



Regular City Council Meeting

Monday, March 18, 2024, at 5:30 PM

City Council Chambers, City Hall (10 3rd Ave SW)

Any person needing special accommodation for the meeting is requested to notify the City Clerk's office at 857-4752.

1. ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. MAYOR'S REPORT
4. CITY MANAGER'S REPORT

Documents:

[3-18-2024 CITY MANAGER REPORT.PDF](#)

5. CONSIDER THE REPORT OF THE PLANNING COMMISSION

Documents:

[3 \(MAR\) RECOMMENDATIONS 2024.PDF](#)

- 5.1. MAJOR SUBDIVISION PRELIMINARY PLAT: GOLD NUGGET 7TH ADDITION

Consider approval of a major subdivision preliminary plat to consolidate several properties into two (2) lots. The proposed subdivision is to be named Gold Nugget 7th Addition, being a replat of Outlot 5, Outlot 16, Outlot 25, Outlot 26 and an unplatted portion of the S 1/2 NE 1/4 NW 1/4 Less the East 33' for Street and 1/2 adjacent Vacated 13th Ave. SE, Section 29, Township 155 N, Range 82 W of the Fifth Principal Meridian, to the City of Minot, County of Ward, State of North Dakota.

The properties include 1305 31st Street SE, and two unaddressed proposed flood buy out properties south of 1305 31st Street SE and one unaddressed property (Outlot 5) northwest of 1305 31st Street SE.

#### **RECOMENDED ACTION**

**It is recommended City Council approve a major subdivision preliminary plat in alignment with the Planning Commission recommendations.**

Documents:

6. CONSENT ITEMS

6.1. CITY COUNCIL MINUTES

**It is recommended City Council approve the minutes of the March 4, 2024, Regular City Council meeting.**

Documents:

[03042024 COUNCIL MEETING MINUTES.PDF](#)

6.2. ORDINANCES

**It is recommended City Council approve the following ordinances on second reading:**

- 1. Ordinance No 5948 - 2023 BA - Line Items Over Budget**
- 2. Ordinance No 5949 - Encroachments on City Property Ordinance**

Documents:

[ORDINANCE NO 5948 - 2023 BA - LINE ITEMS OVER BUDGET.PDF](#)  
[ORDINANCE NO 5949 - ENCROACHMENTS ON CITY PROPERTY ORDINANCE.PDF](#)

6.3. ADMINISTRATIVE APPROVALS

**It is recommended City Council ratify the following Administrative Approvals.**

Documents:

[ADMIN APPROVALS 03182024.PDF](#)

6.4. GAMING SITE AUTHORIZATION - MSU BEAVER BOOSTERS

**It is recommended City Council approve the gaming site authorization for the MSU Beaver Boosters to conduct gaming on April 3, 2024, at the Sleep Inn & Suites.**

Documents:

[MEMO- GAMING SITE AUTHORIZATION.PDF](#)

6.5. AUTHORIZE FINAL PAYEMENT TO MINOT HOUSING AUTHORITY

Presented by Chris Plank

**RECOMMENDED ACTION**

**It is recommended City Council authorize the final payment of**

**\$84,060.00 to Minot Housing Authority for work completed on the Milton Young Towers facility.**

Documents:

[CITY COUNCIL MEMO - MHA FINAL DRAW.PDF](#)  
[MILTON YOUNG TOWERS - FINAL DRAW.PDF](#)

- 6.6. AUTHORIZE FINAL PAYMENT TO DAKOTA COLLEGE AT BOTTINEAU  
Presented by Chris Plank

**RECOMMENDED ACTION**

**It is recommended City Council authorize the final payment of \$236,340.90 to Dakota College of Bottineau for work completed on the Center for Technical Excellence.**

Documents:

[CITY COUNCIL MEMO - CTE FINAL DRAW.PDF](#)  
[CTE FINAL DRAW REQUEST.PDF](#)

- 6.7. OVERLAND WEST AIRPORT LEASE  
Presented by Jennifer Eckman, Airport Director

**RECOMMENDED ACTION**

- 1. It is recommended City Council approve the Rental Car Concession and Lease Agreement with Overland West; and**
- 2. Authorize the Mayor to sign the contract.**

Documents:

[20240307 MEMO OVERLAND LEASE.PDF](#)  
[20240228 OVERLAND WEST SIGNED AGREEMENT.PDF](#)

- 6.8. MEIER AND COMPANY AIRPORT LEASE  
Presented by Jennifer Eckman, Airport Director

**RECOMMENDED ACTION**

- 1. It is recommended City Council approve Rental Car Concession and Lease Agreement with Meier & Company; and**
- 2. Authorize the Mayor to sign the contract.**

Documents:

[20240307 MEMO MEIER AND COMPANY LEASE.PDF](#)  
[20240308 MEIER AND COMPANY SIGNED AGREEMENT.PDF](#)

- 6.9. ENTERPRISE RENT A CAR AIRPORT LEASE  
Presented by Jennifer Eckman, Airport Director

**RECOMMENDED ACTION**

1. **It is recommended City Council approve the Rental Car Concession and Lease Agreement with Enterprise RAC Company of Montana-Wyoming; and**
2. **Authorize the Mayor to sign the contract.**

Documents:

[20240307 MEMO ENTERPRISE LEASE.PDF](#)  
[20240306 ENTERPRISE RAC COMPANY OF MONTANA-WYOMING SIGNED AGREEMENT.PDF](#)

- 6.10. SEH CONTRACT FOR TAXIWAY C/C3 RECONSTRUCTION FINAL DESIGN (CITY PROJECT NUMBER #2024500005/ AIP 3-38-0037-72-2024)  
Presented by Jennifer K. Eckman

**RECOMMENDED ACTION**

1. **It is recommended City Council direct staff to apply for state and federal funding to assist with the financing and rehabilitation of Taxiway C/C3 project;**
2. **Approve the supplemental letter agreement with Short Elliott Hendrickson Inc. (SEH) to design the rehabilitation of Taxiway C/C3 in form; and**
3. **Upon receipt of federal and/or state funding, authorize the Mayor, Airport Director, and City Attorney to execute grants and the Supplemental Agreement.**

Documents:

[MEMO TXY C\\_C3 FINAL DESIGN.PDF](#)  
[SEH PROPOSAL\\_FINAL DESIGN FOR TXY C\\_C3\\_030824.PDF](#)

- 6.11. MIDCO EASEMENT ON AIRPORT PROPERTY  
Presented by Jennifer K. Eckman

**RECOMMENDED ACTION**

**It is recommended City Council approve the easement and subordination agreement and authorize the Mayor to sign the contracts.**

Documents:



- 6.12. BIDDING OF ELECTRICAL VAULT REHABILITATION  
Presented by Jennifer K. Eckman, Airport Director

**RECOMMENDED ACTION**

1. **It is recommended City Council approve staff apply for state and federal funding to assist with the financing of the electrical vault rehabilitation;**
2. **Authorize City staff to advertise and solicit bids for the Electrical Vault Rehabilitation project; and**
3. **Upon receipt of federal and/or state funding, authorize the Mayor, Airport Director, and City Attorney to execute grants.**

Documents:

MEMO ELEC VAULT\_BIDDING.PDF  
2024 MOT ELECTRICAL VAULT REHABILITATION\_DRAFT PROJECT  
MANUAL.PDF  
00 11 13 ADVERTISEMENT FOR BIDS\_ONLINE BIDDING.PDF

- 6.13. PURCHASE OF TRANSIT FIXED ROUTE SOFTWARE (4833)  
Presented by Jason Sorenson

**RECOMMENDED ACTION**

1. **It is recommended City Council approve the purchase of Transit Fixed Route Software from TripSpark Technologies (This will replace our current RouteMatch software system.); and**
2. **Approve the Mayor or Transit Superintendent to sign the necessary agreements.**

Documents:

MTC APPROVAL OF TRANSIT FIXED ROUTE SOFTWARE PURCHASE.PDF  
ND MINOT - TRIPSPARK - STREETS PRICING SUMMARY.PDF

- 6.14. WELLS 5 & 6 RAW WATER LINE REPLACEMENT - AWARD OF BID (4758)  
Presented by Jason Sorenson

**RECOMMENDED ACTION**

1. **It is recommended City Council approve the bid in the amount of \$552,699.50 from Steen Construction for the Riverside Park Raw**

- Water Line project;**
- 2. Authorize the Mayor to sign the contract; and**
  - 3. Approve the budget amendment to allocate remaining unspent funds for the construction contract.**

Documents:

[4758 - MEMO - AWARD OF BID.PDF](#)  
[RIVERSIDE PARK RAW WATER PROJECT BID REVIEW LETTER.PDF](#)  
[17. 2024 BA - RIVERSIDE PARK RAW WATER LINE.PDF](#)

- 6.15. 2024 STREET IMPROVEMENT CEMENT STABILIZATION - AWARD OF BID (4802.1)  
Presented by Lance Meyer

#### **RECOMMENDED ACTION**

**It is recommended City Council award the bid for the 2024 Street Improvement Cement Stabilization to the low bidder, Keller Paving & Landscaping, Inc. in the amount of \$2,409,475.33 and authorize the Mayor to sign the agreement.**

Documents:

[2024 STREET IMPROVEMENT CSA - AWARD BID - 4802.1.PDF](#)  
[4802.1 - 2024 STREET IMPROVEMENT SOW.PDF](#)  
[4802.1\\_BIDWORKSHEET.PDF](#)

- 6.16. 2024 PAVEMENT MARKINGS - AWARD OF BID (4800)  
Presented by Lance Meyer

#### **RECOMMENDED ACTION**

**It is recommended City Council award the bid for the 2024 Pavement Markings Project to the low bidder, West River Striping Company, in the amount of \$225,728.75 and authorize the Mayor to sign the agreement.**

Documents:

[4800 - 2024 PAVEMENT MARKINGS AWARD OF BID MEMO.PDF](#)  
[2024 PAVEMENT MARKINGS COVER SHEET.PDF](#)  
[4800\\_BIDWORKSHEET.PDF](#)

- 6.17. 2024 CONCRETE PAVEMENT REHAB - AWARD OF BID (4807)  
Presented by Lance Meyer, City Engineer

#### **RECOMMENDED ACTION**

**It is recommended City Council award the bid for 2024 Concrete**

**Pavement Rehab to the low bidder, Keller Paving & Landscaping, Inc., in the amount of \$327,905.75; and authorize the Mayor to sign the Agreement.**

Documents:

[2024 CONCRETE PAVEMENT REHAB - AWARD BID - 4807.PDF](#)  
[4807 - 2024 CONCRETE PAVEMENT REHAB SOW.PDF](#)  
[4807\\_BIDWORKSHEET.PDF](#)

- 6.18. 2024 STREET PATCHING - AWARD OF BID (4805)  
Presented by Lance Meyer, City Engineer

**RECOMMENDED ACTION**

**It is recommended City Council award the bid for the 2024 Street Patching to the low bidder, Keller Paving & Landscaping, Inc., in the amount of \$557,660.00 and authorize the Mayor to sign the Agreement.**

Documents:

[2024 STREET PATCHING - AWARD BID - 4805.PDF](#)  
[4805 - 2024 STREET PATCHING SOW.PDF](#)  
[4805\\_BIDWORKSHEET.PDF](#)

- 6.19. 2024 SIDEWALK, CURB & GUTTER - AWARD OF BID (4806)  
Presented by Lance Meyer, PE, City Engineer

**RECOMMENDED ACTION**

**It is recommended City Council award the bid for the 2024 Sidewalk, Curb & Gutter to the low bidder, Ti-Zack Concrete, LLC, in the amount of \$247,288.78 and authorize the Mayor to sign the agreement.**

Documents:

[2024 SIDEWALK, CURB AND GUTTER - AWARD BID - 4806.PDF](#)  
[4806 - 2024 SIDEWALK, CURB AND GUTTER SOW.PDF](#)  
[4806\\_BIDWORKSHEET.PDF](#)

- 6.20. 2024 STREET IMPROVEMENT MILL & OVERLAY - AWARD OF BID (4802.2)  
Presented by Lance Meyer, PE, City Engineer

**RECOMMENDED ACTION**

**It is recommended City Council award the bid for the 2024 Street Improvement Mill and Overlay to the low bidder, Bechtold Paving, Inc.,**

**in the amount of \$2,520,844.25 and authorize the Mayor to sign the agreement.**

Documents:

[2024 STREET IMPROVEMENT MILL AND OVERLAY - AWARD BID - 4802.2.PDF](#)  
[4802.2 - 2024 STREET IMPROVEMENT SOW.PDF](#)  
[4802.2\\_BIDWORKSHEET.PDF](#)

- 6.21. FACADE IMPROVEMENT PROGRAM CASE NO. FI-12 (KAMP COLLECTIVE, LLC)  
Presented by Brian Billingsley

#### **RECOMMENDED ACTION**

**It is recommended City Council approve the forgivable loan application FI-12 for Kamp Collective, LLC for a property located at 11 Central Avenue East in an amount not to exceed \$130,554.00, subject to conditions of the program.**

Documents:

[CC MEMO - FI-12 KAMP COLLECTIVE LLC.PDF](#)  
[FI-12 CONTRACT DRAFT.PDF](#)  
[FI-12 APPLICATION\\_REDACTED.PDF](#)

#### **7. ACTION ITEMS**

- 7.1. FIRST READING OF ORDINANCE AMENDING CHAPTER 2 (ADMINISTRATION), ARTICLE III (CITY OFFICERS), DIVISION 2 (CITY MANAGER) OF THE CODE OF ORDINANCES, CITY OF MINOT, NORTH DAKOTA  
Presented by Harold Stewart, City Manager

#### **RECOMMENDED ACTION**

**It is recommended City Council approve first reading of the ordinance.**

Documents:

[COUNCIL MEMO CM AND ACM ORDINANCE AMENDMENTS.PDF](#)  
[ORDINANCE\\_CM UPDATES AND ACM.PDF](#)  
[ORDINANCE\\_CM UPDATES AND ACM\\_REDLINE.PDF](#)

#### **8. PERSONAL APPEARANCES**

#### **9. MISCELLANEOUS AND DISCUSSION ITEMS**

- 9.1. HOTEL LICENSING  
Presented by Mayor Tom Ross

#### **10. LIAISON REPORTS**

## 11. ADJOURNMENT



**TO:** Mayor Tom Ross  
Members of the City Council

**FROM:** Harold Stewart, City Manager

**DATE:** March 18, 2024

**City Manager:**

Staff continues to research and gather the information the Council requested at the March 4<sup>th</sup> City Council meeting regarding grant payments and ADA changes. Staff anticipates having this on one of the April Council meetings.

The process for potentially refilling the Economic Development Administrator continues to progress. Three finalists will be interviewed on April 15<sup>th</sup>.

Public input meetings are being scheduled with the consultant to occur on April 15<sup>th</sup> and 16<sup>th</sup> as part of the Strategic Plan development process. More information will be provided as it becomes available.

Meetings attended included: Community and Economic Development Leaders Coordination/Communication meeting; meetings regarding potential campground on City flood property during the State Fair; meeting with staff regarding snow removal response; Alcohol Ordinance Review Committee; and the 2024 Annual MACEDC meeting.

**Public Works**  
**Public Works Interim Director, Jason Sorenson**

**PUBLIC WORKS ADMIN:**

PW admin is working on the design of maintenance projects for 2024. This includes water main replacement, sewer lining, and storm sewer projects.

The MOA for NAWS Biota plant operations and maintenance is now signed by all parties. Work has begun on the Biota Plant budget and how federal reimbursement will take place. Discussion continues between City, DWR and DEQ on how Biota and Minot Water Plant will operate together and how compliance will be achieved and where.

Work continues on gathering info for the lead service line inventory. This inventory is due in October of 2024 and will be the basis for lead testing and service line replacement.

The Utilities Director attended the weekly design and construction meeting for the various phases of flood control and NAWS that are under design and construction and provide input for the overall design and operation and long-term maintenance.

**Water Treatment Department:**

## Monthly Water Report For February 2024

River Water Treated	0 gallons
Well Water Treated	161,900,000 gallons
Recycle Water	8,297,000 gallons
Facility Water	10,872,000 gallons
<b>Total Water Treated</b>	<b>181,069,000 gallons</b>
Pumped to City	54,804,000 gallons
Pumped to NAWS	110,082,000 gallons
Pumped Total	164,886,000 gallons

AMMONIUM SULFATE	5,640 pounds
CARBON DIOXIDE	92,100 pounds
CHLORINE	19,899 pounds
COAGULANT	10,603 gallons
FLOURIDE	8,108 gallons
LIME RECEIVED	719,243 pounds
PHOSPHATE	2,582 pounds

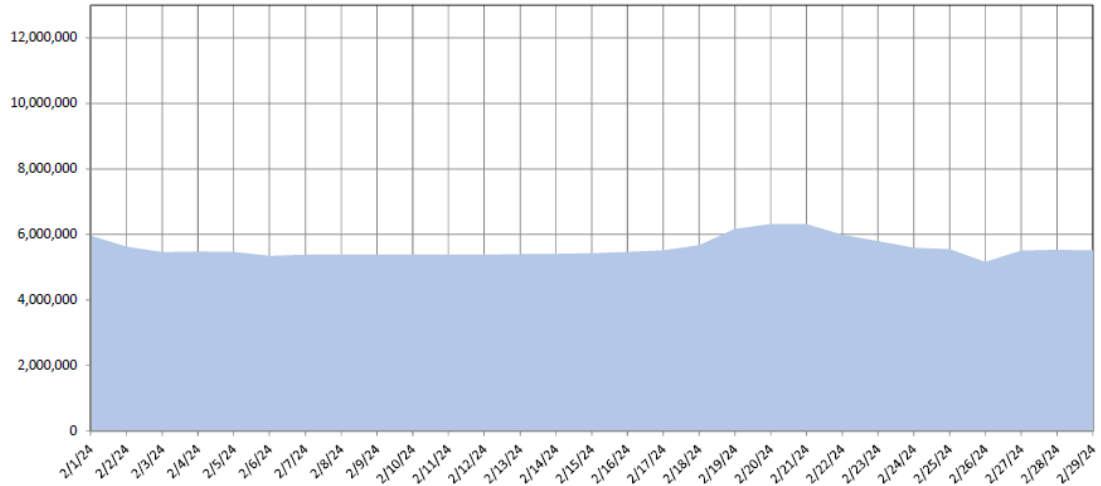
Waste Sludge	124 loads
	1367.05 tons

Bacteria Samples Taken                      50 total

Finish Water Turbidity                      0.070 NTU

WELL FIELD INFORMATION			
WELL #	Hours Run	Gallons per Minute	Gallons Pumped
5	0.0		0
6	0.0		0
8	0.0		0
11	696.0	220	9,187,000
12A&12B	0.0		0
13	0.0		0
14	8.0	760	365,000
15	0.0		0
16	696.0	295	12,319,000
A	0.0		0
B	696.0	580	24,221,000
C	10.0	1630	978,000
D	498.2	1610	48,126,000
E	0.0		0
F	488.8	2290	67,161,000
			162,357,000

February 2024 Influent Raw Water



### Water/Sewer Department:

#### CITY OF MINOT 2024 Water & Sewer Monthly Report/Task vs. Objectives

TASK	OBJECTIVE	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24	Jul-24	Aug-24	Sep-24	Oct-24	Nov-24	Dec-24	TOTALS
Meetings		14	21											35
Service Calls	6,750	597	694											1,291
Inspections	150													0
After hours Calls (Foremen)		30	7											37
Lab Tests	6,500	101	100											201
<b>Meters</b>														
Install New Meters	100	6	9											15
Meter Changes	100	28	16											44
Delinquent Water Accounts		206	99											305
MXU Installations	100	17	13											30
Locates: water/sewer/storm	4,000	111	74											185
<b>Hydrants</b>														
Hydrant Inspections	1,150	0	0											0
Flow Hydrants(for sewer lines)		50	78											128
Install Hydrants	15	0	0											0
Hydrant Repair	180	4	2											6
Hydrant Flow Testing		0	0											0
Hydrant Meter Set		0	0											0
Hydrants Painted		0	0											0
<b>Water</b>														
Curb Stop Maintenance	40	5	5											10
Curb Box (riser repair)	100	4	6											10
GV exercising/inspections	2,000	0	10											10
Gate Valve Maintenance	24	0	1											1
Gate Valve (riser repair)	50	0	1											1
Gate Valves ON/OFF		10	23											33
Repair Water Main Breaks	40	3	2											5
Service Taps		0	0											0
Service Leaks		1	0											1
Hydrastopping	1	0	0											0
Haul Clay/dirt/gravel/snow	Days	0	0											0
PRV Maintenance	5	0	0											0
Install Insta-Valve	1	0	0											0
<b>Sewer</b>														
Televising (feet)	60,500	200	100											300
Clean Sanitary Sewer (feet)	140,000	4,367	4,990											9,357
Check/Flush Manholes	5,000	236	424											660
Inspect Sewer Lift Stations	2,080	612	609											1,221
Sewer Calls		5	2											7
Manhole Repair	50	3	1											4
Repair Sewers (feet)	30	0	0											0
Mowing/Snow Removal Hours	6,000	8	10											18



**Landfill/Sanitation:**

The following are totals for February 2024

Single Stream Recycling – 80.63 Tons

MSW – 5,221.85 Tons

Inert – 666.1 Tons

Lime – 1367.05 Tons

Trees – 91.74 Tons

Trees Given Away for Firewood – 11.03 tons

Total number of landfill tickets generated – 2994

February gate collections were \$240,792.76 compared to \$240,733.67 in 2023.

There was a total of 18 C&D tanks set out for residential use

Sanitation – Pickup 850.04 tons of MSW in the month of February

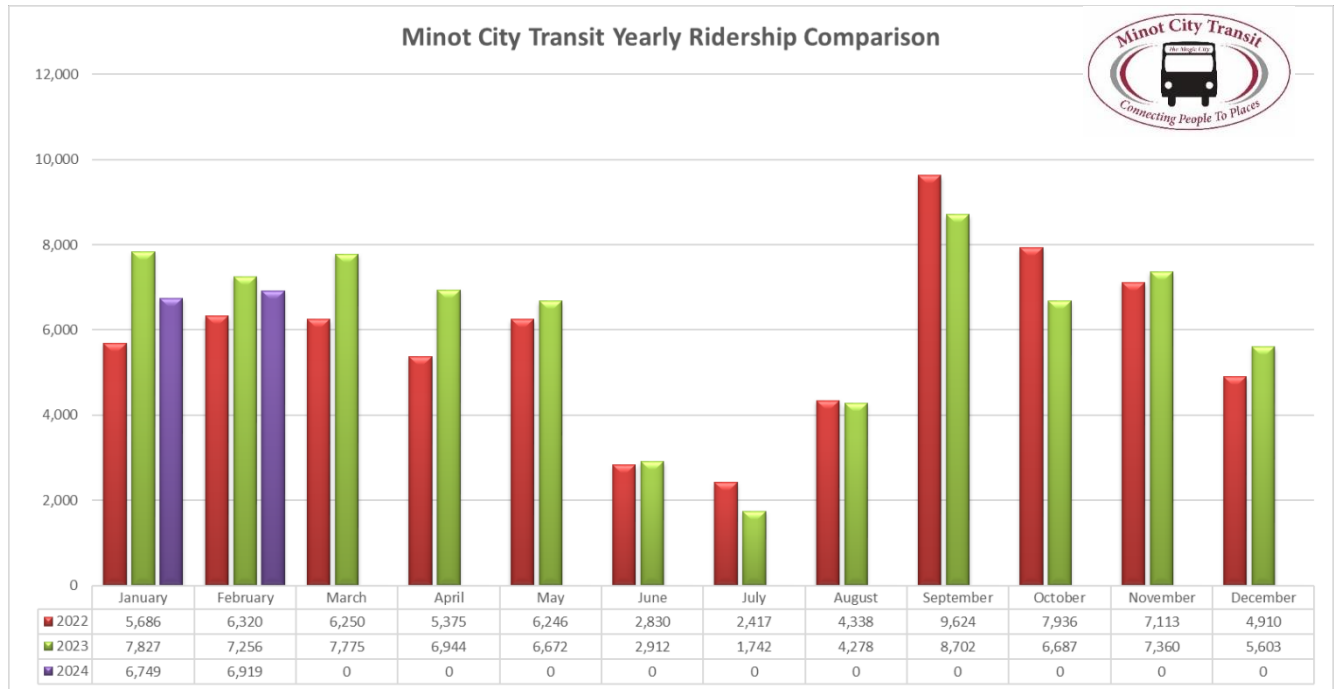
**Vehicle Maintenance:**

Staff completed 171 work orders in February. 74(43%) were preventive maintenance and 97 (57%) were unscheduled maintenance repairs.

The parts and labor cost for February was \$125,631.93.

Our Work Order Turnaround was 53% of work completed within 24 hours and 71% of all work orders were completed in under 72 hours.

## Transit:



Bids were opened March 5 for the construction of the new transit transfer center. Bids were slightly above the original \$500,000 budget. NDDOT is currently evaluating the bids and will also be doing an amendment to our original Section 5339 grant to allocate additional funding so that the project can move forward.

Transit staff has evaluated 3 different software packages to replace our current RouteMatch software. The recommendation for entering into a contract with TripSpark Technologies to provide the new fixed route software system is on the council's agenda for March 18.

Staff will also be working on writing specifications for a new Low-Floor Transit Bus to be purchased in 2024.

## Cemetery

The Cemetery staff continue with burials, urn interments, etc.

### MONTHLY REPORT

Date: Feb-24  
 To: Jason Sorenson, Utilities Director  
 From:  
 Re: Monthly Report, Acct. #540

LOT SALES	REG	Flat Stone	2		
	REG	Monument	4	<u>Columbarium Niches</u>	
	Niche	Top 3	0	<u>% SOLD</u>	70.83%
	Niche	Bottom 3	0		
	Infant		2		
				TOTAL	8
	Sell Back	Reg	0		
	Sell Back	Monument	0		
	Sell Back	Col	0	TOTAL	8
PERFORM INTERMENTS			Traditional	Cremation	Columbaria
WEEKDAY INTERMENT			10	2	2
SATURDAY INTERMENT			1	0	0
Social Service			0	0	
Infant			2	0	
			13	2	2
HOLIDAY/SUNDAY INTERMENT			0	0	
			Cremation Percentage	13.33%	TOTAL 15
SURCHARGES					
2nd Interment / Lot Reuse					
					TOTAL 0
DISINTERRED					TOTAL 0
			Prior Month Balance	Intake	Removed
VAULT STORAGE			9	2	0
					TOTAL 11
WORK ORDERS			Prior Balance	New	Closed
Vase			4	1	0
Grounds			1	0	0
Monument			13	1	0
MONUMENT/MARKER INSTALLATION			Single	Double	
Flat			0	0	
Monuments			0	0	
Veteran			0		
Vase/Yoke					TOTAL 0

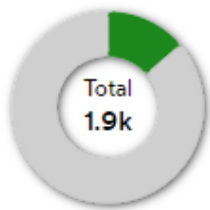
**Human Resources**  
**HR Director, Lisa Jundt**

**Self Service Utilization Analysis from ADP Year to Date**

ADP's point-in-time snapshot of the City of Minot's self-service utilization by managers and employees, provides the HR department an overview of where there are opportunities for time and cost savings in some administrative functions for personnel information. This tool will be helpful as the department looks to improve in areas and initiatives in the future, such as staff training and engagement.

**Utilization Overview**

This graphic compares the percent of changes made by your employees through self service with the percent of changes made by your HR practitioners.



Self Service Changes

● **14%** (267)

Practitioner Changes

● **86%** (1,682)

**Estimated Current Savings**

Based on the number of self-service changes made by your employees and the industry standard cost for HR practitioners to make those same changes, we estimate that you've already saved this amount during this time period.


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Self Service Changes		Average HR Task Cost		Estimated Savings
267	x	\$4.51	=	\$1,204.17

## Opportunities to Save More

Every change your employees make through self service helps your HR practitioners save time and your organization save money.

Estimated Savings  
**\$1,204.17**

Estimated Opportunity   
**\$7,585.82**

### Top Saving Areas

[Tax Withholdings >](#)

[Emergency Contacts >](#)

[Personal Info >](#)

### Top Opportunity Areas

[Employment Info >](#)

[Employee Pay Rate >](#)

[Personal Info >](#)

**WSI Audit** – As reported in a previous City Manager Report, the organization has again passed the annual audit for Workforce Safety and Insurance. Compliance by the City and participation in Workforce grant programs has contributed to the City earning \$110,161 in safety discounts to use towards annual WSI premiums.

**Recruitment/Current Openings** HR Staff continue their efforts to recruit for the following positions: Economic Development Administrator, Public Works Operations Director, Fleet Management Services Superintendent, Project Civil Engineer, Engineering Technician, Intelligence Analyst, 911 Dispatcher, Police Officer, Engineer Intern, GIS Intern, Library Assistant and Metropolitan Planning Organization Director

## Assessor's Office City Assessor, Ryan Kamrowski

The following represents the City of Minot's real estate market based on a monthly and year to date basis. The numbers listed below are based on Normal Arm's Length Transactions as determined by extensive review by the City of Minot Assessor's office.

	February			Year to Date 2024		
	Sales	Median	Average	Sales	Median	Average
Residential	4	\$ 330,950	\$ 271,850	44	\$ 239,987	\$ 274,970
Residential Vacant Land	0	\$ 0	\$ 0	27	\$ 35,000	\$ 35,000
Commercial	0	\$ 0	\$ 0	4	\$ 475,000	\$ 1,375,125
Commercial Vacant Land	0	\$ 0	\$ 0	0	\$ 0	\$ 0

**\*Special Notes:**

The Ward County Auditor's office has been delayed in processing deeds due to a backlog of property tax payments. We expect deed processing to normalize in March 2024.

**Community Development Department  
Director, Brian Billingsley**

**INSPECTIONS DIVISION:**

February 2024 Permit Information (February 2023):

- Total Permits Issued: 187 (130)
- Single-Family Homes: 2 (0)
- Multi-Family Permits: 0 (0)
- New Residential Permit: \$307,698 (\$0)
- Residential Remodels: \$177,128 (\$36,500)
- New Commercial: \$6,000 (\$65,372,000)
- Commercial Remodels: \$830,000 (\$465,000)
- Valuations of all Permits: \$1,320,826 (\$65,873,500)

Notable Building Permits:

- Badlands Power Fuels, LLC – Tenant Buildout – 305 17<sup>th</sup> Ave. SE - \$370,000

Electrical Inspection Update:

Director will be sending out a survey to all electricians and contractors during the month of March to obtain feedback on the quality of service.

**PLANNING DIVISION:**

Planning Commission:

The Planning Commission had a meeting in February. All items were approved.

Development Review Team Meetings:

The Minot Development Review Team (DRT) held four (4) DRT meetings during the month of January:

- Square 1 Construction Shop – SE Minot (2-mile)
- Central Parking Ramp Project – Edgewood
- Magic City Beverage – Building Addition
- Gooseneck Implement Complex – Highway 83 S (2-mile)

### Housing Study Update:

The housing study should be ready for adoption at the April 16 city council meeting.

### Other Projects/Meetings:

- Director participated in two CDBG-DR/NDR meetings.
- Director attended a virtual meeting with the Retail Coach.
- Director attended a meeting for the Central Garage development proposal.
- Director attended two meetings with EPIC regarding phase II of The Tracks project.
- Director attended two meetings on alcohol licensing.
- Director and Principal Planner attended the State of the City address.
- Director attended a meeting on ADA accessibility at City Hall.
- Director attended a meeting of the Renaissance Zone Review Board.
- Director and Principal Planner attended a meeting with the Park Board staff to discuss the collection of impact fees.
- Director attended flood control meeting hosted by Senator Hoeven.

### **Minot Public Library Director, Zhaina Moya**



### Director's Report

#### A. Activities/Programs (January 2024)

a. 4 CLC Visits	214 Participants
b. 2 Head Start Visits	104 Participants
c. 1 Passive	53 Participants
d. 1 Kids "Other"	100 Participants
e. 2 LEGO Club	85 Participants
f. 1 Pokemon Club	50 Participants
g. 1 READ Dogs	9 Participants
h. 1 Pokemon Scavenger Hunt	70 Participants
i. 2 Teen Crafts	25 Participants
j. 2 Teen Gaming	18 Participants
k. 1 Makerspace Program	25 Participants
l. 2 Teen Board Game Party	33 Participants
m. 1 "Other" Teen Program	19 Participants
n. 3 Teen Passive	38 Participants
o. 1 Bird Scavenger Hunt	33 Participants
p. 1 Books 'N Brews	16 Participants

q. 1 Dungeons & Dragons	24 Participants
r. 1 Mondays are for Murder	12 Participants
s. Tech Tutors	6 Participants
t. Tech Ed @ Elison	2 Participants
u. 1 That's Craftastic	16 Participants
v. 1 Volunteer Training	3 Participants
w. Twisted Stitches	8 Participants
<b>TOTAL</b>	<b>968 Participants</b>

#### Building & Grounds:

- a. Rolac has been unresponsive in providing an plan to fix some of the remodel issues including carpet and falling leaves & butterflies. A&E has been negotiating with Rolac in regards to the final payments.

#### 2023 Budget:

- a. Moya is still working with finance to close out the 2023 fiscal year.

#### Merit Increase Plans:

- a. The library has been working off of outdated salary range tables when determining staff wages. Additionally, the process for determining raises at the end of the year is overly complex. Moya has contracted with Payscale to gain access to detailed and accurate wages for library staff. Moya's goal is to present new salary range tables at the March Library Board Meeting.

### **HUD Resilience Chris Plank, NDR Program Manager**

- Director attended two Department Manager meeting – 2
- Director and staff attended Broadway Circle Construction Meeting – 3
- Director and staff attended Broadway Circle Update Meeting – 2
- Director and staff attended CDBG- NDR meetings– 3
- Director and staff attended Acquisition meeting – 2
- Director attended City Manager One on One - 1
- Director and Staff attended CRP Fire Extinguisher Training
- Director and staff attended Grant Monitoring meeting – 1
- Director attended Lunch n Learn – 1
- Director and staff attended Senator Hoeven Flood Control meeting – 1
- Director attended CTE Council Tour – 1
- Director and staff attended CTE Construction Update – 2
- Staff one on one – 1
- Director attended ADA walkthrough of City Hall – 1
- Director attended City Attorney Meeting – 1
- Director attended City Council Meetings - 2



## **Project Updates**

### Milton Young Towers

Construction on the project has been completed and the request for the final payoff has been submitted for Council approval. Minot Housing Authority planning Open House. Date to be determined.

### Center for Technical Excellence (CTE)

Tour of the facility was held on February 23, 2024. Members of Council were present along with individuals from MAEDC, Dakota College of Bottineau, Minot State. Final punch list items are being reviewed. Construction is set to be completed on March 29, 2024. Final payment has been submitted for Council approval.

### Acquisitions/Demolition

Open records request initialed by attorney for Parkview Trailer park. Gathering and redacting personal information per the request.

Demolition bids are being accepted for 309 1st Ave NE and will run in the newspaper as well as being posted on the City of Minot Website.

### Broadway Circle

Construction continues on the project. Trusses have been installed on Building C (17 unit LMI Housing) along with walls on first and second floors. There are a couple of items needing to be corrected however this will not delay the final date of completion. Anticipation of warmer weather will allow the parking lot behind the building to be completed.

### Entitlement Process

Onboarding meeting with Consultant. Elizabeth McNannay will be in town the week of April 18, 2024 to do public information gathering meetings along with stakeholder sessions. IDIS Access information sent to HUD for approval. Environmental review for Administration Costs has been completed.

Still unsure of allocation for fiscal year 24. HUD is still waiting for the final Allocation to be decided.

*This document serves two purposes: 1) To provide a summary of the Planning Commission meeting and associated recommendations to City Council; and 2) To act as the Planning Commission minutes of the meeting. The minutes of the Planning Commission meeting are generally adopted at the following Planning Commission with or without changes.*

**Regular Meeting:** Planning Commission.

**Location:** City Hall, Council Chambers, 10 3<sup>rd</sup> Avenue SW., City of Minot, N.D.

**Meeting Called to Order:** Tuesday, March 5, 2024 @ 5:30 pm.

**Presiding Official:** Chairman Offerdahl.

**Members in Attendance:** Commissioners Offerdahl, Baumann, Dohms, Iverson, Kibler, Johnson, Pontenila.

**Members Absent:** Commissioners Faken, Gates, Longtin.

**City Staff Present:** Brian Billingsley (Community Development Director), Doug Diedrichsen (Principal Planner), Nick Schmitz (Assistant City Attorney), Emily Huettl (Assistant City Engineer), Daniel Falconer (Associate Planner) and Hannah Hornberger (C.D. Admin Clerk)

**Others Present:**

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**The following are the minutes of the Planning Commission meeting. The minutes are in DRAFT form until formally adopted by the Planning Commission:**

**Meeting Called to Order by Chairman Offerdahl at 5:30 pm**

**Item #1: Roll Call**

**Item #2: Pledge of Allegiance**

**Item #3: Intro & Decorum**

**Item #4: Approval of Minutes**

Motion by Commissioner Kibler to approve the February 6th, 2024 Planning Commission Meeting Minutes. Second by Commissioner Dohms and carried by the following roll call vote: ayes: all, nays: none.

**Motion carries.**

**Item #5: 2024-01-05: Preliminary Major Plat – Gold Nugget 7<sup>th</sup> Addition**

Public hearing request by Abraham Anderson on behalf of the property owner Magic City MHL LLC, property owner for a preliminary plat to consolidate four outlots and an unplatted portion of land into two lots. The proposed subdivision is to be named Gold Nugget 7<sup>th</sup> Addition, being a replat of Outlot 5, Outlot 16, Outlot 25, Outlot 26 and an unplatted portion of the S 1/2 NE 1/4 NW 1/4 Less the East 33' for Street and 1/2 adjacent Vacated 13<sup>th</sup> Ave. SE, Section 29, Township 155 N, Range 82 W of the Fifth Principal Meridian, to the City of Minot, County of Ward, State of North Dakota.

