness, is amended as follows:

403.10.1.3 Fire Safety and evacuation instructions. Information shall be provided in the fire safety and evacuation plan when required by Section 404 to allow guests to decide whether to evacuate to the outside, evacuate to an *area of refuge*, remain in place, or any combination of the three.

Chapter 5 Fire Service Features

Section 503 Fire Service Features, is amended as follows:

503.2.3 Surface Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus ~~and~~, shall be surfaced so as to provide all weather driving capabilities, and shall meet the specifications of the Mandan City Engineering Department.

503.4 Obstruction of fire apparatus access roads. Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles. The minimum widths and clearances established in section 503.2.1 shall be maintained at all times. Parking of motor vehicles or otherwise obstructing a designated fire apparatus access road shall be prohibited and enforcement of such prohibition may be accomplished in the same manner as provided in Section 24-7-1 of the Mandan Code of Ordinances. A violation of this section is a Class B misdemeanor.

Section 510 Emergency Responder Radio Coverage is amended as follows:

510.1 Emergency responder radio coverage in new buildings. When required by the fire code official, new buildings shall have *approved* radio coverage for emergency responders within the building based upon the existing coverage levels of the public safety communication systems of the jurisdiction at the exterior of the building. This section shall not require improvement of the existing public safety communication systems.

Chapter 9 Fire Protection and Life Safety Systems

Section 903 is amended as follows:

Section 903.2.8 Group R is amended to read as follows: An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Exception: Single-family dwelling or a residential building that contains no more than two dwelling units.

Section 903.2.9 Group S-1. An automatic sprinkler system shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

1. A Group S-1 fire area exceeds 12,000 square feet
2. A Group S-1 fire area is located more than three stories above grade plane
3. The combined area of all Group S-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet.
4. A Group S-1 fire area used for the storage of commercial motor vehicles where the fire area exceeds 5,000 square feet.
5. A Group S-1 occupancy used for the storage of upholstered furniture or mattresses exceeds 2,500 square feet.

Section 903.2.11.3 Buildings 55 feet, or five stories or more in height. An automatic sprinkler system shall be installed throughout buildings that have one or more stories with an occupant load of 30 or more located 55 feet, or five stories or more above the lowest level of fire department vehicle access, measured to the finished floor.

Section 903.3.1 Standards Sprinkler systems shall be designed with a 5-psi safety margin and installed in accordance with Sections 903.3.1.1, 903.3.1.2 or 903.3.1.3 and other chapters of this code, as applicable.

Section 903.3.1.2.1 Balconies and Decks. Sprinkler protection shall be provided for exterior balconies, decks and ground floor patios of dwelling units and sleeping units where either of the following conditions exists:

1. The building is of Type V construction, provided there is a roof, overhang 6 inches or greater, or deck above.
2. Exterior balconies, decks and ground floor patios of dwelling units and sleeping units are constructed in accordance with Section 705.2.3.1, Exception 3 of the *International Building Code*.

Sidewall sprinklers that are used to protect such areas shall be permitted to be located such that their deflectors are within 1 inch to 6 inches below the structural members and a maximum distance of 14 inches below the deck of the exterior balconies and decks that are constructed of open wood joist construction.

Section 905, Standpipe Systems, is amended as follows:

Section 905.1 General. Standpipe systems shall be provided in new buildings and structures in accordance with Sections 905.2 through 905.10. In buildings used for high-piled combustible storage, fire protection shall be in accordance with chapter 32. Class II and III standpipe systems are prohibited. Where required in this section, all standpipe systems shall meet the requirements of a Class I standpipe.

Section 907 Fire Alarm and Detection Systems is amended as follows:

Section 907.2.3 Group E. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. *When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system. Where approved by the fire code official, a building's emergency communication system interfaced with the fire alarm system in accordance with NFPA 72 is acceptable.*

907.8.3 Smoke detector sensitivity. Smoke detector sensitivity shall be checked ~~within one year every 5 years after installation and every alternate year thereafter. After the second calibration test, where sensitivity tests indicate that the detector has remained within its listed and marked sensitivity range (or 4 percent obscuration light grey smoke, if not marked), the length of time between calibration tests shall be permitted to extended to not more than 5 years. Where the frequency is extended, records of detector-caused nuisance alarms and subsequent trends of these alarms shall be maintained. In zones or areas where nuisance alarms show increase over the previous year, calibration tests shall be performed.~~

Chapter 11 Construction Requirements for Existing Buildings

Section 1103 Existing multiple-story buildings.

Section 1103.6.1 Existing multiple-story buildings. Existing buildings with occupied floors located more than 50 feet 5 stories above the lowest

level of fire department access or more than ~~50 feet~~ 5 stories below the highest level of fire department access shall be equipped with standpipes.

Chapter 53 Compressed Gases

Section 5307, Compressed Gases no otherwise regulated, is amended as follows:

Section 5307.3 Insulated liquid carbon dioxide systems used in beverage dispensing applications, is amended as follows:

Section 5307.3 Insulated liquid carbon dioxide systems used in beverage dispensing applications. Insulated liquid carbon dioxide systems with more than ~~400~~ 500 pounds of carbon dioxide used in beverage dispensing applications shall comply with Section 5307.3.1.

Section 5307.4 Carbon dioxide enrichment systems, is amended as follows:

Section 5307.4 Carbon dioxide enrichment systems. The design, installation and maintenance of carbon dioxide enrichment systems with more than ~~400~~ 500 pounds of carbon dioxide, and carbon dioxide enrichment systems with any quantity of carbon dioxide having a remote fill connection, shall comply with Sections 5307.4.1 through 5307.4.7.

Chapter 56 Explosives and Fireworks

Section 5601, is amended as follows:

Section 5601.1.3 Fireworks, is amended as follows:

Section 5601.1.3 Fireworks. The possession, manufacture, storage, sale, handling and use of fireworks are prohibited within the city limits.

Exceptions:

1. Storage and handling of fireworks as allowed in Section 5604.

~~2. Manufacture, assembly and testing of fireworks as allowed in Section 5605.~~

3. The use of fireworks for fireworks displays as allowed in Section 5608 is an exception to the prohibition of use of fireworks in the city, provided the requirements of sections 5601.2.3 and 5601.2.4 are met. The possession, use,

discharge, or explosion of fireworks, as defined by § 23-15-01, N.D.C.C., not including bottle rockets, is permitted between the hours of 12:00 p.m. and 12:00 a.m. on July 2 and 3, from the hours of 12:00 p.m. on July 4 to 2:00 a.m. on July 5 of each year, and from the hours of 5:00 p.m. on December 31 to 1:00 a.m. on January 1.

~~4. The possession, storage, sale, handling and use of specific types of Division 1.4G fireworks where allowed by applicable laws, ordinances and regulations, provided that such fireworks and facilities comply with NFPA 1124, CPSC 16 CFR Parts 1500 and 1507, and DOTn 49 CFR Parts 100-185, as applicable for consumer fireworks.~~

Section 5601.2.4 Financial responsibility, deleted in its entirety and replaced with:

Section 5601.2.4 Financial responsibility. The permittee shall furnish a bond or insurance in an amount deemed adequate by the board of city commissioners, but not less than two hundred and fifty thousand dollars (\$250,000.00) per individual or one million dollars (\$1,000,000.00) per occurrence, conditioned for the payment of all potential damages which may be caused either to a person or persons or to property by reason of the permitted display, and arising from any act of the permittee, its agents, employees or subcontractors.