The properties include 1305 31<sup>st</sup> Street SE, and two unaddressed proposed flood buy out properties south of 1305 31st Street SE and one unaddressed property (Outlot 5) northwest of 1305 31st Street SE.

Chairman Offerdahl asked for staff report to which Mr. Diedrichsen provided a verbal summary of the written staff report. Mr. Diedrichsen provided an aerial view of the property as well as the current zoning of the property, C2 General/Commercial & MH Mobile Home District. Legal nonconforming. Future Land Use would have to conform to existing underlying zoning. The subject property is designated as "Manufactured Home Community" and "Ag and Open Space" as in our Future Land Use plan. Mr. Diedrichsen then showed site photos of the current property, which is a mobile home park facing northwest and road south. Southwest is the river bank and flood plain in the area. Mr. Diedrichsen stated staff recommends Planning Commission adopts staff finding facts and recommends approval.

Commissioner Kibler asked if the multiple designations would be turned into one designation. Mr. Diedrichsen informed Commissioner Kibler that Lot 2 would be designated C2 primarily, Lot 1 would be designated flood. It is apart of future flood buyout property and the owner has discovered which area would be under flood control and is separating that out.

**PUBLIC HEARING:**

Chairman Offerdahl opened the public hearing to the public for testimony.

No one appeared to testify.

Chairman Offerdahl closed the public hearing.

**FINDINGS OF FACT:**

The Minot Planning Commission should accept the following findings of facts:

- 1) The applicants have submitted a complete application.
- 2) The property is zoned "C2" General Commercial District on the Official Zoning Map and has a "Manufactured Home Park" and "Ag and Open Space" designation on the Future Land Use Map of the 2040 Comprehensive Plan.
- 3) The applicant's request is consistent with the bulk requirements of Chapter 2.14 – "C2" General Commercial District of the Land Development Ordinance of the City of Minot (LDO).
- 4) The applicable sections of Chapter 10.3 related to subdivision design are satisfied.
- 5) The Minot Planning Commission has the authority to recommend approval, with or without conditions, or recommend denial of the Major Subdivision Preliminary Plat. The public notice requirements were met, the hearing was legally noticed and posted, and the hearing was held and conducted under the requirements of North Dakota Century Code and Minot City ordinances.

**STAFF RECOMMENDATION:**

Staff recommends the Planning Commission adopt staff findings of fact and recommend City Council approve the Major Subdivision Preliminary Plat for Gold Nugget 7th Addition.

**FINAL DECISION:**

Motion made by Commissioner Dohms based on staff's finding of fact and recommendation. Second by Commissioner Kibler. The motion was carried by the following vote: ayes: 7, nays: 0. **Motion carries.**

**Item #6: Other Business**

Mr. Falconer presenting parking minimums presentation. Minot is already “below average” for parking. Minot is a very car dominated city. Downtown Minot currently has no minimum parking requirements.

Commissioner Kibler stated he’s spoke with several people about parking in Minot and has gotten mixed responses. Mr. Billingsley stated that we are currently working with a company that will build on top of one of the parking ramps downtown. The ramp in the Renaissance Zone is still looking to have someone come in and build on top of that as well. Mr. Falconer suggests we start to get the ball over the hill and start the process. Mr. Falconer informs everyone that this conversation is just to decide what to do with the minimums, whether that is to get rid of them completely or not and what the ripple effects would be if that happened. Mr. Diedrichsen states that we do have areas in the city with issues with parking, specifically strip developed areas where businesses choose not to have adequate parking and then parking spills into residential and that is where we have problems. Commissioner Baumann wants to note the benefits of the active transit, green space development are really cool elements of our community however the problem being parking spots are really wasted space in our community. A parking lot will generate zero income and having sufficient use of space in our community to have a thriving Minot. Commission Baumann doesn’t believe Minot is ready to get rid of them completely, whether habit or car centric people who need a car to get to Minot period. Spaces for cars are needed, but would love to see a surgical approach to go in and see if our code needs to be changed or address where parking may not be needed. Chairman Offerdahl agrees, and asks if we have the man power or hours to get to this? Mr. Billingsley states we do a clean up every fall, to take the time to look at the code, but right away we don’t have the man power. Commissioner Baumann would like to offer motion to direct staff to put together recommendations to reductions of parking minimums across the entire city, all zones and uses and how we could reduce parking minimums in any way that we can. And be presented with the fall language clean up. Commission Kibler 2<sup>nd</sup> the motion. Mr. Diedrichsen asks Commissioner Baumann if he would like those brought forward a month before it is brought forward formally to review, discuss and give any recommendations? Chairman Offerdahl asks if that timeline is feasible and for Commissioner Baumann to amend his motion? Commission Baumann amends his motion. Commissioner Kibler seconds the motion. The motion was carried by the following vote: ayes: 8, nays: 0. **Motion carries.**

Mr. Billingsley introduces Ms. Hornberger, new planning and code enforcement assistant.

**Item #7: Adjournment**

With no further business, Chairman Offerdahl adjourned the meeting at 6:20 pm.

# GOLD NUGGET 7TH ADDITION

## to the City of Minot, ND

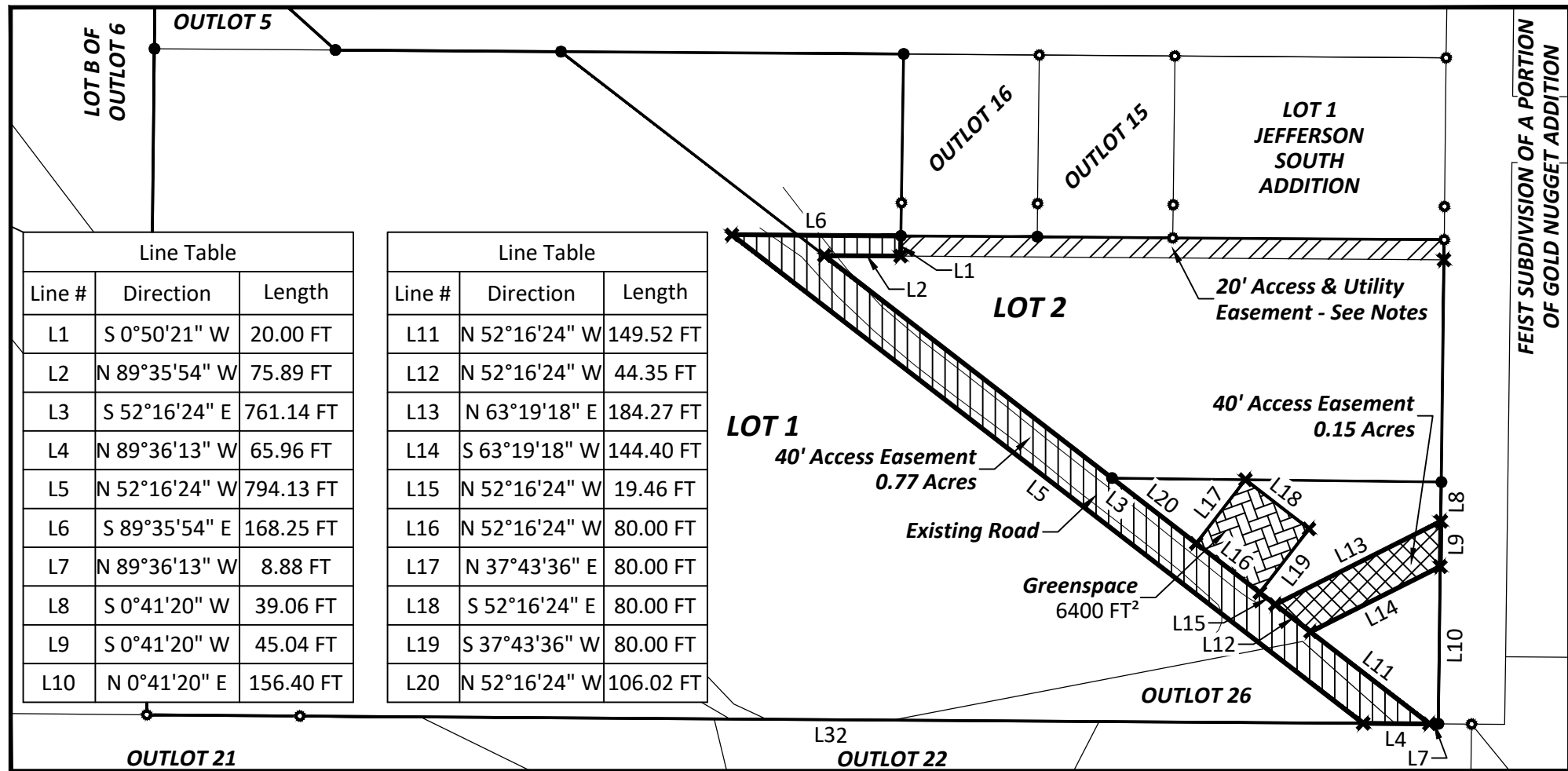
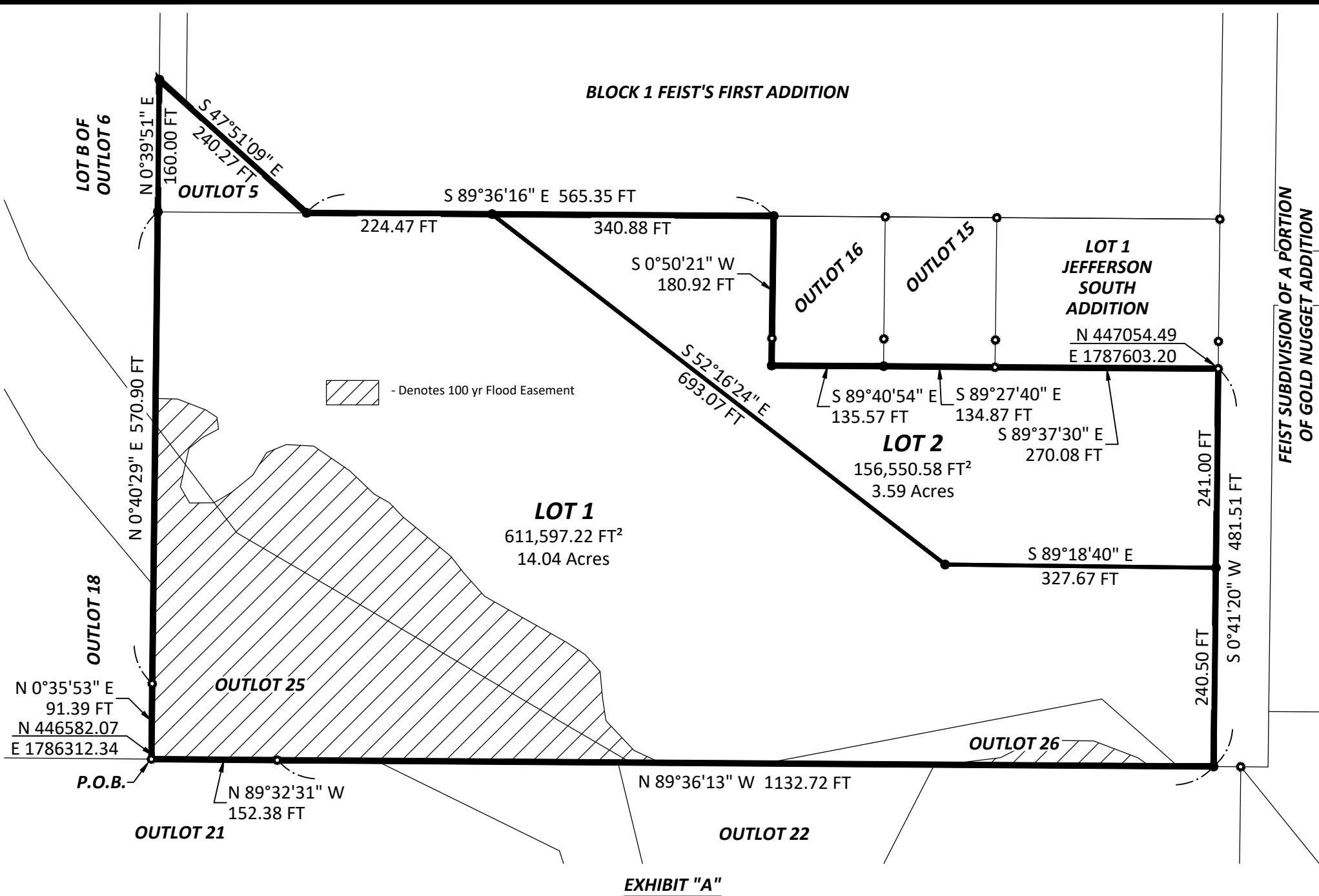
BEING OUTLOT 5, OUTLOT 16, OUTLOT 25, OUTLOT 26 AND AN UNPLATTED PORTION OF THE S½NE¼NW¼, SECTION 29, TOWNSHIP 155 N, RANGE 82 W, TO THE CITY OF MINOT, NORTH DAKOTA

### DESCRIPTION:

Know all men by these presents that Magic City Community, LLC, being Owner and Proprietor, of Outlot 5, Outlot 16, Outlot 25, Outlot 26 and an Unplatted Portion of the S½NE¼NW¼, Section 29, Township 155 N, Range 82 W, Ward County, North Dakota, being more particularly described as follows:

Beginning at the Southwest Property Corner, of Outlot 25, a Plat being on file at the Ward County Recorder's Office; Thence N 0°35'53" E, on the West Line, of said Outlot 25, a distance of 91.39 FT; Thence N 0°40'29" E, a distance of 570.90 FT, to the Southwest Property Corner, of Outlot 5, a Plat being on file at the Ward County Recorder's Office; Thence N 0°39'51" E, on the West Line, of said Outlot 5, a distance of 160.00 FT, to the Northwest Property Corner, of said Outlot 5; Thence S 47°51'09" E, on the East Line, of said Outlot 5, a distance of 240.27 FT, to the Southeast Property Corner, of said Outlot 5; Thence S 89°36'16" E, a distance of 565.35 FT, to the Northwest Property Corner, of Outlot 16, a Plat being on file at the Ward County Recorder's Office; Thence S 0°50'21" W, on the West Line, of said Outlot 16, a distance of 180.92 FT; Thence S 89°40'54" E, a distance of 135.57 FT; Thence S 89°27'40" E, a distance of 134.87 FT, to the Southwest Property Corner, of Lot 1 of Jefferson South Addition, a Plat being on file at the Ward County Recorder's Office; Thence S 89°37'30" E, on the South Line, of Lot 1 of Jefferson South Addition, a distance of 270.08 FT, to the Southeast Property Corner, of said Lot 1 of Jefferson South Addition; Thence S 0°41'20" W, a distance of 481.51 FT; Thence N 89°36'13" W, a distance of 1132.72 FT, to the Point of Beginning.

Said described tract, of land contains 17.63 Acres more or less Have caused the same to be surveyed and platted as shown hereon, to be known as Gold Nugget 7th Addition, to the City of Minot, North Dakota and hereby dedicate and donate road rights, of ways and easements as shown to the public for public use forever, in witness whereof, the owners hereunto affixed their signatures.



- - Denotes Property Corner Set 18" - #5 Rebar w/ PLS Cap #6134
- - Denotes Property Corner Found
- ✕ - Denotes Traverse Point

### NOTES:

- Plat is subject to all prior Easements of Record.
- Bearings and Distances may vary from previous plats due to different methods of measurement.
- A 10' Utility Easement is on the streetside of every Lot.
- State Plane Coordinates shown are North Dakota (North Zone) NAD83 Int. Feet. NGS OPUS Solution was used to establish coordinates.
- 20' Access & Utility Easement Obtained off of City of Minot Resolution No. 3745 Adopted January 3, 2021.

### APPROVAL

I hereby certify that the Plat shown hereon has been approved by the Minot Planning Commission and the Minot City Council.

Approved: \_\_\_\_\_, 2023  
Minot City Engineer

\_\_\_\_\_  
Magic City Community, LLC

On this \_\_\_\_ Day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said State, Appeared ????, well known to be the persons described in the foregoing description and acknowledged to me that they executed the same on their own free act and deed.

My commission expires

\_\_\_\_\_  
Notary Public, State of North Dakota

On this \_\_\_\_ Day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said State, Appeared ????, well known to be the person described in the foregoing description and acknowledged to me that he executed the same on his own free act and deed.

My commission expires

\_\_\_\_\_  
Notary Public, State of North Dakota

### SURVEYOR'S CERTIFICATE

I, Thomas R. Leshovsky, a duly Registered Professional Land Surveyor, do hereby certify that I have Surveyed and Platted, the Foregoing described land. That Lots, Distances, Areas and Locations as shown on the foregoing Plat and in the Description Thereof, are true and correct to the best of my Knowledge and Belief.

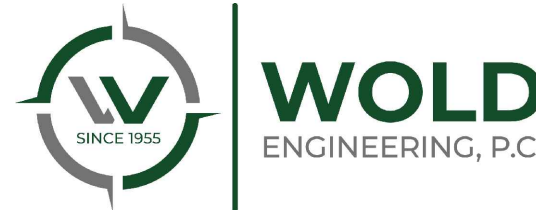
\_\_\_\_\_  
Thomas R. Leshovsky P.L.S. #6134

STATE OF NORTH DAKOTA, COUNTY OF \_\_\_\_\_

On this \_\_\_\_ Day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said State, Appeared Thomas R. Leshovsky, Registered Professional Land Surveyor, well known to be such, and acknowledged to me that he executed the foregoing Surveyor's Certificate as his own free act and deed.

My commission expires

\_\_\_\_\_  
Notary Public, State of North Dakota



915 East 11th Street - PO Box 237 - Bottineau, ND 58318  
110 8th Avenue Southwest - Minot, ND 58701  
316 Eastdale Drive - PO Box 1277 - Bismarck, ND 58502

**On March 4, 2024, a Regular Meeting of the Minot City Council was held in the Council Chambers at City Hall. Mayor Ross called the meeting to order at 5:30 pm.**

**ROLL CALL**

**Members Present:**

Burlingame, Evans, Jantzer (via teams), Olson, Pitner, Podrygula, Ross

**Members Absent:**

None

**PLEDGE OF ALLEGIANCE**

Mayor Ross, along with Girl Scout Katie from Troop 10319, led the City Council in the Pledge of Allegiance.

**MAYOR'S REPORT**

Mayor Ross attended an Alcohol Ordinance Review and Rewrite Committee meeting, MACEDC Board meeting, two coffee sessions with a group of senior enlisted and airmen on MAFB, NDSF planning meeting, Visit Minot staff meeting, suicide symposium planning meeting, MACEDC Business After Hours, meetings with Rep. Kelly Armstrong and Senator Hoeven, a local podcast, NCAA Super Regional, Dakota Rattlers wrestling, the Home & Garden Show, a team meal for the South Prairie Royals, and the state basketball tournament.

**CITY MANAGER'S REPORT**

Harold Stewart submitted a written report to the council.

**CITY ATTORNEY REPORT**

Stefanie Stalheim submitted a written report to the council.

**CONSENT ITEMS**

Alderman Pitner moved the City Council approve consent items 6.1-6.2, 6.4-6.14, 6.16-6.20.

6.1 CITY COUNCIL MINUTES - Approve the minutes of the February 20, 2024, Regular City Council meeting and the February 26, 2024, Special City Council meeting.

6.2 ORDINANCES – Approval of the following ordinances considered for second reading:

1. Ordinance No 5946 - 2024 BA - Engineering Consultant Fees

2. Ordinance No 5947 - 2024 BA - Entitlement Consultant Fees

(Ordinances are available for inspection and copying at the City Hall City Clerk's Office during normal office hours (generally Mon-Friday 8:00am – 4:30pm))

6.4 BILLS, TRANSFERS, AND PAYROLL - Approve the payroll for the period of January 14, 2024, through February 10, 2024, in the amount of \$2,593,724.41 and the bills and transfers for February in the amount of \$6,130,443.30.

AAAE	\$4,165.00	299523	BRIDGETOWER OPCO, LLC	\$1,211.32	299675
ACKERMAN ESTVOLD	\$53,081.88	299524	BUTLER MACHINERY CO.	\$38,048.70	299676
ACME TOOLS	\$7.16	299525	CAPITAL ONE	\$32.99	299677
AMERICAN WELDING & GAS, INC.	\$4,633.75	299526	CITY OF MINOT	\$210.00	299780
APEX ENGINEERING GROUP	\$79,845.50	299527	COLE PAPERS, INC.	\$5,804.08	299678
CENTRAL TRENCHING, INC.	\$71.45	299529	CORE & MAIN	\$5,537.64	299679
CHEMSCAN, INC.	\$6,021.00	299530	DACOTAH PAPER CO.	\$4,404.23	299680
CITY OF MINOT	\$125.00	299597	DAKOTA FENCE	\$5,700.00	299681
CPS, LTD	\$532.50	299531	DAKOTA FIRE EXTINGUISHER	\$203.63	299682
DACOTAH PAPER CO.	\$6,853.33	299532	DAKOTA FLUID POWER, INC.	\$3,579.55	299683
DAKOTA FIRE EXTINGUISHER	\$1,061.84	299533	DEERE CREDIT, INC.	\$88,093.22	299762
DAKOTA FLUID POWER, INC.	\$212.97	299534	DELL MARKETING L.P.	\$111,014.15	299684
DECOMM VENTURES, LP	\$7,200.00	299535	DOMESTIC VIOLENCE CRISIS CENTER	\$1,556.20	299685
DOMESTIC VIOLENCE CRISIS CENTER	\$3,959.32	299536	ELDORADO NATIONAL - CALIFORNIA	\$403.66	299686
DR. ANTHONY TATMAN	\$50.00	299538	EMC CORPORATION	\$51,426.60	299687
ELDORADO NATIONAL - CALIFORNIA	\$932.63	299539	EMERGENCY AUTOMOTIVE TECHNOLOGIES	\$87.82	299688
ELECTRIC PUMP	\$1,904.01	299540	Amanda Somerville	\$17.70	299689
Alex Coleman	\$64.90	299541	Amanda Somerville	\$171.10	299690
Casey Rostberg	\$64.90	299542	Anthony Barrette	\$255.00	299691

Chad Sickles	\$942.30	299543	Belinda Gladback	\$171.10	299692
City of Minot	\$50.00	299544	Bryce Allen	\$76.70	299693
Dwayne Akin	\$112.10	299545	Bryce Allen	\$135.70	299694
Jason Angelo	\$942.30	299546	Caisee Sandusky	\$106.20	299695
Krystle Foster	\$112.10	299547	Caisee Sandusky	\$206.50	299696
Kyle Beck	\$344.20	299548	Chris LaValley	\$135.70	299697
Mark Paddock	\$557.44	299549	Christina Bullard-Wolf	\$271.70	299698
Travis Bullard-Wolf	\$112.10	299550	Dana Pollman	\$17.70	299699
Travis Degele	\$344.20	299551	Diego Torres	\$11.00	299700
ENERBASE	\$28,413.11	299552	Jacob Olson	\$17.70	299701
ETC INSTITUTE	\$6,000.00	299553	Karlain Olstad	\$76.70	299702
FACTORY MOTOR PARTS	\$182.94	299554	Karlain Olstad	\$135.70	299703
FERGUSON WATERWORKS #2516	\$8,208.00	299556	Krystle Foster	\$51.59	299704
FIRE EQUIPMENT CO.	\$1,051.00	299557	Melissa Anderson	\$59.22	299705
FIRST INTERNATIONAL BANK & TRUST	\$759.00	299558	Rob Cimino	\$76.70	299706
FLEETMIND SOLUTIONS, INC.	\$3,818.32	299559	Seth LaBodda	\$17.70	299707
FLEXIBLE PIPE TOOLS & EQUIPMENT	\$1,180.00	299560	Terry Burckhard	\$23.00	299708
G & P COMMERCIAL SALES	\$562.04	299561	ENERBASE	\$29,393.09	299709
GALLS, LLC	\$7,121.94	299562	FACTORY MOTOR PARTS	\$320.16	299710
GEFROH ELECTRIC	\$5,965.00	299563	FASTENAL COMPANY	\$31.12	299712
Carl Davidson	\$20.00	299564	FIRST DISTRICT HEALTH UNIT	\$26,500.00	299713
City of Minot	\$100.00	299565	FIRST INTERNATIONAL BANK & TRUST	\$759.00	299714
Dan Lawson9	\$50.00	299566	FLEETMIND SOLUTIONS, INC.	\$2,120.01	299715
IKFYR	\$1,000.00	299567	FORCE AMERICA	\$187.77	299716
Joe Melvin Stenvold	\$200.00	299568	FRONTLINE PUBLIC SAFETY SOLUTIONS	\$3,858.75	299717
Joeleon Holdings	\$10.00	299569	G & P COMMERCIAL SALES	\$6,027.34	299718
Katelynn Bowen	\$25.00	299570	GALLS, LLC	\$5,475.75	299719
Kevina Click	\$20.00	299571	Casey Skdesvold	\$50.00	299720
Menards	\$40.00	299572	Celine Marx	\$50.00	299723
Minot Park District	\$50.00	299573	City of Minot	(\$10.00)	299724
North Dakota Child Support	\$75.00	299574	Closet Connection	\$20.80	299725
North Dakota Child Support	\$20.00	299575	Jennifer Demshur Baker	\$25.00	299726
Randy Holbach	\$2.23	299576	Jeremy Laber	\$50.00	299727
GENERAL TRADING	\$21.40	299577	Jim Johnson	\$50.00	299728
GERDAU RECYCLING	\$1,706.01	299578	Jim Johnson	(\$50.00)	299729
GRAYMONT WESTERN US INC.	\$40,773.70	299579	Marketplace Food	\$200.00	299730
H.A. THOMPSON & SONS, INC.	\$4,594.76	299580	Michaela Young	\$50.00	299733
HAWKINS, INC.	\$29,386.64	299581	Mya Hanson	\$200.00	299734
HOUSTON ENGINEERING, INC.	\$6,288.25	299582	Rodney Neuhalfen	\$50.00	299735
IHEARTMEDIA	\$1,120.00	299583	Seirra Inn	\$20.00	299736
INFAX, INC.	\$14,000.00	299584	Shandel Grogan	\$25.00	299737
INTERNATIONAL CITY MANAGEMENT ASSOCIATION RET.	\$631.40	299585	Target	\$10.00	299738
INTERSTATE ENGINEERING, INC.	\$3,000.00	299586	Target	\$14.99	299739
KLJ ENGINEERING, LLC	\$4,341.69	299587	TeamCare	\$100.00	299740
LANCE LENTON	\$8,000.00	299537	Teresa Hunt	\$25.00	299741
MARCO, INC.	\$385.00	299589	U.S. Postal Service	\$50.00	299742
MATTHEW BENDER & COMPANY, INC.	\$147.31	299588	Virtual VRI	\$100.00	299743
MELANIE MOORE	\$70.00	299598	GENERAL TRADING	\$144.05	299744
METROHM USA, INC.	\$23,460.63	299590	GOETTLE LAW, PLLC	\$3,500.00	299745
MIDWEST TAPE	\$227.89	299591	GRAYMONT WESTERN US INC.	\$72,114.07	299747
MILLER LAW OFFICE, P.C.	\$677.94	299592	GREAT PLAINS TECHNICAL SERVICES	\$810.00	299748
MINOT EMPLOYEE DONATIONS	\$870.24	299593	HAWKINS, INC.	\$18,385.05	299749
MINOT PARK DISTRICT	\$49,894.84	299594	HERC-U-LIFT	\$294.00	299750
MINOT RURAL FIRE DEPT	\$511.81	299595	HIGH POINT NETWORKS, LLC	\$3,982.55	299751
MINOT VETERINARY CLINIC	\$6,778.35	299596	HP, INC.	\$15,813.00	299752
MOWBRAY & SONS	\$312.00	299599	HP, INC.	\$961.01	299753
NAPA AUTO PARTS	\$1,566.81	299600	IACP	\$190.00	299754
ND DEPT OF ENVIRONMENTAL QUALITY	\$18.54	299601	ICMA	\$901.00	299755
ND DEPT OF WATER RESOURCES	\$54,803.25	299602	IHEARTMEDIA	\$840.00	299756
ND FIRE CHIEFS ASSN	\$100.00	299603	INDUSTRIAL BUILDERS, INC.	\$146,900.00	299757
ND STATE RADIO COMM.	\$3,400.00	299604	INFORMATION TECHNOLOGY DEPARTMENT	\$6,393.50	299758
NEW HALI-BRITE, INC.	\$10,583.87	299605	INTERNATIONAL CITY MANAGEMENT ASSOCIATION RET.	\$624.56	299759
NEWMAN TRAFFIC SIGNS	\$1,250.00	299606	INTERSTATE BATTERY SYSTEM	\$150.95	299760
NORTHWEST TIRE AND RETREAD	\$4,286.73	299607	JOB SERVICES OF NORTH DAKOTA	\$12,897.48	299761
OFFICE OF STATE AUDITOR	\$900.00	299608	JOHNSON CONTROLS	\$6,173.00	299763
OHNSTAD TWICHELL, P.C.	\$3,500.00	299609	KIMBALL MIDWEST	\$78.80	299764
PARKLAND USA CORPORATION	\$60.23	299555	LANGUAGE LINE SERVICES	\$149.74	299765
PEC SOLUTIONS LLC	\$12,786.00	299528	LOWES PRINTING, INC.	\$75.00	299766
POST CONSTRUCTION COMPANY	\$78,922.91	299610	M & S SHEET METAL, INC.	\$1,571.96	299767
POWER PROCESS EQUIPMENT	\$28.60	299611	M&T FIRE AND SAFETY, INC.	\$4,864.00	299768
PRAIRIE SCALE SYSTEMS, INC.	\$28,468.00	299612	MAD DOG BROKERAGE INC	\$17,253.20	299770
PRAIRIE SUPPLY	\$445.52	299613	MAGIC CITY GARAGE DOOR COMPANY	\$6,557.50	299771
PRINGLE & HERIGSTAD, P.C.	\$757.50	299614	MAIN ELECTRIC CONSTRUCTION	\$2,221.60	299772
PROCOLLECT	\$170.00	299615	MARCO, INC.	\$295.95	299773
PROCONTROLS MIDWEST	\$1,866.25	299616	MELANIE MOORE	\$60.00	299782
RDO EQUIPMENT	\$488.23	299617	MIDWEST TAPE	\$2,221.18	299774
AHMANN, JANETTE	\$10.00	299618	MINOT AREA CHAMBER EDC	\$46,637.50	299769
CAMPBELL, LEO	\$14.04	299619	MINOT AREA COUNCIL OF THE ARTS, INC	\$6,666.66	299775

FORD, ALYSSA	\$19.93	299620	MINOT ASSOC. OF BUILDERS	\$650.00	299776
HALIPAJ, JESSICA	\$12.86	299621	MINOT AUTO	\$9.46	299777
IPM	\$156.70	299622	MINOT COMMISSION ON AGING	\$13,532.50	299778
IPM	\$50.65	299623	MINOT EMPLOYEE DONATIONS	\$808.32	299779
KNIGHT, SHELLY	\$70.00	299624	MOWBRAY & SONS	\$364.00	299783
MATTISON, MARK	\$78.85	299625	NAPA AUTO PARTS	\$3,770.11	299784
MINOT PARK DISTRICT	\$6,685.74	299626	ND DEPT OF WATER RESOURCES	\$48,236.04	299785
ROTHE, JASON	\$10.81	299627	ND FRATERNAL ORDER OF POLICE	\$1,498.50	299786
STEBLETON, THERESA	\$14.55	299628	ND ONE CALL, INC.	\$158.15	299787
RHI SUPPLY	\$2,300.10	299629	NDBOA	\$995.00	299788
ROTARY CLUB OF MINOT	\$186.00	299630	NEXTREQUEST	\$9,572.70	299790
SCHOLASTIC LIBRARY PUBLISHING	\$10.79	299631	NORTHERN TESTING	\$1,400.00	299791
SIGN SOLUTIONS USA	\$168.41	299632	NORTHWEST TIRE AND RETREAD	\$11,989.46	299792
SOLTIS BUSINESS FORMS CO.	\$3,293.25	299633	O'REILLY AUTO PARTS	\$32.68	299793
SOURIS RIVER JOINT WATER RESOURCE	\$20,827.64	299634	OFFICE FURNITURE RESOURCES	\$240.00	299794
STANTEC CONSULTING SERVICES, INC.	\$6,624.00	299635	OHNSTAD TWICHELL, P.C.	\$709.50	299795
STREICHER'S	\$4,046.35	299636	OLSON'S TOWING	\$2,915.00	299796
SWEENEY CONTROLS COMPANY	\$391.27	299637	ONE CALL CONCEPTS, INC.	\$92.70	299797
TITAN MACHINERY	\$191.94	299638	PARKLAND USA CORPORATION	\$93.24	299711
TYLER TECHNOLOGIES, INC.	\$700.00	299639	PEC SOLUTIONS LLC	\$552.00	299669
U.S. GEOLOGICAL SURVEY	\$5,245.00	299640	POSTMASTER	\$320.00	299826
U.S. POST OFFICE	\$5,000.00	299641	PRAIRIE SUPPLY	\$183.71	299798
VESSCO, INC.	\$390.90	299642	PRINGLE & HERIGSTAD, P.C.	\$1,612.50	299799
VISIT MINOT	\$15,769.14	299643	PROTECH INTEGRATIONS, LLC	\$100.00	299800
WARD COUNTY TREASURER	\$2,428.18	299644	PROVIDENT LIFE & ACC INS CO	\$363.08	299801
WESTLIE TRUCK CENTER	\$1,067.73	299645	RAPID FIRE PROTECTION, INC.	\$8,476.00	299802
AFLAC	\$16,214.66	100005163	RDO EQUIPMENT	\$3,684.59	299803
CENTER FOR PUBLIC SAFETY MANAGEMENT, LLC	\$16,285.00	299646	EDWARDS, CHRYS	\$64.25	299804
EAPC	\$7,266.11	299647	RHI SUPPLY	\$4,478.69	299805
EMPOWER TRUST COMPANY, LLC	\$29,277.40	100005154	ROLAC CONTRACTING	(\$614,412.60)	299806
LPO CONFERENCE ACCOUNT	\$1,133.70	299649	ROLLKALL TECHNOLOGIES LLC	\$14.00	299807
MATTSON CONSTRUCTION	\$1,542,718.94	299648	RONKEN INDUSTRIES INC	\$1,094.78	299808
ND PUBLIC EMPLOYEES RETIREMENT SYSTEM	\$12,823.45	100005160	SANITATION PRODUCTS	\$9,844.29	299809
ND PUBLIC EMPLOYEES RETIREMENT SYSTEM	\$13,067.95	100005161	SCHAEFER SYSTEMS INTERNATIONAL	\$16,585.50	299810
PROJECT BEE	\$1.00	299650	SCHOCKS SAFE AND LOCK SERVICE	\$75.00	299811
ANDRYSIAK, KRISTA	\$11.80	299651	SCHOLASTIC, INC.	\$192.92	299812
BENNETT, KIJ	\$37.15	299652	SEAGRAVE FIRE APPARATUS, LLC	\$8,179.71	299813
CHILDRES, JADEN	\$18.57	299653	SERTOMA CLUB OF MINOT	\$125.00	299814
HOULE, HANNAH	\$31.14	299654	SOLTIS BUSINESS FORMS CO.	\$1,132.00	299815
KELLUM, KAMIL	\$39.11	299655	SOURIS RIVER JOINT WATER RESOURCE	\$345,904.47	299816
MINOT PARK DISTRICT	\$1,543.66	100005167	SRF CONSULTING GROUP	\$53,364.18	299817
DAKOTA COLLEGE AT BOTTINEAU	\$254,820.25	115	SWANSTON EQUIPMENT COMPANIES	\$11,144.05	299818
DAKOTA COLLEGE AT BOTTINEAU	\$5.00	116	TED BOLTON	\$761.77	299673
Jared Foley	\$171.10	299656	THE IRIS COMPANIES	\$3,860.00	299819
EMPOWER TRUST COMPANY, LLC	\$5,402.43	100005165	THOMSON REUTERS-WEST PAYMENT CENTER	\$372.00	299820
1 CALL SEPTIC SERVICES, INC	\$9,971.72	299657	TIMMONS GROUP	\$12,555.00	299821
AAAE	\$2,700.00	299658	TIMOTHY P BROOKS	\$6,032.89	299746
ABSOLUTE COMFORT, INC.	\$172.50	299659	TITAN MACHINERY	\$1,804.50	299822
ACKERMAN ESTVOLD	\$23,816.03	299660	TRINITY EVANGELICAL FREE CHURCH	\$500.00	299823
ACME TOOLS	\$31.01	299661	TYLER TECHNOLOGIES, INC.	\$1,400.00	299824
ADVANCED BUSINESS METHODS	\$191.53	299662	UNITED MAILING SERVICE	\$5,434.00	299825
ALCO COVERS, LLC	\$970.45	299663	WALLWORK TRUCK CENTER	\$342.11	299827
AMERICAN TRUCK & TRAILER, LLC	\$164.85	299664	WAYNE MOE	\$1,260.00	299781
AMERICAN WELDING & GAS, INC.	\$9,307.88	299665	WESTLIE FORD	\$3,354.91	299828
APEX ENGINEERING GROUP	\$59,321.16	299666	WESTLIE TRUCK CENTER	\$2,565.63	299829
APPLE BOOKS, LLC	\$1,162.70	299667	WHITE CAP, LP	\$826.24	299830
ARAMARK	\$126.18	299668	ROLAC CONTRACTING	\$792,912.60	299831
ASPHALT PRESERVATION COMPANY, INC	\$1,550.00	299670	VISIT MINOT	\$38,050.32	299832
ATSSA	\$92.00	299671	MDU	\$262.02	100005175
BARR ENGINEERING	\$9,346.50	299672	VERENDRYE ELECTRIC	\$65,169.46	100005164
BERVEN INDUSTRIES, LLC	\$3,292.36	299789	XCEL	\$67,900.14	100005177
BOUND TREE MEDICAL	\$940.91	299674	WEX HEALTH, INC	\$306.60	100005169
				\$4,471,165.75	

6.5 ALCOHOLIC BEVERAGE LICENSE - THE DEPOT & BAGGAGE CLAIM - Approve the Supper Club License for The Depot & Baggage Claim at 15 N Main St. for the premise outlined in the application during the period of March 4, 2024 through December 31, 2024.