Chapter 57 Flammable and Combustible Liquids

Section 5704, Storage, is amended as follows:

5704.2.9.6.1 Locations where above-ground tanks are prohibited.- ~~Storage of Class I and II liquids in above-ground tanks outside of buildings is prohibited within the limits established by law as the limits of districts in which such storage is prohibited.~~ Storage of Class I and II liquids in above-ground tanks outside of buildings is prohibited in all zoning districts within the corporate boundaries of the City of Mandan, except where allowed in zoning districts MA, MB, MC and MD.

Section 5706, Special Operations, is amended as follows:

5706.2.4.4 Permanent and temporary tanks. ~~The capacity of permanent above-ground tanks containing Class I or II liquids shall not exceed 1,100 gallons (4164 L). The capacity of temporary above-ground tanks containing Class I or II liquids shall not exceed 10,000 gallons (37 854 L).~~

~~Tanks shall be of a single-compartment design.~~ Storage of Class I and II liquids in permanent above-ground tanks outside of buildings is prohibited in all zoning districts within the corporate boundaries of the City of Mandan, except where allowed in zoning districts MA, MB, MC and MD.

Chapter 58 Flammable Gases and Flammable Cryogenic Fluids

Section 5806, Flammable Cryogenic Fluids is amended as follows:

5806.2 Limitations. Storage of flammable cryogenic fluids in stationary containers outside of buildings is prohibited within the limits established by law as the limits of districts in which such storage is prohibited except for Industrial, Agricultural, and Public districts (MA, MB, MC and MD).

Chapter 61 Liquefied Petroleum Gases

Section 6103 Installation of Equipment is amended as follows:

Section 6103.2.1.6 Use with self-contained torch assemblies, is amended to read as follows:

Section 6103.2.1.6 Use with self-contained torch assemblies. Portable LP-gas are allowed to be use to supply *approved* self-contained torch assemblies or similar appliances. Such containers shall not exceed a water capacity of ~~2.7~~ 12 pounds.

Section 6104 Location of LP-Gas Containers is amended as follows:

Section 6104.2 Maximum capacity within established limits, is deleted in its entirety and replaced with the following:

Section 6104.2 Maximum capacity within established limits. Within residentially zoned districts of the corporate boundaries of the City of Mandan, storage of liquefied petroleum gas used to supply a structure or for any other use shall not exceed a water capacity of 29 gallons. In all other districts, except for Industrial, Agricultural, and Public districts (MA, MB, A, P), the maximum capacity of any one installation shall not exceed a water capacity of 2,000 gallons.

(Code 1994, § 7-01-07; Ord. No. 1051, § 1, 5-5-2009; Ord. No. 1092, 4-19-2011; Ord. No. 1172, 11-19-2013; Ord. No. 1220, 10-20-2015; Ord. No. 1255, §§ 2, 3, 12-20-2016; Ord. No. 1272, 9-5-2017)

Cross reference— Adoption of the International Fire Code, [§ 10-2-1](#).

By:

President, Board of City
Commissioners

Attest:

City Administrator

First Consideration: Jan. 7, 2020

Second Consideration and Final Passage: Jan. 21, 2020

(Ordinance No. 1333 to Amend and Re-enact Chapter 10 of the Mandan Code of Ordinances Relating to Fire Code)



Board of City Commissioners

Agenda Documentation

MEETING DATE: January 21, 2020
PREPARATION DATE: December 11, 2019
SUBMITTING DEPARTMENT: Building Inspections
DEPARTMENT DIRECTOR: Shawn Ouradnik, Building Official
PRESENTER: Shawn Ouradnik
SUBJECT: Second Consideration and final passage of proposed change to Article 2 Section 111-2-1 of the Mandan Municipal code pertaining to Building Codes.

STATEMENT/PURPOSE: Updating the Mandan Building code to supplement the adoption of the State Building code on January 1, 2020.

BACKGROUND/ALTERNATIVES: In the State Building code, that will be adopted and implemented January 1st of 2020, several modifications were made that the Building Inspections Department felt were vital to keep in our code. The modifications are as follows:

- (1) Removing the need for the self-closing self-latching door requirement between an attached garage and a dwelling.
- (2) Window sill height for an emergency escape and rescue opening in the basement of a dwelling from a maximum of 44" to a maximum of 48".
- (3) Eliminating the minimum slope requirements for drainage away from structures.

In addition to the modification on the State level the Building Inspections Department proposes changing the footing and foundation portion of Section 111-2-1 to adopt the State Building code requirements for footings and foundations and adding a requirement for footing on attached decks.

The concerns of this department are echoed by the Mandan Fire Department. These code changes, at the state level were, passed during the voting procedures for code adoption. All of the State Building code changes were contested by additional municipalities other than Mandan but did not receive the required votes to pass.

The amendments to the footings and foundation section are being put in place because they are more consistent with other municipalities and are more in line with current building practices. By placing the requirements into the Mandan Municipal Code we can avoid confusion and be more consistent from during the three year cycle of State Building code adoption increasing safety for our public.

ATTACHMENTS: Code change submission to the state for each change, ordinance for proposed change to the Mandan Municipal Code

FISCAL IMPACT: None

STAFF IMPACT: None

LEGAL REVIEW: All documents have been reviewed by Attorney Brown.

RECOMMENDATION: We recommend passing the amendments to Article 2 Section 111-2-1 of the Mandan Municipal code

SUGGESTED MOTION: I move to amend and reenact Article 2 Section 111-2-1 of the Mandan Municipal code as presented.

ORDINANCE NO. 1331

An Ordinance to Amend and Re-enact
Article 2 of the Mandan Code of Ordinances
Relating to Building Code

Be it Ordained by the Board of City Commissioners as follows:

Article 2 of the Mandan Code of Ordinances is hereby amended and re-enacted to read as follows:

ARTICLE 2. - BUILDING CODE

Sec. 111-2-1. - Adoption of code.

There is adopted by reference that certain building code known as the state building code, as developed by the state, as now or hereafter amended. The purpose of the building code is to establish rules and regulations of erection, construction, enlargement, alteration, repair, moving, removal, demolition, conversion, occupancy, equipment, uses, height, area, and maintenance of buildings and structures. A copy of the current edition of the State Building Code shall be kept on file in the offices of the building official. The State Building Code, adopted by the provisions of this chapter, and all subsequent editions, is amended, changed and altered as follows:

- (1) IRC Section 108.2 Schedule of Permit Fees, is amended by adding the following sentence to the end of the paragraph;

The fees for any building permit, amendments to permits or required inspections shall be established by resolution of the Board of City Commissioners.

- (2) IBC Section 1603.1.3 Roof snow load is amended to insert a minimum snow load design requirement of thirty pounds per square foot.

~~(3) Section 1807 Footings and Foundations of the International Building Code, as adopted by the State Building Code, is amended by adding the following requirements relating to Minimum Requirements for Foundations for Stud Bearing Walls (as depicted in the table below), which shall supersede any of the alternate foundation provisions of Section 1807 of the International Building Code. Those provisions of Section 1807 of the International Building Code which conflict with the minimum requirements established herein by the City may apply, provided the building official approves their application due to unique soil conditions or building materials and provides a written statement verifying the applicable section.~~

~~TABLE NO. 1807.1.6.2(1)
FOUNDATIONS FOR STUD BEARING WALLS
MINIMUM REQUIREMENTS~~

Number of Stories	Thickness of Foundation Wall (Inches)		Width of Footings (Inches)	Thickness of Footings (Inches)	Depth of Foundation Below Grade (Feet)
	Concrete	Unit Masonry			
1	8	8	16	8	4
2	8	8	16	8	4
3	10	10	18	10	4

-

~~(4)~~ Foundation walls up to four feet high shall be eight inches wide and reinforced with (2) No. 4 rebar.

~~(3)~~~~(5)~~ Foundation walls over four feet high up to 10 feet high shall be reinforced as follows: horizontal rebar—two No. 4 rebar within twelve inches of top of foundation, two No. 4 rebar in the lowest twelve inches of the wall, one No. 4 rebar in the middle one-third of the wall height. Any foundation wall that exceeds 10 foot in height needs plans stamped by an engineer.

~~(4)~~~~(6)~~ All footings shall be constructed in accordance with North Dakota State building code bear on undisturbed soil or engineered fill and be designed to distribute sufficiently the super-imposed loads to the particular type of soil upon which they bear and shall be reinforced with a minimum of (2) No. 4 rebar continuous.

~~(5)~~~~(7)~~ Detached garage foundations may be constructed on concrete slabs, providing such slabs are at least four inches thick and thickened to at least twelve inches at all edges, and such thickened edges having a horizontal width of at least eight inches at their bottom and shall be reinforced with a minimum of (2) No. 4 rebar.

~~(6)~~~~(8)~~ In addition to all other requirements, each building permit shall require that off-street parking areas and the driveways leading from the street thereto shall be graded and drained to dispose of all surface water accumulated within the area and paved with Portland cement, concrete or plant-mixed bituminous surface in accordance with the specifications therefore promulgated by the city engineer.

~~(7)~~~~(9)~~ For determining value of a construction job for purposes of calculating a permit fee, the most current chart from the "International Code Council Building Valuation Data" shall be used with the following additions to the chart:

- a. \cup Utility: Carports, Decks, Pole Barns, Sheds, Misc. = $\frac{1}{2}$ value of Utility line.
- b. Crawl Space = \$15.00 per sq. ft.
- c. Finished Basement = \$30.00 per sq. ft.
- d. Single and Two Family second story = $\frac{1}{2}$ value of main cost per sq. ft.
- e. Manufactured Home:
 - i. New on owned lot - Actual cost of home value.
 - ii. Used - under 10 yrs. old = \$50.00 per sq. ft.
 - iii. Used - over 10 yrs. old = \$25.00 per sq. ft.
 - iv. MH Court - set permit fee by resolution.

(8) Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 13/8 inches (35 mm) in thickness, solid or honeycomb-core steel doors not less than 13/8 inches (35 mm) thick, or 20-minute fire-rated doors, equipped with self-closing self-latching hardware.

(9) Window sill height. Where a window is provided as the emergency escape and rescue opening in the basement of a dwelling, it shall have a sill height of not more than 44 inches above the floor; where the sill height is below grade, it shall be provided with a window well in accordance with the State Building Code requirements. Sill height shall be measured from the finished floor to the bottom of the clear opening. A step, ladder, or other means of reducing the on the interior height of floor directly inside the window cannot be supplemented for the finished floor height.

(10) Drainage. Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection that does not create a hazard. Lots shall be grades to drain surface water from the foundation of any structure at a minimum slope of 6 inches within the first 10 feet.

Exception: Where lot lines, walls, slopes, or other physical barriers prohibit the 6 inch fall within 10 feet, drains or swales shall be constructed to ensure drainage away from the structure. Impervious surfaces within 10 feet of the building foundation shall be sloped not less than a minimum of 2 percent away from the building.

(11) Deck Footings. Deck footing shall comply with section R507.3 of the International Residential Code (IRC).

By: _____
President, Board of City Commissioners

Attest:

City Administrator

First Consideration: [Dec. 17, 2019](#)

Second Consideration and Final Passage: [Jan. 21, 2020](#)

CODE AMENDMENT SUBMITTAL
ND DIVISION OF COMMUNITY SERVICES
 SFN 50180 (9/18)

Name Bruce Taralson		Jurisdiction/Company/Organization City of Fargo	
Signature 		Address 225 4 th Street N	
City Fargo		State ND	ZIP Code 58102
Telephone Number 701-241-1561		Email inspections@cityoffargo.com	
Code to be Revised			
<input type="checkbox"/> 2015 International Building Code <input type="checkbox"/> 2015 International Residential Code <input type="checkbox"/> 2015 International Mechanical Code <input type="checkbox"/> 2015 International Fuel Gas Code <input type="checkbox"/> 2015 International Energy Conservation Code		<input type="checkbox"/> 2018 International Building Code <input checked="" type="checkbox"/> 2018 International Residential Code <input type="checkbox"/> 2018 International Mechanical Code <input type="checkbox"/> 2018 International Fuel Gas Code <input type="checkbox"/> 2018 International Energy Conservation Code <input type="checkbox"/> Other _____	
Revision of: Section R302.5.1			
Check One and Complete (attach additional pages if necessary)			
<input checked="" type="checkbox"/> Revise as follows: <input type="checkbox"/> Add as follows: <input type="checkbox"/> Delete and substitute as follows: <input type="checkbox"/> Delete			
<p>R302.5.1 Opening Protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1¾ inches (35 mm) in thickness, solid or honeycomb-core steel doors not less than 1¾ inches (35 mm) thick, or 20-minute fire-rated doors, equipped with a self-closing device or automatic closing device.</p>			
Reason: (attach additional pages if necessary)			
<p>Self-closing doors are more of a nuisance than a safety feature since it is such an easy device to overcome by blocking the door open and is the source of constant complaints from builders and occupants. Add that once closer are defeated a few times they are prone to cease latching which eliminates their effectiveness for fire protection.</p>			
SEND TO: Department of Commerce Division of Community Service PO Box 2057 Bismarck, ND 58502-2057 701-665-4496			

CODE AMENDMENT SUBMITTAL
ND DIVISION OF COMMUNITY SERVICES
 SFN 50180 (9/18)

Name Bruce Taralson		Jurisdiction/Company/Organization City of Fargo	
Signature 		Address 225 4 th Street N	
City Fargo		State ND	ZIP Code 58102
Telephone Number 701-241-1561		Email inspections@cityoffargo.com	
Code to be Revised			
<input type="checkbox"/> 2015 International Building Code <input type="checkbox"/> 2015 International Residential Code <input type="checkbox"/> 2015 International Mechanical Code <input type="checkbox"/> 2015 International Fuel Gas Code <input type="checkbox"/> 2015 International Energy Conservation Code		<input type="checkbox"/> 2018 International Building Code <input checked="" type="checkbox"/> 2018 International Residential Code <input type="checkbox"/> 2018 International Mechanical Code <input type="checkbox"/> 2018 International Fuel Gas Code <input type="checkbox"/> 2018 International Energy Conservation Code <input type="checkbox"/> Other _____	
Revision of: Section R310.2.3.1			
Check One and Complete (attach additional pages if necessary)			
<input checked="" type="checkbox"/> Revise as follows: <input type="checkbox"/> Add as follows: <input type="checkbox"/> Delete and substitute as follows: <input type="checkbox"/> Delete			
Section R310.2.3.1 is hereby amended to read as follows: R310.2.3.1 Ladder and steps. Window wells with a vertical depth greater than 44 inches (1118 mm) shall be equipped with a permanently affixed ladder or steps usable with the window in the fully open position, <u>or shall be equipped with a permanently-attached platform at least 30 inches by 16 inches. The maximum distance between the top of the window well and a platform shall be 42 inches and shall not impede the operation of the window.</u> Ladders or steps required by this section shall not be required to comply with Sections R311.7 and R311.8. Ladders or rungs shall have an inside width of <u>not less than at least 12 inches (305 mm), shall project not less than at least 3 inches (76 mm) from the wall and shall be spaced not more than 18 inches (457 mm) on center vertically for the full height of the window well.</u> <u>Exception: Terraced window wells with a maximum of 24 inches per vertical rise and minimum of 12 inches per horizontal projection on each level shall also be allowed.</u>			

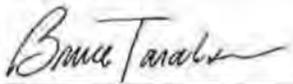
Reason: (attach additional pages if necessary)

This is a current State and local amendment that has served its purpose and should be retained. As long as the egress window served is free to move to the completely open position, the allowance contained in this amendment serves well to raise the bottom of the area well to a complying and useable level.