6.6 ALCOHOLIC BEVERAGE LICENSE - DAKOTA INN/TRAPPERS LOUNGE - Approve the Hotel License for Dakota Inn/Trappers Lounge at 2401 Elk Drive for the period of March 4, 2024 through December 31, 2024.

6.7 GAMING SITE AUTHORIZATION - MULE DEER FOUNDATION - Approve the Mule Deer Foundation to conduct a raffle on April 27, 2024, at Sports on Tap in Room 221 (220 S Broadway).



6.8 GAMING SITE AUTHORIZATION – MINOT HOCKEY BOOSTERS - Approve the gaming site authorization from Minot Hockey Boosters, Inc. from March 5, 2024 through June 30, 2024 at the Depot (15 N Main St).

6.9 MINOR SUBDIVISION PLAT: THOMPSON'S 20TH ADDITION - Approve a minor subdivision plat as provided in Attachment A to create Thompson's 20th Addition.

6.10 15th ST NW STORM SEWER IMPROVEMENTS - Award the base bid and bid alternate 1 for the 15 St. NW Storm Sewer Rehabilitation to the low bidder, Dig It Up Backhoe Service, Inc., in the amount of \$268,834.65; and authorize the Mayor to sign the agreement.

6.11 2024 SANITARY SEWER REHAB - Award the bid for the 2024 Sanitary Sewer CIPP Project to Hydro-Klean, LLC for the lowest bid of \$992,835.31; and authorize the Mayor to sign contract documents on behalf of the City.

6.12 2024 WATERMAIN IMPROVEMENTS (4816 & 4817) - Approve the plans and specifications for the Westfield Ave and University Ave watermain projects and authorize a call for bids; approve the attached resolution to apply for a SRF loan; and authorize the Mayor to sign application documents.

6.13 AMEND CHAPTER 28 – ENCROACHMENTS ON CITY PROPERTY (4541) - Pass an ordinance on 1st reading amending Chapter 28 of the Code of Ordinances.

6.14 16TH STREET SW RECONSTRUCTION PROJECT PHASING (4780) - Split the 16 St SW Reconstruction project into two phases.

6.16 2028 NDDOT URBAN PROGRAM SOLICITATION (4829) - Concur with the staff recommendations and submit the requests to the NDDOT.

6.17 2024-2025 NUISANCE ABATEMENT - AWARD BID (4831) - Award the bid for the 2024-2025 Nuisance Abatement Project to the low bidder, Hanson's Excavating, Inc., in the amount of \$66,350.00; and authorize the Mayor to sign the agreement.

6.18 LEASE RENEWAL LOT 9 WESTSIDE DEVELOPMENT - Approve the renewal option of lease terms for Lot 9, Westside Development owned by Nach, LLC.

6.19 2023 BUDGET AMENDMENT - Approve the proposed ordinance on first reading.

6.20 WARD COUNTY EMERGENCY OPERATIONS PLAN - Adopt the Ward County Emergency Operations Plan and authorize the Mayor to sign.

Motion seconded by Alderwoman Olson and carried by the following roll call vote: ayes: Burlingame, Evans, Jantzer, Olson, Pitner, Podrygula, Ross; nays: none.

### **6.3 ADMINISTRATIVE APPROVALS - APPROVED**

Alderman Pitner moved the City Council approve the following administrative approvals.

- 1 First Lutheran Church to conduct a calendar raffle for April 2024 at First Lutheran Church (120 5th Ave NW).
2. Minot Girls Wrestling Boosters to conduct a raffle on August 4, 2024 at Magic City Campus (1100 11th Ave SW).
3. Minot State University Men's Hockey to conduct a raffle on February 16, 2024 at the Maysa Arena (2501 Burdick Exwy W).
4. Greater Minot Zoological Society to conduct a raffle on March 23, 2024 at Sleep Inn & Suites (2400 10th St SW).
5. Our Savior Lutheran Church to conduct a raffle on March 15, 2024 at Sleep Inn & Suites (2400 10th St SW).
6. Independence Inc. to conduct a raffle on March 7, 2024 at Clarion Hotel (2200 E Burdick Expwy).
7. Magic City Figure Skating Club to conduct a raffle on April 12, 2024 at Minot Municipal Auditorium (420 3rd Ave SW).
8. Rebel Boosters to conduct a raffle on March 2-3, 2024 at Magic City Campus (1100 11th Ave SW).
9. AAU Earnest Academy 8th Grade Boys to conduct a raffle on April 13, 2024 at Earnest Academy (3800 14th Ave SE).
10. Special Event Permit for Duckpond Ventures, LLC dba Saul's (105 1st St SE basement).
11. Special Event Permit for Sports on Tap, Inc. dba Sports on Tap (220 S Broadway).
12. Three Special Event Permits for Der Blaue, LLC dba Blue Rider (118 1st Ave SE).
13. Special Event Permit for Army's 2.0, LLC dba Army's 2.0 (12 3rd St SE).
14. Special Event Permit for ZZ Food Group, LLC dba JL Beers (2201 22nd Ave SW).

Motion seconded by Alderwoman Olson and carried by the following roll call vote: ayes: Evans, Jantzer, Olson, Pitner, Podrygula, Ross; nays: none; abstain: Burlingame.

### **6.15 CPKC RAIL QUIET ZONE ENGINEERING AGREEMENTS (4781) – APPROVED**

Alderman Podrygula moved the City Council approve the professional engineering agreements with CPKC and authorize the Mayor to sign the agreements

Motion seconded by Alderman Pitner and carried by the following roll call vote: ayes: Burlingame, Evans, Jantzer, Olson, Pitner, Podrygula, Ross; nays: none.

### **ACTION ITEMS**

#### **7.1 ORDINANCE REQUIRING BUILDINGS AND BUSINESSES RECEIVING PUBLIC FUNDS TO INSTALL AN AUTOMATIC DOOR - APPROVED**

City Council directed:

- Finance Department to provide a list of organizations who have received over \$5,000 or more in City funding in the past 5 years and how much the organizations have received.
- Council Members Pitner and Olson to provide a list of awardees for the Visit Minot Tourism Fund and Souris Basin Planning Commission Accelerator funds this ordinance would affect.
- Clarify how this would affect any home-based businesses.
- City Attorney to contact the City of Mandan Attorney to discuss their ordinance and any potential litigation.
- Clarify how this ordinance would affect a tenant of a building vs the owner of the building.

City staff will provide either an update to the ordinance or update on the process on March 18, 2024.

### **PERSONAL APPEARANCES**

Billi Gunderson addressed the council about ADA accessibility. Drew Hanson addressed the council on downtown ADA accessibility and snow removal. Mayor Ross read an e-mail from Kyle Erikson on City Hall ADA accessibility.

### **MISCELLANEOUS AND DISCUSSION ITEMS**

### **ADJOURNMENT**

There being no further business, Alderman Pitner moved the City Council meeting be adjourned. Motion seconded by Alderman Burlingame and carried unanimously. Meeting adjourned at 6:16 pm.

For the full March 4, 2024 Regular City Council meeting video, see: [Minot City Council Meeting 3/4/24 - YouTube](#).

ATTEST: \_\_\_\_\_  
Mikayla McWilliams, City Clerk

APPROVED: \_\_\_\_\_  
Thomas Ross, Mayor

## ORDINANCE NO: 5948

### AN ORDINANCE AMENDING THE 2023 ANNUAL BUDGET TO ADJUST THE DEPARTMENT BUDGETS FOR FUNDS APPROVED BY CITY COUNCIL FOR THE FOLLOWING YEAR-END TRANSFERS AND GRANTS.

#### BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINOT:

§1: The 2023 annual budget for the following department revenue and expenditure numbers are increased and decreased for funds received and expended.

	10044000-45900	\$(4,000)	Budget transfer to repairs & maintenance, operation supplies	Property Maintenance
	10044000-45800	(1,784)	Budget transfer to repairs & maintenance, operation supplies	Property Maintenance
	10044000-44320	2,892	Budget transfer from education and travel	Property Maintenance
	10044000-46101	2,892	Budget transfer from education and travel	Property Maintenance
2021720001	10035000-43040	55,350	Move budget from fund 251 – wrong fund on original ordinance #5825	EDA Placemaking Grant
2021720001	10000000-33400	55,350	Move budget from fund 251 – wrong fund on original ordinance #5825	EDA Placemaking Grant
2021720001	25172000-48100	(55,350)	Move budget to fund 100 – wrong fund on original ordinance #5825	EDA Placemaking Grant
2021720001	25100000-33400	(55,350)	Move budget to fund 100 – wrong fund on original ordinance #5825	EDA Placemaking Grant
2021720001	25172000-48100	9,644	FI-7 2 <sup>nd</sup> Amendment to Façade Application	Façade Improvements
2021720001	25172000-48100	101,928	FI-1 Amended Loan Agreement	Façade Improvements
2023200001	10020000-41300	71,492	2023 Off-Duty Policing	Overtime
2023200001	10020000-42200	3,768	2023 Off-Duty Policing	Social Security
2023200001	10020000-42210	1,038	2023 Off-Duty Policing	Medicare
2023200001	10000000-34210	76,948	2023 Off-Duty Policing	Charges for Services
2022600001	14060000-49116	361,772	Transfer unused funds back to Sales Tax NAWS	Sundre Well F
	10011000-48100	137,457	Park District State Aid – collections were higher than anticipated	Park District State Aid
	10011000-48100	169,818	Mattson Construction	Retainage payable
	10013000-42400	16,000	Tuition reimbursements – move to correct object code	Tuition reimbursements
	10013000-45900	(16,000)	Tuition reimbursements – move to correct object code	Tuition reimbursements

	25172000-43030	\$6,800	Independent Auditors for AUP compliance reports on agreements	Auditors
	25172000-46400	4,500	LOIS subscription	Subscriptions
	42019000-57500	14,487	Network Switches for City Hall building	Capital equipment
	42021000-57500	7,414	Police interceptor	Capital equipment
	42067000-57700	3,648	Library books	Capital equipment
	25172000-49101	46,285	Transfer to general fund for City economic development activities	Transfer Out
	42066000-49114	12,400	Transfer unused funds back to sales tax improvements	Transfer Out

§2: This ordinance shall be in effect from and after its passage and approval.

PASSED FIRST READING: March 4, 2024

PASSED SECOND READING: March 18, 2024

APPROVED:

ATTEST:

\_\_\_\_\_  
Thomas Ross, Mayor

\_\_\_\_\_  
Mikayla McWilliams, City Clerk



ORDINANCE NO. 5949

**AN ORDINANCE AMENDING ARTICLE VI (RESERVED) AND ENACTING SECTION 28-250 OF ARTICLE VII (ENCROACHMENTS) OF CHAPTER 28 (STREETS, SIDEWALKS, AND PUBLIC GROUNDS) OF THE CITY OF MINOT CODE OF ORDINANCES RELATING TO ARTICLE VII'S APPLICABILITY TO ENCROACHMENTS ON PROPERTY OWNED BY THE CITY.**

WHEREAS, the City of Minot is a political subdivision lawfully recognized in the state of North Dakota as a home rule city and has adopted a home rule charter in accordance with North Dakota Century Code (NDCC) § 40-05.1; and

WHEREAS, NDCC § 40-05.1-06 provides that the City shall have the power to implement home rule powers by ordinance, including the power to enact ordinances regarding streets, sidewalks, and public grounds within city limits; and

WHEREAS, NDCC § 40-05.1-05 provides that a ratified home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purposes; and

WHEREAS, the City of Minot now desires to modify ordinances relating to streets, sidewalks, and public grounds to clarify that the provisions of Article VII, Chapter 28 regarding encroachments is applicable to encroachments on property owned by the City; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINOT:**

**§1. That Article VI (Reserved) of Chapter 28 (Streets, Sidewalks, and Public Grounds) of the Code of Ordinances, City of Minot, North Dakota, is hereby amended to read as follows:**

ARTICLE VI. – RESERVED

Secs. 28-231 – 28-250~~49~~. Reserved.

**§2. That Section 28-250 of Article VII (Encroachments) of Chapter 28 (Streets, Sidewalks, and Public Grounds) of the Code of Ordinances, City of Minot, North Dakota, is hereby enacted to read as follows:**

Sec. 28-250 – Applicability

The provisions of this Article VII (Encroachments) shall apply to any encroachment on property owned by the City of Minot.

**§3. This Ordinance shall become effective upon final passage and approval.**

PASSED FIRST READING: March 4, 2024

PASSED SECOND READING: March 18, 2024

ATTEST:

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Mikayla McWilliams, City Clerk

APPROVED:

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Tom Ross, Mayor



**TO:** Mayor Tom Ross  
Members of the City Council

**FROM:** Mikayla McWilliams, City Clerk

**DATE:** March 18, 2024

**SUBJECT: ADMINISTRATIVE APPROVALS**

#### **I. RECOMMENDED ACTION**

It is recommended the City Council ratify the following administratively approved requests:

1. ND State USBC to conduct a raffle on April 6-7, 13-14, 20-21, 2024 at North Hill Bowl (1901 N Broadway).
2. Zion Lutheran Church to conduct a raffle on March 22, 2024 at Zion Lutheran Church (1800 Hiawatha St SE).
3. ND Chapter Backcountry Hunters & Anglers to conduct a raffle on June 6, 2024 at Whiskey Nine (109 W Central Ave).
4. Minot Valley Scottish Rite to conduct a raffle on June 22, 2024 at Minot Valley Scottish Rite (2524 E Burdick Exwy).
5. Nedrose Cardinals Booster Club to conduct a raffle on March 21<sup>st</sup> & 23<sup>rd</sup>, 2024 at Magic City Campus (1100 11<sup>th</sup> Ave SE).
6. API Bakken Chapter to conduct a raffle on March 9, 2024 at Clarion Hotel (2200 E Burdick Expwy).
7. Minot High Cheer Booster Club to conduct a raffle on March 10, 2024 at Minot High School (1100 11<sup>th</sup> Ave SE).
8. American Legion Department of ND to conduct a raffle on January 25, 2025 at the Grand Hotel (1505 N Broadway).
9. Dakota Clay Busters to conduct a calendar raffle for June 2024 at Centerspace (3100 10<sup>th</sup> St SW).
10. Power of 1 to conduct a raffle on August 18, 2024 at ARCO Dakota Square (1520 24<sup>th</sup> Ave SW).
11. Special Event Permit for Sports on Tap, Inc. dba Sports on Tap (220 S Broadway).
12. Special Event Permit for Whiskey Nine, LLC dba Whiskey Nine (111 West Central Ave).

#### **II. DEPARTMENT CONTACT PERSONS**

John Klug, Police Chief	857-4715
Mikayla McWilliams, City Clerk	857-4752

#### **III. DESCRIPTION**

##### **A. Background**

Under the Code of Ordinances, a permit issued pursuant to NDCC 5-02-01.1, to allow an alcoholic beverage sales licensee to operate at premises other than the licensed

premises to which the license relates, shall be issued administratively by the city clerk upon the following terms and conditions:

1. The payment by the applicant of a nonrefundable fee of twenty-five dollars (\$25.00).
2. The submission by the applicant, as part of the application required by the city clerk, of a brief narrative explaining:
  - a. The nature of the occasion for the permit (e.g., wedding dance, trade show or promotion, etc.); and
  - b. The steps which will be undertaken by the permittee to restrict the sale to, and consumption of, alcoholic beverages by minors at such occasion.
3. The written approval by the chief of police of the issuance of the permit.
4. A permit issued pursuant to this subsection may not be used for the off-sale of alcoholic beverages.

An application for local authorization pertaining to gaming, other than site approval, shall be issued administratively by the city clerk upon the following terms and conditions:

1. The payment by the applicant of a fee [of \$25].
2. The submission by the applicant, as part of the application required by the city clerk, of the following:
  - a. The appropriate form and other information prescribed or recommended by the attorney general; or
  - b. If there is no prescribed or recommended form, then a brief narrative explaining the particulars whereby the applicant should be considered to be qualified under state law for the particular local authorization sought; what the net proceeds will be expended for; and such other information, if any, as the city clerk may reasonably require to assist him in administering this subsection.
3. The written approval by the chief of police of the issuance of the authorization.

Each month, a report shall be provided to the city council concerning the permits allowed and the permits denied under this subsection subsequent to the last prior such report.

**IV. IMPACT:**

Special Event Permits, Local Permits and Restricted Event Permits are approved administratively each month through the City Clerk's Office. The non-refundable application fee for each permit is \$25 and is deposited into the appropriate general fund revenue accounts.

**V. ALTERNATIVES**

N/A - the request is to ratify the applications which have been administratively approved.

**VI. TIME CONSTRAINTS:** N/A

**VII. LIST OF ATTACHMENTS:** None





**TO:** Mayor Tom Ross  
Members of the City Council

**FROM:** Mikayla McWilliams, City Clerk

**DATE:** March 18, 2024

**SUBJECT: GAMING SITE AUTHORIZATION**

**I. RECOMMENDED ACTION**

It is recommended City Council approve the gaming site authorization for the MSU Beaver Boosters to conduct gaming on April 3, 2024 at the Sleep Inn & Suites.

**II. DEPARTMENT CONTACT PERSONS**

John Klug, Police Chief	857-9800
Mikayla McWilliams, City Clerk	857-4752

**III. DESCRIPTION**

Background

Site approval by the City Council is required as a precondition to obtain a state games of chance license. Each organization submits documentation annually in order to conduct games of chance at locations throughout the city of Minot. These organizations have submitted documentation and received approval from the Police Chief.

**IV. IMPACT:**

Fiscal Impact:

The City of Minot receives \$100 per site authorization, which is deposited into the appropriate general fund revenue account.

**V. ALTERNATIVES**

The City Council could deny an application if there is reasonable cause to do so and the establishment would not be permitted to conduct games of chance.

**VI. TIME CONSTRAINTS**

Site authorizations must be approved in a timely manner in order for organizations to submit their approved gaming form to the Attorney General's Office.

**VII. LIST OF ATTACHMENTS**

A. None



**TO:** Mayor  
Members of the City Council

**FROM:** Chris Plank, NDR Grant Manager

**DATE:** 3/18/2024

**SUBJECT: AUTHORIZE FINAL PAYEMENT TO MINOT HOUSING AUTHORITY**

**I. RECOMMENDED ACTION**

*Staff recommends City Council authorize the final payment of \$84,060.00 to Minot Housing Authority for work completed on the Milton Young Towers facility.*

**II. DEPARTMENT CONTACT PERSONS**

*Chris Plank, NDR Grant Manager 701-857-1553*

**III. DESCRIPTION**

**A. Background**

*The Minot Housing Authority entered into a sub-recipient agreement with the City of Minot on 1-24-2019 to carry out efforts to increase the community's resilience , especially for low to moderate income (LMI) residents by increasing the resilience of Milton Young Towers which will result in extending its useful life.*

*Milton Young Towers was completed in 1971. It lacks many of the resilience features that are common in affordable multifamily housing today including: fire suppression systems, building security, water efficient plumbing and energy efficient lighting systems. Around 61% of the residents are disabled and the average income is around \$10,500/resident. Milton Young Towers is essential to some of the City's most vulnerable population.*

**IV. IMPACT:**

**A. Strategic Impact:**

*Investment in long-term resilience has proven to be a smart investment for communities and is essential for affordable housing assets that many vulnerable residents rely on. Resilient buildings are more environmentally sustainable, accessible, and energy efficient and investments in long term building resilience can help to reduce operating expenses and costs helping to ensure more economically sustainable affordable housing and availability of funds required to support future investments in capital improvements when they are needed.*

*In addition to installing the resilience features listed above, the goal is to retrofit and rehab up to 10 additional units to meet the Americans with Disability Act (ADA) accessibility requirements along with converting up to 34 1-bedroom units to 2-bedroom units.*

**B. Service/Delivery Impact:**

*This project meets one the National Objective of assisting Low to Moderate Income individuals with housing needs.*

C. Project Funding:

*The total amount awarded was \$5,000,000 for resilience updates and appropriate rehabilitation activities.*

**V. CITY COUNCIL ASPIRATIONS**

*This project meets the City Council's aspiration of being resilient and prepared*

**VI. TIME CONSTRAINTS**

*Approving this payment will allow the City of Minot to close the project and perform the necessary close out procedures required by HUD*

**VII, Attachments**

A. *MHA Final draw request doc*



## NATIONAL DISASTER RESILIENCE (NDR) GRANT DRAW REQUEST

### DRAW INFORMATION

Project Name Milton Young Towers		Contractor Name Minot Housing Authority	
Draw Request Prepared By Tom Alexander	Telephone Number 701-852-1485	Developer TIN 45-0313108	
Draw Request Number 35	Amount Requested \$ 84,060.00	Preferred Method of Payment ACH/Wire <input checked="" type="checkbox"/> Check <input type="checkbox"/>	

### REQUEST SUMMARY


1. NDR Support Costs \$ 5,000,000	2. NDR Funds Received To-Date \$ 4,914,992.81	3. NDR Funds Requested, not received to-date \$ 0.00
4. Total NDR Funds Requested To-Date (2 plus 3) \$ 4,914,992.81		5. NDR Funds Available for this Request (1 less 4) \$ 85,007.19
6. Amount of this Request \$ 84,060.00		7. Balance of Funds Remaining for Future Requests (5 less 6) \$ 947.19
Description of use of funds from this draw (must provide invoices supporting use of all funds)		
Draw 35 includes a complete remodel of main floor restrooms and acoustic ceiling on 15th floor per change order G26.		

### OTHER PROJECT FUNDING BEING DRAWN FROM ALL SOURCES


Funding Source	Total Available	Amount Drawn Down To-Date
MHA CFP	\$ 778,000	\$ \$334,994.26
	\$	\$
	\$	\$
	\$	\$

### CERTIFICATION OF RECIPIENT

To the best of my knowledge, the information contained in this form is correct and all disbursements are in compliance with NDR program requirements.

Name of Recipient Tom Alexander	Title of Recipient Executive Director
Signature 	Date 2-29-24

### APPROVAL BY CITY OF MINOT

City of Minot Authorized Signature	Date
Additional Authorized Signature	Date
	03/05/2024

# APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF One

PAGES

TO OWNER: Minot Housing Authority  
108 Burdick Expressway East  
Minot, ND 58701

PROJECT: Milton Young Tower Reno. APPLICATION NO: 29A

Distribution to:

<input type="checkbox"/>	OWNER
<input type="checkbox"/>	ARCHITECT
<input type="checkbox"/>	CONTRACTOR
<input type="checkbox"/>	
<input type="checkbox"/>	

FROM CONTRACTOR:

Rolac Contracting, Inc.  
PO Box 1872  
Minot, ND 58702

VIA ARCHITECT: EAPC

PERIOD TO: 2/26/2023

PROJECT NOS:

CONTRACT DATE: 12/17/2021

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM	4,441,842.00
2. Net Changes in Contract	163,602.81
3. CONTRACT SUM TO DATE	4,605,444.81
4. TOTAL COMPLETED & STORED TO DATE	4,605,444.81
5. RETAINAGE:	5% of contract amount

Total Retainage	\$ 0.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total)	\$ 4,605,444.81
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)	\$ 4,521,384.81
8. CURRENT PAYMENT DUE	\$ 84,060.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$ 0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$79,542.81	
Total approved this Month	\$84,060.00	
TOTALS	\$163,602.81	
NET CHANGES by Change Order	\$163,602.81	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Rolac Contracting, Inc.

By: Jason Sanders, Project Manager Date: 2/26/24  
State of: ND North Dakota County of: Ward  
Subscribed and sworn to me before this 26 day of February  
Notary Public  
My Commission expires: Shariette Marchant

Shariette Marchant  
Notary Public  
State of North Dakota  
Expiration Date: October 19, 2026

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ..... \$ 84,060.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)  
ARCHITECT: Richard Larsen, EAPC

By: Richard Larsen, EAPC Date: 2.26.24

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



Rolac Contracting Inc.

Project: Milton Young Tower Renovation

Est#

29A

Ending

2/26/23

N0.	Description of Work	Original Value	Changes	New Value	Work Completed Previous	This Period	Materials Stored	Total Completed and Stored	% Complete	Balance to Finish
1	General Conditions	\$ 392,731.00	\$ -	\$ 392,731.00	\$ 392,731.00	\$ -	\$ -	\$ 392,731.00	100.0%	\$ -
2	Demolition	\$ 91,859.00	\$ -	\$ 91,859.00	\$ 91,859.00	\$ -	\$ -	\$ 91,859.00	100.0%	\$ -
3	Asbestos Abatement	\$ 304,700.00	\$ -	\$ 304,700.00	\$ 304,700.00	\$ -	\$ -	\$ 304,700.00	100.0%	\$ -
4	Millwork	\$ 138,230.00	\$ -	\$ 138,230.00	\$ 138,230.00	\$ -	\$ -	\$ 138,230.00	100.0%	\$ -
5	Doors & Door Hardware	\$ 148,718.00	\$ -	\$ 148,718.00	\$ 148,718.00	\$ -	\$ -	\$ 148,718.00	100.0%	\$ -
6	Aluminum	\$ 312,370.00	\$ -	\$ 312,370.00	\$ 312,370.00	\$ -	\$ -	\$ 312,370.00	100.0%	\$ -
7	Framing & Sheetrock	\$ 240,434.00	\$ -	\$ 240,434.00	\$ 240,434.00	\$ -	\$ -	\$ 240,434.00	100.0%	\$ -
8	Flooring	\$ 147,400.00	\$ -	\$ 147,400.00	\$ 147,400.00	\$ -	\$ -	\$ 147,400.00	100.0%	\$ -
9	Painting	\$ 53,677.00	\$ -	\$ 53,677.00	\$ 53,677.00	\$ -	\$ -	\$ 53,677.00	100.0%	\$ -
10	Specialties	\$ 131,005.00	\$ -	\$ 131,005.00	\$ 131,005.00	\$ -	\$ -	\$ 131,005.00	100.0%	\$ -
11	Mechanical	\$ 1,766,715.00	\$ -	\$ 1,766,715.00	\$ 1,766,715.00	\$ -	\$ -	\$ 1,766,715.00	100.0%	\$ -
12	Electrical	\$ 648,003.00	\$ -	\$ 648,003.00	\$ 648,003.00	\$ -	\$ -	\$ 648,003.00	100.0%	\$ -
13	Acoustic Ceilings	\$ 66,000.00	\$ -	\$ 66,000.00	\$ 66,000.00	\$ -	\$ -	\$ 66,000.00	100.0%	\$ -
14	CO G01 Suds Relief		\$ 16,304.78	\$ 16,304.78	\$ 16,304.78	\$ -	\$ -	\$ 16,304.78	100.0%	\$ -
15	CO G05 Change Ceiling Tile		\$ 1,396.50	\$ 1,396.50	\$ 1,396.50	\$ -	\$ -	\$ 1,396.50	100.0%	\$ -
16	CO G07 Mortise Locks on new ADA rooms		\$ 3,745.03	\$ 3,745.03	\$ 3,745.03	\$ -	\$ -	\$ 3,745.03	100.0%	\$ -
17	CO G09 Ph. 1 add'l asbestos abatement		\$ 11,029.20	\$ 11,029.20	\$ 11,029.20	\$ -	\$ -	\$ 11,029.20	100.0%	\$ -
18	CO G13 Ph. 2 add'l asbestos abatement		\$ 1,723.31	\$ 1,723.31	\$ 1,723.31	\$ -	\$ -	\$ 1,723.31	100.0%	\$ -
19	CO G15 Davis Bacon Wage Correction		\$ 10,810.99	\$ 10,810.99	\$ 10,810.99	\$ -	\$ -	\$ 10,810.99	100.0%	\$ -
20	CO G16 Revise ADA Kitchens		\$ 2,779.39	\$ 2,779.39	\$ 2,779.39	\$ -	\$ -	\$ 2,779.39	100.0%	\$ -
21	CO G17 Additional Mop Sinks		\$ 5,816.63	\$ 5,816.63	\$ 5,816.63	\$ -	\$ -	\$ 5,816.63	100.0%	\$ -
22	CO G18 Asbestos Abatement Community Room		\$ 4,843.23	\$ 4,843.23	\$ 4,843.23	\$ -	\$ -	\$ 4,843.23	100.0%	\$ -
23	CO G19 Corridor Lighting		\$ 6,197.56	\$ 6,197.56	\$ 6,197.56	\$ -	\$ -	\$ 6,197.56	100.0%	\$ -
24	CO G20 add'l ceiling grid		\$ 1,522.88	\$ 1,522.88	\$ 1,522.88	\$ -	\$ -	\$ 1,522.88	100.0%	\$ -
25	CO G21 main level flooring changes		\$ 6,895.00	\$ 6,895.00	\$ 6,895.00	\$ -	\$ -	\$ 6,895.00	100.0%	\$ -
26	CO G22 add'l ceiling tile		\$ 1,886.63	\$ 1,886.63	\$ 1,886.63	\$ -	\$ -	\$ 1,886.63	100.0%	\$ -
27	CO G23 camera equipment		\$ 4,591.68	\$ 4,591.68	\$ 4,591.68	\$ -	\$ -	\$ 4,591.68	100.0%	\$ -
28	CO G26 Renovate Existing Bathrooms		\$ 84,040.00	\$ 84,040.00	\$ -	\$ 84,040.00	\$ -	\$ 84,040.00	100.0%	\$ -
29	CO G26 Remove/Replace 15th Floor Ceilings		\$ 20,020.00	\$ 20,020.00	\$ -	\$ 20,020.00	\$ -	\$ 20,020.00	100.0%	\$ -
	Subtotals	\$ 4,441,842.00	\$ 163,602.81	\$ 4,605,444.81	\$ 4,521,384.81	\$ 84,060.00	\$ -	\$ 4,605,444.81	100.00%	\$ -



# AIA® Document G701® – 2017

## Change Order

**PROJECT:** (Name and address)  
Milton Young Towers Renovations  
310 2nd St SE  
Minot, ND 58701

**CONTRACT INFORMATION:**  
Contract For: General Construction  
Date: December 17, 2020

**CHANGE ORDER INFORMATION:**  
Change Order Number: G26  
Date: January 10, 2024

**OWNER:** (Name and address)  
Minot Housing Authority

108 Burdick Expressway East  
Minot, ND 58701

**ARCHITECT:** (Name and address)  
Engineers-Architects, P.C. (herein known  
as EAPC Architects Engineers)  
300 - 3rd Avenue SW, Suite A  
Minot, ND 58701

**CONTRACTOR:** (Name and address)  
Rolac Contracting, Inc.

P. O. Box 1872  
Minot, ND 58702

### THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

Provide upgrades to the public bathrooms in accordance with the attached RFPG03 & the attached proposal #27.

The original Contract Sum was	\$ 5,218,929.00
The net change by previously authorized Change Orders	\$ 506,650.61
The Contract Sum prior to this Change Order was	\$ 5,725,579.61
The Contract Sum will be increased by this Change Order in the amount of	\$ 84,060.00
The new Contract Sum including this Change Order will be	\$ 5,809,639.61

The Contract Time will be unchanged by Zero (0) days.  
The new date of Substantial Completion will be the same.

**NOTE:** This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

### NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Engineers-Architects, P.C. (herein known  
as EAPC Architects Engineers)

**ARCHITECT** (Firm name)

**SIGNATURE**

Richard Larsgaard, Construction  
Specialist

**PRINTED NAME AND TITLE**

**DATE**

Rolac Contracting, Inc.

**CONTRACTOR** (Firm name)

**SIGNATURE**

Jason Sanders, President

**PRINTED NAME AND TITLE**

1/10/24

**DATE**

Minot Housing Authority

**OWNER** (Firm name)

**SIGNATURE**

Tom Alexander, Executive Director

**PRINTED NAME AND TITLE**

**DATE**

## CHANGE ORDER

Project: Milton Young Bathroom Remodel	Date: 12/8/23	Change Order No.
--	---------------	------------------

***Change Order Submitted To:***

Company: Minot Housing Authority	Attention: Tom Alexander
Address:	Phone:
City/State/Zip:	Email:

Our proposed cost for the requested changes is as follows:

Our cost to renovate the existing bathrooms at Milton Young as per RFP G03 is as follows:

Eighty four thousand fifty six dollars

\$ 84,060.00

**Includes:**

Removal of existing flooring, ceilings and specialties/millwork.

Provide and install new vanities.

Refinish and paint sheetrock walls.

Provide and install Aspecta 5 flooring.

Provide and install new acoustic ceilings.

Provide and install new toilet partitions and accessories.

Mechanical as per attached.

Electrical as per attached.

Install new ACT and LED lighting in hallway on 15<sup>th</sup> floor.

Does not include costs to handle any asbestos

Proposal is valid for 30 days

---

***Acceptance of Change Order***

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.

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

Signature: \_\_\_\_\_

P.O. Box 1872 • Minot, ND 58702-1872

E-mail: [info@rolac-nd.com](mailto:info@rolac-nd.com)

Phone: 701.839.6525 • Fax: 701.839.6581

Web: [www.rolac-nd.com](http://www.rolac-nd.com)





# AIA® Document G709™ – 2018

## Proposal Request

**PROJECT:** *(name and address)*  
Milton Young Towers Renovations  
310 2nd St SE  
Minot, ND 58701

**CONTRACT INFORMATION:**  
Contract For: General Construction  
Date: December 17, 2020

Architect's Project Number: 20195340  
Proposal Request Number: G03  
Proposal Request Date: December 20, 2023

**OWNER:** *(name and address)*  
Minot Housing Authority

108 Burdick Expressway East  
Minot, ND 58701

**ARCHITECT:** *(name and address)*  
Engineers-Architects, P.C. (herein known  
as EAPC Architects Engineers)  
2080 36th Ave SW, Suite 210  
Minot, ND 58701

**CONTRACTOR:** *(name and address)*  
Rolac Contracting, Inc.

P. O. Box 1872  
Minot, ND 58702

The Owner requests an itemized proposal for changes to the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. The Contractor shall submit this proposal within Zero (0) days or notify the Architect in writing of the anticipated date of submission.

*(Insert a detailed description of the proposed modifications to the Contract Documents and, if applicable, attach or reference specific exhibits.)*

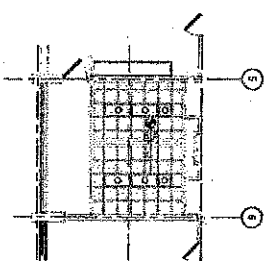
Propose the cost to add the work of attached drawing RFP G03 to the scope of work.

**THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE, OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.**

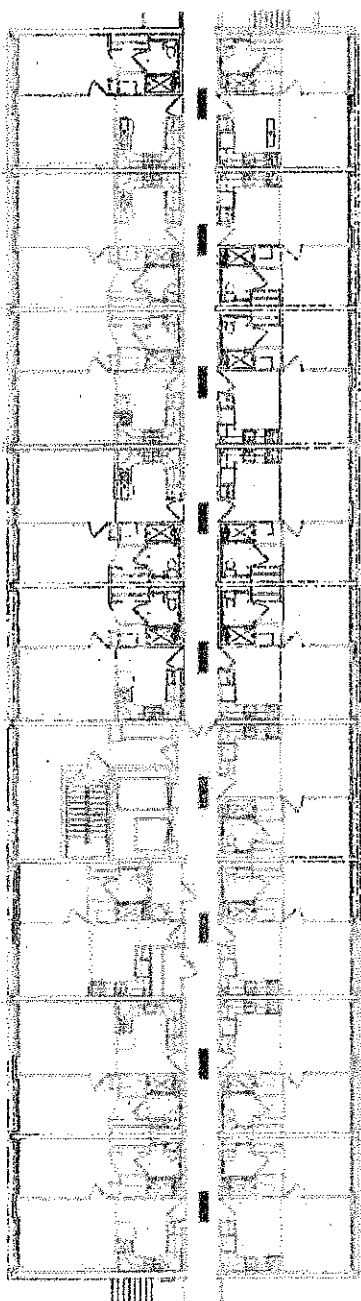
### REQUESTED BY THE ARCHITECT:

Richard Larsgaard, Construction  
Specialist

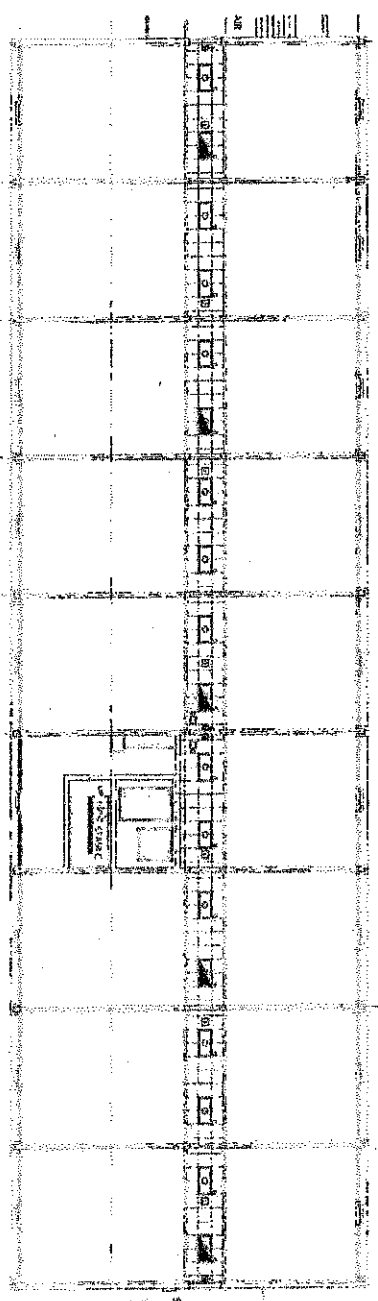
**PRINTED NAME AND TITLE**



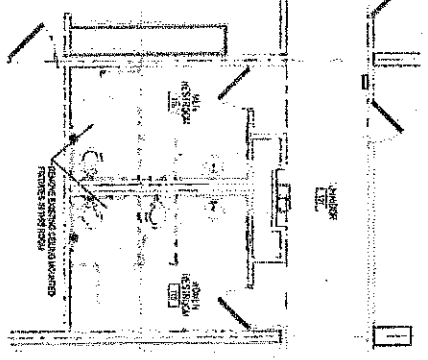
GENERAL SCHEDULE											
NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL	NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	15TH FLOOR REFLECTED CEILING PLAN	1	SQ. FT.	1.00	1.00	2	TOILET ROOM REFLECTED CEILING PLAN	1	SQ. FT.	1.00	1.00
3	DEMOLITION PLAN - ELECTRICAL	1	SQ. FT.	1.00	1.00	4	MAIN FLOOR TOILET ROOM REMODEL	1	SQ. FT.	1.00	1.00



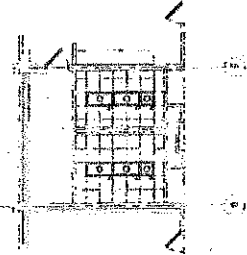
1. 15TH FLOOR REFLECTED DEMO CEILING PLAN



2. 15TH FLOOR REFLECTED CEILING PLAN



3. DEMOLITION PLAN - ELECTRICAL



4. TOILET ROOM REFLECTED CEILING PLAN

**IFC** **EAPC**

15TH FLOOR REFLECTED CEILING PLAN  
 15TH FLOOR REFLECTED CEILING PLAN  
 15TH FLOOR REFLECTED CEILING PLAN

**MINOT HOUSING AUTHORITY**

**MILTON YOUNG TOWERS RENOVATIONS**

**DATE: 08/01/2010**  
**BY: NGUYEN D. NGUYEN**  
**ISSUE DATE: 08/01/2010**

**PROJECT NO: 2010030**  
**DATE: 08/01/2010**  
**BY: NGUYEN D. NGUYEN**  
**ISSUE DATE: 08/01/2010**

**E302**



**TO:** Mayor  
Members of the City Council

**FROM:** Chris Plank, NDR Grant Manager

**DATE:** 3/18/2024

**SUBJECT:** AUTHORIZE FINAL PAYEMENT TO DAKOTA COLLEGE AT BOTTINEAU

**I. RECOMMENDED ACTION**

*Staff recommends City Council authorize the final payment of \$236,340.90 to Dakota College of Bottineau for work completed on the Center for Technical Excellence.*

**II. DEPARTMENT CONTACT PERSONS**

*Chris Plank, NDR Grant Manager 701-857-1553*

**III. DESCRIPTION**

**A. Background**

*On November 1, 2021, the City of Minot entered into an agreement with Dakota College of Bottineau to build a Center for Technical Education in Minot with laboratory and classroom space, a computer center, offices, and study areas. Minot State University and Dakota College will provide programming and management for the Center for Technical Education, which will offer one- and two-year certificate programs, customized technical training for area businesses, associate degree programs, and eventually college transfer programs. MSU and Dakota College will work with schools to develop post-secondary training options for targeted career programs.*

**IV. IMPACT:**

**A. Strategic Impact:**

*Quality sustainable stable employment is frequently vulnerable during and after natural disasters and residents, especially low/moderate income, are particularly challenged because they do not have the resources to help them recover from disasters. The 2011 flood and its aftermath exposed the City's vulnerability to be able to recover economically and to sustain economic growth by the reality that it is one of the few of the largest cities in North Dakota without a facility to provide skills training for residents to meet employment demands and to promote new commercial/industrial and small business diversity as a core part of a resilient strategy.*

*Dakota College at Bottineau has the demonstrated experience and expertise to develop, administer, and deliver training in a critically needed Center for Technical Education. Investing in long-term resilience has proven to be a smart investment for communities and is essential for sustainable economic growth through diverse skills training opportunities.*

B. Service/Delivery Impact:

*After rehabilitation of the Center at the Property, the parties estimate that the operator of the Center will initially be able to offer 3 programs for approximately 50 students at the Center. The Center will also require instructors, an onsite manager, administrative staff support and part-time staff jobs employed by the operator of the Center. As the number of programs offered increases, both the student population and the number of full-time and part-time employees at the Center is also expected to increase.*

C. Project Funding:

*NDR012 – Center for Technical Excellence \$3,400,000.00*

**V. CITY COUNCIL ASPIRATIONS**

*This project meets the City Council's aspiration of being resilient and prepared*

**VI. TIME CONSTRAINTS**

*Approving this payment will allow the City of Minot to close the project and perform the necessary close out procedures required by HUD*

**VII, Attachments**

A. *CTE Final draw request doc*





**NATIONAL DISASTER RESILIENCE (NDR) GRANT  
DRAW REQUEST**

**DRAW INFORMATION**

Project Name NDR012-Center for Technical Education		Recipient Name Dakota College at Bottineau	
Draw Request Prepared By Lisa Mock	Telephone Number 701-228-5432	Developer TIN	
Draw Request Number #14	Amount Requested \$ 236,340.90	Preferred Method of Payment ACH/Wire <input checked="" type="checkbox"/> Check <input type="checkbox"/>	

**REQUEST SUMMARY**

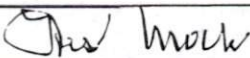
1. NDR Support Costs \$ 3,400,000.00	2. NDR Funds Received To-Date \$ 3,163,659.10	3. NDR Funds Requested, not received to-date \$ 0.00
4. Total NDR Funds Requested To-Date (2 plus 3) \$ 3,163,659.10		5. NDR Funds Available for this Request (1 less 4) \$ 236,340.90
6. Amount of this Request \$ 236,340.90		7. Balance of Funds Remaining for Future Requests (5 less 6) \$ 0.00
Description of use of funds from this draw (must provide invoices supporting use of all funds)  Roers \$13,350.99/Hight \$42,022.10/Mowbray \$135,386.81/Gefroh \$45,581.00		

**OTHER PROJECT FUNDING BEING DRAWN FROM ALL SOURCES**

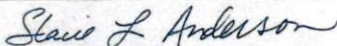
Funding Source	Total Available	Amount Drawn Down To-Date
RWIP	\$ 3,308.77	\$ 3308.77
	\$	\$
	\$	\$
	\$	\$

**CERTIFICATION OF RECIPIENT**

To the best of my knowledge, the information contained in this form is correct and all disbursements are in compliance with NDR program requirements.

Name of Recipient Lisa Mock	Title of Recipient Business Manager	
Signature 	Date 3/4/24	

**APPROVAL BY CITY OF MINOT**

City of Minot Authorized Signature	Date
Additional Authorized Signature 	Date 03/06/2024

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Vendor ID

## DAKOTA COLLEGE AT BOTTINEAU CAMPUS

## VOUCHER

(DO NOT USE FOR PAYROLL PAYMENTS)

REFERENCE NO.

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

EmpID

22-808-020

VENDOR INVOICE NO.

1/29/2024

INVOICE DATE

CUSTOMER NO.

PAY TO THE ORDER OF

SPECIAL INSTRUCTIONS:

☐ HOLD CHECK-CALL☐ PAYMENT NEEDED BY

(Date)

Roers Construction Joint Venture LLC

NAME

200 45th St S

ADDRESS

Fargo, ND 58103

CITY

MAIL TO (IF DIFFERENT THAN VENDOR ADDRESS)

QUANTITY	DESCRIPTION OF GOODS OR SERVICES	UNIT PRICE	AMOUNT
	Minot - Site Maintenance		2,999.68
DCB Tax Exempt Certificate # E-2001			
TOTAL			2,999.68

AMOUNT	ACCOUNT	FUND	DEPT	PROGRAM	PROJECT
2,999.68	623025	49000	3160		BOT2204902

I/WE ACKNOWLEDGE RECEIPT OF THE ABOVE STATED GOODS AND/OR SERVICES AND REQUEST THAT PAYMENT BE MADE IN THE AMOUNT AND MANNER INDICATED.

REQUESTING DEPARTMENT NAME AND NUMBER

DEPARTMENT HEAD SIGNATURE

DATE

APPROVED

DATE

APPROVED

DATE

APPROVED

DATE

FOR BUSINESS USE ONLY

GRANTS & CONTRACTS APPROVAL

AUDITED BY	PURCHASE ORDER NO.	DATE ENTERED	CHECK NUMBER	CHECK DATE	AUDITED BY



# ROERS

Building success.

**From:**

Roers Construction Joint Venture LLC  
200 45th St S  
Fargo, ND 58103

**Bill To:**

North Dakota Board of Higher Education  
d/b/a Dakota College Bottineau  
105 Simrall Blvd  
Bottineau, ND 58318

INVOICE #  
INVOICE DATE

22-808-020  
1/29/2024

**Project:**

Minot CTE Center

Roers Reimbursables	
Description	Amount
Plotter	\$ -
Dumpster/Dump Fees	\$ 1,213.68
Final Cleaning/General	\$ -
Temp Toilet	\$ -
Temp Power/Temp Water/Temp Heat	\$ -
Trailer/Office/Storage/Mobilization	\$ -
Phone/Internet	\$ -
Mileage	\$ 86.00
Site Maintenance	\$ 200.00
Procore/Truelook	\$ 1,500.00
Testing Allowance	\$ -
Survey Allowance	\$ -
Building Permit	\$ -
Estimated P&P Bonds	\$ -
<b>Subtotal</b>	<b>\$ 2,999.68</b>

Construction Management as Agent

By: Michal Jacobson

Date: 1/29/2024

Dakota College at Bottineau

By: \_\_\_\_\_

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



--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Vendor ID

## DAKOTA COLLEGE AT BOTTINEAU CAMPUS

## VOUCHER

REFERENCE NO.

(DO NOT USE FOR PAYROLL PAYMENTS)

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

EmplID

22-808-021

VENDOR INVOICE NO.

1/29/2024

INVOICE DATE

CUSTOMER NO.

PAY TO THE ORDER OF

SPECIAL INSTRUCTIONS:

☐ HOLD CHECK-CALL☐ PAYMENT NEEDED BY

(Date)

Roers Construction Joint Venture LLC

NAME

200 45th St S

ADDRESS

Fargo, ND 58103

CITY

MAIL TO (IF DIFFERENT THAN VENDOR ADDRESS)

QUANTITY	DESCRIPTION OF GOODS OR SERVICES	UNIT PRICE	AMOUNT
	Minot - Site Maintenance		13,660.08
DCB Tax Exempt Certificate # E-2001			
TOTAL			13,660.08

AMOUNT	ACCOUNT	FUND	DEPT	PROGRAM	PROJECT
10,351.31	623025	49000	3160		BOT2204902
3308.77	623025	49001	3160		BOT2204902
				MINOT CTE	
				HUB	

I/WE ACKNOWLEDGE RECEIPT OF THE ABOVE STATED GOODS AND/OR SERVICES AND REQUEST THAT PAYMENT BE MADE IN THE AMOUNT AND MANNER INDICATED.

REQUESTING DEPARTMENT NAME AND NUMBER

Unbach 1/29/24

DEPARTMENT HEAD SIGNATURE

DATE

APPROVED

DATE

APPROVED

DATE

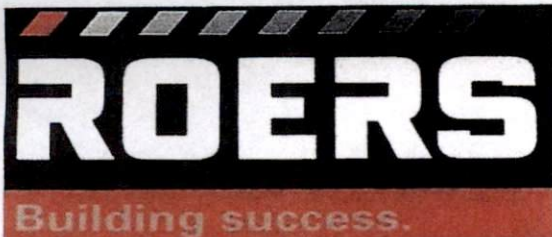
APPROVED

DATE

FOR BUSINESS USE ONLY

GRANTS & CONTRACTS APPROVAL

AUDITED BY	PURCHASE ORDER NO.	DATE ENTERED	CHECK NUMBER	CHECK DATE	AUDITED BY



# INVOICE

<b>From:</b>
Roers Construction Joint Venture LLC
200 45th St S
Fargo, ND 58103
<b>Bill To:</b>
North Dakota Board of Higher Education
d/b/a Dakota College Bottineau
105 Simrall Blvd
Bottineau, ND 58318

INVOICE #  
INVOICE DATE

22-808-021  
1/29/2024

<b>Project:</b>
Minot CTE Center

Roers CMA Fee - 5%			
Description		Amount	
Total Billings 1/1/24 to 1/31/24	\$ 273,201.54	\$	13,660.08
<i>Includes 5% CMA from FG&amp;P December</i>			
<i>Pay Application (Was missed in last invoice)</i>			
<b>Subtotal</b>		<b>\$</b>	<b>13,660.08</b>

Construction Management as Agent

By: Monty Jacobson  
Date: 1/29/2024

Dakota College at Bottineau

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

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Vendor ID

## DAKOTA COLLEGE AT BOTTINEAU CAMPUS

## VOUCHER

REFERENCE NO.

(DO NOT USE FOR PAYROLL PAYMENTS)

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Hight 12

VENDOR INVOICE NO.

1/31/2024

INVOICE DATE

CUSTOMER NO.

PAY TO THE ORDER OF

SPECIAL INSTRUCTIONS:

☐ HOLD CHECK-CALL☐ PAYMENT NEEDED BY

(Date)

Hight Construction

NAME

PO Box 458

ADDRESS

Minot, ND 58703

CITY

MAIL TO (IF DIFFERENT THAN VENDOR ADDRESS)

QUANTITY	DESCRIPTION OF GOODS OR SERVICES	UNIT PRICE	AMOUNT
	Minot CTE Center - General Contractor		42,022.10
TOTAL →			42,022.10

DCB Tax Exempt Certificate # E-2001

AMOUNT	ACCOUNT	FUND	DEPT	PROGRAM	PROJECT
42022.10	682090	49000	3160		BOT2204902

I/WE ACKNOWLEDGE RECEIPT OF THE ABOVE STATED GOODS AND/OR SERVICES AND REQUEST THAT PAYMENT BE MADE IN THE AMOUNT AND MANNER INDICATED.

REQUESTING DEPARTMENT NAME AND NUMBER

Unock 1/9/24

DEPARTMENT HEAD SIGNATURE

DATE

APPROVED

DATE

APPROVED

DATE

APPROVED

DATE

FOR BUSINESS USE ONLY

GRANTS & CONTRACTS APPROVAL

AUDITED BY	PURCHASE ORDER NO.	DATE ENTERED	CHECK NUMBER	CHECK DATE	AUDITED BY



# APPLICATION AND CERTIFICATE FOR PAYMENT

TO (Construction Manager):  
Roers

1260 West Villard  
Dickenson, ND 58601

FROM (CONTRACTOR): Hight Construction  
PO Box 458  
Minot ND 58702

PROJECT: Dakota College at Bottineau- Minot CTE

VIA (ARCHITECT): Akerman-Estvold  
1907 17th St SE  
Minot, ND 58701

APPLICATION NO.: 12

PERIOD TO: 01/31/2024

ARCHITECT'S  
PROJECT NO.:

Distribution to:  
☐ OWNER  
☐ ARCHITECT  
☒ CONTRACTOR  
☐  
☐

CONTRACT FOR:

CONTRACT DATE: 1/11/2023

## CONTRACTOR'S APPLICATION FOR PAYMENT

### CHANGE ORDER SUMMARY

		ADDITIONS	DEDUCTIONS
Change Orders approved in previous months by Owner			
TOTAL		40,920.04	
Approved this Month			
Number	Date Approved		
Totals			40,920.04
Net change by Change Orders			

The undersigned Contractor certifies that, to the best of the Contractor's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

Contractor: Hight Construction, LLC

By:

Date:

1/22/2024

Application is made for Payment, as shown below, in connection with the Contract.

1. Original Contract Sum.....	\$ 1,013,347.00
2. Net change by Change Orders.....	\$ 40,920.04
3. Contract Sum to Date (Line 1 +/- 2).....	\$ 1,054,267.04
4. Total Completed & Stored to Date.....	\$ 835,812.06
5. Retainage:	
a. 5 % of Completed Work	\$ 41,790.60
(Column D + E on G703)	
b. % of Stored Material	
(Column F on G703)	
Total Retainage (Line 5a + 5b or	
Total in Column 1 of G703).....	\$ 41,790.60
6. Total Earned Less Retainage.....	\$ 794,021.46
(Line 4 less Line 5 Total)	
7. Less Previous Certificates for	
Payment (Line 6 from prior Certificate).....	\$ 751,999.36
8. Current Payment Due.....	\$ 42,022.10
9. Balance to Finish, Plus Retainage.....	\$ 260,245.58
(Line 3 less Line 6)	

State of: North Dakota County of: Ward  
Subscribed and sworn before me this 22nd day of January 2024

Notary Public:

My Commission expires:

7/11/2026

CHELSEA BROWN

Notary Public

State of North Dakota

My Commission Expires July 11, 2026

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED.....

ARCHITECT:

CMA

By:

Date: 1/29/2024

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



# CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.  
In tabulations below, amounts are stated to the nearest dollar.  
Use column I on Contracts where variable retainage for line items may apply.

2022-40 Dakota College at Bottineau- Minot CTE  
EIN 45-0460658

Application Number: 12  
Application Date: 1/22/2024  
Period To: 1/31/2024  
Architect's Project No:

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% Completed	BALANCE TO FINISH (C - G)	5%
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					RETAINAGE
10000	General Requirements	-				-	0.0%	-	-
10000	Bond	10,000.00	10,000.00			10,000.00	100.0%	-	500.00
10000	Supervision	37,000.00	24,000.00	3,750.00		27,750.00	75.0%	9,250.00	1,387.50
10000	Equipment Fuel and Overhead	131,866.00	89,500.00	9,399.50		98,899.50	75.0%	32,966.50	4,944.98
10000	Daily Cleanup	3,000.00	1,600.00	200.00		1,800.00	60.0%	1,200.00	90.00
10000	Mob & DeMob	1,500.00	750.00			750.00	50.0%	750.00	37.50
215000	Selective Demolition	153,000.00	153,000.00			153,000.00	100.0%	-	7,650.00
330000	Cast In Place Concrete	5,000.00	5,000.00			5,000.00	100.0%	-	250.00
610000	Rough Carpentry	4,000.00	4,000.00			4,000.00	100.0%	-	200.00
620230	Finish Carpentry & Install Casework	103,250.00	87,792.00	5,133.00		92,925.00	90.0%	10,325.00	4,646.25
721000	Insulation/ T&M Protection	40,800.00	40,800.00			40,800.00	100.0%	-	2,040.00
792200	Joint Sealants	6,500.00	-			-	0.0%	6,500.00	-
811130	Hollow Metal Doors & Frames	91,850.00	26,000.00			26,000.00	28.3%	65,850.00	1,300.00
870000	Finish Hardware								
929000	Gypsum Board Systems	187,780.00	169,013.44	18,766.56		187,780.00	100.0%	-	9,389.00
93013	Tiling	156,500.00	78,250.00			78,250.00	50.0%	78,250.00	3,912.50
965130	Resilient Base								
966190	Resilient Flooring								
968130	Carpet Tiles								
991000	Painting /coatings	27,150.00	20,362.05	4,072.95		24,435.00	90.0%	2,715.00	1,221.75
101419	Dimensional Letter Signage	11,500.00	11,500.00			11,500.00	100.0%	-	575.00
101423	Room Signage	8,701.00	-			-	0.0%	8,701.00	-
102113	Phenolic Toilet Partitions	13,500.00	13,500.00			13,500.00	100.0%	-	675.00
102800	Toilet Accessories	8,900.00	8,900.00			8,900.00	100.0%	-	445.00
104416	Fire Extinguishers	2,000.00	2,000.00			2,000.00	100.0%	-	100.00
105113	Metal Lockers	9,550.00	9,550.00			9,550.00	100.0%	-	477.50
CO #1	CP #1, ASI 2, ASI 3, ASI 7	19,474.78	14,615.52	2,911.78		17,527.30	90.0%	1,947.48	876.37
CO #2	Removal and Replacement of Sidewalk	7,815.00	7,815.00			7,815.00	100.0%	-	390.75
CO #3	Wage Change and Temporary Heat	13,630.26	13,630.26			13,630.26	100.0%	-	681.51
			-			-		-	-
			-			-		-	-
Total		\$ 1,054,267.04	\$ 791,578.27	\$ 44,233.79	\$ -	\$ 835,812.06	79.3%	\$ 218,454.98	\$ 41,790.60

Current Payment Due: \$ - 42,022.10



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Vendor ID

## DAKOTA COLLEGE AT BOTTINEAU CAMPUS

## VOUCHER

(DO NOT USE FOR PAYROLL PAYMENTS)

REFERENCE NO.

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Mowbray 11

VENDOR INVOICE NO.

1/31/2024

INVOICE DATE

CUSTOMER NO.

PAY TO THE ORDER OF

SPECIAL INSTRUCTIONS:

☐ HOLD CHECK-CALL☐ PAYMENT NEEDED BY

(Date)

Mowbray &amp; Son, Inc

NAME

PO Box 878

ADDRESS

Minot, ND 58702

CITY

MAIL TO (IF DIFFERENT THAN VENDOR ADDRESS)

QUANTITY	DESCRIPTION OF GOODS OR SERVICES	UNIT PRICE	AMOUNT
	Minot CTE Center -Mechanical Contractor		135,386.81
TOTAL →			135,386.81

DCB Tax Exempt Certificate # E-2001

AMOUNT	ACCOUNT	FUND	DEPT	PROGRAM	PROJECT
135386.81	682100	49000	3160		BOT2204902

I/WE ACKNOWLEDGE RECEIPT OF THE ABOVE STATED GOODS AND/OR SERVICES AND REQUEST THAT PAYMENT BE MADE IN THE AMOUNT AND MANNER INDICATED.

REQUESTING DEPARTMENT NAME AND NUMBER

DEPARTMENT HEAD SIGNATURE

DATE

APPROVED

DATE

APPROVED

DATE

APPROVED

DATE

FOR BUSINESS USE ONLY

GRANTS & CONTRACTS APPROVAL

AUDITED BY	PURCHASE ORDER NO.	DATE ENTERED	CHECK NUMBER	CHECK DATE	AUDITED BY



# **AIA® Document G702™ – 1992**

## **Application and Certificate for Payment**

<b>TO OWNER:</b> ND State Board of Higher Education dba Dakota College Bottineau 105 Simrall Boulevard Bottineau ND 58318	<b>PROJECT:</b> DCB & MSU Career & Technical Education Center 120 Burdick Expressway East Minot, ND	<b>APPLICATION NO:</b> Eleven <b>PERIOD TO:</b> 1/31/2024 <b>CONTRACT FOR:</b> MECHANICAL <b>CONTRACT DATE:</b> 1/11/2023 <b>PROJECT NOS:</b> / /
<b>Distribution to:</b> OWNER <input type="checkbox"/> ARCHITECT <input type="checkbox"/> CONTRACTOR <input type="checkbox"/> FIELD <input type="checkbox"/> OTHER <input type="checkbox"/>		
<b>FROM CONTRACTOR:</b> MOWBRAY & SON, INC PO BOX 878 MINOT, ND 58702	<b>VIA ARCHITECT:</b> Ackerman-Estvold Architects 1907 17th St SE Minot, ND 58701	

### **CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. AIA Document G703™, Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM .....	\$ 1,584,730.00
2. NET CHANGE BY CHANGE ORDERS .....	\$ 66,256.00
3. CONTRACT SUM TO DATE (Line 1 ± 2) .....	\$ 1,650,986.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) .....	\$ 1,491,842.87
<b>5. RETAINAGE:</b>	
a. 5 % of Completed Work (Columns D + E on G703)	\$ 82,549.30
b. 5 % of Stored Material (Column F on G703)	\$ 0.00
Total Retainage (Lines 5a + 5b, or Total in Column I of G703) .....	\$ 82,549.30
6. TOTAL EARNED LESS RETAINAGE .....	\$ 1,409,293.57
(Line 4 minus Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT .....	\$ 1,273,906.76
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE .....	\$ 135,386.81
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 minus Line 6)	\$ 241,692.43

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 100903.00	\$ -34647.00
Total approved this month	\$ 0.00	\$ 0.00
<b>TOTAL</b>	<b>\$ 100903.00</b>	<b>\$ -34647.00</b>
<b>NET CHANGES by Change Order</b>	<b>\$ 66256.00</b>	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

**CONTRACTOR:**

By: MOWBRAY & SON, INC.

Date: 1/22/2024

State of: NORTH DAKOTA

County of: WARD

Subscribed and sworn to before me this

22nd

day of

Notary Public:

My commission expires:

7/30/2024

BRIAN MICHALENKO  
 January, 2024 Notary Public  
 State of North Dakota  
 My Commission Expires July 30, 2024

### **ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

**AMOUNT CERTIFIED** .....

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

**ARCHITECT:** CMA

By: Michael Jacobson

Date: 1/29/2024

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

**CAUTION:** You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

AIA Document G702™ – 1992. Copyright © 1953, 1963, 1965, 1971, 1978, 1983 and 1992 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. Purchasers are permitted to reproduce ten (10) copies of this document when completed. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, [copyright@aia.org](mailto:copyright@aia.org).

01071UC044



## Continuation Sheet

AIA Document G702™–1992, Application and Certificate for Payment, or G732™–2009, Application and Certificate for Payment, Construction Manager as Adviser Edition, containing Contractor's signed certification is attached.  
In tabulations below, amounts are in US dollars.  
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: Eleven  
APPLICATION DATE: 1/22/2024  
PERIOD TO: 1/31/2024  
ARCHITECT'S PROJECT NO:

Use Column I on Contracts where variable retainage for line items may apply.									
A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (Not in D or E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G + C)	BALANCE TO FINISH (C - G)	RETAINAGE (If variable rate)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
1	MOBILIZATION	4,650.00	2,325.00			2,325.00	50%	2,325.00	232.50
2	G&A, PERMIT, SUBMITTALS	3,875.00	1,937.50			1,937.50	50%	1,937.50	193.75
3	TRUCK/TRAVEL	3,540.00	2,902.80	283.20		3,186.00	90%	354.00	177.00
4	DEMO	90,613.00	90,613.00			90,613.00	100%	0.00	4,530.65
5	UG DWV	50,810.00	50,810.00			50,810.00	100%	0.00	2,540.50
6	AG STORM	47,642.00	47,642.00			47,642.00	100%	0.00	2,382.10
7	DOMESTIC WATER	106,294.00	106,294.00			106,294.00	100%	0.00	5,314.70
8	FIXTURES & DRAINS	50,511.00	30,306.60	15,153.30		45,459.90	90%	5,051.10	2,525.55
9	AIR PIPING	31,558.00	29,980.10	1,262.32		31,242.42	99%	315.58	1,577.90
10	HYDRONIC HEATING	352,193.00	324,017.56	10,565.79		334,583.35	95%	17,609.65	17,609.65
11	VACUU	36,085.00	34,280.75	1,443.40		35,724.15	99%	360.85	1,804.25
12	GAS PIPING	15,524.00	6,209.60			6,209.60	40%	9,314.40	776.20
13	HVAC	521,855.00	380,954.15	104,371.00		485,325.15	93%	36,529.85	26,092.75
14	ATC	109,670.00	57,028.40			57,028.40	52%	52,641.60	5,483.50
15	INSULATION	123,665.00	112,535.15			112,535.15	91%	11,129.85	6,183.25
16	TAB	9,880.00	1,383.20			1,383.20	14%	8,496.80	494.00
17	STARTUP	12,500.00				0.00	0%	12,500.00	625.00
18	BOND	13,865.00	13,865.00			13,865.00	100%	0.00	693.25
19	CO01 INSTALL TEMP HEATER	3,202.00	3,202.00			3,202.00	100%	0.00	160.10
20	CO02 ADD DENTAL CHAIR	57,695.00	54,810.25	2,307.80		57,118.05	99%	576.95	2,884.75
21	CO03 EXTERIOR BLDG CHASE	-33,647.00	-33,647.00			-33,647.00	100%	0.00	-1,682.35
22	CO04 EPR M3 ADD LIFE SFTY DMF	4,395.00	4,395.00			4,395.00	100%	0.00	219.75
23	CO05 EPR M4 ADD AIR/VACUUM	5,458.00	5,458.00			5,458.00	100%	0.00	272.90
24	CO06 INSTALL TEMP HEAT (FBO)	4,522.00	4,522.00			4,522.00	100%	0.00	226.10
25	CO08 PIPE CLEANING	24,631.00	24,631.00			24,631.00	100%	0.00	1,231.55
	GRAND TOTAL	1,650,986.00	1,356,456.06	135,386.81	0.00	1,491,842.87	90%	159,143.13	82,549.30

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.



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Vendor ID

## DAKOTA COLLEGE AT BOTTINEAU CAMPUS

## VOUCHER

REFERENCE NO.

(DO NOT USE FOR PAYROLL PAYMENTS)

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Gefroh 10

VENDOR INVOICE NO.

1/31/2024

INVOICE DATE

CUSTOMER NO.

PAY TO THE ORDER OF

SPECIAL INSTRUCTIONS:

☐ HOLD CHECK-CALL☐ PAYMENT NEEDED BY

(Date)

Gefroh Electric Inc

NAME

100 45th Ave NW

ADDRESS

Minot, ND 58703

CITY

MAIL TO (IF DIFFERENT THAN VENDOR ADDRESS)

QUANTITY	DESCRIPTION OF GOODS OR SERVICES	UNIT PRICE	AMOUNT
	Minot CTE Center -electrical contractor		45,581.00
DCB Tax Exempt Certificate # E-2001			
TOTAL			45,581.00

AMOUNT	ACCOUNT	FUND	DEPT	PROGRAM	PROJECT
45581.00	682030	49000	3160		BOT2204902

I/WE ACKNOWLEDGE RECEIPT OF THE ABOVE STATED GOODS AND/OR SERVICES AND REQUEST THAT PAYMENT BE MADE IN THE AMOUNT AND MANNER INDICATED.

REQUESTING DEPARTMENT NAME AND NUMBER

DEPARTMENT HEAD SIGNATURE

DATE

APPROVED

DATE

APPROVED

DATE

APPROVED

DATE

FOR BUSINESS USE ONLY

GRANTS & CONTRACTS APPROVAL

AUDITED BY	PURCHASE ORDER NO.	DATE ENTERED	CHECK NUMBER	CHECK DATE	AUDITED BY



**TO OWNER:**

ND SBHE DBA DAKOTA COLLEGE BOT ROERS CONSTRUCTION JV, LLC  
105 SIMRALL BLVD  
BOTTINEAU ND 58318

**FROM CONTRACTOR:**

GEFROH ELECTRIC INC  
100 45TH AVE NW  
MINOT ND 58703

**CONTRACT FOR: ELECTRICAL CONSTRUCTION****CONSTRUCTION MANAGER:**

1260 WEST VILLARD  
DICKINSON ND 58601

**PROJECT LOCATION:**

DCB & MSU CTE  
MINOT ND 58701

APPLICATION NO: 10

APP DATE: JAN 25 2024

PERIOD TO: JAN 1 TO JAN 31

PROJECT NOS: R21222

CONTRACT DATE: JAN 11, 2023

Distribution to:

☐ OWNER  
☐ ARCHITECT  
☒ CONTRACTOR

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 527,200.00
2. Net change by Change Orders \$ 54,326.79
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 581,526.79
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 501,620.90
5. RETAINAGE:
  - a. 10 % of Completed Work \$ 29,076.34 10% Of 1st 50%  
(Column D + E on G703)
  - b. % of Stored Material \$  
(Column F on G703)Total Retainage (Lines 5a + 5b or  
Total in Column I of G703) \$ 29,076.34
6. TOTAL EARNED LESS RETAINAGE \$ 472,544.56  
(Line 4 Less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ (426,963.56)
8. CURRENT PAYMENT DUE \$ 45,581.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE \$ 108,982.23  
(Line 3 less Line 6)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$54,326.79	
Total approved this Month	\$0.00	
TOTALS	\$54,326.79	\$0.00
NET CHANGES by Change Order	\$54,326.79	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: *Getroh Electric, Inc.*By: *[Signature]* Date: *1/25/24*

State of: *North Dakota* County of: *Ward*  
Subscribed and sworn to before me this *25th* day of *January* 2024  
Notary Public: *[Signature]*  
My Commission expires: *5/15/2027*

DANA DUCHSCHERER  
Notary Public  
State of North Dakota  
My Commission Expires May 15, 2027

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED ..... \$

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: *CMA*By: *[Signature]* Date: *1/29/2024*

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



# CONTINUATION SHEET

AIA DOCUMENT G703

PAGE OF PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 10

APPLICATION DATE: 1/25/2024

PERIOD TO: JAN 1 - JAN 31

ARCHITECT'S PROJECT NO: R21222

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G + C)		
1	BOND COST	\$9,200.00	\$9,200.00			\$9,200.00	100.00%	\$0.00	\$920.00
2	DEMO & TEMP POWER	\$22,800.00	\$22,800.00			\$22,800.00	100.00%	\$0.00	\$2,280.00
3	ELEC SERVICE & DISTRIBUTION	\$121,000.00	\$102,845.00	\$18,155.00		\$121,000.00	100.00%	\$0.00	\$12,100.00
4	POWER ROUGHIN	\$64,300.00	\$61,085.00	\$1,286.00		\$62,371.00	97.00%	\$1,929.00	\$6,237.10
5	LIGHTING ROUGHIN	\$27,800.00	\$26,410.00	\$556.00		\$26,966.00	97.00%	\$834.00	\$2,696.60
6	POWER TRIM OUT	\$10,250.00	\$5,125.00	\$3,587.00		\$8,712.00	85.00%	\$1,538.00	\$871.20
7	LIGHTING TRIM OUT	\$52,550.00	\$26,275.00	\$18,392.00		\$44,667.00	85.00%	\$7,883.00	\$4,466.70
8	NETWORK & TV CABLING	\$42,125.00	\$35,807.00			\$35,807.00	85.00%	\$6,318.00	\$3,580.70
9	CLOCK SYSTEM	\$9,650.00	\$5,307.50			\$5,307.50	55.00%	\$4,342.50	\$530.75
10	RESCUE ASSIST SYSTEM	\$15,350.00	\$8,442.50			\$8,442.50	55.00%	\$6,907.50	\$844.25
11	CONTROLLED ACCESS SYSTEM	\$22,125.00	\$12,169.00			\$12,169.00	55.00%	\$9,956.00	\$1,216.90
12	SURVEILLANCE SYSTEM	\$49,500.00	\$22,275.00			\$22,275.00	45.00%	\$27,225.00	\$2,227.50
13	FIRE ALARM SYSTEM	\$21,550.00	\$15,085.00	\$1,077.00		\$16,162.00	75.00%	\$5,388.00	\$1,616.20
14	ALT 1	\$59,000.00	\$59,000.00			\$59,000.00	100.00%	\$0.00	\$5,900.00
15	CO 1	\$48,269.90	\$38,615.90	\$2,413.00		\$41,028.90	85.00%	\$7,241.00	\$4,102.89
16	CO 2	\$2,292.89	\$1,834.00	\$115.00		\$1,949.00	85.00%	\$343.89	\$194.90
17	CO 3	\$3,764.00	\$3,764.00			\$3,764.00	100.00%	\$0.00	\$376.40
18									
19									
20									
	RETAINAGE: 10% FOR 1ST 50% OF WORK								
	<b>GRAND TOTALS</b>	\$581,526.79	\$456,039.90	\$45,581.00	\$0.00	\$501,620.90	86.26%	\$79,905.89	\$29,076.34

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity



**TO:** Mayor  
Members of the City Council

**FROM:** Jennifer K Eckman, Airport Director

**DATE:** March 18, 2024

**SUBJECT: OVERLAND WEST AIRPORT LEASE**

**I. RECOMMENDED ACTION**

- A. Approve Rental Car Concession and Lease Agreement with Overland West; and
- B. Authorize Mayor to sign the contract

**II. DEPARTMENT CONTACT PERSONS**

Jennifer Eckman, Airport Director	857-4724
Jessica Long, Airport Business and Development Manager	857-4725

**III. DESCRIPTION**

A. Background

Minot International Airport (MOT) has been in contract negotiations with the current Rental Car Companies for the last year. The final contract has been received by the rental car companies with signature after receiving the form contract in December.

B. Proposed Project

Proposed project is to update the expired rental car contracts. This will ensure that MOT will be able to enforce regulations and guarantee service.

C. Consultant Selection

Decomm Aviation is MOT's Aviation Business Consultant and worked through the contract and negotiations.

**IV. IMPACT:**

A. Strategic Impact:

The updated contracts will take us out of holdover and will help ensure ongoing rental car concessions and MOT and help guarantee we are better able to assist our passengers and the citizens of Minot.

B. Service/Delivery Impact:

The contract will help maintain a working relationship with the Car Rental Companies and continue to provide service to the community.

C. Fiscal Impact:

Car rentals are revenue only concession contracts. Estimated revenue for 2024 based on a three-year average \$650,000.

**V. CITY COUNCIL ASPIRATIONS**

Dynamic and Flourishing

**VI. ALTERNATIVES**

1. Council can reject the updated contract and require MOT to go out for bids.

**VII. TIME CONSTRAINTS**

MOT has been in holdover with the Car Rental Companies for almost a year.

**VIII. LIST OF ATTACHMENTS**

- A. Overland West signed agreement

**CITY OF MINOT**  
**MINOT INTERNATIONAL AIRPORT**  
**NON-EXCLUSIVE RENTAL CAR CONCESSION AGREEMENT AND LEASE**

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT made between **City of Minot** (hereinafter referred to as the "City"), and **Overland West, Inc. DBA Hertz Rent A Car** (hereinafter referred to as the "Concessionaire").

**WITNESSETH:**

**WHEREAS**, the City is owner and operator of the Minot International Airport (hereinafter referred to as "the Airport"); and

**WHEREAS**, Concessionaire is engaged in the business of renting on-airport passenger vehicles and desires to use certain Airport areas and facilities owned by the City and to acquire from the City certain rights and privileges in connection with its use of the Airport; and

**WHEREAS**, the City has the right to permit use of the property on the Airport upon the terms and conditions hereinafter set forth and has full power and authority to enter into this Non-Exclusive Agreement as provided herein;

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, conditions, privileges, obligations, and agreements herein contained, the City and the Concessionaire hereby mutually undertake, promise, and agree, each for itself and its successors and assigns, as follows.

**Article 1**  
**Automobile Rental Concession**

1. The City hereby grants to Concessionaire, subject to the terms and conditions of this non-exclusive Agreement, the right to conduct and operate an automobile rental concession at the Airport.
2. The City agrees not to enter into any similar automobile rental concession agreement with any person, partnership, or corporation other than the Concessionaire for a concession on the Airport, unless the same shall be upon financial terms no more favorable than those herein granted to the Concessionaire, and shall require automobile rental service substantially equivalent to those available from automobile rental concessionaires upon airports of comparable size throughout the United States. Nothing herein contained shall limit the City from making such reasonable distinctions between the automobile rental counter space and parking areas as may appear to it to be justified by the differing operational requirements of the respective rental car Concessionaires, or by reason of the differing amounts of airport automobile rental business done by each of the respective Concessionaires. This Agreement does not prohibit agreements or regulations pertaining to off-airport automobile rental

companies or person to person (P2P) operators provided that the operator enters into an Agreement with the Airport and pays the required fee, as determined by the Airport Director.

3. For the Term of this Agreement, unless otherwise approved by the City, at its sole discretion, the Concessionaire will be allowed to operate up to a maximum of three (3) brands per counter position and operate only the brands specified in this Agreement. The acquisition, transfer, or subletting of any brand(s) or trade name(s) requires prior written approval by the Airport Director. Such approval may be withheld by the Airport Director for good and sufficient reasons, but will not be unreasonably withheld. The brands authorized under this Agreement include:

Hertz

Dollar

Thrifty

In the event Concessionaire no longer offers any brand identified above during the Term of the Agreement, Concessionaire will be required to adhere to the Minimum Annual Guarantee (MAG) proposed for all brands included in this Agreement and the lease rental rate included herein, and Concessionaire will not be allowed to offer any new brands during the Term of the Agreement.

The City shall be permitted to add a new on-Airport rental car concession during the Term and any such addition shall be subject to the provisions of Article 1, paragraph 2 hereof. The City shall reasonably adjust the Minimum Annual Guarantees of Concessionaire and other Concessionaires proportionate to the projected market share of the new Concessionaire as a percentage of the total projected market share of all Concessionaires to reflect the impact of adding a new concession.

## **Article 2** **Premises**

City hereby grants to Concessionaire, for the period and subject to the terms and conditions hereinafter stated, the following described Premises located in or upon the Airport:

### **1. Terminal Premises**

a. During the Term of this Agreement, Concessionaire shall have the right to occupy on a preferential use basis four hundred and fifty (450) square feet of ticket counter, queuing space, and back-office space, as identified on Exhibit "A", attached hereto and made a part hereof. Within said counter, queuing and back-office space, City shall furnish, at no direct charge to Concessionaire, heat, air conditioning, overhead lighting, and electrical convenience outlets. Concessionaire shall provide all furniture and equipment for such space at its sole expense and will be solely responsible for any additional improvements required provided that prior written approval is requested and granted by the Airport Director. The space must be kept in a clean and orderly condition at the sole expense of the Concessionaire.

b. Concessionaire shall use the screens provided by the City for all branding at the counter location for the purpose of advertising Concessionaire's rental car authorized brands as identified in Article 1, paragraph 3. Such signs shall not advertise rates.

c. Concessionaire shall have the right, at its sole expense, to make such additions and improvements, and to install such equipment and facilities as Concessionaire may deem necessary or desirable for the operation of its automobile rental concession, provided, however, that no such additions, improvements, or installation of equipment or facilities shall be undertaken by Concessionaire without the prior written consent of the Airport Director, which consent, shall not be unreasonably withheld. Within seven (7) calendar days after the termination or earlier cancellation of this Agreement as called for herein, Concessionaire shall also have the right to remove any such additions, improvements, equipment or facilities erected or installed by Concessionaire at its expense pursuant to the terms of this Article, provided, however, the Premises shall be restored to their former condition, normal wear and tear excepted. Any improvements or equipment not removed by Concessionaire within seven (7) calendar days following the termination or cancellation of this Agreement shall become the property of the City or may be disposed of by the City, the cost of which will be paid by the Concessionaire.

## 2. Parking Area Premises

a. Concessionaire, in cooperation with other Concessionaires that have executed a similar Agreement to operate a concession located at the Airport, shall have the right to use the ready and return parking premises on a preferential basis as allocated in accordance with the terms of this Agreement. The ready and return lots shall be as depicted in Exhibit B. The storage lot shall be in a location as approved by the City. The initial allocation of the ready/return stalls will be determined by the Minimum Annual Guarantee (MAG) amount proposed by Concessionaire during the negotiation process for the extension of this Agreement for each brand to be operated at the Airport. As part of the MAG proposal, Concessionaires shall identify the number of ready/return stalls desired for each brand. The highest proposed MAG per brand and requested positions will be allowed to select their positions first, the second highest next, and so forth. The City will use its best efforts to provide the requested number of positions. If the total number of positions requested is greater than the number of positions available, the requests will be reduced pro rata based on the MAGs submitted. If the number of positions requested is less than the total number of positions available, the unrequested positions will be retained by the Airport and may not be used by Concessionaires. If Concessionaire desires to lease additional positions that are under the control of the Airport following the initial allocation, the available stalls will be leased on an annual basis at the applicable fee on a first come, first served basis until all available stalls are leased. The Concessionaire will have the first right to request an extension of the annual lease of the surplus positions and must indicate its desire no less than sixty (60) calendar days prior to the expiration of the annual lease.

b. The total number of parking spaces to be designated for ready and return parking will be determined annually by the Airport Director and identified in Exhibit B. In the event the location or quantity of ready/return parking stalls available during the term of this Agreement are modified, an amended Exhibit B will be substituted in this Agreement. The number of spaces allocated to each Concessionaire on an annual basis shall be allocated among the Concessionaires upon the execution of this Agreement as identified in Article 2, paragraph 2a above, and subject to adjustment annually thereafter only if there is a market share change of twenty percent (20%) or more for any one Concessionaire. for each succeeding year of this



Agreement. Subsequent year stall allocations will be based on the previous year's ratio of Concessionaire's (for all brands identified in Article 1, paragraph 3) Gross Receipts for brand(s) operated by Concessionaire to the Gross Receipts of all Concessionaires operating under this Agreement for all authorized brands. The determination of the twenty percent (20%) market share will be determined by taking the total Gross Receipts by each Concessionaire as a percentage of the total Gross Receipts for all Concessionaires. The Reallocations will be completed following the end of the fiscal year following the completion of the annual audit by the City. Concessionaires shall be offered a minimum of ten (10) ready/return parking positions for each authorized brand identified in this Agreement subject to adjustment as outlined herein.

3. Quick Turn Around ("QTA") Premises

a. During the Term of this Agreement, the City may develop a QTA facility at a location near the Terminal as determined by the City. The City reserves the right to develop this facility subject to terms and conditions that are acceptable to the City and provided that the cost of development and operation of the QTA premises is entirely funded by Customer Facility Charges (CFCs), contingent rent, or other funding as mutually agreed by the Parties.

b. In the event that the City develops and completes the QTA facility during the Term of this Agreement, the terms and conditions agreed to by the parties will be established via amendment to this Agreement. All direct and indirect costs associated with the development and operation of the QTA, applicable land rent for the land associated with the premises and associated improvements such as vacuum stations and fueling facilities, and all utilities will be included in the costs associated with the QTA and paid to the City. A separate operating agreement will be developed and must be executed by Concessionaires operating at the Airport. The QTA may not be used for the servicing of any vehicles not assigned by Concessionaire to the Airport. All costs associated for the operation of the facility will be allocated to each Concessionaire based on the number of vehicles processed.

c. The Airport Director will consult with Concessionaires prior to the development of the terms and conditions for the QTA as well as development of the final design and take comments received by Concessionaires into consideration.

d. Customer Facility Charge (CFC) funds collected and remitted by Concessionaire and other rental car concessions shall be used to fund rental car related improvements and operating costs at the Airport, including but not limited to the QTA facility.

**Article 3**  
**Term of Agreement and Holdover**

1. Subject to earlier termination as herein provided, the Term of this Agreement shall be from January 1, 2024, through December 31, 2028.

2. In the event that the Concessionaire, or its successor in interest, if any, shall remain beyond the Term hereof, without the express written permission of the City, it is the intention of the parties and it is hereby agreed that a tenancy from month-to-month in Holdover and shall be subject to all the terms and conditions of this Agreement except that the City shall, through the

Holdover period, have the sole right to determine the rates, fees, and charges under the Holdover period.

**Article 4**  
**Use of the Airport and the Premises**

The City grants to Concessionaire the following rights and privileges, subject to other limitations expressed in this Agreement:

1. Terminal and Roadways. The right to use in common with others, the general facilities of the Airport in the normal conduct of its operation as a car rental company for on-Airport designated vehicles in such manner as may be prescribed by the City.
2. Signs. The Concessionaire shall have the right to utilize the electronic screens to display one or more signs within the Premises, identifying it and its authorized brands as identified in Article 1, paragraph 3, provided, however, the subject matter, type, design, number, location and elevation of such graphics, shall be in general conformity with those of other Airport tenants and subject to, and in accordance with, Airport rules, regulations, and ordinances and the prior written approval of the Airport Director. No graphics will be approved that may be confusing to customers and the traveling public. Without limiting the generality of the foregoing, the City maintains the policy that advertising shall not mention other concessionaire car rental companies either directly or indirectly nor shall it reference a competitor's product.
4. Parking Space - Employees. The City shall make available to Concessionaire's employees, parking in an employee area designated by the City only during the employee's working hours at the airport for a fee as adopted by the City and subject to change annually. Concessionaire's employees shall park their private vehicles only in the employee parking area furnished by the City. Concessionaire is strictly prohibited from allowing employees, guests, or contractors to utilize ready/return, storage spaces, or short-term parking for parking of personal vehicles. Failure to comply with this provision may result in the City terminating the leasing of ready/return stalls at the sole discretion of the Airport Director. During any period where egress from the ready/return spaces is processed through the paid parking lot exit lanes, if there is a shortfall in paid parking revenues versus the number of vehicles processed, the Concessionaires will be assessed the shortfall in the operating expenses associated with the rental car costs that will be paid to the City.
5. Relocation. Future development of a Quick Turn Around (QTA) facility or other improvements on the Airport may require the alteration of the Parking Area Premises. The City shall have the right to amend this Agreement to incorporate the terms and conditions of any such development requirements. Reasonable advance notice of any alteration shall be given by the City, but in no event shall the notice be less than thirty (30) calendar days.
6. Purpose. Concessionaire agrees that it will not engage in any commercial activities not authorized herein and will not permit the use of the Terminal Premises, Parking Area Premises, and Quick Turn Around (QTA), of any purpose other than those authorized in this Agreement as may be amended from time to time.
7. Accommodation. During the Term of this Agreement, the City may have a need to modify the Terminal Premises or Parking Area Premises. In the event that Concessionaire's

Terminal Premises or Parking Area Premises is impacted, the City will use its best efforts to accommodate Concessionaire during the period of disruption and provide comparable accommodations to the greatest degree possible.

8. Construction, Airport Expansion and Inconvenience to Concessionaire. The Concessionaire recognizes that from time to time during the Term of this Agreement it may be necessary for the City to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair in order that the Airport and its facilities may be suitable for the volume and character of its air traffic and flight activity, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience the Concessionaire in its operations at the Airport. The City agrees to make all reasonable efforts to minimize the inconvenience to the operation of the Concessionaire's business. The Concessionaire agrees that no liability shall attach to the City, its officers, agents, employees, contractors, subcontractors, and representatives by reason of such inconvenience or interruptions.

9. Non-Exclusive Rights. This Agreement shall be non-exclusive and the City reserves the right, subject to the provisions of Article 1, paragraphs 2 and 3, to enter into similar contracts with other individuals, firms, or corporations engaging in the car rental business at the Airport. The City shall not grant to any other Concessionaire a car rental concession on terms more favorable than those granted to the Concessionaire.

10. Rights of Ingress and Egress. The City grants to Concessionaire the right of ingress and egress to and from the premises for Concessionaire's employees, agents, customers and invitees to the extent reasonably necessary in connection with the conduct of Concessionaire's business under this Agreement. Areas designated as restricted areas by the City shall be excluded.

## Article 5

### Minimum Annual Guarantee, Rents, Fees, and Charges and Performance Guarantee

For the privilege of operating its rental car service at the Airport and for the use of the premises described in Article 2, Concessionaire agrees to pay to the City the following rentals and fees.

#### 1. Terminal Premises

The Terminal Premises rental for a single brand shall include a ticket counter, queuing and back-office space as set forth on Exhibit "A" as attached (hereinafter referred to as "Terminal Premises"). Concessionaire shall be entitled to preferential use of four hundred and thirty-five (435) square feet of Terminal Premises. The annual rental rate per square foot will be the rate as established by the City annually for the airline rental rate. In the event Concessionaire operates two (2) rental car brands as identified in Article 1, paragraph 3 from one counter position, the rental rate for a single position shall be at a rate of one hundred twenty five percent (125%) of the applicable base rental rate. In the event Concessionaire operates three (3) rental car brands as identified in Article 1, paragraph 3 from one counter position, the rental rate for a single position shall be at a rate of one hundred fifty percent (150%) of the applicable base rental rate. In no event shall Concessionaire operate more than three brands out of a single rental car position. Rental for Terminal Premises shall be payable in equal monthly

installments. Rental charges, storage area charges, and any other charges due the City shall be due and payable in advance, on or before the first day of each month, without the requirement for a demand thereof.

2. Parking Area Premises

a. Annually, Concessionaire will be allocated parking storage and ready/return parking stalls as called for in Article 2, paragraph 2a. All Concessionaires operating under a concession agreement agree to pay ground rental for the Parking Area Premises at a monthly rate per stall. The rate will be established from time to time by the City Council's Rates and Charges Resolution through the Term of the Agreement. Such rental for the Parking Area Premises shall be paid on the first day of each month in advance without the requirement of a demand thereof. City shall be responsible for the snow removal of the main drive aisles of the designated lots and maintenance of the Parking Area Premises and the City shall be reimbursed for such costs based on a pro rata share of the stalls allocated. Concessionaire shall be responsible for removal of snow and the associated cost for removal at all allocated parking spaces.

3. Quick Turn Around (QTA) Facility

The City may, at its sole discretion, arrange for the design and development of a QTA facility to be used by Concessionaire and other Concessionaires having signed similar Agreements on the Airport. The terms and conditions associated with the design, funding, rental rates, operating requirements, and position assignment will be included in an Amendment of this Agreement if the project proceeds. Customer Facility Charges (CFCs) from all transactions conducted on the Airport would be used as a means of funding the facility and associated operating costs. The QTA shall be used for the servicing of vehicles that are based at the Airport and used in transactions originated at the Airport. Concessionaire will be prohibited from processing non-Airport based vehicles through the QTA.

4. Concession Fee and Minimum Annual Guarantee ("MAG")

Concessionaire and other Concessionaires shall submit to the City prior to the execution of this Agreement a proposed MAG for the period from January 1, 2024 through December 31, 2024 for each brand proposed to be operated under this Agreement and identify the number of ready/return spaces that are desired for each brand that will be operated by Concessionaire under this Agreement regardless of whether the Concessionaire is leasing multiple counter positions. Such proposal shall be included as Exhibit C to this Agreement.

During the first year of the Agreement, the Concessionaire shall pay annually to the City, the greater of the initial MAG amount proposed by Concessionaire (Exhibit C) or Eleven percent (11%) of the Gross Receipts, as hereinafter defined, derived from the Concessionaire's car rental operations at the Airport.

Beginning in the second year and for each year of the Agreement thereafter, the Concessionaire shall pay annually to the City, the greater of the adjusted MAG amount as described in Article

5 Section 4 paragraph a., or eleven percent (11%) of the Gross Receipts, as hereinafter defined, derived from the Concessionaire's car rental operations at the Airport.

a. Annual Adjustment of MAG- The MAG shall be subject to annual adjustment following the first year of this Agreement. For the second year of the Term and each subsequent year, the Minimum Annual Guarantee shall be the greater of the previous year's MAG or the amount which represents eighty-five percent (85%) of Concessionaire's percentage fee applied against Gross Receipts for the immediately preceding Lease Year. In no event shall the MAG during any given year of the Agreement be less than the first year's MAG during the Term of this Agreement.

b. Monthly Payments and Year End Reconciliation- The contract year commences on January 1st of each year. By the twentieth (20th) day of each month following the month of activity during the Term of the Agreement, Concessionaire shall remit to the City a report identifying the Concession Fee due for the previous month's activity by multiplying the Gross Receipts for the month reported applied against Concession Fee and the calculated payment. Concessionaire shall report activity on a form supplied by the City and calculate the amount due the City at the end of each month of the Agreement. Concessionaire shall provide to the City within sixty (60) calendar days, an audited summary signed by an authorized officer of the company identifying the Gross Receipts for the preceding fiscal year with an eleven percent (11%) Concession Fee applied to the Gross Receipts. If the annual calculated amount is less than the applicable MAG due, Concessionaire shall remit to the City the difference between the calculated amount and the MAG within ten (10) calendar days upon submission of the invoice.

5. Customer Facility Charge (hereinafter referred to as "CFC"):

a. The Concessionaire acknowledges the City has implemented a CFC for the funding of eligible rental car related capital improvements and operating expenses. In the event the City adjusts the CFC amount, the Airport Director will consult with Concessionaire prior to adoption of any such change and will provide sixty (60) calendar days written notice to Concessionaire prior to the implementation of any change.

b. Concessionaire must charge the approved CFC for each Transaction Day for each rental agreement initiated at the Airport and/or for each vehicle based at the Airport. If Concessionaire has provided a written quotation to a customer that contains the previous CFC amount prior to the thirty (30) calendar day notice period, the quoted CFC amount will be the charged amount for any such rental.

c. The Concessionaire shall include the approved CFC for all transactions made utilizing cars that are located at the Airport or leased off-airport but are returned to the Airport.

d. The CFC shall be listed as a separate charge in the Concessionaire's advertised rates or rental agreements and such separate charge shall be disclosed to the customer at the time of reservation and again at the time of actual rental. The CFC shall be disclosed and listed as a Customer Facility Charge and shall not be listed as an Airport surcharge or tax. The CFC must be collected from all customers.

e. "Transaction Day" shall mean a twenty-four (24) hour period or fraction thereof for which a rental car customer is provided the use of a rental car for compensation regardless of the duration or length of the rental term. If the same rental car is rented to more than one customer within such continuous 24-hour period, then each such rental shall be calculated as a Transaction Day, except that a partial day that is a grace period of no more than 2 hours after the last 24-hour day booked shall not be considered a Transaction Day.

f. The Concessionaire shall collect from each and every Airport customer of the Concessionaire, a CFC for each Transaction Day under each rental agreement, subject to the limitation set out hereinafter. The CFCs collected by each Concessionaire shall be held in trust on behalf of the City by the respective Concessionaire. On or before the 20th day of each month, Concessionaire shall furnish to the City a sworn statement setting forth the number of transaction days covered by the rental agreements during the preceding month together with the CFCs collected during the preceding month. The CFCs shall not be calculated in the "Gross Receipts" of a Concessionaire in order to determine the concession fee payable to the City.

g. The Concessionaire acknowledges that the CFC shall be subject to revision by the City upon a minimum of sixty (60) calendar days written notice to the Concessionaire. The City will provide the Concessionaire written notice for any such revisions prior to a recommendation to be made to the City for adjustment.

h. The City will provide an annual report summarizing collections, expenditures, and fund balances.

i. In the event of any national emergency wherein there is a curtailment, either by executive decree or legislative action, of the use of motor vehicles or commercial aircraft by the general public, the MAG shall be suspended on a pro rata basis for the period of time the condition continues to exist.

6. The term Gross Receipts shall mean all revenues received by the Concessionaire from the customer derived from the operation of Concessionaire's vehicle rental business at the Airport regardless of where any vehicle is delivered or returned. The term Gross Receipts includes Concessionaire's recovery of any concession fee charged to the customer such that the total concession recovery fee charged to the customer shall be 12.36%.

For purposes of the Agreement, Gross Receipts shall include all revenues received by Concessionaire except for:

- a. Sums recovered by Concessionaire from insurance claims or otherwise for personal accidents, for damage to rental vehicles or other property, or for theft, or loss, or abandonment of its rental vehicles or other property.
- b. Sums charged to customers by Concessionaire for waiver by Concessionaire of its rights to recover loss or damages from its customers for damage to or destruction of the rental vehicles.

- c. Any tax or surcharge separately stated as a tax or surcharge and collected from Concessionaire's customers, in an amount that actually has been levied or charged by and paid to any competent governmental authority, excluding concession fees recovered from Concessionaire's customers.
- d. Proceeds and sums received by the Concessionaire from the collection of the CFC.
- e. Discounts to customers taken at the time of the rental only and clearly noted on the rental contract or agreement.
- f. Vehicle sales and new vehicle prep revenue.
- g. Direct costs associated with vehicle license fees.
- h. Unauthorized one way drop fees.
- i. Charges that are assessed for third party assessments including fines, tolls, towing charges, and other similar reimbursement type charges.

7. Within sixty (60) calendar days after the close of each contract year hereunder, Concessionaire shall furnish to City a sworn statement certified by an authorized officer of Concessionaire showing all Gross Receipts derived from automobile rentals made at the Airport for said contract year. All sums due hereunder and the reports and statements of Gross Receipts shall be paid to the City by delivery to the Airport Director.

8. In the event any payment is not paid when due, the City shall assess, and the Concessionaire agrees to pay, a one percent (1.75%) late charge, plus an additional one percent (1.75%) each month on any remaining unpaid balance which is past due. This amount is determined by the City and subject to change per City rates and charges.

9. Concessionaire agrees to provide the City with an irrevocable Letter of Credit provided by a bank acceptable to the City, or a performance bond issued by a surety acceptable to the City, renewable annually during the term of this Agreement, in a sum equal to no less than six (6) months of the annual MAG amount.

#### **Article 6** **Covenants of Concessionaire**

Concessionaire hereby covenants and agrees:

- 1. To utilize the Terminal Premises and Parking Area Premises for the use and benefit of the public.
- 2. To furnish good, prompt and efficient service, adequate to meet all reasonable demands for its automobile rental service at the Airport. Concessionaire shall also provide the quality and quantity of car rental services necessary to reasonably serve the needs of the general public and passengers and invitees at the Airport. Services provided by the Concessionaire shall consist of a sufficient number of late model cars in popular price ranges and sufficient personnel to reasonably serve the demand for such services at the Airport. Vehicles used for rental shall not exceed three (3) model years and/or fifty thousand (50,000) miles.

3. That rental automobiles made available hereunder shall be maintained at Concessionaire's sole expense, in good operative order, sanitized, free from known mechanical defects, and in clean, neat and attractive condition, inside and outside.
4. The facilities to be provided by Concessionaire hereunder for the purpose of providing automobile rental services shall remain open from thirty (30) minutes prior to the first scheduled departure until thirty (30) minutes after the last arrival. All such rentals shall be deemed to be made at the Airport in determining payments due City as provided by this Agreement.
5. Personnel performing services hereunder shall be neat, clean, and courteous, and Concessionaire shall not permit its agents, contractors, vendors, or employees so engaged to conduct business in a loud, noisy, boisterous, offensive or objectionable manner, or to solicit business outside the space assigned in any manner whatsoever except through the use of signs constructed and maintained in accordance with this Agreement.
6. Concessionaire shall abide by and be subject to all lawful ordinances, rules, and regulations which are now, or may from time to time be promulgated by the City concerning management, operation, or use of the Airport.
7. Concessionaire will keep, or cause to be kept, true, accurate and complete records of business conducted hereunder, and Concessionaire further agrees that City shall have the right, through its duly authorized agents or representatives to examine all pertinent records at any and all reasonable times, with no less than ten (10) calendar days' notice, for the purpose of determining the accuracy of the reports required to be made by Concessionaire. Concessionaire further agrees that a numbered agreement shall be issued with each sale or transaction, and will be available for inspection by the Airport Director, or designee, upon request.
8. Concessionaire will be responsible for all expenses in connection with the use of the Premises hereunder and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied or assessed upon Concessionaire's property or upon its use or possession of the Premises or structures and improvements at any time situated thereon, and that it will secure all such permits and licenses. Provided Concessionaire has paid any tax, levy, assessment, or other charge Concessionaire may, however, at its sole cost and expense, protest any tax, levy, assessment, or other charge.
9. Concessionaire will furnish, install, operate, and maintain any installation of proprietary equipment or improvements following written approval by the City, provided hereunder and keep the same as well as the Premises made available to it and the furniture, fixtures and equipment installed therein and thereon, all in good order, condition and repair, and upon termination of this Agreement will deliver the Premises in question to City in good order, condition and repair, reasonable wear and tear and other casualty excepted.
10. Concessionaire will not engage in any activity on said Premises other than those herein specifically set forth.



11. The Concessionaire shall furnish said service on a fair, equal, and nondiscriminatory basis to all users thereof. Concessionaire will not on the grounds of race, color, national origin or other protected class discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal Aviation Regulations, Title VI of the Civil Rights Act of 1964 or State or local laws.

12. Concessionaire shall charge fair, reasonable, and non-discriminatory prices for each unit of sale or service; provided that the Concessionaire may be allowed to make reasonable and non-discriminatory discounts, rebates, and other similar types of price reduction to volume purchases.

13. This Agreement shall be non-exclusive and subordinate to the provisions of any existing or future agreement between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. This subordination shall include, but is not limited to, any and all terms, conditions, restrictions and requirements of the United States or the State of North Dakota, as may be amended from time to time, which apply to the City or its lessees in carrying out certain obligations and responsibilities pursuant to grant agreement(s) or other conditions that apply to this Agreement. As applicable, Concessionaire shall be responsible for any and all such obligations and requirements. Such grant agreement(s) or other conditions are incorporated in and made a part of this Agreement.

14. The Concessionaire, in common with other Concessionaires, shall be responsible for the general maintenance (including, but not limited to, refuse collection, Concessionaire owned signage, and snow plowing of assigned parking positions, and control of the Parking Area Premises.

15. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 Code of Federal Regulations Part 23. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, sex or other protected class in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. The Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters into and cause those businesses to similarly include the statements in their further agreements.

16. The Concessionaire hereby grants to the City the right to audit Concessionaire's books and records for its operation at the Airport and agrees to make available to the City, or its authorized representative, at any time upon reasonable notice, Monday through Friday inclusive, between the hours of 9:00 a.m. and 5:00 p.m., either at its Airport office or its home office, at the City's election, all records, record books, and pertinent information as may be required for audit purposes. If such an inspection is made by said authorized representative and it is determined as a result thereof that Concessionaire has underpaid the City by more than five percent (5%) of the amount to which it is entitled under Article 5 hereof, Concessionaire shall reimburse the City for its reasonable costs of making such inspection of

said books and records, and this obligation of reimbursement shall be in addition to the obligation to pay any discovered underpayment. If an inspection determines that Concessionaire has underpaid the City by less than five (5%) percent of the amount to which it is entitled under the Agreement, Concessionaire shall reimburse the City the amount which it underpaid. Termination of this Agreement for fraud shall not serve to nullify such obligation.

#### **Article 7** **Covenants of City**

City hereby covenants and agrees that it shall take appropriate action within its authority to protect the rights and privileges demised and granted to the automobile rental Concessionaire or concessionaires under this and similar agreements. City agrees that it will not authorize or knowingly permit the solicitation or transaction of automobile rental business on the Airport premises, including but not limited to advertising displays; by any person or organization whatsoever, other than the said automobile rental concessionaires. City further agrees to instruct all of its employees and all concessionaires having contact or dealing in any way with members of the general public on the Airport: (1) to refer all requests for automobile rental services to one of the said authorized automobile rental services for which the customer shall indicate a preference, and to no other, and (2) to refer requests for automobile rental services where no preference is indicated only to the Airport automobile rental concessionaires located in the terminal building without favoring one over the other. Nothing in this Article shall entitle Concessionaire to damages in the event City fails to enforce strict compliance with this provision.

Concessionaire acknowledges that nothing herein prohibits City from entering into contracts with limousine, taxicab, or other ground transportation network companies or allowing such companies to provide services at the Airport.

#### **Article 8** **Indemnity and Insurance**

1. Concessionaire shall keep and hold harmless City, its officers, employees, and agents, from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including officers, directors, agents or employees of City or Concessionaire, by reason of death or injury to persons, or loss or damage to property, resulting from Concessionaire's operations hereunder, or sustained in or upon the Premises as the result of anything claimed to be done or omitted to be done by Concessionaire hereunder. Concessionaire shall not be required to hold the City harmless from any act of gross negligence of the City or its employees. Nothing in this Agreement shall be construed to preclude, encumber or limit in any manner whatsoever, the City's rights, protections and privileges under governmental immunity, including the right to assert same in defense of any claim.

2. Concessionaire shall obtain and maintain continuously in effect at all times during the term hereof, at Concessionaire's sole expense, commercial general liability insurance protecting City and owners against liability which may accrue against City or owners by reason of Concessionaire's wrongful conduct incident to the use of the Premises or resulting from any accidents occurring on or about the roads, driveways, or other public places used

by Concessionaire at the Airport in the operations hereunder caused or arising out of any wrongful act or omission by Concessionaire. Such insurance shall provide minimum liability limits of \$2,000,000 for each occurrence; and shall name City, its' officers, directors, agents and employees as additional insureds as their interest may appear arising out of the conduct of the Concessionaire thereunder. Concessionaire shall also, without cost to City, obtain and maintain, during the term hereof, commercial automobile liability insurance covering the operation of rental automobiles hereunder with a \$2,000,000 combined single limit. Concessionaire shall provide certificates evidencing all such insurance to City upon execution of this Agreement and annually thereafter. Any such policy of insurance shall include a provision requiring the City be provided a thirty (30) day written notice prior to any cancellation of same. Minimum insurance requirements are subject to change from time to time per City policy and ordinance.

3. Concessionaire shall furnish to the City satisfactory evidence that it carries workers' compensation insurance in accordance with the laws of the State of North Dakota.

4. City agrees to notify Concessionaire in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder, and to cooperate with Concessionaire in the investigation and defense thereof.

#### **Article 9**

#### **Cancellation by City**

This Agreement and all rights, interests, covenants, and obligations created hereunder may be terminated by City upon written notice to Concessionaire upon or after the happening of any one of the following events:

1. Default by Concessionaire in the performance of any term, covenant, or condition to be performed by Concessionaire hereunder, and such default is not remedied within thirty (30) calendar days from and after written notice to it by the City of such default. The acceptance of any monies by City after default shall not be deemed to have waived the right of termination by City nor shall City be stopped from evicting Concessionaire from the Premises and terminating this Agreement.

2. Concessionaire shall (1) make an assignment for the benefit of creditors, (2) file a voluntary petition in bankruptcy or consent to the appointment of a receiver of its property, or (3) be adjudged bankrupt.

#### **Article 10**

#### **Cancellation by Concessionaire**

This Agreement and all rights, interests, covenants and obligations created hereunder may be terminated by Concessionaire upon or after the happening of any one of the following events:

1. Default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default, or initiate corrective action if

the remedy cannot be completed in the prescribed cure period, for a period of thirty (30) calendar days after receipt from Concessionaire of written notice to remedy the same; provided, however, that no notice of cancellation, as above provided, shall be of any force or effect if City shall have remedied the default prior to receipt of Concessionaire's notice of cancellation.

2. Issuance by any court of competent jurisdiction of an injunction preventing or restraining the use of the terminal in such a manner and to such an extent as to materially interfere with the operation of Concessionaire's automobile rental concession and the remaining in force of such injunction for a period of at least ninety (90) calendar days.

3. Inability of Concessionaire to use, for a period in excess of sixty (60) calendar days, the terminal building or any of the premises, facilities, rights, services or privileges leased to Concessionaire hereunder, because of fire, explosion, earthquake, other casualty, or acts of God or the public enemy provided that same is not caused by acts, omissions, or negligence of Concessionaire.

4. Lawful assumption by the United States Government or any authorized agency thereof of the operation, control or use of the Airport and facilities in such a manner and to such extent as to materially interfere with the operation of Concessionaire's automobile rental concession for a period of at least sixty (60) calendar days.

#### **Article 11** **Survival of the Obligations of the Concessionaire**

1. In the event that this Agreement shall have been terminated in accordance with the provisions of Articles 9 or 10, all the obligations of the Concessionaire under this Agreement shall survive such termination and shall remain in full force and effect for the full term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the City to the same extent, at the same time or times, and in the same manner as if no termination had taken place. The City may maintain separate actions to recover the damage or deficiency then due or at its option and at any time may accelerate the remaining balance due and sue to recover the full deficiency less the proper discount, for the entire unexpired term of this Agreement.

2. The amount of damages for the period of time subsequent to termination on account of the Concessionaire's rental obligations shall be the sum of the following:

a. The amount of the total of all installments of rents, fees, and charges less the installments thereof paid prior to the effective date of termination except that the credit to be allowed for the installment payable on the first (1st) day of the month in which the termination is effective shall be prorated for the part of the month the Agreement remains in effect on the basis of the total days in the month; and

b. An amount equal to all expenses incurred by the City, and not reimbursed in connection with regaining possession, restoring the Premises, acquiring a new Agreement for the Premises, legal expenses (including but not limited to attorney fees), and putting the Premises in order.

3. There shall be credited to the account of the Concessionaire against its survived obligations hereunder; a) the amount actually received from any Concessionaire, licensee, permittee, or other occupier in connection with the use of the said Premises or portion thereof during the balance of the term of use and occupancy as the same is originally stated in this Agreement and, b) the market value of the occupancy of such portion of the Premises as the City may itself during such period actually use and occupy. No such use and occupancy shall be or be construed to be an acceptance of a surrender of the Premises, nor shall such use and occupancy constitute a waiver of any rights of the City hereunder. The City will use reasonable efforts to mitigate damages to Concessionaire under this Article.

#### **Article 12**

##### **Use Subsequent to Cancellation or Termination**

1. The City, upon termination or cancellation pursuant to Articles 9 or 10 hereof, may occupy the Premises or may enter into an agreement with another tenant, and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such use may be of part of the Premises, or of the entire Premises, together with other premises, and for a period of time the same as or different from the balance of the Term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement.

2. The City shall also, upon said termination or cancellation have the right to repair and to make structural or other changes in the Premises, including changes which alter its character and the suitability thereof for the purposes of the Concessionaire under this Agreement.

#### **Article 13**

##### **Rights of Entry Reserved**

1. The City, by its officers, employees, agents, and contractors, shall have the right at all reasonable times to enter upon the Premises whether in preferential or joint use areas for purposes of inspection and for other purposes permitted by this Agreement.

2. Without limiting the generality of the foregoing, the City, by its officers, employees, agents, contractors and furnishers of utilities and other services, shall have the right at its own cost and expense, whether for its own benefit, or for the benefit of others, to maintain existing and future mechanical, electrical and other utility systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations thereto, as may, in the opinion of the City, be necessary or advisable, and from time to time to construct or install over, in or under the Premises, such systems or parts thereof and, in connection with such maintenance, use the Premises for access to other approved areas of the Airport otherwise not conveniently accessible, provided, however, that in the exercise of such right of access, repair, alteration or new construction, the City shall not unreasonably interfere with Concessionaire's operations or use of the Premises.

3. Any use by the City of the Premises for access, repair, alteration, or new construction shall be performed by the City with reasonable dispatch and the Premises shall be left in as

good order and condition as it was prior to commencement of the work.

**Article 14**  
**Successors and Assigns**

1. All the Covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.
2. It is expressly agreed and understood that any and all obligations of Concessionaire hereunder may be fulfilled or discharged either by Concessionaire or by a licensee member appointed thereto by Concessionaire, and that any and all privileges of every kind granted Concessionaire hereunder may extend to and be enjoyed by such licensee; provided, however, that notwithstanding the method of operation employed by Concessionaire hereunder, Concessionaire shall continue always to remain directly liable to City for the performance of all terms and conditions of this Agreement. Except as hereinabove set out the Premises may not be sublet, in whole or part, and Concessionaire shall not assign this Agreement without prior written consent of City, nor permit any transfer by operation of law of Concessionaire's interest created hereby, other than by merger or consolidation.

**Article 15**  
**Notices**

Any notice or other communication to City or Concessionaire pursuant hereto shall be deemed validly given, served or delivered upon deposit in the United States mail, registered and with proper postage and registration fee prepaid, addressed as follows:

To City:

City of Minot  
Minot International Airport  
Attention: Airport Director  
305 Airport Road, Suite 216  
Minot, ND 58703

To Concessionaire:

Overland West, Inc., dba Hertz Rent a Car  
Attn: Steve Jones, V.P. Rental Operations  
2805 Washington Blvd  
Ogden, UT 84401

or to such other address as the addressee may designate by written notice to the other party delivered in accordance with the provisions of this Article.

**Article 16**  
**Taxes, Licenses, Debts and Liens**

1. The Concessionaire shall promptly pay, when due, any and all taxes or assessments which may be assessed upon the Premises or its property located at the Airport.