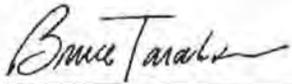
SEND TO:

Department of Commerce
Division of Community Service
PO Box 2057
Bismarck, ND 58502-2057
701-665-4496

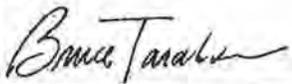
CODE AMENDMENT SUBMITTAL
ND DIVISION OF COMMUNITY SERVICES
 SFN 50180 (9/18)

Name Bruce Taralson		Jurisdiction/Company/Organization City of Fargo	
Signature 		Address 225 4 th Street N	
City Fargo		State ND	ZIP Code 58102
Telephone Number 701-241-1561		Email inspections@cityoffargo.com	
Code to be Revised			
<input type="checkbox"/> 2015 International Building Code		<input type="checkbox"/> 2018 International Building Code	
<input type="checkbox"/> 2015 International Residential Code		<input checked="" type="checkbox"/> 2018 International Residential Code	
<input type="checkbox"/> 2015 International Mechanical Code		<input type="checkbox"/> 2018 International Mechanical Code	
<input type="checkbox"/> 2015 International Fuel Gas Code		<input type="checkbox"/> 2018 International Fuel Gas Code	
<input type="checkbox"/> 2015 International Energy Conservation Code		<input type="checkbox"/> 2018 International Energy Conservation Code	
		<input type="checkbox"/> Other _____	
Revision of: Section R401.3			
Check One and Complete (attach additional pages if necessary)			
<input checked="" type="checkbox"/> Revise as follows: <input type="checkbox"/> Add as follows: <input type="checkbox"/> Delete and substitute as follows: <input type="checkbox"/> Delete			
Section R401.3 is hereby amended to read as follows:			
<p>R401.3 Drainage. Surface drainage shall be diverted to a storm sewer conveyance or other approved point of collection that does not create a hazard. Lots shall be graded to drain surface water away from foundation walls. The grade shall fall not fewer than a minimum of 6 inches (152mm) within the first 10 feet (3048mm).</p> <p>Exception: Where lot lines, walls, slopes or other physical barriers prohibit 6 inches (152mm) of fall within 10 feet (3048mm), drains or swales shall be constructed to ensure drainage away from the structure. Impervious surfaces within 10 feet (3048mm) of the building foundation shall be sloped not less than a minimum of 2 percent away from the building.</p>			
Reason: (attach additional pages if necessary)			
<p>Existing amendment would dramatically simplify drainage requirements and their enforcement. Essentially the simplification takes the code content back to the basic and original intent of moving drainage away the building foundation and excluded all the extraneous site drainage which has very little if any relevance to the buildings construction.</p>			
SEND TO: Department of Commerce Division of Community Service PO Box 2057 Bismarck, ND 58502-2057 701-665-4496			

CODE AMENDMENT SUBMITTAL
ND DIVISION OF COMMUNITY SERVICES
 SFN 50180 (9/18)

Name Bruce Taralson		Jurisdiction/Company/Organization City of Fargo	
Signature 		Address 225 4 th Street N	
City Fargo		State ND	ZIP Code 58102
Telephone Number 701-241-1561		Email inspections@cityoffargo.com	
Code to be Revised			
<input type="checkbox"/> 2015 International Building Code		<input type="checkbox"/> 2018 International Building Code	
<input type="checkbox"/> 2015 International Residential Code		<input checked="" type="checkbox"/> 2018 International Residential Code	
<input type="checkbox"/> 2015 International Mechanical Code		<input type="checkbox"/> 2018 International Mechanical Code	
<input type="checkbox"/> 2015 International Fuel Gas Code		<input type="checkbox"/> 2018 International Fuel Gas Code	
<input type="checkbox"/> 2015 International Energy Conservation Code		<input type="checkbox"/> 2018 International Energy Conservation Code	
		<input type="checkbox"/> Other _____	
Revision of: Section R507.3			
Check One and Complete (attach additional pages if necessary)			
<input checked="" type="checkbox"/> Revise as follows: <input type="checkbox"/> Add as follows: <input type="checkbox"/> Delete and substitute as follows: <input type="checkbox"/> Delete			
Section R507.3 is hereby deleted in its entirety.			
Reason: (attach additional pages if necessary)			
To avoid confusion with the amendment made to Section R403.1.4.1, exception 3, Frost Protection.			
SEND TO: Department of Commerce Division of Community Service PO Box 2057 Bismarck, ND 58502-2057 701-665-4496			

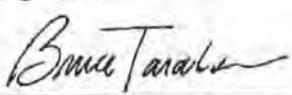
CODE AMENDMENT SUBMITTAL
ND DIVISION OF COMMUNITY SERVICES
 SFN 50180 (9/18)

Name Bruce Taralson		Jurisdiction/Company/Organization City of Fargo	
Signature 		Address 225 4 th Street N	
City Fargo		State ND	ZIP Code 58102
Telephone Number 701-241-1561		Email inspections@cityoffargo.com	
Code to be Revised			
<input type="checkbox"/> 2015 International Building Code <input type="checkbox"/> 2018 International Building Code <input type="checkbox"/> 2015 International Residential Code <input checked="" type="checkbox"/> 2018 International Residential Code <input type="checkbox"/> 2015 International Mechanical Code <input type="checkbox"/> 2018 International Mechanical Code <input type="checkbox"/> 2015 International Fuel Gas Code <input type="checkbox"/> 2018 International Fuel Gas Code <input type="checkbox"/> 2015 International Energy Conservation Code <input type="checkbox"/> 2018 International Energy Conservation Code <input type="checkbox"/> Other _____			
Revision of: Section R507.3.1			
Check One and Complete (attach additional pages if necessary)			
<input type="checkbox"/> Revise as follows: <input type="checkbox"/> Add as follows: <input type="checkbox"/> Delete and substitute as follows: <input checked="" type="checkbox"/> Delete			
Table R507.3.1 is hereby deleted in its entirety.			
Reason: (attach additional pages if necessary)			
Proposed new AMENDMENT. This table is no longer needed if Section 507.3 is deleted.			
SEND TO: Department of Commerce Division of Community Service PO Box 2057 Bismarck, ND 58502-2057 701-665-4496			

CODE AMENDMENT SUBMITTAL
ND DIVISION OF COMMUNITY SERVICES
 SFN 50180 (9/18)

Name James Schmidt		Jurisdiction/Company/Organization North Dakota State Electrical Board	
Signature 		Address 1929 N. Washington St. Ste A-1	
City Bismarck		State ND	ZIP Code 58507-7335
Telephone Number (701) 328-9522		Email jameschmidt@nd.gov	
Code to be Revised			
<input type="checkbox"/> 2015 International Building Code <input type="checkbox"/> 2015 International Residential Code <input type="checkbox"/> 2015 International Mechanical Code <input type="checkbox"/> 2015 International Fuel Gas Code <input type="checkbox"/> 2015 International Energy Conservation Code		<input type="checkbox"/> 2018 International Building Code <input checked="" type="checkbox"/> 2018 International Residential Code <input type="checkbox"/> 2018 International Mechanical Code <input type="checkbox"/> 2018 International Fuel Gas Code <input type="checkbox"/> 2018 International Energy Conservation Code Other <u>2018 International Existing Building Code</u>	
Revision Sections 403.1			
Check One and Complete (attach additional pages if necessary)			
<input checked="" type="checkbox"/> Revise as follows: <input checked="" type="checkbox"/> Add as follows: <input type="checkbox"/> Delete and substitute as follows: <input type="checkbox"/> Delete			
R403.1 General. All exterior walls shall be supported on continuous solid or fully grouted masonry or concrete footings, crushed stone footings, wood foundations, or other approved structural systems that shall be of sufficient design to accommodate all loads according to Section R301 and to transmit the resulting loads to the soil within the limitations as determined from the character of the soil. Footings shall be supported on undisturbed natural soils or engineered fill and shall include a concrete encased contiguous rebar stubbed out near the electrical service for grounding of the electrical system as per the requirements of the most recently adopted version of North Dakota State Electrical Board's Laws, Rules and Wiring Standards. Coordinate with the electrical contractor.			
Reason: (attach additional pages if necessary)			
This amendment clarifies references to applicable electrical codes and wiring standards for grounding requirements which are adopted by the North Dakota State Electrical Board.			
SEND TO: Department of Commerce Division of Community Service PO Box 2057 Bismarck, ND 58502-2057 (701) 665-4496			

CODE AMENDMENT SUBMITTAL
ND DIVISION OF COMMUNITY SERVICES
 SFN 50180 (9/18)

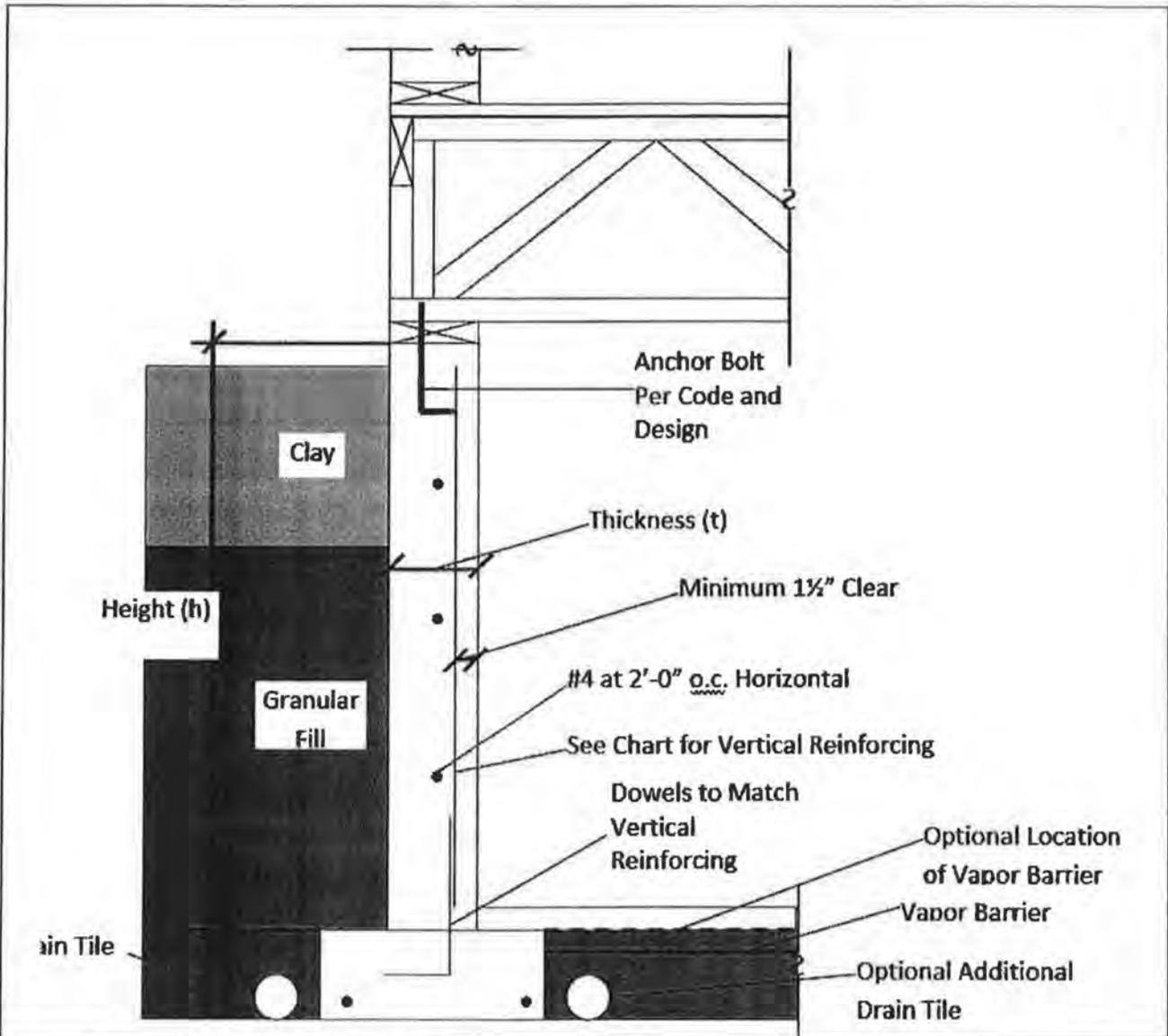
Name Bruce Taralson		Jurisdiction/Company/Organization City of Fargo	
Signature 		Address 225 4 th Street N	
City Fargo		State ND	ZIP Code 58102
Telephone Number 701-241-1561		Email inspections@cityoffargo.com	
Code to be Revised			
<input type="checkbox"/> 2015 International Building Code		<input type="checkbox"/> 2018 International Building Code	
<input type="checkbox"/> 2015 International Residential Code		<input checked="" type="checkbox"/> 2018 International Residential Code	
<input type="checkbox"/> 2015 International Mechanical Code		<input type="checkbox"/> 2018 International Mechanical Code	
<input type="checkbox"/> 2015 International Fuel Gas Code		<input type="checkbox"/> 2018 International Fuel Gas Code	
<input type="checkbox"/> 2015 International Energy Conservation Code		<input type="checkbox"/> 2018 International Energy Conservation Code	
		<input type="checkbox"/> Other _____	
Revision of: Section R403.1.4.1			
Check One and Complete (attach additional pages if necessary)			
<input checked="" type="checkbox"/> Revise as follows: <input type="checkbox"/> Add as follows: <input type="checkbox"/> Delete and substitute as follows: <input type="checkbox"/> Delete			
Section R403.1.4.1, Exceptions 1, 2 and 3, are hereby amended to read as follows:			
<p>R403.1.4.1 Frost protection *** Exceptions:</p> <ol style="list-style-type: none"> 1. Protection of freestanding accessory structures with an area of 600 square feet (56 m²) or less, of light-frame construction, with an eave height of 10 feet (3048 mm) or less shall not be required. 2. Protection of freestanding, accessory structures with an area of 400 square feet (37 m²) or less, of other than light-frame construction, with an eave height of 10 feet (3048 mm) or less shall not be required. <p>Decks not supported by a dwelling need not be provided with footings that extend below the frost line.</p>			
Reason: (attach additional pages if necessary)			
<p>This is an existing amendment in the state code that should be retained as it has served us all well and recognizes commonly acceptable structures constructed without frost-protected foundation systems which have proven themselves serviceable without such foundation systems.</p>			
<p>SEND TO: Department of Commerce Division of Community Service PO Box 2057 Bismarck, ND 58502-2057 701-665-4496</p>			