2. The Concessionaire shall promptly pay, when due, all taxes, license fees, and permit fees applicable to its business and acquire and keep current all licenses, municipal, state, and federal, required as a result of its operations at the Airport. Such taxes include any real property taxes that may arise as a result of Concessionaire's lease and use of the Premises.

3. The Concessionaire shall promptly pay, when due, all bills, debts, and obligations incurred by Concessionaire in connection with its operations or activities at the Airport

4. The Concessionaire shall have no power to do any act or make any contract which may create any lien, mortgage, or other encumbrance upon an interest of the City in the Airport Premises or the buildings or improvements thereon. If, because of any act or omission (or alleged act or omission) of Concessionaire, any mechanic's, construction or other lien is filed against the Premises, any improvements thereon, or against the City (whether or not such lien, charge or order is valid or enforceable as such), Concessionaire shall, at its cost and expense, cause the same to be canceled and discharged of record or bonded within ten days after notice to Concessionaire of the filing thereof; and, the Concessionaire shall indemnify, defend, and save the City harmless against all costs, expenses, liabilities, losses, damages, suits, fines, penalties, claims and demands, including reasonable attorney fees, resulting therefrom. If Concessionaire fails to have the lien canceled, discharged, or bonded as aforesaid, then the City may, after serving twenty-four hours' notice on Concessionaire, pay the amount of said lien, or discharge the same by depositing or filing the bond required by law, and may pay any judgment recovered under such claim. The amount or amounts so paid or deposited, and all expenses incurred, including attorney's fees, shall, at the option of the City, be deemed additional rent and added by the City to the next or any subsequent installment of rent hereunder, and the City at its option shall have the same remedies for the nonpayment thereof as for the nonpayment of rent reserved.

#### **Article 17**

#### **Conformity with Laws, Ordinances, Rules and Regulations, and Grant Assurances**

1. From time to time the City, State, or Federal government may adopt and enforce rules and regulations with respect to the occupancy and use of the Airport. The Concessionaire agrees to observe and obey any and all such rules and regulations and all other federal, state and municipal rules and regulations, laws and ordinances, Grant Assurances, and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same. The City reserves the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with such rules, regulations or laws and ordinances. The Concessionaire shall be liable for any and all fines and penalties assessed against the City as a result of actions or omissions by the Concessionaire, its employees, agents, representatives or contractors.

2. The Concessionaire shall indemnify, defend and hold harmless the City, its officers, directors, agents and employees from any and all claims, liabilities, damages, losses, fines, penalties, or expenses, including costs of suit and attorney fees, which any or all of them may hereafter incur, be responsible for, or pay out arising out of the violation of any federal, state, or local law, ordinance, rules or regulations by said Concessionaire, its agents, employees, representatives or contractors.

**Article 18**  
**Airport Concession Disadvantaged Business Enterprise (ACDBE) Compliance**

- A. The City has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The concessionaire is required to participate in the City's ACDBE program.
- B. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by Title 49 CFR Part 23.
- C. The concessionaire or contractor agrees to include the statement set forth in paragraph B in any subsequent concession agreement or contract covered by Title 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
- D. The City has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:
  - 1. Breach of contract action, pursuant to the terms of this contract;
  - 2. Breach of contract action, pursuant to applicable State Statutes
- E. The federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE problem, including, but not limited to, the following:
  - 1. Suspension or debarment proceedings pursuant to 49 CFR part 23;
  - 2. Enforcement action pursuant to 49 CFR part 31; and
  - 3. Prosecution pursuant to 18 USC 1001.
- F. The City will comply with all regulations set forth in 49 CFR Part 23 and will monitor concessionaires at the Airport for compliance with the ACDBE program.
- G. The City will submit to the Federal Aviation Administration's, Regional Civil Rights Office, an annual ACDBE participation report showing the commitments and attainments. The City will take measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities.

**Article 19**  
**Grant Assurances**

This Agreement shall be subordinate to the provisions of any existing or future agreement between City and the United States, relative to the operation or maintenance of the Airport, the



execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Grant Assurance 22, Economic Nondiscrimination, requires sponsors to make aeronautical facilities available to the public and their tenants on reasonable terms and without unjust discrimination.

## **Article 20**

### **General Provisions**

1. The City reserves the right to further develop or improve the Airport at its sole discretion.
2. The City reserves the right to maintain and keep in repair the landing area and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire in this regard.
3. During a time of war or national emergency, the City shall have the right to lease the landing area or any part of the Airport to the United States Government for military or naval use, and, if such lease is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the Lease to the government, shall be suspended.
4. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or any other structure on, or adjacent to, the Airport, which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to air navigation, as determined by the appropriate federal rules and regulations including, but not limited to, 14 CFR Part 77.
5. Waivers. Failure by the City to insist upon the strict performance by the Concessionaire of any of the terms or conditions herein contained shall not constitute a waiver of the City's right to thereafter enforce any such term or condition, but the same shall continue in full force and effect. The exercise of any right to terminate arising under this Agreement shall not operate to deprive the City of any coexisting right to seek damages or other remedies arising from the defaults of the Concessionaire.
6. The acceptance of rents or fees or the continued performance by the City of its obligations under this Agreement after a default by the Concessionaire in its performance of any of its obligations under this Agreement shall not be deemed a waiver of the City's right to terminate this Agreement for such default other than a default in the payment of rents or fees which are subsequently accepted by the City.
8. Applicable Law. This Agreement shall be performable and enforceable in Ward County, North Dakota, and shall be construed in accordance with the laws of the State of North Dakota.
9. This Agreement is made for the sole and exclusive benefit of the City and the Concessionaire, their successors and assigns, and is not made for the benefit of any third party.

10. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
11. The titles of the several Articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.
12. Nothing herein contained shall create or be construed to create a co-partnership or joint venture between the City and the Concessionaire or to constitute the Concessionaire an agent of the City. The City and the Concessionaire each expressly disclaim the existence of such a relationship between them. Concessionaire is neither an employee nor agent nor contractor of City.
13. Quiet Enjoyment. The City agrees that, on payment of the rents, fees, charges, licenses, and taxes provided for in this Agreement and the performance of the covenants and agreements on the part of the Concessionaire to be performed pursuant to this Agreement, the Concessionaire shall peaceably have the Premises subject to the provisions of this Agreement.
14. Invalid Provisions. In the event any covenant, condition or provision contained in this Agreement is held to be invalid by any Court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenants, conditions or provisions contained in this Agreement; provided that the invalidity of such covenant, condition or provision does not materially prejudice either the City or the Concessionaire in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.
15. Interpretation of Agreement. Nothing in this Agreement shall be construed or interpreted in any manner whatsoever as limiting, relinquishing or waiving any right of ownership enjoyed by the City in the Airport property, or in any manner waiving or limiting the City's control over the management, operation, or maintenance of the Airport property, except as specifically provided for in this Agreement, or in any manner impairing the governmental rights of the City.
16. Force Majeure. Neither the City or Concessionaire shall be deemed to be in violation of this Agreement for failure to perform any of its obligations hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of public authority, flight restrictions, weather conditions, riots, rebellion, accidents, sabotage or any other events, conditions or circumstances for which it is not responsible and/or which are not within its control.
17. Conflict of Interest. The Concessionaire must disclose in writing the nature and existence of any relationship involving Concessionaire and the City that, in Concessionaires opinion, will or possibly may affect the independent professional judgment of the Concessionaire as it relates to its affairs with the City.

18. This Agreement shall be subordinate to the provisions of any existing or future Agreement between the City and the United States of America or the State of North Dakota relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal or State funds for the development of the Airport, or to any security requirements of State or Federal Government, including temporary security procedures or instructions.

**Article 21**  
**Entire Agreement**

1. This Agreement consists of Articles 1 to 21, inclusive, and Exhibits A, B, and C.
2. The parties agree that this Agreement forms the entire agreement of the parties hereto and may not be changed, modified, discharged or extended except by written instrument duly executed by the City and the Concessionaire unless otherwise provided herein. The parties agree that no other representations or agreements shall be binding upon the City or the Concessionaire unless expressly provided for in this Agreement.

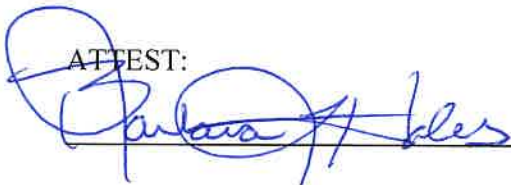
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duty authorized officers and their respective seals to be hereunto affixed this \_\_\_\_\_ day of 2024.

ATTEST:

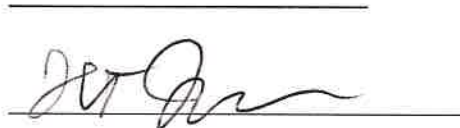
CITY OF MINOT

\_\_\_\_\_ BY: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

BY:

  
V.P. Rental Operations



**TO:** Mayor  
Members of the City Council

**FROM:** Jennifer K Eckman, Airport Director

**DATE:** March 18, 2024

**SUBJECT: MEIER AND COMPANY AIRPORT LEASE**

**I. RECOMMENDED ACTION**

- A. Approve Rental Car Concession and lease agreement with Meier and Company and;
- B. Authorize Mayor to sign the contract

**II. DEPARTMENT CONTACT PERSONS**

Jennifer Eckman, Airport Director	857-4724
Jessica Long, Airport Business and Development Manager	857-4725

**III. DESCRIPTION**

- A. Background  
Minot International Airport (MOT) has been in contract negotiations with the current Rental Car Companies for the last year. The final contract has been received by the rental car companies with signature after receiving the form contract in December.
- B. Proposed Project  
Proposed project is to update the expired rental car contracts. This will ensure that MOT will be able to enforce regulations and guarantee service.
- C. Consultant Selection  
Decomm Aviation is MOT's Aviation Business Consultant and worked through the contract and negotiations.

**IV. IMPACT:**

- A. Strategic Impact:  
The updated contracts will take us out of holdover and will help ensure ongoing rental car concessions and MOT and help guarantee we are better able to assist our passengers and the citizens of Minot.
- B. Service/Delivery Impact:  
The contract will help maintain a working relationship with the Car Rental Companies and continue to provide service to the community.
- C. Fiscal Impact:  
Car rentals are revenue only concession contracts. Estimated revenue for 2024 based on a three-year average \$650,000.

**V. CITY COUNCIL ASPIRATIONS**

Dynamic and Flourishing

**VI. ALTERNATIVES**

1. Council can reject the updated contract and require MOT to go out for bids.

**VII. TIME CONSTRAINTS**

MOT has been in holdover with the Car Rental Companies for almost a year.

**VIII. LIST OF ATTACHMENTS**

- A. Meier and Company signed agreement



**CITY OF MINOT**  
**MINOT INTERNATIONAL AIRPORT**  
**NON-EXCLUSIVE RENTAL CAR CONCESSION AGREEMENT AND LEASE**

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT made between **City of Minot** (hereinafter referred to as the "City"), and **Meier & Company, dba Avis Rent A Car** (hereinafter referred to as the "Concessionaire").

**WITNESSETH:**

**WHEREAS**, the City is owner and operator of the Minot International Airport (hereinafter referred to as "the Airport"); and

**WHEREAS**, Concessionaire is engaged in the business of renting on-airport passenger vehicles and desires to use certain Airport areas and facilities owned by the City and to acquire from the City certain rights and privileges in connection with its use of the Airport; and

**WHEREAS**, the City has the right to permit use of the property on the Airport upon the terms and conditions hereinafter set forth and has full power and authority to enter into this Non-Exclusive Agreement as provided herein;

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, conditions, privileges, obligations, and agreements herein contained, the City and the Concessionaire hereby mutually undertake, promise, and agree, each for itself and its successors and assigns, as follows.

**Article 1**  
**Automobile Rental Concession**

1. The City hereby grants to Concessionaire, subject to the terms and conditions of this non-exclusive Agreement, the right to conduct and operate an automobile rental concession at the Airport.

2. The City agrees not to enter into any similar automobile rental concession agreement with any person, partnership, or corporation other than the Concessionaire for a concession on the Airport, unless the same shall be upon financial terms no more favorable than those herein granted to the Concessionaire, and shall require automobile rental service substantially equivalent to those available from automobile rental concessionaires upon airports of comparable size throughout the United States. Nothing herein contained shall limit the City from making such reasonable distinctions between the automobile rental counter space and parking areas as may appear to it to be justified by the differing operational requirements of the respective rental car Concessionaires, or by reason of the differing amounts of airport automobile rental business done by each of the respective Concessionaires. This Agreement does not prohibit agreements or regulations pertaining to off-airport automobile rental

companies or person to person (P2P) operators provided that the operator enters into an Agreement with the Airport and pays the required fee, as determined by the Airport Director.

3. For the Term of this Agreement, unless otherwise approved by the City, at its sole discretion, the Concessionaire will be allowed to operate up to a maximum of three (3) brands per counter position and operate only the brands specified in this Agreement. The acquisition, transfer, or subletting of any brand(s) or trade name(s) requires prior written approval by the Airport Director. Such approval may be withheld by the Airport Director for good and sufficient reasons, but will not be unreasonably withheld. The brands authorized under this Agreement include:

\_\_\_\_\_ Avis \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In the event Concessionaire no longer offers any brand identified above during the Term of the Agreement, Concessionaire will be required to adhere to the Minimum Annual Guarantee (MAG) proposed for all brands included in this Agreement and the lease rental rate included herein, and Concessionaire will not be allowed to offer any new brands during the Term of the Agreement.

The City shall be permitted to add a new on-Airport rental car concession during the Term and any such addition shall be subject to the provisions of Article 1, paragraph 2 hereof. The City shall reasonably adjust the Minimum Annual Guarantees of Concessionaire and other Concessionaires proportionate to the projected market share of the new Concessionaire as a percentage of the total projected market share of all Concessionaires to reflect the impact of adding a new concession.

## Article 2 Premises

City hereby grants to Concessionaire, for the period and subject to the terms and conditions hereinafter stated, the following described Premises located in or upon the Airport:

### 1. Terminal Premises

a. During the Term of this Agreement, Concessionaire shall have the right to occupy on a preferential use basis four hundred and fifty (450) square feet of ticket counter, queuing space, and back-office space, as identified on Exhibit "A", attached hereto and made a part hereof. Within said counter, queuing and back-office space, City shall furnish, at no direct charge to Concessionaire, heat, air conditioning, overhead lighting, and electrical convenience outlets. Concessionaire shall provide all furniture and equipment for such space at its sole expense and will be solely responsible for any additional improvements required provided that prior written approval is requested and granted by the Airport Director. The space must be kept in a clean and orderly condition at the sole expense of the Concessionaire.

b. Concessionaire shall use the screens provided by the City for all branding at the counter location for the purpose of advertising Concessionaire's rental car authorized brands as identified in Article 1, paragraph 3. Such signs shall not advertise rates.

c. Concessionaire shall have the right, at its sole expense, to make such additions and improvements, and to install such equipment and facilities as Concessionaire may deem necessary or desirable for the operation of its automobile rental concession, provided, however, that no such additions, improvements, or installation of equipment or facilities shall be undertaken by Concessionaire without the prior written consent of the Airport Director, which consent, shall not be unreasonably withheld. Within seven (7) calendar days after the termination or earlier cancellation of this Agreement as called for herein, Concessionaire shall also have the right to remove any such additions, improvements, equipment or facilities erected or installed by Concessionaire at its expense pursuant to the terms of this Article, provided, however, the Premises shall be restored to their former condition, normal wear and tear excepted. Any improvements or equipment not removed by Concessionaire within seven (7) calendar days following the termination or cancellation of this Agreement shall become the property of the City or may be disposed of by the City, the cost of which will be paid by the Concessionaire.

2. Parking Area Premises

a. Concessionaire, in cooperation with other Concessionaires that have executed a similar Agreement to operate a concession located at the Airport, shall have the right to use the ready and return parking premises on a preferential basis as allocated in accordance with the terms of this Agreement. The ready and return lots shall be as depicted in Exhibit B. The storage lot shall be in a location as approved by the City. The initial allocation of the ready/return stalls will be determined by the Minimum Annual Guarantee (MAG) amount proposed by Concessionaire during the negotiation process for the extension of this Agreement for each brand to be operated at the Airport. As part of the MAG proposal, Concessionaires shall identify the number of ready/return stalls desired for each brand. The highest proposed MAG per brand and requested positions will be allowed to select their positions first, the second highest next, and so forth. The City will use its best efforts to provide the requested number of positions. If the total number of positions requested is greater than the number of positions available, the requests will be reduced pro rata based on the MAGs submitted. If the number of positions requested is less than the total number of positions available, the unrequested positions will be retained by the Airport and may not be used by Concessionaires. If Concessionaire desires to lease additional positions that are under the control of the Airport following the initial allocation, the available stalls will be leased on an annual basis at the applicable fee on a first come, first served basis until all available stalls are leased. The Concessionaire will have the first right to request an extension of the annual lease of the surplus positions and must indicate its desire no less than sixty (60) calendar days prior to the expiration of the annual lease.

b. The total number of parking spaces to be designated for ready and return parking will be determined annually by the Airport Director and identified in Exhibit B. In the event the location or quantity of ready/return parking stalls available during the term of this Agreement are modified, an amended Exhibit B will be substituted in this Agreement. The number of spaces allocated to each Concessionaire on an annual basis shall be allocated among the Concessionaires upon the execution of this Agreement as identified in Article 2, paragraph 2a above, and subject to adjustment annually thereafter only if there is a market share change of twenty percent (20%) or more for any one Concessionaire. for each succeeding year of this

Agreement. Subsequent year stall allocations will be based on the previous year's ratio of Concessionaire's (for all brands identified in Article 1, paragraph 3) Gross Receipts for brand(s) operated by Concessionaire to the Gross Receipts of all Concessionaires operating under this Agreement for all authorized brands. The determination of the twenty percent (20%) market share will be determined by taking the total Gross Receipts by each Concessionaire as a percentage of the total Gross Receipts for all Concessionaires. The Reallocations will be completed following the end of the fiscal year following the completion of the annual audit by the City. Concessionaires shall be offered a minimum of ten (10) ready/return parking positions for each authorized brand identified in this Agreement subject to adjustment as outlined herein.

3. Quick Turn Around ("QTA") Premises

a. During the Term of this Agreement, the City may develop a QTA facility at a location near the Terminal as determined by the City. The City reserves the right to develop this facility subject to terms and conditions that are acceptable to the City and provided that the cost of development and operation of the QTA premises is entirely funded by Customer Facility Charges (CFCs), contingent rent, or other funding as mutually agreed by the Parties.

b. In the event that the City develops and completes the QTA facility during the Term of this Agreement, the terms and conditions agreed to by the parties will be established via amendment to this Agreement. All direct and indirect costs associated with the development and operation of the QTA, applicable land rent for the land associated with the premises and associated improvements such as vacuum stations and fueling facilities, and all utilities will be included in the costs associated with the QTA and paid to the City. A separate operating agreement will be developed and must be executed by Concessionaires operating at the Airport. The QTA may not be used for the servicing of any vehicles not assigned by Concessionaire to the Airport. All costs associated for the operation of the facility will be allocated to each Concessionaire based on the number of vehicles processed.

c. The Airport Director will consult with Concessionaires prior to the development of the terms and conditions for the QTA as well as development of the final design and take comments received by Concessionaires into consideration.

d. Customer Facility Charge (CFC) funds collected and remitted by Concessionaire and other rental car concessions shall be used to fund rental car related improvements and operating costs at the Airport, including but not limited to the QTA facility.

**Article 3**

**Term of Agreement and Holdover**

1. Subject to earlier termination as herein provided, the Term of this Agreement shall be from January 1, 2024, through December 31, 2028.

2. In the event that the Concessionaire, or its successor in interest, if any, shall remain beyond the Term hereof, without the express written permission of the City, it is the intention of the parties and it is hereby agreed that a tenancy from month-to-month in Holdover and shall be subject to all the terms and conditions of this Agreement except that the City shall, through the

Holdover period, have the sole right to determine the rates, fees, and charges under the Holdover period.

#### **Article 4** **Use of the Airport and the Premises**

The City grants to Concessionaire the following rights and privileges, subject to other limitations expressed in this Agreement:

1. **Terminal and Roadways.** The right to use in common with others, the general facilities of the Airport in the normal conduct of its operation as a car rental company for on-Airport designated vehicles in such manner as may be prescribed by the City.
2. **Signs.** The Concessionaire shall have the right to utilize the electronic screens to display one or more signs within the Premises, identifying it and its authorized brands as identified in Article 1, paragraph 3, provided, however, the subject matter, type, design, number, location and elevation of such graphics, shall be in general conformity with those of other Airport tenants and subject to, and in accordance with, Airport rules, regulations, and ordinances and the prior written approval of the Airport Director. No graphics will be approved that may be confusing to customers and the traveling public. Without limiting the generality of the foregoing, the City maintains the policy that advertising shall not mention other concessionaire car rental companies either directly or indirectly nor shall it reference a competitor's product.
4. **Parking Space - Employees.** The City shall make available to Concessionaire's employees, parking in an employee area designated by the City only during the employee's working hours at the airport for a fee as adopted by the City and subject to change annually. Concessionaire's employees shall park their private vehicles only in the employee parking area furnished by the City. Concessionaire is strictly prohibited from allowing employees, guests, or contractors to utilize ready/return, storage spaces, or short-term parking for parking of personal vehicles. Failure to comply with this provision may result in the City terminating the leasing of ready/return stalls at the sole discretion of the Airport Director. During any period where egress from the ready/return spaces is processed through the paid parking lot exit lanes, if there is a shortfall in paid parking revenues versus the number of vehicles processed, the Concessionaires will be assessed the shortfall in the operating expenses associated with the rental car costs that will be paid to the City.
5. **Relocation.** Future development of a Quick Turn Around (QTA) facility or other improvements on the Airport may require the alteration of the Parking Area Premises. The City shall have the right to amend this Agreement to incorporate the terms and conditions of any such development requirements. Reasonable advance notice of any alteration shall be given by the City, but in no event shall the notice be less than thirty (30) calendar days.
6. **Purpose.** Concessionaire agrees that it will not engage in any commercial activities not authorized herein and will not permit the use of the Terminal Premises, Parking Area Premises, and Quick Turn Around (QTA), of any purpose other than those authorized in this Agreement as may be amended from time to time.
7. **Accommodation.** During the Term of this Agreement, the City may have a need to modify the Terminal Premises or Parking Area Premises. In the event that Concessionaire's



Terminal Premises or Parking Area Premises is impacted, the City will use its best efforts to accommodate Concessionaire during the period of disruption and provide comparable accommodations to the greatest degree possible.

8. Construction, Airport Expansion and Inconvenience to Concessionaire. The Concessionaire recognizes that from time to time during the Term of this Agreement it may be necessary for the City to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair in order that the Airport and its facilities may be suitable for the volume and character of its air traffic and flight activity, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience the Concessionaire in its operations at the Airport. The City agrees to make all reasonable efforts to minimize the inconvenience to the operation of the Concessionaire's business. The Concessionaire agrees that no liability shall attach to the City, its officers, agents, employees, contractors, subcontractors, and representatives by reason of such inconvenience or interruptions.

9. Non-Exclusive Rights. This Agreement shall be non-exclusive and the City reserves the right, subject to the provisions of Article 1, paragraphs 2 and 3, to enter into similar contracts with other individuals, firms, or corporations engaging in the car rental business at the Airport. The City shall not grant to any other Concessionaire a car rental concession on terms more favorable than those granted to the Concessionaire.

10. Rights of Ingress and Egress. The City grants to Concessionaire the right of ingress and egress to and from the premises for Concessionaire's employees, agents, customers and invitees to the extent reasonably necessary in connection with the conduct of Concessionaire's business under this Agreement. Areas designated as restricted areas by the City shall be excluded.

## Article 5

### Minimum Annual Guarantee, Rents, Fees, and Charges and Performance Guarantee

For the privilege of operating its rental car service at the Airport and for the use of the premises described in Article 2, Concessionaire agrees to pay to the City the following rentals and fees.

#### 1. Terminal Premises

The Terminal Premises rental for a single brand shall include a ticket counter, queuing and back-office space as set forth on Exhibit "A" as attached (hereinafter referred to as "Terminal Premises"). Concessionaire shall be entitled to preferential use of four hundred and fifty (450) square feet of Terminal Premises. The annual rental rate per square foot will be the rate as established by the City annually for the airline rental rate. In the event Concessionaire operates two (2) rental car brands as identified in Article 1, paragraph 3 from one counter position, the rental rate for a single position shall be at a rate of one hundred twenty five percent (125%) of the applicable base rental rate. In the event Concessionaire operates three (3) rental car brands as identified in Article 1, paragraph 3 from one counter position, the rental rate for a single position shall be at a rate of one hundred fifty percent (150%) of the applicable base rental rate. In no event shall Concessionaire operate more than three brands out of a single rental car position. Rental for Terminal Premises shall be payable in equal monthly

installments. Rental charges, storage area charges, and any other charges due the City shall be due and payable in advance, on or before the first day of each month, without the requirement for a demand thereof.

2. Parking Area Premises

a. Annually, Concessionaire will be allocated parking storage and ready/return parking stalls as called for in Article 2, paragraph 2a. All Concessionaires operating under a concession agreement agree to pay ground rental for the Parking Area Premises at a monthly rate per stall. The rate will be established from time to time by the City Council's Rates and Charges Resolution through the Term of the Agreement. Such rental for the Parking Area Premises shall be paid on the first day of each month in advance without the requirement of a demand thereof. City shall be responsible for the snow removal of the main drive aisles of the designated lots and maintenance of the Parking Area Premises and the City shall be reimbursed for such costs based on a pro rata share of the stalls allocated. Concessionaire shall be responsible for removal of snow and the associated cost for removal at all allocated parking spaces.

3. Quick Turn Around (QTA) Facility

The City may, at its sole discretion, arrange for the design and development of a QTA facility to be used by Concessionaire and other Concessionaires having signed similar Agreements on the Airport. The terms and conditions associated with the design, funding, rental rates, operating requirements, and position assignment will be included in an Amendment of this Agreement if the project proceeds. Customer Facility Charges (CFCs) from all transactions conducted on the Airport would be used as a means of funding the facility and associated operating costs. The QTA shall be used for the servicing of vehicles that are based at the Airport and used in transactions originated at the Airport. Concessionaire will be prohibited from processing non-Airport based vehicles through the QTA.

4. Concession Fee and Minimum Annual Guarantee ("MAG")

Concessionaire and other Concessionaires shall submit to the City prior to the execution of this Agreement a proposed MAG for the period from January 1, 2024 through December 31, 2024 for each brand proposed to be operated under this Agreement and identify the number of ready/return spaces that are desired for each brand that will be operated by Concessionaire under this Agreement regardless of whether the Concessionaire is leasing multiple counter positions. Such proposal shall be included as Exhibit C to this Agreement.

During the first year of the Agreement, the Concessionaire shall pay annually to the City, the greater of the initial MAG amount proposed by Concessionaire (Exhibit C) or Eleven percent (11%) of the Gross Receipts, as hereinafter defined, derived from the Concessionaire's car rental operations at the Airport.

Beginning in the second year and for each year of the Agreement thereafter, the Concessionaire shall pay annually to the City, the greater of the adjusted MAG amount as described in Article

5 Section 4 paragraph a., or eleven percent (11%) of the Gross Receipts, as hereinafter defined, derived from the Concessionaire's car rental operations at the Airport.

a. Annual Adjustment of MAG- The MAG shall be subject to annual adjustment following the first year of this Agreement. For the second year of the Term and each subsequent year, the Minimum Annual Guarantee shall be the greater of the previous year's MAG or the amount which represents eighty-five percent (85%) of Concessionaire's percentage fee applied against Gross Receipts for the immediately preceding Lease Year. In no event shall the MAG during any given year of the Agreement be less than the first year's MAG during the Term of this Agreement.

b. Monthly Payments and Year End Reconciliation- The contract year commences on January 1st of each year. By the twentieth (20th) day of each month following the month of activity during the Term of the Agreement, Concessionaire shall remit to the City a report identifying the Concession Fee due for the previous month's activity by multiplying the Gross Receipts for the month reported applied against Concession Fee and the calculated payment. Concessionaire shall report activity on a form supplied by the City and calculate the amount due the City at the end of each month of the Agreement. Concessionaire shall provide to the City within sixty (60) calendar days, an audited summary signed by an authorized officer of the company identifying the Gross Receipts for the preceding fiscal year with an eleven percent (11%) Concession Fee applied to the Gross Receipts. If the annual calculated amount is less than the applicable MAG due, Concessionaire shall remit to the City the difference between the calculated amount and the MAG within ten (10) calendar days upon submission of the invoice.

5. Customer Facility Charge (hereinafter referred to as "CFC"):

a. The Concessionaire acknowledges the City has implemented a CFC for the funding of eligible rental car related capital improvements and operating expenses. In the event the City adjusts the CFC amount, the Airport Director will consult with Concessionaire prior to adoption of any such change and will provide sixty (60) calendar days written notice to Concessionaire prior to the implementation of any change.

b. Concessionaire must charge the approved CFC for each Transaction Day for each rental agreement initiated at the Airport and/or for each vehicle based at the Airport. If Concessionaire has provided a written quotation to a customer that contains the previous CFC amount prior to the thirty (30) calendar day notice period, the quoted CFC amount will be the charged amount for any such rental.

c. The Concessionaire shall include the approved CFC for all transactions made utilizing cars that are located at the Airport or leased off-airport but are returned to the Airport.

d. The CFC shall be listed as a separate charge in the Concessionaire's advertised rates or rental agreements and such separate charge shall be disclosed to the customer at the time of reservation and again at the time of actual rental. The CFC shall be disclosed and listed as a Customer Facility Charge and shall not be listed as an Airport surcharge or tax. The CFC must be collected from all customers.

e. "Transaction Day" shall mean a twenty-four (24) hour period or fraction thereof for which a rental car customer is provided the use of a rental car for compensation regardless of the duration or length of the rental term. If the same rental car is rented to more than one customer within such continuous 24-hour period, then each such rental shall be calculated as a Transaction Day, except that a partial day that is a grace period of no more than 2 hours after the last 24-hour day booked shall not be considered a Transaction Day.

f. The Concessionaire shall collect from each and every Airport customer of the Concessionaire, a CFC for each Transaction Day under each rental agreement, subject to the limitation set out hereinafter. The CFCs collected by each Concessionaire shall be held in trust on behalf of the City by the respective Concessionaire. On or before the 20th day of each month, Concessionaire shall furnish to the City a sworn statement setting forth the number of transaction days covered by the rental agreements during the preceding month together with the CFCs collected during the preceding month. The CFCs shall not be calculated in the "Gross Receipts" of a Concessionaire in order to determine the concession fee payable to the City.

g. The Concessionaire acknowledges that the CFC shall be subject to revision by the City upon a minimum of sixty (60) calendar days written notice to the Concessionaire. The City will provide the Concessionaire written notice for any such revisions prior to a recommendation to be made to the City for adjustment.

h. The City will provide an annual report summarizing collections, expenditures, and fund balances.

i. In the event of any national emergency wherein there is a curtailment, either by executive decree or legislative action, of the use of motor vehicles or commercial aircraft by the general public, the MAG shall be suspended on a pro rata basis for the period of time the condition continues to exist.

6. The term Gross Receipts shall mean all revenues received by the Concessionaire from the customer derived from the operation of Concessionaire's vehicle rental business at the Airport regardless of where any vehicle is delivered or returned. The term Gross Receipts includes Concessionaire's recovery of any concession fee charged to the customer such that the total concession recovery fee charged to the customer shall be 12.36%.

For purposes of the Agreement, Gross Receipts shall include all revenues received by Concessionaire except for:

- a. Sums recovered by Concessionaire from insurance claims or otherwise for personal accidents, for damage to rental vehicles or other property, or for theft, or loss, or abandonment of its rental vehicles or other property.
- b. Sums charged to customers by Concessionaire for waiver by Concessionaire of its rights to recover loss or damages from its customers for damage to or destruction of the rental vehicles.

- c. Any tax or surcharge separately stated as a tax or surcharge and collected from Concessionaire's customers, in an amount that actually has been levied or charged by and paid to any competent governmental authority, excluding concession fees recovered from Concessionaire's customers.
- d. Proceeds and sums received by the Concessionaire from the collection of the CFC.
- e. Discounts to customers taken at the time of the rental only and clearly noted on the rental contract or agreement.
- f. Vehicle sales and new vehicle prep revenue.
- g. Direct costs associated with vehicle license fees.
- h. Unauthorized one way drop fees.
- i. Charges that are assessed for third party assessments including fines, tolls, towing charges, and other similar reimbursement type charges.

7. Within sixty (60) calendar days after the close of each contract year hereunder, Concessionaire shall furnish to City a sworn statement certified by an authorized officer of Concessionaire showing all Gross Receipts derived from automobile rentals made at the Airport for said contract year. All sums due hereunder and the reports and statements of Gross Receipts shall be paid to the City by delivery to the Airport Director.

8. In the event any payment is not paid when due, the City shall assess, and the Concessionaire agrees to pay, a one percent (1.75%) late charge, plus an additional one percent (1.75%) each month on any remaining unpaid balance which is past due. This amount is determined by the City and subject to change per City rates and charges.

9. Concessionaire agrees to provide the City with an irrevocable Letter of Credit provided by a bank acceptable to the City, or a performance bond issued by a surety acceptable to the City, renewable annually during the term of this Agreement, in a sum equal to no less than six (6) months of the annual MAG amount.

## **Article 6**

### **Covenants of Concessionaire**

Concessionaire hereby covenants and agrees:

1. To utilize the Terminal Premises and Parking Area Premises for the use and benefit of the public.
2. To furnish good, prompt and efficient service, adequate to meet all reasonable demands for its automobile rental service at the Airport. Concessionaire shall also provide the quality and quantity of car rental services necessary to reasonably serve the needs of the general public and passengers and invitees at the Airport. Services provided by the Concessionaire shall consist of a sufficient number of late model cars in popular price ranges and sufficient personnel to reasonably serve the demand for such services at the Airport. Vehicles used for rental shall not exceed three (3) model years and/or fifty thousand (50,000) miles.



3. That rental automobiles made available hereunder shall be maintained at Concessionaire's sole expense, in good operative order, sanitized, free from known mechanical defects, and in clean, neat and attractive condition, inside and outside.
4. The facilities to be provided by Concessionaire hereunder for the purpose of providing automobile rental services shall remain open from thirty (30) minutes prior to the first scheduled departure until thirty (30) minutes after the last arrival. All such rentals shall be deemed to be made at the Airport in determining payments due City as provided by this Agreement.
5. Personnel performing services hereunder shall be neat, clean, and courteous, and Concessionaire shall not permit its agents, contractors, vendors, or employees so engaged to conduct business in a loud, noisy, boisterous, offensive or objectionable manner, or to solicit business outside the space assigned in any manner whatsoever except through the use of signs constructed and maintained in accordance with this Agreement.
6. Concessionaire shall abide by and be subject to all lawful ordinances, rules, and regulations which are now, or may from time to time be promulgated by the City concerning management, operation, or use of the Airport.
7. Concessionaire will keep, or cause to be kept, true, accurate and complete records of business conducted hereunder, and Concessionaire further agrees that City shall have the right, through its duly authorized agents or representatives to examine all pertinent records at any and all reasonable times, with no less than ten (10) calendar days' notice, for the purpose of determining the accuracy of the reports required to be made by Concessionaire. Concessionaire further agrees that a numbered agreement shall be issued with each sale or transaction, and will be available for inspection by the Airport Director, or designee, upon request.
8. Concessionaire will be responsible for all expenses in connection with the use of the Premises hereunder and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied or assessed upon Concessionaire's property or upon its use or possession of the Premises or structures and improvements at any time situated thereon, and that it will secure all such permits and licenses. Provided Concessionaire has paid any tax, levy, assessment, or other charge Concessionaire may, however, at its sole cost and expense, protest any tax, levy, assessment, or other charge.
9. Concessionaire will furnish, install, operate, and maintain any installation of proprietary equipment or improvements following written approval by the City, provided hereunder and keep the same as well as the Premises made available to it and the furniture, fixtures and equipment installed therein and thereon, all in good order, condition and repair, and upon termination of this Agreement will deliver the Premises in question to City in good order, condition and repair, reasonable wear and tear and other casualty excepted.
10. Concessionaire will not engage in any activity on said Premises other than those herein specifically set forth.

11. The Concessionaire shall furnish said service on a fair, equal, and nondiscriminatory basis to all users thereof. Concessionaire will not on the grounds of race, color, national origin or other protected class discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal Aviation Regulations, Title VI of the Civil Rights Act of 1964 or State or local laws.

12. Concessionaire shall charge fair, reasonable, and non-discriminatory prices for each unit of sale or service; provided that the Concessionaire may be allowed to make reasonable and non-discriminatory discounts, rebates, and other similar types of price reduction to volume purchases.

13. This Agreement shall be non-exclusive and subordinate to the provisions of any existing or future agreement between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. This subordination shall include, but is not limited to, any and all terms, conditions, restrictions and requirements of the United States or the State of North Dakota, as may be amended from time to time, which apply to the City or its lessees in carrying out certain obligations and responsibilities pursuant to grant agreement(s) or other conditions that apply to this Agreement. As applicable, Concessionaire shall be responsible for any and all such obligations and requirements. Such grant agreement(s) or other conditions are incorporated in and made a part of this Agreement.

14. The Concessionaire, in common with other Concessionaires, shall be responsible for the general maintenance (including, but not limited to, refuse collection, Concessionaire owned signage, and snow plowing of assigned parking positions, and control of the Parking Area Premises.

15. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 Code of Federal Regulations Part 23. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, sex or other protected class in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. The Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters into and cause those businesses to similarly include the statements in their further agreements.