CODE AMENDMENT SUBMITTAL
ND DIVISION OF COMMUNITY SERVICES
 SFN 50180 (9/18)

Name James Schmidt		Jurisdiction/Company/Organization North State Electrical Board	
Signature 		Address PO Box 7335	
City Bismarck		State ND	ZIP Code 58507
Telephone Number (701) 328-9522		Email jameschmidt@nd.gov	
Code to be Revised			
<input type="checkbox"/> 2015 International Building Code		<input type="checkbox"/> 2018 International Building Code	
<input type="checkbox"/> 2015 International Residential Code		<input checked="" type="checkbox"/> 2018 International Residential Code	
<input type="checkbox"/> 2015 International Mechanical Code		<input type="checkbox"/> 2018 International Mechanical Code	
<input type="checkbox"/> 2015 International Fuel Gas Code		<input type="checkbox"/> 2018 International Fuel Gas Code	
<input type="checkbox"/> 2015 International Energy Conservation Code		<input type="checkbox"/> 2018 International Energy Conservation Code	
		<input type="checkbox"/> Other _____	
Revision R404.1			
Check One and Complete (attach additional pages if necessary)			
<input type="checkbox"/> Revise as follows: <input type="checkbox"/> Add as follows: <input type="checkbox"/> Delete and substitute as follows: <input type="checkbox"/> Delete			
R404.1 Concrete and masonry foundation walls. Concrete foundation walls shall be selected and constructed in accordance with the provisions of Section R404.1.3. Masonry foundation walls shall be selected and constructed in accordance with the provisions of Section R404.1.2. There shall be a concrete encased contiguous rebar stubbed out near the electrical service for grounding of the electrical system as per the requirements of the most recently adopted version of North Dakota State Electrical Board's Laws, Rules and Wiring Standards. Coordinate with the electrical contractor.			
Reason: (attach additional pages if necessary)			
SEND TO: Department of Commerce Division of Community Service PO Box 2057 Bismarck, ND 58502-2057 (701) 665-4496			

CODE AMENDMENT SUBMITTAL
ND DIVISION OF COMMUNITY SERVICES
 SFN 50180 (9/18)

Name Bruce Taralson		Jurisdiction/Company/Organization City of Fargo	
Signature 		Address 225 4 th Street N	
City Fargo		State ND	ZIP Code 58102
Telephone Number 701-241-1561		Email inspections@cityoffargo.com	
Code to be Revised			
<input type="checkbox"/> 2015 International Building Code		<input type="checkbox"/> 2018 International Building Code	
<input type="checkbox"/> 2015 International Residential Code		<input checked="" type="checkbox"/> 2018 International Residential Code	
<input type="checkbox"/> 2015 International Mechanical Code		<input type="checkbox"/> 2018 International Mechanical Code	
<input type="checkbox"/> 2015 International Fuel Gas Code		<input type="checkbox"/> 2018 International Fuel Gas Code	
<input type="checkbox"/> 2015 International Energy Conservation Code		<input type="checkbox"/> 2018 International Energy Conservation Code	
		<input type="checkbox"/> Other _____	
Revision of: Figure R404.1.2(1)			
Check One and Complete (attach additional pages if necessary)			
<input checked="" type="checkbox"/> Revise as follows: <input type="checkbox"/> Add as follows: <input type="checkbox"/> Delete and substitute as follows: <input type="checkbox"/> Delete			
Figure R404.1.2(1) is adopted as shown: FIGURE R404.1.2(1)			

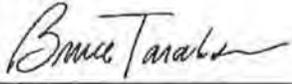


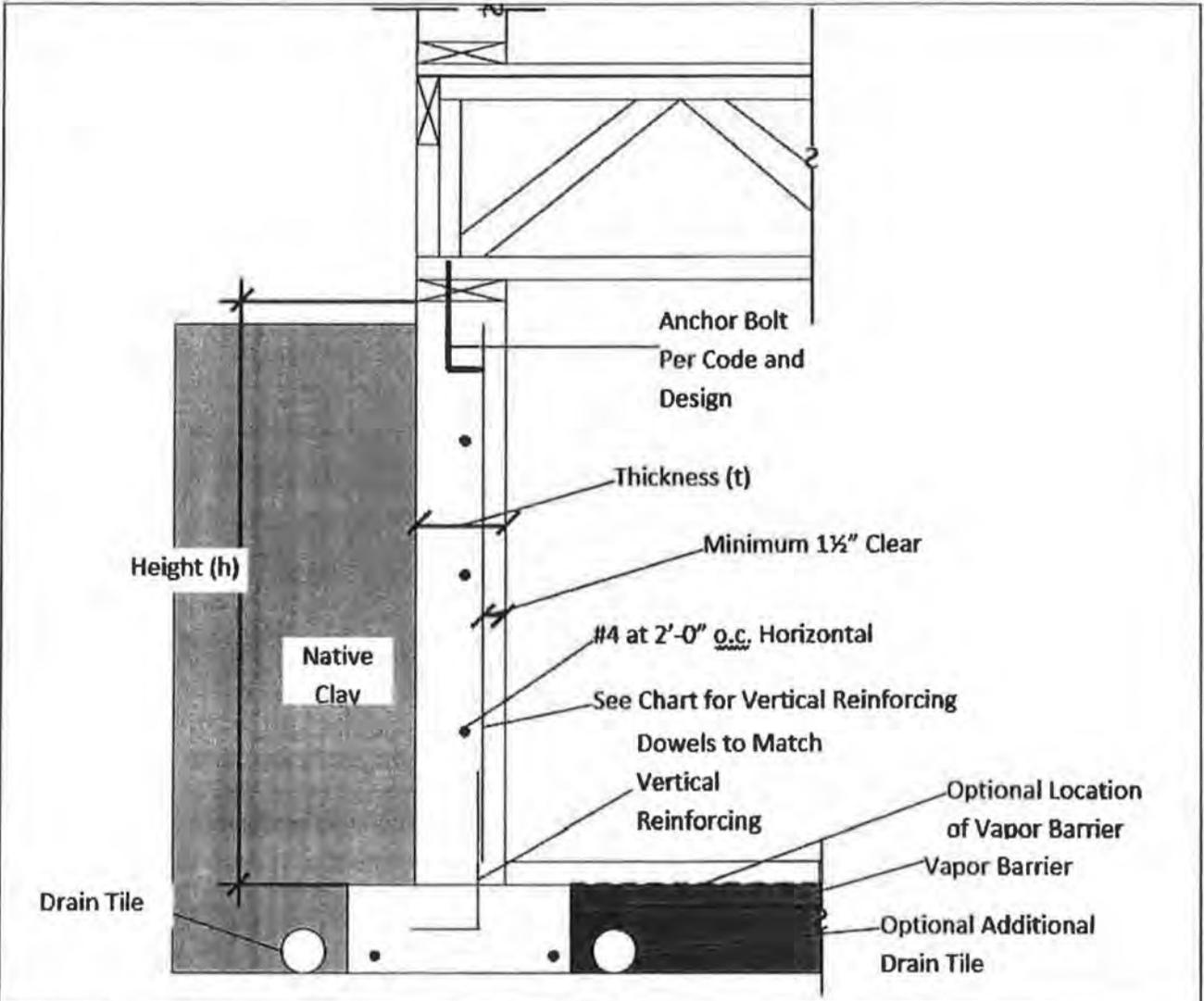
Reason: (attach additional pages if necessary)

This figure is referenced in conjunction with the concrete foundation reinforcing tables that were adopted long ago with the intent simplifying the tables in the code and allowing different sizes of rebar than those specified by the code.