16. The Concessionaire hereby grants to the City the right to audit Concessionaire's books and records for its operation at the Airport and agrees to make available to the City, or its authorized representative, at any time upon reasonable notice, Monday through Friday inclusive, between the hours of 9:00 a.m. and 5:00 p.m., either at its Airport office or its home office, at the City's election, all records, record books, and pertinent information as may be required for audit purposes. If such an inspection is made by said authorized representative and it is determined as a result thereof that Concessionaire has underpaid the City by more than five percent (5%) of the amount to which it is entitled under Article 5 hereof, Concessionaire shall reimburse the City for its reasonable costs of making such inspection of

said books and records, and this obligation of reimbursement shall be in addition to the obligation to pay any discovered underpayment. If an inspection determines that Concessionaire has underpaid the City by less than five (5%) percent of the amount to which it is entitled under the Agreement, Concessionaire shall reimburse the City the amount which it underpaid. Termination of this Agreement for fraud shall not serve to nullify such obligation.

## **Article 7**

### **Covenants of City**

City hereby covenants and agrees that it shall take appropriate action within its authority to protect the rights and privileges demised and granted to the automobile rental Concessionaire or concessionaires under this and similar agreements. City agrees that it will not authorize or knowingly permit the solicitation or transaction of automobile rental business on the Airport premises, including but not limited to advertising displays; by any person or organization whatsoever, other than the said automobile rental concessionaires. City further agrees to instruct all of its employees and all concessionaires having contact or dealing in any way with members of the general public on the Airport: (1) to refer all requests for automobile rental services to one of the said authorized automobile rental services for which the customer shall indicate a preference, and to no other, and (2) to refer requests for automobile rental services where no preference is indicated only to the Airport automobile rental concessionaires located in the terminal building without favoring one over the other. Nothing in this Article shall entitle Concessionaire to damages in the event City fails to enforce strict compliance with this provision.

Concessionaire acknowledges that nothing herein prohibits City from entering into contracts with limousine, taxicab, or other ground transportation network companies or allowing such companies to provide services at the Airport.

## **Article 8**

### **Indemnity and Insurance**

1. Concessionaire shall keep and hold harmless City, its officers, employees, and agents, from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including officers, directors, agents or employees of City or Concessionaire, by reason of death or injury to persons, or loss or damage to property, resulting from Concessionaire's operations hereunder, or sustained in or upon the Premises as the result of anything claimed to be done or omitted to be done by Concessionaire hereunder. Concessionaire shall not be required to hold the City harmless from any act of gross negligence of the City or its employees. Nothing in this Agreement shall be construed to preclude, encumber or limit in any manner whatsoever, the City's rights, protections and privileges under governmental immunity, including the right to assert same in defense of any claim.
2. Concessionaire shall obtain and maintain continuously in effect at all times during the term hereof, at Concessionaire's sole expense, commercial general liability insurance protecting City and owners against liability which may accrue against City or owners by reason of Concessionaire's wrongful conduct incident to the use of the Premises or resulting from any accidents occurring on or about the roads, driveways, or other public places used

by Concessionaire at the Airport in the operations hereunder caused or arising out of any wrongful act or omission by Concessionaire. Such insurance shall provide minimum liability limits of \$2,000,000 for each occurrence; and shall name City, its' officers, directors, agents and employees as additional insureds as their interest may appear arising out of the conduct of the Concessionaire thereunder. Concessionaire shall also, without cost to City, obtain and maintain, during the term hereof, commercial automobile liability insurance covering the operation of rental automobiles hereunder with a \$2,000,000 combined single limit. Concessionaire shall provide certificates evidencing all such insurance to City upon execution of this Agreement and annually thereafter. Any such policy of insurance shall include a provision requiring the City be provided a thirty (30) day written notice prior to any cancellation of same. Minimum insurance requirements are subject to change from time to time per City policy and ordinance.

3. Concessionaire shall furnish to the City satisfactory evidence that it carries workers' compensation insurance in accordance with the laws of the State of North Dakota.

4. City agrees to notify Concessionaire in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder, and to cooperate with Concessionaire in the investigation and defense thereof.

#### **Article 9** **Cancellation by City**

This Agreement and all rights, interests, covenants, and obligations created hereunder may be terminated by City upon written notice to Concessionaire upon or after the happening of any one of the following events:

1. Default by Concessionaire in the performance of any term, covenant, or condition to be performed by Concessionaire hereunder, and such default is not remedied within thirty (30) calendar days from and after written notice to it by the City of such default. The acceptance of any monies by City after default shall not be deemed to have waived the right of termination by City nor shall City be stopped from evicting Concessionaire from the Premises and terminating this Agreement.

2. Concessionaire shall (1) make an assignment for the benefit of creditors, (2) file a voluntary petition in bankruptcy or consent to the appointment of a receiver of its property, or (3) be adjudged bankrupt.

#### **Article 10** **Cancellation by Concessionaire**

This Agreement and all rights, interests, covenants and obligations created hereunder may be terminated by Concessionaire upon or after the happening of any one of the following events:

1. Default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default, or initiate corrective action if

the remedy cannot be completed in the prescribed cure period, for a period of thirty (30) calendar days after receipt from Concessionaire of written notice to remedy the same; provided, however, that no notice of cancellation, as above provided, shall be of any force or effect if City shall have remedied the default prior to receipt of Concessionaire's notice of cancellation.

2. Issuance by any court of competent jurisdiction of an injunction preventing or restraining the use of the terminal in such a manner and to such an extent as to materially interfere with the operation of Concessionaire's automobile rental concession and the remaining in force of such injunction for a period of at least ninety (90) calendar days.

3. Inability of Concessionaire to use, for a period in excess of sixty (60) calendar days, the terminal building or any of the premises, facilities, rights, services or privileges leased to Concessionaire hereunder, because of fire, explosion, earthquake, other casualty, or acts of God or the public enemy provided that same is not caused by acts, omissions, or negligence of Concessionaire.

4. Lawful assumption by the United States Government or any authorized agency thereof of the operation, control or use of the Airport and facilities in such a manner and to such extent as to materially interfere with the operation of Concessionaire's automobile rental concession for a period of at least sixty (60) calendar days.

#### **Article 11** **Survival of the Obligations of the Concessionaire**

1. In the event that this Agreement shall have been terminated in accordance with the provisions of Articles 9 or 10, all the obligations of the Concessionaire under this Agreement shall survive such termination and shall remain in full force and effect for the full term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the City to the same extent, at the same time or times, and in the same manner as if no termination had taken place. The City may maintain separate actions to recover the damage or deficiency then due or at its option and at any time may accelerate the remaining balance due and sue to recover the full deficiency less the proper discount, for the entire unexpired term of this Agreement.

2. The amount of damages for the period of time subsequent to termination on account of the Concessionaire's rental obligations shall be the sum of the following:

a. The amount of the total of all installments of rents, fees, and charges less the installments thereof paid prior to the effective date of termination except that the credit to be allowed for the installment payable on the first (1st) day of the month in which the termination is effective shall be prorated for the part of the month the Agreement remains in effect on the basis of the total days in the month; and

b. An amount equal to all expenses incurred by the City, and not reimbursed in connection with regaining possession, restoring the Premises, acquiring a new Agreement for the Premises, legal expenses (including but not limited to attorney fees), and putting the Premises in order.

3. There shall be credited to the account of the Concessionaire against its survived obligations hereunder; a) the amount actually received from any Concessionaire, licensee, permittee, or other occupier in connection with the use of the said Premises or portion thereof during the balance of the term of use and occupancy as the same is originally stated in this Agreement and, b) the market value of the occupancy of such portion of the Premises as the City may itself during such period actually use and occupy. No such use and occupancy shall be or be construed to be an acceptance of a surrender of the Premises, nor shall such use and occupancy constitute a waiver of any rights of the City hereunder. The City will use reasonable efforts to mitigate damages to Concessionaire under this Article.

## **Article 12**

### **Use Subsequent to Cancellation or Termination**

1. The City, upon termination or cancellation pursuant to Articles 9 or 10 hereof, may occupy the Premises or may enter into an agreement with another tenant, and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such use may be of part of the Premises, or of the entire Premises, together with other premises, and for a period of time the same as or different from the balance of the Term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement.

2. The City shall also, upon said termination or cancellation have the right to repair and to make structural or other changes in the Premises, including changes which alter its character and the suitability thereof for the purposes of the Concessionaire under this Agreement.

## **Article 13**

### **Rights of Entry Reserved**

1. The City, by its officers, employees, agents, and contractors, shall have the right at all reasonable times to enter upon the Premises whether in preferential or joint use areas for purposes of inspection and for other purposes permitted by this Agreement.

2. Without limiting the generality of the foregoing, the City, by its officers, employees, agents, contractors and furnishers of utilities and other services, shall have the right at its own cost and expense, whether for its own benefit, or for the benefit of others, to maintain existing and future mechanical, electrical and other utility systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations thereto, as may, in the opinion of the City, be necessary or advisable, and from time to time to construct or install over, in or under the Premises, such systems or parts thereof and, in connection with such maintenance, use the Premises for access to other approved areas of the Airport otherwise not conveniently accessible, provided, however, that in the exercise of such right of access, repair, alteration or new construction, the City shall not unreasonably interfere with Concessionaire's operations or use of the Premises.

3. Any use by the City of the Premises for access, repair, alteration, or new construction shall be performed by the City with reasonable dispatch and the Premises shall be left in as



good order and condition as it was prior to commencement of the work.

## Article 14

### Successors and Assigns

1. All the Covenants, stipulations and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.
2. It is expressly agreed and understood that any and all obligations of Concessionaire hereunder may be fulfilled or discharged either by Concessionaire or by a licensee member appointed thereto by Concessionaire, and that any and all privileges of every kind granted Concessionaire hereunder may extend to and be enjoyed by such licensee; provided, however, that notwithstanding the method of operation employed by Concessionaire hereunder, Concessionaire shall continue always to remain directly liable to City for the performance of all terms and conditions of this Agreement. Except as hereinabove set out the Premises may not be sublet, in whole or part, and Concessionaire shall not assign this Agreement without prior written consent of City, nor permit any transfer by operation of law of Concessionaire's interest created hereby, other than by merger or consolidation.

## Article 15

### Notices

Any notice or other communication to City or Concessionaire pursuant hereto shall be deemed validly given, served or delivered upon deposit in the United States mail, registered and with proper postage and registration fee prepaid, addressed as follows:

To City: City of Minot  
Minot International Airport  
Attention: Airport Director  
305 Airport Road, Suite 216  
Minot, ND 58703

To Concessionaire: Meier & Company  
Attn: Scott Meier  
4740 6<sup>th</sup> Ave SE, Rm 139  
Aberdeen, SD 57401

or to such other address as the addressee may designate by written notice to the other party delivered in accordance with the provisions of this Article.

**Article 16**  
**Taxes, Licenses, Debts and Liens**

1. The Concessionaire shall promptly pay, when due, any and all taxes or assessments which may be assessed upon the Premises or its property located at the Airport.

2. The Concessionaire shall promptly pay, when due, all taxes, license fees, and permit fees applicable to its business and acquire and keep current all licenses, municipal, state, and federal, required as a result of its operations at the Airport. Such taxes include any real property taxes that may arise as a result of Concessionaire's lease and use of the Premises.

3. The Concessionaire shall promptly pay, when due, all bills, debts, and obligations incurred by Concessionaire in connection with its operations or activities at the Airport

4. The Concessionaire shall have no power to do any act or make any contract which may create any lien, mortgage, or other encumbrance upon an interest of the City in the Airport Premises or the buildings or improvements thereon. If, because of any act or omission (or alleged act or omission) of Concessionaire, any mechanic's, construction or other lien is filed against the Premises, any improvements thereon, or against the City (whether or not such lien, charge or order is valid or enforceable as such), Concessionaire shall, at its cost and expense, cause the same to be canceled and discharged of record or bonded within ten days after notice to Concessionaire of the filing thereof; and, the Concessionaire shall indemnify, defend, and save the City harmless against all costs, expenses, liabilities, losses, damages, suits, fines, penalties, claims and demands, including reasonable attorney fees, resulting therefrom. If Concessionaire fails to have the lien canceled, discharged, or bonded as aforesaid, then the City may, after serving twenty-four hours' notice on Concessionaire, pay the amount of said lien, or discharge the same by depositing or filing the bond required by law, and may pay any judgment recovered under such claim. The amount or amounts so paid or deposited, and all expenses incurred, including attorney's fees, shall, at the option of the City, be deemed additional rent and added by the City to the next or any subsequent installment of rent hereunder, and the City at its option shall have the same remedies for the nonpayment thereof as for the nonpayment of rent reserved.

#### **Article 17**

#### **Conformity with Laws, Ordinances, Rules and Regulations, and Grant Assurances**

1. From time to time the City, State, or Federal government may adopt and enforce rules and regulations with respect to the occupancy and use of the Airport. The Concessionaire agrees to observe and obey any and all such rules and regulations and all other federal, state and municipal rules and regulations, laws and ordinances, Grant Assurances, and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same. The City reserves the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with such rules, regulations or laws and ordinances. The Concessionaire shall be liable for any and all fines and penalties assessed against the City as a result of actions or omissions by the Concessionaire, its employees, agents, representatives or contractors.

2. The Concessionaire shall indemnify, defend and hold harmless the City, its officers, directors, agents and employees from any and all claims, liabilities, damages, losses, fines, penalties, or expenses, including costs of suit and attorney fees, which any or all of them may hereafter incur, be responsible for, or pay out arising out of the violation of any federal, state, or local law, ordinance, rules or regulations by said Concessionaire, its agents, employees, representatives or contractors.

## **Article 18**

### **Airport Concession Disadvantaged Business Enterprise (ACDBE) Compliance**

- A. The City has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The concessionaire is required to participate in the City's ACDBE program.
- B. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by Title 49 CFR Part 23.
- C. The concessionaire or contractor agrees to include the statement set forth in paragraph B in any subsequent concession agreement or contract covered by Title 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
- D. The City has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:
  - 1. Breach of contract action, pursuant to the terms of this contract;
  - 2. Breach of contract action, pursuant to applicable State Statutes
- E. The federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE problem, including, but not limited to, the following:
  - 1. Suspension or debarment proceedings pursuant to 49 CFR part 23;
  - 2. Enforcement action pursuant to 49 CFR part 31; and
  - 3. Prosecution pursuant to 18 USC 1001.
- F. The City will comply with all regulations set forth in 49 CFR Part 23 and will monitor concessionaires at the Airport for compliance with the ACDBE program.
- G. The City will submit to the Federal Aviation Administration's, Regional Civil Rights Office, an annual ACDBE participation report showing the commitments and attainments. The City will take measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities.

## **Article 19**

### **Grant Assurances**

This Agreement shall be subordinate to the provisions of any existing or future agreement between City and the United States, relative to the operation or maintenance of the Airport, the

execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Grant Assurance 22, Economic Nondiscrimination, requires sponsors to make aeronautical facilities available to the public and their tenants on reasonable terms and without unjust discrimination.

**Article 20**  
**General Provisions**

1. The City reserves the right to further develop or improve the Airport at its sole discretion.
2. The City reserves the right to maintain and keep in repair the landing area and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire in this regard.
3. During a time of war or national emergency, the City shall have the right to lease the landing area or any part of the Airport to the United States Government for military or naval use, and, if such lease is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the Lease to the government, shall be suspended.
4. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or any other structure on, or adjacent to, the Airport, which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to air navigation, as determined by the appropriate federal rules and regulations including, but not limited to, 14 CFR Part 77.
5. Waivers. Failure by the City to insist upon the strict performance by the Concessionaire of any of the terms or conditions herein contained shall not constitute a waiver of the City's right to thereafter enforce any such term or condition, but the same shall continue in full force and effect. The exercise of any right to terminate arising under this Agreement shall not operate to deprive the City of any coexisting right to seek damages or other remedies arising from the defaults of the Concessionaire.
6. The acceptance of rents or fees or the continued performance by the City of its obligations under this Agreement after a default by the Concessionaire in its performance of any of its obligations under this Agreement shall not be deemed a waiver of the City's right to terminate this Agreement for such default other than a default in the payment of rents or fees which are subsequently accepted by the City.
8. Applicable Law. This Agreement shall be performable and enforceable in Ward County, North Dakota, and shall be construed in accordance with the laws of the State of North Dakota.
9. This Agreement is made for the sole and exclusive benefit of the City and the Concessionaire, their successors and assigns, and is not made for the benefit of any third party.

10. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.
11. The titles of the several Articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.
12. Nothing herein contained shall create or be construed to create a co-partnership or joint venture between the City and the Concessionaire or to constitute the Concessionaire an agent of the City. The City and the Concessionaire each expressly disclaim the existence of such a relationship between them. Concessionaire is neither an employee nor agent nor contractor of City.
13. Quiet Enjoyment. The City agrees that, on payment of the rents, fees, charges, licenses, and taxes provided for in this Agreement and the performance of the covenants and agreements on the part of the Concessionaire to be performed pursuant to this Agreement, the Concessionaire shall peaceably have the Premises subject to the provisions of this Agreement.
14. Invalid Provisions. In the event any covenant, condition or provision contained in this Agreement is held to be invalid by any Court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenants, conditions or provisions contained in this Agreement; provided that the invalidity of such covenant, condition or provision does not materially prejudice either the City or the Concessionaire in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.
15. Interpretation of Agreement. Nothing in this Agreement shall be construed or interpreted in any manner whatsoever as limiting, relinquishing or waiving any right of ownership enjoyed by the City in the Airport property, or in any manner waiving or limiting the City's control over the management, operation, or maintenance of the Airport property, except as specifically provided for in this Agreement, or in any manner impairing the governmental rights of the City.
16. Force Majeure. Neither the City or Concessionaire shall be deemed to be in violation of this Agreement for failure to perform any of its obligations hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of public authority, flight restrictions, weather conditions, riots, rebellion, accidents, sabotage or any other events, conditions or circumstances for which it is not responsible and/or which are not within its control.
17. Conflict of Interest. The Concessionaire must disclose in writing the nature and existence of any relationship involving Concessionaire and the City that, in Concessionaires opinion, will or possibly may affect the independent professional judgment of the Concessionaire as it relates to its affairs with the City.

18. This Agreement shall be subordinate to the provisions of any existing or future Agreement between the City and the United States of America or the State of North Dakota relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal or State funds for the development of the Airport, or to any security requirements of State or Federal Government, including temporary security procedures or instructions.

**Article 21**  
**Entire Agreement**

1. This Agreement consists of Articles 1 to 21, inclusive, and Exhibits A, B, and C.
2. The parties agree that this Agreement forms the entire agreement of the parties hereto and may not be changed, modified, discharged or extended except by written instrument duly executed by the City and the Concessionaire unless otherwise provided herein. The parties agree that no other representations or agreements shall be binding upon the City or the Concessionaire unless expressly provided for in this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duty authorized officers and their respective seals to be hereunto affixed this \_\_\_\_\_ day of 2024.

ATTEST:

CITY OF MINOT

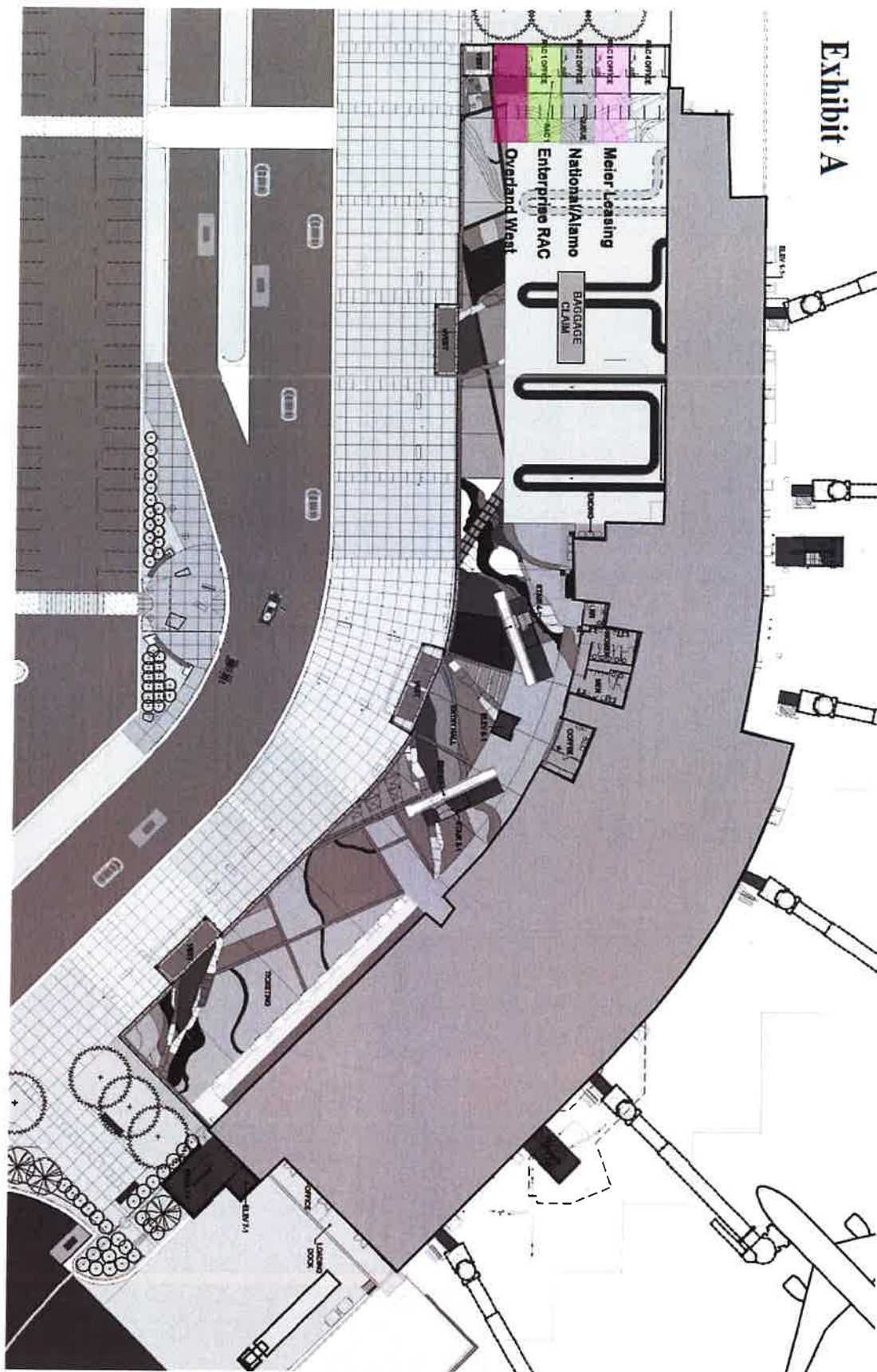
\_\_\_\_\_ BY: \_\_\_\_\_

ATTEST:

Scott Meier BY: Meier & Company

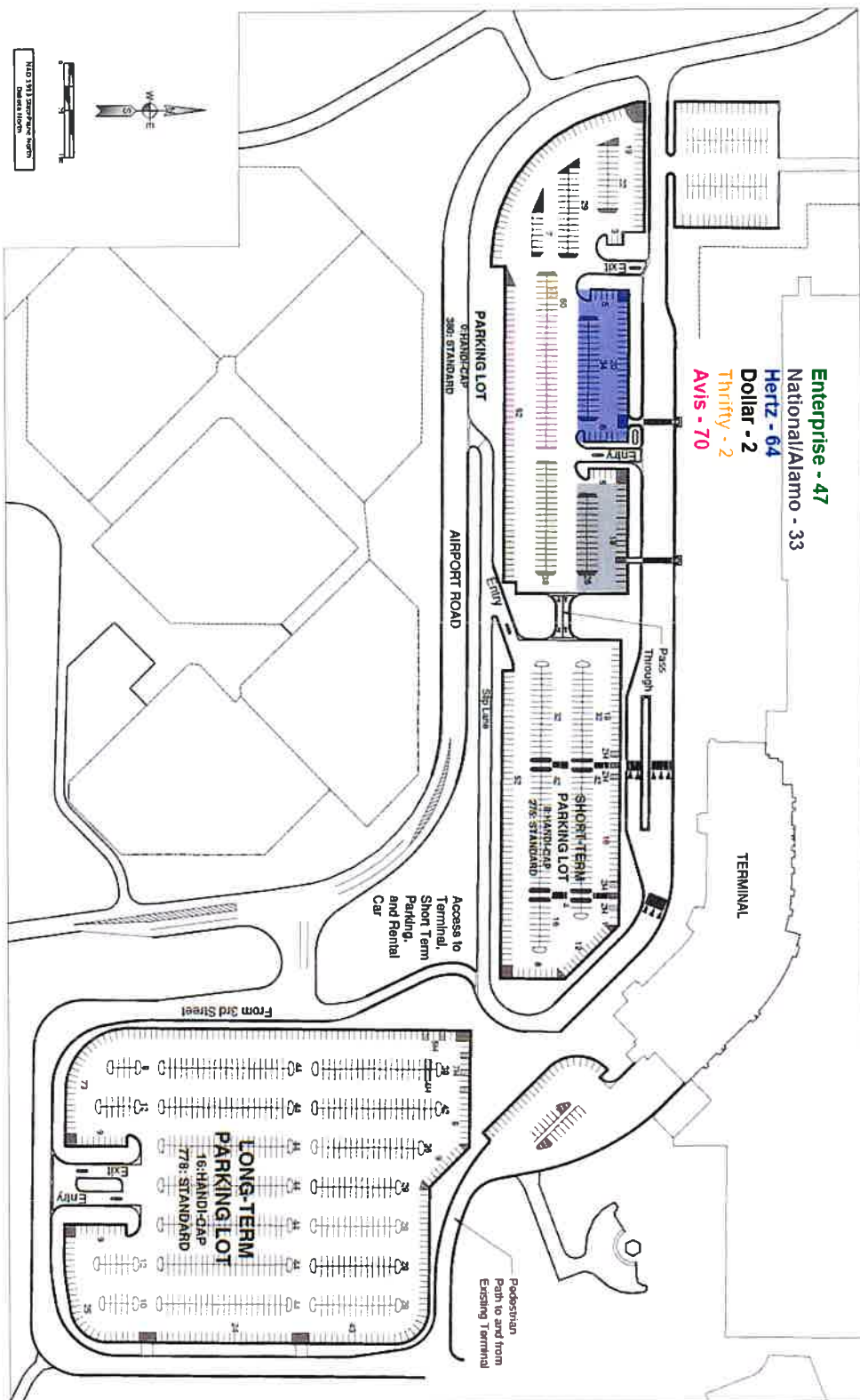


## Exhibit A



**Exhibit B**  
**Parking Stalls**

### Exhibit B - Ready Return Stall Allocation

Minot International Airport  
Parking Lot Facilities

## Exhibit C MAG, Ready Return Stalls, and Leased Premises

### A. MAG and Ready Return Stalls

The undersigned submits the following information which shall be included as Exhibit C to the Minot International Non-Exclusive Airport Rental Car Concession Agreement and Lease:

1. Brand(s) to be operated (up to three brands may be operated per agreement):

Avis

2. Minimum Annual Guarantee per brand:

Brand	Minimum Annual Guarantee Year One (2024)
<u>Avis</u>	<u>\$30,000.00</u>
<u></u>	<u></u>
<u></u>	<u></u>

3. Number of ready/return stalls requested:

Brand	Ready/Return Stalls Requested
<u>Avis</u>	<u>70</u>
<u></u>	<u></u>
<u></u>	<u></u>

### B. Leased Premises

1. Ticket Counter and Office Space: 450 Square Feet

Rate per Square Foot: 18.70 (2024 rate subject to adjustment annually)

Total Annual Amount Due: \$8,415

Total Monthly Amount Due 701.25

2. Ready Return Stalls: Total Per Brand

Brand	
<u>Avis</u>	<u>70</u>
<u></u>	<u></u>
<u></u>	<u></u>


Total Stalls: 70

Rate per Stall: \$15.00 (2024 rate subject to adjustment annually)

Total Annual Amount Due: \$12,600.00

Total Monthly Amount Due: \$1050.00

Authorized Signature:

  
\_\_\_\_\_  
Typed Name: Scott Mier  
Title: Owner  
Date: 3/4/24



**TO:** Mayor  
Members of the City Council

**FROM:** Jennifer K Eckman, Airport Director

**DATE:** March 18, 2024

**SUBJECT: ENTERPRISE RENTAL CAR FINAL AIRPORT LEASE**

**I. RECOMMENDED ACTION**

- A. Approve Rental Car Concession and Lease Agreement with Enterprise RAC Company of Montana/Wyoming; and
- B. Authorize Mayor to sign the contract

**II. DEPARTMENT CONTACT PERSONS**

Jennifer Eckman, Airport Director	857-4724
Jessica Long, Airport Business and Development Manager	857-4725

**III. DESCRIPTION**

- A. Background  
Minot International Airport (MOT) has been in contract negotiations with the current Rental Car Companies for the last year. The final contract has been received by the rental car companies with signature after receiving the form contract in December.
- B. Proposed Project  
Proposed project is to update the expired rental car contracts. This will ensure that MOT will be able to enforce regulations and guarantee service.
- C. Consultant Selection  
Decomm Aviation is MOT's Aviation Business Consultant and worked through the contract and negotiations.

**IV. IMPACT:**

- A. Strategic Impact:  
The updated contracts will take us out of holdover and will help ensure ongoing rental car concessions and MOT and help guarantee we are better able to assist our passengers and the citizens of Minot.
- B. Service/Delivery Impact:  
The contract will help maintain a working relationship with the Car Rental Companies and continue to provide service to the community.
- C. Fiscal Impact:  
Car rentals are revenue only concession contracts. Estimated revenue for 2024 based on a three-year average \$650,000.

**V. CITY COUNCIL ASPIRATIONS**

Dynamic and Flourishing

**VI. ALTERNATIVES**

1. Council can reject the updated contract and require MOT to go out for bids.

**VII. TIME CONSTRAINTS**

MOT has been in holdover with the Car Rental Companies for almost a year.

**VIII. LIST OF ATTACHMENTS**

- A. Enterprise RAC Company of Montana/Wyoming signed agreement



**CITY OF MINOT**  
**MINOT INTERNATIONAL AIRPORT**  
**NON-EXCLUSIVE RENTAL CAR CONCESSION AGREEMENT AND LEASE**

THIS NON-EXCLUSIVE RENTAL CAR CONCESSION AND LEASE AGREEMENT made between City of Minot (hereinafter referred to as the "City"), and **Enterprise RAC Company of Montana/Wyoming, LLC, dba Enterprise Rent-A-Car, Alamo Rent A Car, and National Car Rental** (hereinafter referred to as the "Concessionaire").

**WITNESSETH:**

**WHEREAS**, the City is owner and operator of the Minot International Airport (hereinafter referred to as "the Airport"); and

**WHEREAS**, Concessionaire is engaged in the business of renting on-airport passenger vehicles and desires to use certain Airport areas and facilities owned by the City and to acquire from the City certain rights and privileges in connection with its use of the Airport; and

**WHEREAS**, the City has the right to permit use of the property on the Airport upon the terms and conditions hereinafter set forth and has full power and authority to enter into this Non-Exclusive Agreement as provided herein;

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, conditions, privileges, obligations, and agreements herein contained, the City and the Concessionaire hereby mutually undertake, promise, and agree, each for itself and its successors and assigns, as follows.

**Article 1**  
**Automobile Rental Concession**

1. The City hereby grants to Concessionaire, subject to the terms and conditions of this non-exclusive Agreement, the right to conduct and operate an automobile rental concession at the Airport.

2. The City agrees not to enter into any similar automobile rental concession agreement with any person, partnership, or corporation other than the Concessionaire for a concession on the Airport, unless the same shall be upon financial terms no more favorable than those herein granted to the Concessionaire, and shall require automobile rental service substantially equivalent to those available from automobile rental concessionaires upon airports of comparable size throughout the United States. Nothing herein contained shall limit the City from making such reasonable distinctions between the automobile rental counter space and parking areas as may appear to it to be justified by the differing operational requirements of the respective rental car Concessionaires, or by reason of the differing amounts of airport automobile rental business done by each of the respective Concessionaires. This Agreement

does not prohibit agreements or regulations pertaining to off-airport automobile rental companies or person to person (P2P) operators provided that the operator enters into an Agreement with the Airport and pays the required fee, as determined by the Airport Director.

3. For the Term of this Agreement, unless otherwise approved by the City, at its sole discretion, the Concessionaire will be allowed to operate up to a maximum of three (3) brands per counter position and operate only the brands specified in this Agreement. The acquisition, transfer, or subletting of any brand(s) or trade name(s) requires prior written approval by the Airport Director. Such approval may be withheld by the Airport Director for good and sufficient reasons, but will not be unreasonably withheld. The brands authorized under this Agreement include:

Enterprise Rent-A-Car

Alamo Rent A Car

National Car Rental

In the event Concessionaire no longer offers any brand identified above during the Term of the Agreement, Concessionaire will be required to adhere to the Minimum Annual Guarantee (MAG) proposed for all brands included in this Agreement and the lease rental rate included herein, and Concessionaire will not be allowed to offer any new brands during the Term of the Agreement.

The City shall be permitted to add a new on-Airport rental car concession during the Term and any such addition shall be subject to the provisions of Article 1, paragraph 2 hereof. The City shall reasonably adjust the Minimum Annual Guarantees of Concessionaire and other Concessionaires proportionate to the projected market share of the new Concessionaire as a percentage of the total projected market share of all Concessionaires to reflect the impact of adding a new concession.

## **Article 2** **Premises**

City hereby grants to Concessionaire, for the period and subject to the terms and conditions hereinafter stated, the following described Premises located in or upon the Airport:

### **1. Terminal Premises**

a. During the Term of this Agreement, Concessionaire shall have the right to occupy on a preferential use basis nine hundred (900) square feet that incorporates two ticket counters, two sections of queuing space, and two back-office spaces, as identified on Exhibit "A", attached hereto and made a part hereof. Within said counter, queuing and back-office space, City shall furnish, at no direct charge to Concessionaire, heat, air conditioning, overhead lighting, and electrical convenience outlets. Concessionaire shall provide all furniture and equipment for such space at its sole expense and will be solely responsible for any additional improvements required provided that prior written approval is requested and granted by the Airport Director. The space must be kept in a clean and orderly condition at the sole expense of the Concessionaire.

b. Concessionaire shall use the screens provided by the City for all branding at the counter location for the purpose of advertising Concessionaire's rental car authorized brands as identified in Article 1, paragraph 3. Such signs shall not advertise rates.

c. Concessionaire shall have the right, at its sole expense, to make such additions and improvements, and to install such equipment and facilities as Concessionaire may deem necessary or desirable for the operation of its automobile rental concession, provided, however, that no such additions, improvements, or installation of equipment or facilities shall be undertaken by Concessionaire without the prior written consent of the Airport Director, which consent, shall not be unreasonably withheld. Within seven (7) calendar days after the termination or earlier cancellation of this Agreement as called for herein, Concessionaire shall also have the right to remove any such additions, improvements, equipment or facilities erected or installed by Concessionaire at its expense pursuant to the terms of this Article, provided, however, the Premises shall be restored to their former condition, normal wear and tear excepted. Any improvements or equipment not removed by Concessionaire within seven (7) calendar days following the termination or cancellation of this Agreement shall become the property of the City or may be disposed of by the City, the cost of which will be paid by the Concessionaire.

## **2. Parking Area Premises**

a. Concessionaire, in cooperation with other Concessionaires that have executed a similar Agreement to operate a concession located at the Airport, shall have the right to use the ready and return parking premises on a preferential basis as allocated in accordance with the terms of this Agreement. The ready and return lots shall be as depicted in Exhibit B. The storage lot shall be in a location as approved by the City. The initial allocation of the ready/return stalls will be determined by the Minimum Annual Guarantee (MAG) amount proposed by Concessionaire during the negotiation process for the extension of this Agreement for each brand to be operated at the Airport. As part of the MAG proposal, Concessionaires shall identify the number of ready/return stalls desired for each brand. The highest proposed MAG per brand and requested positions will be allowed to select their positions first, the second highest next, and so forth. The City will use its best efforts to provide the requested number of positions. If the total number of positions requested is greater than the number of positions available, the requests will be reduced pro rata based on the MAGs submitted. If the number of positions requested is less than the total number of positions available, the unrequested positions will be retained by the Airport and may not be used by Concessionaires. If Concessionaire desires to lease additional positions that are under the control of the Airport following the initial allocation, the available stalls will be leased on an annual basis at the applicable fee on a first come, first served basis until all available stalls are leased. The Concessionaire will have the first right to request an extension of the annual lease of the surplus positions and must indicate its desire no less than sixty (60) calendar days prior to the expiration of the annual lease.

b. The total number of parking spaces to be designated for ready and return parking will be determined annually by the Airport Director and identified in Exhibit B. In the event the location or quantity of ready/return parking stalls available during the term of this Agreement are modified, an amended Exhibit B will be substituted in this Agreement. The number of spaces allocated to each Concessionaire on an annual basis shall be allocated among the

Concessionaires upon the execution of this Agreement as identified in Article 2, paragraph 2a above, and subject to adjustment annually thereafter only if there is a market share change of twenty percent (20%) or more for any one Concessionaire. for each succeeding year of this Agreement. Subsequent year stall allocations will be based on the previous year's ratio of Concessionaire's (for all brands identified in Article 1, paragraph 3) Gross Receipts for brand(s) operated by Concessionaire to the Gross Receipts of all Concessionaires operating under this Agreement for all authorized brands. The determination of the twenty percent (20%) market share will be determined by taking the total Gross Receipts by each Concessionaire as a percentage of the total Gross Receipts for all Concessionaires. The Reallocations will be completed following the end of the fiscal year following the completion of the annual audit by the City. Concessionaires shall be offered a minimum of ten (10) ready/return parking positions for each authorized brand identified in this Agreement subject to adjustment as outlined herein.