SEND TO:
 Department of Commerce
 Division of Community Service
 PO Box 2057
 Bismarck, ND 58502-2057
 701-665-4496

CODE AMENDMENT SUBMITTAL
ND DIVISION OF COMMUNITY SERVICES
 SFN 50180 (9/18)

Name Bruce Taralson		Jurisdiction/Company/Organization City of Fargo	
Signature 		Address 225 4 th Street N	
City Fargo		State ND	ZIP Code 58102
Telephone Number 701-241-1561		Email inspections@cityoffargo.com	
Code to be Revised			
<input type="checkbox"/> 2015 International Building Code <input type="checkbox"/> 2015 International Residential Code <input type="checkbox"/> 2015 International Mechanical Code <input type="checkbox"/> 2015 International Fuel Gas Code <input type="checkbox"/> 2015 International Energy Conservation Code		<input type="checkbox"/> 2018 International Building Code <input checked="" type="checkbox"/> 2018 International Residential Code <input type="checkbox"/> 2018 International Mechanical Code <input type="checkbox"/> 2018 International Fuel Gas Code <input type="checkbox"/> 2018 International Energy Conservation Code <input type="checkbox"/> Other _____	
Revision of: Figure R404.1.2(2)			
Check One and Complete (attach additional pages if necessary)			
<input checked="" type="checkbox"/> Revise as follows: <input type="checkbox"/> Add as follows: <input type="checkbox"/> Delete and substitute as follows: <input type="checkbox"/> Delete			
Figure R404.1.2(2) is adopted as shown: FIGURE R404.1.2(2)			

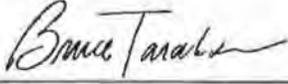


Reason: (attach additional pages if necessary)

This figure is referenced in conjunction with the concrete foundation reinforcing tables that were adopted long ago with the intent simplifying the tables in the code and allowing different sizes of rebar than those specified by the code.

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 SFN 50180 (9/18)

Name Bruce Taralson	Jurisdiction/Company/Organization City of Fargo	
Signature 	Address 225 4 th Street N	
City Fargo	State ND	ZIP Code 58102
Telephone Number 701-241-1561	Email inspections@cityoffargo.com	

Code to be Revised

<input type="checkbox"/> 2015 International Building Code	<input type="checkbox"/> 2018 International Building Code
<input type="checkbox"/> 2015 International Residential Code	<input checked="" type="checkbox"/> 2018 International Residential Code
<input type="checkbox"/> 2015 International Mechanical Code	<input type="checkbox"/> 2018 International Mechanical Code
<input type="checkbox"/> 2015 International Fuel Gas Code	<input type="checkbox"/> 2018 International Fuel Gas Code
<input type="checkbox"/> 2015 International Energy Conservation Code	<input type="checkbox"/> 2018 International Energy Conservation Code
	<input type="checkbox"/> Other _____

Revision of: Table R404.1.2(10)

Check One and Complete (attach additional pages if necessary)

Revise as follows: Add as follows: Delete and substitute as follows: Delete

Table R404.1.2(10) is hereby adopted as follows:

Table R404.1.2(10)
 Foundation Wall Reinforcing
 Active Pressure = 45pcf

Minimum Reinforcement for Concrete Foundation Walls		
Wall Height (h) feet	Wall Thickness (t) inches	Vertical Reinforcing
8	8	#4 @ 24" o.c. #5 @ 40" o.c.
	10	#4 @ 30" o.c. #5 @ 50" o.c.
9	8	#4 @ 18" o.c.

		#5 @ 28" o.c.
	10	#4 @ 24" o.c. #5 @ 36" o.c.
10	10	#4 @ 16" o.c. #5 @ 26" o.c.

Notes:

1. Chart is based on an active soil pressure of 45 pounds per cubic foot (pcf).
2. Reinforcing steel shall be ASTM A615 Fy – 60,000 pounds per square inch (psi).
3. The vertical reinforcing bars are to be located on the inside face.
4. Minimum concrete strength $F_c^1 = 3,000$ pounds per square inch (psi).
5. Backfill shall not be placed until first floor framing and sheathing is installed and fastened or adequately braced and the concrete floor slab is in place or the wall is adequately braced.

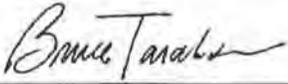
Reason: (attach additional pages if necessary)

These concrete foundation reinforcing tables were adopted long ago with the intent simplifying the tables in the code and allowing different sizes of rebar than those specified by the code.

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CODE AMENDMENT SUBMITTAL
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Name Bruce Taralson	Jurisdiction/Company/Organization City of Fargo	
Signature 	Address 225 4 th Street N	
City Fargo	State ND	ZIP Code 58102
Telephone Number 701-241-1561	Email inspections@cityoffargo.com	

Code to be Revised

<input type="checkbox"/> 2015 International Building Code	<input type="checkbox"/> 2018 International Building Code
<input type="checkbox"/> 2015 International Residential Code	<input checked="" type="checkbox"/> 2018 International Residential Code
<input type="checkbox"/> 2015 International Mechanical Code	<input type="checkbox"/> 2018 International Mechanical Code
<input type="checkbox"/> 2015 International Fuel Gas Code	<input type="checkbox"/> 2018 International Fuel Gas Code
<input type="checkbox"/> 2015 International Energy Conservation Code	<input type="checkbox"/> 2018 International Energy Conservation Code
	<input type="checkbox"/> Other _____

Revision of: Table R404.1.2(11)

Check One and Complete (attach additional pages if necessary)

Revise as follows: Add as follows: Delete and substitute as follows: Delete

Table R404.1.2(11) is hereby adopted as follows:

Table R404.1.2(11) Foundation Wall Reinforcing
 Active Pressure = 65 pcf

Minimum Reinforcement for Concrete Foundation Walls		
Wall Height (h) Feet	Wall Thickness (t) inches	Vertical Reinforcing
8	8	#4 @ 18" o.c. #5 @ 26" o.c. #6 @ 40" o.c.
	10	#4 @ 24" o.c. #5 @ 36" o.c. #6 @ 52" o.c.

	9	8	#4 @ 12" o.c. #5 @ 18" o.c. #6 @ 26" o.c.
		10	#4 @ 16" o.c. #5 @ 24" o.c. #6 @ 36" o.c.
	10	10	#4 @ 12" o.c. #5 @ 18" o.c. #6 @ 24" o.c.

Notes:

1. Chart is based on an active soil pressure of 65 pounds per cubic foot (pcf).
2. Reinforcing steel shall be ASTM A615 Fy – 60,000 pounds per square inch (psi).
3. The vertical reinforcing bars are to be located on the inside face.
4. Minimum concrete strength $F_c^1 = 3,000$ pounds per square inch (psi).
5. Backfill shall not be placed until first floor framing and sheathing is installed and fastened or adequately braced and the concrete floor slab is in place or the wall is adequately braced.

Reason: (attach additional pages if necessary)

These concrete foundation reinforcing tables were adopted long ago with the intent simplifying the tables in the code and allowing different sizes of rebar than those specified by the code.

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 SFN 50180 (9/18)

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Signature 		Address 225 4 th Street N	
City Fargo		State ND	ZIP Code 58102
Telephone Number 701-241-1561		Email inspections@cityoffargo.com	
Code to be Revised			
<input type="checkbox"/> 2015 International Building Code		<input type="checkbox"/> 2018 International Building Code	
<input type="checkbox"/> 2015 International Residential Code		<input checked="" type="checkbox"/> 2018 International Residential Code	
<input type="checkbox"/> 2015 International Mechanical Code		<input type="checkbox"/> 2018 International Mechanical Code	
<input type="checkbox"/> 2015 International Fuel Gas Code		<input type="checkbox"/> 2018 International Fuel Gas Code	
<input type="checkbox"/> 2015 International Energy Conservation Code		<input type="checkbox"/> 2018 International Energy Conservation Code	
		<input type="checkbox"/> Other _____	
Revision of: Section R404.1.3.2			
Check One and Complete (attach additional pages if necessary)			
<input checked="" type="checkbox"/> Revise as follows: <input type="checkbox"/> Add as follows: <input type="checkbox"/> Delete and substitute as follows: <input type="checkbox"/> Delete			
Section R404.1.3.2 is hereby amended to read as follows:			
<p>R404.1.3.2 Reinforcement for foundation walls. Concrete foundation walls shall be laterally supported at the top and bottom. Horizontal reinforcement shall be provided in accordance with Table R404.1.2(1). Vertical reinforcement shall be provided in accordance with Table R404.1.2(2), R404.1.2(3), R404.1.2(4), R404.1.2(5), R404.1.2(6), R404.1.2(7), or R404.1.2(8), <u>or Table R404.1.2(10) and Figure R404.1.2(1) or Table R404.1.2(11) and R404.1.2(2)</u>. Vertical reinforcement for flat basement walls retaining 4 feet (1219 mm) or more of unbalanced backfill is permitted to be determined in accordance with Table R404.1.2(9). For basement walls supporting above-grade concrete walls, vertical reinforcement shall be the greater of that required by Tables R404.1.2(2) through R404.1.2(8) or by Section R608.4.6 for the above-grade wall. In Buildings assigned to Seismic Design Category D₀, D₁, or D₂, concrete foundation walls shall also comply with Section R404.1.4.2.</p>			
Reason: (attach additional pages if necessary)			
This is an existing amendment in the state code that refers to the Heyer concrete reinforcing tables and figures that have been used by many contractors as a simpler alternative to the tables in the code.			
SEND TO: Department of Commerce Division of Community Service PO Box 2057 Bismarck, ND 58502-2057 701-665-4496			



Board of City Commissioners

Agenda Documentation

MEETING DATE: January 21, 2020

PREPARATION DATE: January 17, 2020

SUBMITTING DEPARTMENT: Legal

DEPARTMENT DIRECTOR: Malcolm H. Brown

PRESENTER: Malcolm H. Brown

SUBJECT: New Gas Franchise for Montana-Dakota Utilities Co.

STATEMENT/PURPOSE: Montana-Dakota Utilities Co. has requested that the City grant MDU a new 20-year ordinance for the purpose of supplying natural or manufactured gas for public and private uses within the City of Mandan.

BACKGROUND/ALTERNATIVES: MDU currently has a franchise to provide natural gas within the City of Mandan. This would be a granting and renewal of a new 20-year franchise.

ATTACHMENTS: Ordinance No. 1334.

FISCAL IMPACT: N/A.

STAFF IMPACT: N/A.

LEGAL REVIEW: Reviewed by the undersigned.

RECOMMENDATION: Legal recommends that the commission pass Ordinance No. 1334 granting Montana-Dakota Utilities Co., a franchise to construct, maintain and operate, within the streets, alleys and public grounds of the City of Mandan, a gas distribution system.

SUGGESTED MOTION: I move the first consideration of Ordinance No. 1334 granting a franchise to Montana-Dakota Utilities Co., to construct, maintain and operate, within, upon, in and under the streets, alleys and public grounds of the City of Mandan, a gas distribution system for transmitting and distributing natural or manufactured gas or mixture of both for public and private use.

ORDINANCE NO.1334

AN ORDINANCE GRANTING TO MONTANA-DAKOTA UTILITIES CO., A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE AND RIGHT TO CONSTRUCT, MAINTAIN AND OPERATE, WITHIN AND UPON, IN AND UNDER THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE

City of Mandan, Morton County

A GAS DISTRIBUTION SYSTEM FOR TRANSMITTING AND DISTRIBUTING NATURAL OR MANUFACTURED GAS, OR A MIXTURE OF BOTH, FOR PUBLIC AND PRIVATE USE.

BE IT ORDAINED BY

The City Commission Of The City Of Mandan, North Dakota

SECTION I. For convenience, herein, said municipal corporation is designated and referred to as "Municipality" and Montana-Dakota Utilities Co. is designated and referred to as "Grantee." Any reference to either includes their respective successors and assigns.

SECTION II. There is hereby granted to Montana-Dakota Utilities Co., a corporation, Grantee, its successors and assigns, subject to the limitations herein stated, the right and franchise to occupy now and use the streets, alleys and public grounds of the Municipality as now, or hereafter constituted, for the purpose of constructing, maintaining, and operating, within, upon, in and under the same, a gas distribution system for transmitting and distributing natural or manufactured gas, or a mixture of both, for public and private use.

SECTION III. Grantee shall maintain an efficient distribution system for furnishing natural or manufactured gas, or a mixture of both, for public and private use at such reasonable rates as may be approved by the Public Service Commission of the State of North Dakota and under such orders, rules or regulations as may be issued by a federal or state agency having jurisdiction thereof.

SECTION IV. This franchise shall not be exclusive and shall not be construed to prevent the Municipality from granting to any other party the right to use the streets, alleys, and public grounds of the Municipality for like purposes.

SECTION V. The Municipality reserves any right it may have, under its police power, or otherwise, to control or regulate the use of said streets, alleys, and public grounds by Grantee. The Municipality will give Grantee reasonable notice of plans for

improvements of streets, alleys and public grounds where the Municipality has reason to believe Grantee's gas distribution system may be affected by the improvement. If during the period of this franchise the Municipality shall lawfully elect to alter, or change the grade of any street, alley or public grounds, Grantee, upon reasonable notice by the Municipality, at its own expense may remove, relocate or rearrange its gas distribution facilities that would be a substantial interference with the change to the street, alley or public grounds, provided, however, if relocation, removal or rearrangement of any gas distribution facility is made necessary to accommodate construction of a project on a federal aid highway or extension thereof within the Municipality, Grantee shall be paid the costs of the relocation, removal or rearrangement in accordance with the laws of the State of North Dakota.

SECTION VI. Unless otherwise provided in any permit or regulation of the Municipality under separate ordinance, Grantee may trim trees and shrubs in and over the streets, alleys and public grounds to the extent Grantee determines is necessary to avoid interference with the construction, operation, maintenance and repair of the gas distribution facilities, provided Grantee shall hold the Municipality harmless from any liability arising therefrom.

SECTION VII. Grantee shall indemnify and save and hold the Municipality harmless from any loss or damage due to the construction, installation, and maintenance of its distribution system, and its use of the streets, alleys, and public grounds of the Municipality.

SECTION VIII. Grantee shall have the right to assign this franchise to any party, or corporation, but all obligations of Grantee hereunder shall be binding upon its successors and assigns.

SECTION IX. Within thirty (30) days after Grantee is notified of passage and final approval of this Ordinance, Grantee shall file with the clerk or auditor of the Municipality its written acceptance of this franchise.

SECTION X. This franchise shall continue and remain in full force and effect for a period of twenty (20) years from the date upon which this ordinance shall become effective as provided by law.

By:

President, Board of City Commissioners

Attest:

City Administrator

First Consideration: January 21, 2020

Second Consideration: February 4, 2020