3. Quick Turn Around ("OTA") Premises

a. During the Term of this Agreement, the City may develop a QTA facility at a location near the Terminal as determined by the City. The City reserves the right to develop this facility subject to terms and conditions that are acceptable to the City and provided that the cost of development and operation of the QTA premises is entirely funded by Customer Facility Charges (CFCs), contingent rent, or other funding as mutually agreed by the Parties.

b. In the event that the City develops and completes the QTA facility during the Term of this Agreement, the terms and conditions agreed to by the parties will be established via amendment to this Agreement. All direct and indirect costs associated with the development and operation of the QTA, applicable land rent for the land associated with the premises and associated improvements such as vacuum stations and fueling facilities, and all utilities will be included in the costs associated with the QTA and paid to the City. A separate operating agreement will be developed and must be executed by Concessionaires operating at the Airport. The QTA may not be used for the servicing of any vehicles not assigned by Concessionaire to the Airport. All costs associated for the operation of the facility will be allocated to each Concessionaire based on the number of vehicles processed.

c. The Airport Director will consult with Concessionaires prior to the development of the terms and conditions for the QTA as well as development of the final design and take comments received by Concessionaires into consideration.

d. Customer Facility Charge (CFC) funds collected and remitted by Concessionaire and other rental car concessions shall be used to fund rental car related improvements and operating costs at the Airport, including but not limited to the QTA facility.

**Article 3**  
**Term of Agreement and Holdover**

1. Subject to earlier termination as herein provided, the Term of this Agreement shall be from January 1, 2024, through December 31, 2028.

2. In the event that the Concessionaire, or its successor in interest, if any, shall remain beyond the Term hereof, without the express written permission of the City, it is the intention of the

parties and it is hereby agreed that a tenancy from month-to-month in Holdover and shall be subject to all the terms and conditions of this Agreement except that the City shall, through the Holdover period, have the sole right to determine the rates, fees, and charges under the Holdover period.

#### **Article 4** **Use of the Airport and the Premises**

The City grants to Concessionaire the following rights and privileges, subject to other limitations expressed in this Agreement:

1. **Terminal and Roadways.** The right to use in common with others, the general facilities of the Airport in the normal conduct of its operation as a car rental company for on-Airport designated vehicles in such manner as may be prescribed by the City.
2. **Signs.** The Concessionaire shall have the right to utilize the electronic screens to display one or more signs within the Premises, identifying it and its authorized brands as identified in Article 1, paragraph 3, provided, however, the subject matter, type, design, number, location and elevation of such graphics, shall be in general conformity with those of other Airport tenants and subject to, and in accordance with, Airport rules, regulations, and ordinances and the prior written approval of the Airport Director. No graphics will be approved that may be confusing to customers and the traveling public. Without limiting the generality of the foregoing, the City maintains the policy that advertising shall not mention other concessionaire car rental companies either directly or indirectly nor shall it reference a competitor's product.
4. **Parking Space - Employees.** The City shall make available to Concessionaire's employees, parking in an employee area designated by the City only during the employee's working hours at the airport for a fee as adopted by the City and subject to change annually. Concessionaire's employees shall park their private vehicles only in the employee parking area furnished by the City. Concessionaire is strictly prohibited from allowing employees, guests, or contractors to utilize ready/return, storage spaces, or short-term parking for parking of personal vehicles. Failure to comply with this provision may result in the City terminating the leasing of ready/return stalls at the sole discretion of the Airport Director. During any period where egress from the ready/return spaces is processed through the paid parking lot exit lanes, if there is a shortfall in paid parking revenues versus the number of vehicles processed, the Concessionaires will be assessed the shortfall in the operating expenses associated with the rental car costs that will be paid to the City.
5. **Relocation.** Future development of a Quick Turn Around (QTA) facility or other improvements on the Airport may require the alteration of the Parking Area Premises. The City shall have the right to amend this Agreement to incorporate the terms and conditions of any such development requirements. Reasonable advance notice of any alteration shall be given by the City, but in no event shall the notice be less than thirty (30) calendar days.
6. **Purpose.** Concessionaire agrees that it will not engage in any commercial activities not authorized herein and will not permit the use of the Terminal Premises, Parking Area Premises, and Quick Turn Around (QTA), of any purpose other than those authorized in this Agreement as may be amended from time to time.

7. Accommodation. During the Term of this Agreement, the City may have a need to modify the Terminal Premises or Parking Area Premises. In the event that Concessionaire's Terminal Premises or Parking Area Premises is impacted, the City will use its best efforts to accommodate Concessionaire during the period of disruption and provide comparable accommodations to the greatest degree possible.

8. Construction, Airport Expansion and Inconvenience to Concessionaire. The Concessionaire recognizes that from time to time during the Term of this Agreement it may be necessary for the City to initiate and carry forward programs of construction, reconstruction, expansion, relocation, maintenance, and repair in order that the Airport and its facilities may be suitable for the volume and character of its air traffic and flight activity, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience the Concessionaire in its operations at the Airport. The City agrees to make all reasonable efforts to minimize the inconvenience to the operation of the Concessionaire's business. The Concessionaire agrees that no liability shall attach to the City, its officers, agents, employees, contractors, subcontractors, and representatives by reason of such inconvenience or interruptions.

9. Non-Exclusive Rights. This Agreement shall be non-exclusive and the City reserves the right, subject to the provisions of Article 1, paragraphs 2 and 3, to enter into similar contracts with other individuals, firms, or corporations engaging in the car rental business at the Airport. The City shall not grant to any other Concessionaire a car rental concession on terms more favorable than those granted to the Concessionaire.

10. Rights of Ingress and Egress. The City grants to Concessionaire the right of ingress and egress to and from the premises for Concessionaire's employees, agents, customers and invitees to the extent reasonably necessary in connection with the conduct of Concessionaire's business under this Agreement. Areas designated as restricted areas by the City shall be excluded.

## Article 5

### Minimum Annual Guarantee, Rents, Fees, and Charges and Performance Guarantee

For the privilege of operating its rental car service at the Airport and for the use of the premises described in Article 2, Concessionaire agrees to pay to the City the following rentals and fees.

#### 1. Terminal Premises

The Terminal Premises rental for a single brand shall include a ticket counter, queuing and back-office space as set forth on Exhibit "A" as attached (hereinafter referred to as "Terminal Premises"). Concessionaire shall be entitled to preferential use of nine hundred (900) square feet of Terminal Premises. The annual rental rate per square foot will be the rate as established by the City annually for the airline rental rate. In the event Concessionaire operates two (2) rental car brands as identified in Article 1, paragraph 3 from one counter position, the rental rate for a single position shall be at a rate of one hundred twenty five percent (125%) of the applicable base rental rate. In the event Concessionaire operates three (3) rental car brands as identified in Article 1, paragraph 3 from one counter position, the rental rate for a single position shall be at a rate of one hundred fifty percent (150%) of the applicable base rental rate.



In no event shall Concessionaire operate more than three brands out of a single rental car position. Rental for Terminal Premises shall be payable in equal monthly installments. Rental charges, storage area charges, and any other charges due the City shall be due and payable in advance, on or before the first day of each month, without the requirement for a demand thereof.

2. Parking Area Premises

a. Annually, Concessionaire will be allocated parking storage and ready/return parking stalls as called for in Article 2, paragraph 2a. All Concessionaires operating under a concession agreement agree to pay ground rental for the Parking Area Premises at a monthly rate per stall. The rate will be established from time to time by the City Council's Rates and Charges Resolution through the Term of the Agreement. Such rental for the Parking Area Premises shall be paid on the first day of each month in advance without the requirement of a demand thereof. City shall be responsible for the snow removal of the main drive aisles of the designated lots and maintenance of the Parking Area Premises and the City shall be reimbursed for such costs based on a pro rata share of the stalls allocated. Concessionaire shall be responsible for removal of snow and the associated cost for removal at all allocated parking spaces.

3. Quick Turn Around (QTA) Facility

The City may, at its sole discretion, arrange for the design and development of a QTA facility to be used by Concessionaire and other Concessionaires having signed similar Agreements on the Airport. The terms and conditions associated with the design, funding, rental rates, operating requirements, and position assignment will be included in an Amendment of this Agreement if the project proceeds. Customer Facility Charges (CFCs) from all transactions conducted on the Airport would be used as a means of funding the facility and associated operating costs. The QTA shall be used for the servicing of vehicles that are based at the Airport and used in transactions originated at the Airport. Concessionaire will be prohibited from processing non-Airport based vehicles through the QTA.

4. Concession Fee and Minimum Annual Guarantee ("MAG")

Concessionaire and other Concessionaires shall submit to the City prior to the execution of this Agreement a proposed MAG for the period from January 1, 2024 through December 31, 2024 for each brand proposed to be operated under this Agreement and identify the number of ready/return spaces that are desired for each brand that will be operated by Concessionaire under this Agreement regardless of whether the Concessionaire is leasing multiple counter positions. Such proposal shall be included as Exhibit C to this Agreement.

During the first year of the Agreement, the Concessionaire shall pay annually to the City, the greater of the initial combined MAG amount proposed by Concessionaire (Exhibit C) or Eleven percent (11%) of the Gross Receipts, as hereinafter defined, derived from the Concessionaire's car rental operations at the Airport.

Beginning in the second year and for each year of the Agreement thereafter, the Concessionaire shall pay annually to the City, the greater of the adjusted MAG amount as described in Article

Beginning in the second year and for each year of the Agreement thereafter, the Concessionaire shall pay annually to the City, the greater of the adjusted MAG amount as described in Article 5 Section 4 paragraph a., or eleven percent (11%) of the Gross Receipts, as hereinafter defined, derived from the Concessionaire's car rental operations at the Airport.

a. Annual Adjustment of MAG- The MAG shall be subject to annual adjustment following the first year of this Agreement. For the second year of the Term and each subsequent year, the Minimum Annual Guarantee shall be the greater of the previous year's MAG or the amount which represents eighty-five percent (85%) of Concessionaire's percentage fee applied against Gross Receipts for the immediately preceding Lease Year. In no event shall the MAG during any given year of the Agreement be less than the first year's MAG during the Term of this Agreement.

b. Monthly Payments and Year End Reconciliation- The contract year commences on January 1st of each year. By the twentieth (20th) day of each month following the month of activity during the Term of the Agreement, Concessionaire shall remit to the City a report identifying the Concession Fee due for the previous month's activity by multiplying the Gross Receipts for the month reported applied against Concession Fee and the calculated payment. Concessionaire shall report activity on a form supplied by the City and calculate the amount due the City at the end of each month of the Agreement. Concessionaire shall provide to the City within sixty (60) calendar days, an audited summary signed by an authorized officer of the company identifying the Gross Receipts for the preceding fiscal year with an eleven percent (11%) Concession Fee applied to the Gross Receipts. If the annual calculated amount is less than the applicable MAG due, Concessionaire shall remit to the City the difference between the calculated amount and the MAG within ten (10) calendar days upon submission of the invoice.

5. Customer Facility Charge (hereinafter referred to as "CFC"):

a. The Concessionaire acknowledges the City has implemented a CFC for the funding of eligible rental car related capital improvements and operating expenses. In the event the City adjusts the CFC amount, the Airport Director will consult with Concessionaire prior to adoption of any such change and will provide sixty (60) calendar days written notice to Concessionaire prior to the implementation of any change.

b. Concessionaire must charge the approved CFC for each Transaction Day for each rental agreement initiated at the Airport and/or for each vehicle based at the Airport. If Concessionaire has provided a written quotation to a customer that contains the previous CFC amount prior to the thirty (30) calendar day notice period, the quoted CFC amount will be the charged amount for any such rental.

c. The Concessionaire shall include the approved CFC for all transactions made utilizing cars that are located at the Airport or leased off-airport but are returned to the Airport.

d. The CFC shall be listed as a separate charge in the Concessionaire's advertised rates or rental agreements and such separate charge shall be disclosed to the customer at the time of reservation and again at the time of actual rental. The CFC shall be disclosed and listed

as a Customer Facility Charge and shall not be listed as an Airport surcharge or tax. The CFC must be collected from all customers.

e. "Transaction Day" shall mean a twenty-four (24) hour period or fraction thereof for which a rental car customer is provided the use of a rental car for compensation regardless of the duration or length of the rental term. If the same rental car is rented to more than one customer within such continuous 24-hour period, then each such rental shall be calculated as a Transaction Day, except that a partial day that is a grace period of no more than 2 hours after the last 24-hour day booked shall not be considered a Transaction Day.

f. The Concessionaire shall collect from each and every Airport customer of the Concessionaire, a CFC for each Transaction Day under each rental agreement, subject to the limitation set out hereinafter. The CFCs collected by each Concessionaire shall be held in trust on behalf of the City by the respective Concessionaire. On or before the 20th day of each month, Concessionaire shall furnish to the City a sworn statement setting forth the number of transaction days covered by the rental agreements during the preceding month together with the CFCs collected during the preceding month. The CFCs shall not be calculated in the "Gross Receipts" of a Concessionaire in order to determine the concession fee payable to the City.

g. The Concessionaire acknowledges that the CFC shall be subject to revision by the City upon a minimum of sixty (60) calendar days written notice to the Concessionaire. The City will provide the Concessionaire written notice for any such revisions prior to a recommendation to be made to the City for adjustment.

h. The City will provide an annual report summarizing collections, expenditures, and fund balances.

i. In the event of any national emergency wherein there is a curtailment, either by executive decree or legislative action, of the use of motor vehicles or commercial aircraft by the general public, the MAG shall be suspended on a pro rata basis for the period of time the condition continues to exist.

6. The term Gross Receipts shall mean all revenues received by the Concessionaire from the customer derived from the operation of Concessionaire's vehicle rental business at the Airport regardless of where any vehicle is delivered or returned. The term Gross Receipts includes Concessionaire's recovery of any concession fee charged to the customer such that the total concession recovery fee charged to the customer shall be 12.36%.

For purposes of the Agreement, Gross Receipts shall include all revenues received by Concessionaire except for:

- a. Sums recovered by Concessionaire from insurance claims or otherwise for personal accidents, for damage to rental vehicles or other property, or for theft, or loss, or abandonment of its rental vehicles or other property.

- b. Sums charged to customers by Concessionaire for waiver by Concessionaire of its rights to recover loss or damages from its customers for damage to or destruction of the rental vehicles.
- c. Any tax or surcharge separately stated as a tax or surcharge and collected from Concessionaire's customers, in an amount that actually has been levied or charged by and paid to any competent governmental authority, excluding concession fees recovered from Concessionaire's customers.
- d. Proceeds and sums received by the Concessionaire from the collection of the CFC.
- e. Discounts to customers taken at the time of the rental only and clearly noted on the rental contract or agreement.
- f. Vehicle sales and new vehicle prep revenue.
- g. Direct costs associated with vehicle license fees.
- h. Unauthorized one way drop fees.
- i. Charges that are assessed for third party assessments including fines, tolls, towing charges, and other similar reimbursement type charges.

7. Within sixty (60) calendar days after the close of each contract year hereunder, Concessionaire shall furnish to City a sworn statement certified by an authorized officer of Concessionaire showing all Gross Receipts derived from automobile rentals made at the Airport for said contract year. All sums due hereunder and the reports and statements of Gross Receipts shall be paid to the City by delivery to the Airport Director.

8. In the event any payment is not paid when due, the City shall assess, and the Concessionaire agrees to pay, a one percent (1.75%) late charge, plus an additional one percent (1.75%) each month on any remaining unpaid balance which is past due. This amount is determined by the City and subject to change per City rates and charges.

9. Concessionaire agrees to provide the City with an irrevocable Letter of Credit provided by a bank acceptable to the City, or a performance bond issued by a surety acceptable to the City, renewable annually during the term of this Agreement, in a sum equal to no less than six (6) months of the annual MAG amount.

## **Article 6**

### **Covenants of Concessionaire**

Concessionaire hereby covenants and agrees:

- 1. To utilize the Terminal Premises and Parking Area Premises for the use and benefit of the public.
- 2. To furnish good, prompt and efficient service, adequate to meet all reasonable demands for its automobile rental service at the Airport. Concessionaire shall also provide the quality and quantity of car rental services necessary to reasonably serve the needs of the general public and passengers and invitees at the Airport. Services provided by the Concessionaire

shall consist of a sufficient number of late model cars in popular price ranges and sufficient personnel to reasonably serve the demand for such services at the Airport. Vehicles used for rental shall not exceed three (3) model years and/or fifty thousand (50,000) miles.

3. That rental automobiles made available hereunder shall be maintained at Concessionaire's sole expense, in good operative order, sanitized, free from known mechanical defects, and in clean, neat and attractive condition, inside and outside.

4. The facilities to be provided by Concessionaire hereunder for the purpose of providing automobile rental services shall remain open from thirty (30) minutes prior to the first scheduled departure until thirty (30) minutes after the last arrival. All such rentals shall be deemed to be made at the Airport in determining payments due City as provided by this Agreement.

5. Personnel performing services hereunder shall be neat, clean, and courteous, and Concessionaire shall not permit its agents, contractors, vendors, or employees so engaged to conduct business in a loud, noisy, boisterous, offensive or objectionable manner, or to solicit business outside the space assigned in any manner whatsoever except through the use of signs constructed and maintained in accordance with this Agreement.

6. Concessionaire shall abide by and be subject to all lawful ordinances, rules, and regulations which are now, or may from time to time be promulgated by the City concerning management, operation, or use of the Airport.

7. Concessionaire will keep, or cause to be kept, true, accurate and complete records of business conducted hereunder, and Concessionaire further agrees that City shall have the right, through its duly authorized agents or representatives to examine all pertinent records at any and all reasonable times, with no less than ten (10) calendar days' notice, for the purpose of determining the accuracy of the reports required to be made by Concessionaire. Concessionaire further agrees that a numbered agreement shall be issued with each sale or transaction, and will be available for inspection by the Airport Director, or designee, upon request.

8. Concessionaire will be responsible for all expenses in connection with the use of the Premises hereunder and the rights and privileges herein granted, including without limitation by reason of enumeration, taxes, permit fees, license fees and assessments lawfully levied or assessed upon Concessionaire's property or upon its use or possession of the Premises or structures and improvements at any time situated thereon, and that it will secure all such permits and licenses. Provided Concessionaire has paid any tax, levy, assessment, or other charge Concessionaire may, however, at its sole cost and expense, protest any tax, levy, assessment, or other charge.

9. Concessionaire will furnish, install, operate, and maintain any installation of proprietary equipment or improvements following written approval by the City, provided hereunder and keep the same as well as the Premises made available to it and the furniture, fixtures and equipment installed therein and thereon, all in good order, condition and repair, and upon

termination of this Agreement will deliver the Premises in question to City in good order, condition and repair, reasonable wear and tear and other casualty excepted.

10. Concessionaire will not engage in any activity on said Premises other than those herein specifically set forth.

11. The Concessionaire shall furnish said service on a fair, equal, and nondiscriminatory basis to all users thereof. Concessionaire will not on the grounds of race, color, national origin or other protected class discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal Aviation Regulations, Title VI of the Civil Rights Act of 1964 or State or local laws.

12. Concessionaire shall charge fair, reasonable, and non-discriminatory prices for each unit of sale or service; provided that the Concessionaire may be allowed to make reasonable and non-discriminatory discounts, rebates, and other similar types of price reduction to volume purchases.

13. This Agreement shall be non-exclusive and subordinate to the provisions of any existing or future agreement between the City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. This subordination shall include, but is not limited to, any and all terms, conditions, restrictions and requirements of the United States or the State of North Dakota, as may be amended from time to time, which apply to the City or its lessees in carrying out certain obligations and responsibilities pursuant to grant agreement(s) or other conditions that apply to this Agreement. As applicable, Concessionaire shall be responsible for any and all such obligations and requirements. Such grant agreement(s) or other conditions are incorporated in and made a part of this Agreement.

14. The Concessionaire, in common with other Concessionaires, shall be responsible for the general maintenance (including, but not limited to, refuse collection, Concessionaire owned signage, and snow plowing of assigned parking positions, and control of the Parking Area Premises.

15. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 Code of Federal Regulations Part 23. The Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, sex or other protected class in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23. The Concessionaire agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23 that it enters into and cause those businesses to similarly include the statements in their further agreements.

16. The Concessionaire hereby grants to the City the right to audit Concessionaire's books and records for its operation at the Airport and agrees to make available to the City, or its authorized representative, at any time upon reasonable notice, Monday through Friday inclusive, between the hours of 9:00 a.m. and 5:00 p.m., either at its Airport office or its home



office, at the City's election, all records, record books, and pertinent information as may be required for audit purposes. If such an inspection is made by said authorized representative and it is determined as a result thereof that Concessionaire has underpaid the City by more than five percent (5%) of the amount to which it is entitled under Article 5 hereof, Concessionaire shall reimburse the City for its reasonable costs of making such inspection of said books and records, and this obligation of reimbursement shall be in addition to the obligation to pay any discovered underpayment. If an inspection determines that Concessionaire has underpaid the City by less than five (5%) percent of the amount to which it is entitled under the Agreement, Concessionaire shall reimburse the City the amount which it underpaid. Termination of this Agreement for fraud shall not serve to nullify such obligation.

#### **Article 7** **Covenants of City**

City hereby covenants and agrees that it shall take appropriate action within its authority to protect the rights and privileges demised and granted to the automobile rental Concessionaire or concessionaires under this and similar agreements. City agrees that it will not authorize or knowingly permit the solicitation or transaction of automobile rental business on the Airport premises, including but not limited to advertising displays; by any person or organization whatsoever, other than the said automobile rental concessionaires. City further agrees to instruct all of its employees and all concessionaires having contact or dealing in any way with members of the general public on the Airport: (1) to refer all requests for automobile rental services to one of the said authorized automobile rental services for which the customer shall indicate a preference, and to no other, and (2) to refer requests for automobile rental services where no preference is indicated only to the Airport automobile rental concessionaires located in the terminal building without favoring one over the other. Nothing in this Article shall entitle Concessionaire to damages in the event City fails to enforce strict compliance with this provision.

Concessionaire acknowledges that nothing herein prohibits City from entering into contracts with limousine, taxicab, or other ground transportation network companies or allowing such companies to provide services at the Airport.

#### **Article 8** **Indemnity and Insurance**

1. Concessionaire shall keep and hold harmless City, its officers, employees, and agents, from and against any and all claims, demands, suits, judgments, costs and expenses asserted by any person or persons, including officers, directors, agents or employees of City or Concessionaire, by reason of death or injury to persons, or loss or damage to property, resulting from Concessionaire's operations hereunder, or sustained in or upon the Premises as the result of anything claimed to be done or omitted to be done by Concessionaire hereunder. Concessionaire shall not be required to hold the City harmless from any act of gross negligence of the City or its employees. Nothing in this Agreement shall be construed to preclude, encumber or limit in any manner whatsoever, the City's rights, protections and privileges under governmental immunity, including the right to assert same in defense of any claim.

2. Concessionaire shall obtain and maintain continuously in effect at all times during the term hereof, at Concessionaire's sole expense, commercial general liability insurance protecting City and owners against liability which may accrue against City or owners by reason of Concessionaire's wrongful conduct incident to the use of the Premises or resulting from any accidents occurring on or about the roads, driveways, or other public places used by Concessionaire at the Airport in the operations hereunder caused or arising out of any wrongful act or omission by Concessionaire. Such insurance shall provide minimum liability limits of \$2,000,000 for each occurrence; and shall name City, its' officers, directors, agents and employees as additional insureds as their interest may appear arising out of the conduct of the Concessionaire thereunder. Concessionaire shall also, without cost to City, obtain and maintain, during the term hereof, commercial automobile liability insurance covering the operation of rental automobiles hereunder with a \$2,000,000 combined single limit. Concessionaire shall provide certificates evidencing all such insurance to City upon execution of this Agreement and annually thereafter. Any such policy of insurance shall include a provision requiring the City be provided a thirty (30) day written notice prior to any cancellation of same. Minimum insurance requirements are subject to change from time to time per City policy and ordinance.

3. Concessionaire shall furnish to the City satisfactory evidence that it carries workers' compensation insurance in accordance with the laws of the State of North Dakota.

4. City agrees to notify Concessionaire in writing as soon as practicable of any claim, demand or action arising out of an occurrence covered hereunder, and to cooperate with Concessionaire in the investigation and defense thereof.

#### **Article 9** **Cancellation by City**

This Agreement and all rights, interests, covenants, and obligations created hereunder may be terminated by City upon written notice to Concessionaire upon or after the happening of any one of the following events:

1. Default by Concessionaire in the performance of any term, covenant, or condition to be performed by Concessionaire hereunder, and such default is not remedied within thirty (30) calendar days from and after written notice to it by the City of such default. The acceptance of any monies by City after default shall not be deemed to have waived the right of termination by City nor shall City be stopped from evicting Concessionaire from the Premises and terminating this Agreement.

2. Concessionaire shall (1) make an assignment for the benefit of creditors, (2) file a voluntary petition in bankruptcy or consent to the appointment of a receiver of its property, or (3) be adjudged bankrupt.

**Article 10**  
**Cancellation by Concessionaire**

This Agreement and all rights, interests, covenants and obligations created hereunder may be terminated by Concessionaire upon or after the happening of any one of the following events:

1. Default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such default, or initiate corrective action if the remedy cannot be completed in the prescribed cure period, for a period of thirty (30) calendar days after receipt from Concessionaire of written notice to remedy the same; provided, however, that no notice of cancellation, as above provided, shall be of any force or effect if City shall have remedied the default prior to receipt of Concessionaire's notice of cancellation.
2. Issuance by any court of competent jurisdiction of an injunction preventing or restraining the use of the terminal in such a manner and to such an extent as to materially interfere with the operation of Concessionaire's automobile rental concession and the remaining in force of such injunction for a period of at least ninety (90) calendar days.
3. Inability of Concessionaire to use, for a period in excess of sixty (60) calendar days, the terminal building or any of the premises, facilities, rights, services or privileges leased to Concessionaire hereunder, because of fire, explosion, earthquake, other casualty, or acts of God or the public enemy provided that same is not caused by acts, omissions, or negligence of Concessionaire.
4. Lawful assumption by the United States Government or any authorized agency thereof of the operation, control or use of the Airport and facilities in such a manner and to such extent as to materially interfere with the operation of Concessionaire's automobile rental concession for a period of at least sixty (60) calendar days.

**Article 11**  
**Survival of the Obligations of the Concessionaire**

1. In the event that this Agreement shall have been terminated in accordance with the provisions of Articles 9 or 10, all the obligations of the Concessionaire under this Agreement shall survive such termination and shall remain in full force and effect for the full term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the City to the same extent, at the same time or times, and in the same manner as if no termination had taken place. The City may maintain separate actions to recover the damage or deficiency then due or at its option and at any time may accelerate the remaining balance due and sue to recover the full deficiency less the proper discount, for the entire unexpired term of this Agreement.
2. The amount of damages for the period of time subsequent to termination on account of the Concessionaire's rental obligations shall be the sum of the following:
  - a. The amount of the total of all installments of rents, fees, and charges less the installments thereof paid prior to the effective date of termination except that the credit to be allowed for the installment payable on the first (1st) day of the month in which

the termination is effective shall be prorated for the part of the month the Agreement remains in effect on the basis of the total days in the month; and

b. An amount equal to all expenses incurred by the City, and not reimbursed in connection with regaining possession, restoring the Premises, acquiring a new Agreement for the Premises, legal expenses (including but not limited to attorney fees), and putting the Premises in order.

3. There shall be credited to the account of the Concessionaire against its survived obligations hereunder; a) the amount actually received from any Concessionaire, licensee, permittee, or other occupier in connection with the use of the said Premises or portion thereof during the balance of the term of use and occupancy as the same is originally stated in this Agreement and, b) the market value of the occupancy of such portion of the Premises as the City may itself during such period actually use and occupy. No such use and occupancy shall be or be construed to be an acceptance of a surrender of the Premises, nor shall such use and occupancy constitute a waiver of any rights of the City hereunder. The City will use reasonable efforts to mitigate damages to Concessionaire under this Article.

#### **Article 12** **Use Subsequent to Cancellation or Termination**

1. The City, upon termination or cancellation pursuant to Articles 9 or 10 hereof, may occupy the Premises or may enter into an agreement with another tenant, and shall have the right to permit any person, firm or corporation to enter upon the Premises and use the same. Such use may be of part of the Premises, or of the entire Premises, together with other premises, and for a period of time the same as or different from the balance of the Term hereunder remaining, and on terms and conditions the same as or different from those set forth in this Agreement.

2. The City shall also, upon said termination or cancellation have the right to repair and to make structural or other changes in the Premises, including changes which alter its character and the suitability thereof for the purposes of the Concessionaire under this Agreement.

#### **Article 13** **Rights of Entry Reserved**

1. The City, by its officers, employees, agents, and contractors, shall have the right at all reasonable times to enter upon the Premises whether in preferential or joint use areas for purposes of inspection and for other purposes permitted by this Agreement.

2. Without limiting the generality of the foregoing, the City, by its officers, employees, agents, contractors and furnishers of utilities and other services, shall have the right at its own cost and expense, whether for its own benefit, or for the benefit of others, to maintain existing and future mechanical, electrical and other utility systems and to enter upon the Premises at all reasonable times to make such repairs, replacements or alterations thereto, as may, in the opinion of the City, be necessary or advisable, and from time to time to construct or install over, in or under the Premises, such systems or parts thereof and, in connection with such

3. Any use by the City of the Premises for access, repair, alteration, or new construction shall be performed by the City with reasonable dispatch and the Premises shall be left in as good order and condition as it was prior to commencement of the work.

**Article 16**  
**Taxes, Licenses, Debts and Liens**

1. The Concessionaire shall promptly pay, when due, any and all taxes or assessments which may be assessed upon the Premises or its property located at the Airport.
2. The Concessionaire shall promptly pay, when due, all taxes, license fees, and permit fees applicable to its business and acquire and keep current all licenses, municipal, state, and federal, required as a result of its operations at the Airport. Such taxes include any real property taxes that may arise as a result of Concessionaire's lease and use of the Premises.
3. The Concessionaire shall promptly pay, when due, all bills, debts, and obligations incurred by Concessionaire in connection with its operations or activities at the Airport
4. The Concessionaire shall have no power to do any act or make any contract which may create any lien, mortgage, or other encumbrance upon an interest of the City in the Airport Premises or the buildings or improvements thereon. If, because of any act or omission (or alleged act or omission) of Concessionaire, any mechanic's, construction or other lien is filed against the Premises, any improvements thereon, or against the City (whether or not such lien, charge or order is valid or enforceable as such), Concessionaire shall, at its cost and expense, cause the same to be canceled and discharged of record or bonded within ten days after notice to Concessionaire of the filing thereof; and, the Concessionaire shall indemnify, defend, and save the City harmless against all costs, expenses, liabilities, losses, damages, suits, fines, penalties, claims and demands, including reasonable attorney fees, resulting therefrom. If Concessionaire fails to have the lien canceled, discharged, or bonded as aforesaid, then the City may, after serving twenty-four hours' notice on Concessionaire, pay the amount of said lien, or discharge the same by depositing or filing the bond required by law, and may pay any judgment recovered under such claim. The amount or amounts so paid or deposited, and all expenses incurred, including attorney's fees, shall, at the option of the City, be deemed additional rent and added by the City to the next or any subsequent installment of rent hereunder, and the City at its option shall have the same remedies for the nonpayment thereof as for the nonpayment of rent reserved.

**Article 17**  
**Conformity with Laws, Ordinances, Rules and Regulations, and Grant Assurances**

1. From time to time the City, State, or Federal government may adopt and enforce rules and regulations with respect to the occupancy and use of the Airport. The Concessionaire agrees to observe and obey any and all such rules and regulations and all other federal, state and municipal rules and regulations, laws and ordinances, Grant Assurances, and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same. The City reserves the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with such rules, regulations or laws and ordinances. The Concessionaire shall be liable for any and all fines and penalties assessed against the City as a result of actions or omissions by the Concessionaire, its employees, agents, representatives or contractors.
2. The Concessionaire shall indemnify, defend and hold harmless the City, its officers, directors, agents and employees from any and all claims, liabilities, damages, losses, fines,

penalties, or expenses, including costs of suit and attorney fees, which any or all of them may hereafter incur, be responsible for, or pay out arising out of the violation of any federal, state, or local law, ordinance, rules or regulations by said Concessionaire, its agents, employees, representatives or contractors.

#### **Article 18**

##### **Airport Concession Disadvantaged Business Enterprise (ACDBE) Compliance**

- A. The City has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The concessionaire is required to participate in the City's ACDBE program.
- B. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by Title 49 CFR Part 23.
- C. The concessionaire or contractor agrees to include the statement set forth in paragraph B in any subsequent concession agreement or contract covered by Title 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
- D. The City has available several remedies to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:
  - 1. Breach of contract action, pursuant to the terms of this contract;
  - 2. Breach of contract action, pursuant to applicable State Statutes
- E. The federal government has available several enforcement mechanisms that it may apply to firms participating in the ACDBE problem, including, but not limited to, the following:
  - 1. Suspension or debarment proceedings pursuant to 49 CFR part 23;
  - 2. Enforcement action pursuant to 49 CFR part 31; and
  - 3. Prosecution pursuant to 18 USC 1001.
- F. The City will comply with all regulations set forth in 49 CFR Part 23 and will monitor concessionaires at the Airport for compliance with the ACDBE program.
- G. The City will submit to the Federal Aviation Administration's, Regional Civil Rights Office, an annual ACDBE participation report showing the commitments and attainments. The City will take measures to ensure nondiscriminatory participation of ACDBEs in concession, and other covered activities.



**Article 19**  
**Grant Assurances**

This Agreement shall be subordinate to the provisions of any existing or future agreement between City and the United States, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Grant Assurance 22, Economic Nondiscrimination, requires sponsors to make aeronautical facilities available to the public and their tenants on reasonable terms and without unjust discrimination.

**Article 20**  
**General Provisions**

1. The City reserves the right to further develop or improve the Airport at its sole discretion.
2. The City reserves the right to maintain and keep in repair the landing area and all publicly owned facilities of the Airport, together with the right to direct and control all activities of Concessionaire in this regard.
3. During a time of war or national emergency, the City shall have the right to lease the landing area or any part of the Airport to the United States Government for military or naval use, and, if such lease is executed, the provisions of this Agreement, insofar as they are inconsistent with the provisions of the Lease to the government, shall be suspended.
4. The City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or any other structure on, or adjacent to, the Airport, which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to air navigation, as determined by the appropriate federal rules and regulations including, but not limited to, 14 CFR Part 77.
5. Waivers. Failure by the City to insist upon the strict performance by the Concessionaire of any of the terms or conditions herein contained shall not constitute a waiver of the City's right to thereafter enforce any such term or condition, but the same shall continue in full force and effect. The exercise of any right to terminate arising under this Agreement shall not operate to deprive the City of any coexisting right to seek damages or other remedies arising from the defaults of the Concessionaire.
6. The acceptance of rents or fees or the continued performance by the City of its obligations under this Agreement after a default by the Concessionaire in its performance of any of its obligations under this Agreement shall not be deemed a waiver of the City's right to terminate this Agreement for such default other than a default in the payment of rents or fees which are subsequently accepted by the City.
8. Applicable Law. This Agreement shall be performable and enforceable in Ward County, North Dakota, and shall be construed in accordance with the laws of the State of North Dakota.

9. This Agreement is made for the sole and exclusive benefit of the City and the Concessionaire, their successors and assigns, and is not made for the benefit of any third party.

10. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

11. The titles of the several Articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

12. Nothing herein contained shall create or be construed to create a co-partnership or joint venture between the City and the Concessionaire or to constitute the Concessionaire an agent of the City. The City and the Concessionaire each expressly disclaim the existence of such a relationship between them. Concessionaire is neither an employee nor agent nor contractor of City.

13. Quiet Enjoyment. The City agrees that, on payment of the rents, fees, charges, licenses, and taxes provided for in this Agreement and the performance of the covenants and agreements on the part of the Concessionaire to be performed pursuant to this Agreement, the Concessionaire shall peaceably have the Premises subject to the provisions of this Agreement.

14. Invalid Provisions. In the event any covenant, condition or provision contained in this Agreement is held to be invalid by any Court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenants, conditions or provisions contained in this Agreement; provided that the invalidity of such covenant, condition or provision does not materially prejudice either the City or the Concessionaire in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

15. Interpretation of Agreement. Nothing in this Agreement shall be construed or interpreted in any manner whatsoever as limiting, relinquishing or waiving any right of ownership enjoyed by the City in the Airport property, or in any manner waiving or limiting the City's control over the management, operation, or maintenance of the Airport property, except as specifically provided for in this Agreement, or in any manner impairing the governmental rights of the City.

16. Force Majeure. Neither the City or Concessionaire shall be deemed to be in violation of this Agreement for failure to perform any of its obligations hereunder, by reason of strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of public authority, flight restrictions, weather conditions, riots, rebellion, accidents, sabotage or any other events, conditions or circumstances for which it is not responsible and/or which are not within its control.

18. This Agreement shall be subordinate to the provisions of any existing or future Agreement between the City and the United States of America or the State of North Dakota relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal or State funds for the development of the Airport, or to any security requirements of State or Federal Government, including temporary security procedures or instructions.

**Article 21**  
**Entire Agreement**

1. This Agreement consists of Articles 1 to 21, inclusive, and Exhibits A, B, and C.
2. The parties agree that this Agreement forms the entire agreement of the parties hereto and may not be changed, modified, discharged or extended except by written instrument duly executed by the City and the Concessionaire unless otherwise provided herein. The parties agree that no other representations or agreements shall be binding upon the City or the Concessionaire unless expressly provided for in this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers and their respective seals to be hereunto affixed this \_\_\_\_\_ day of 2024.

ATTEST:

CITY OF MINOT

\_\_\_\_\_  
City Clerk

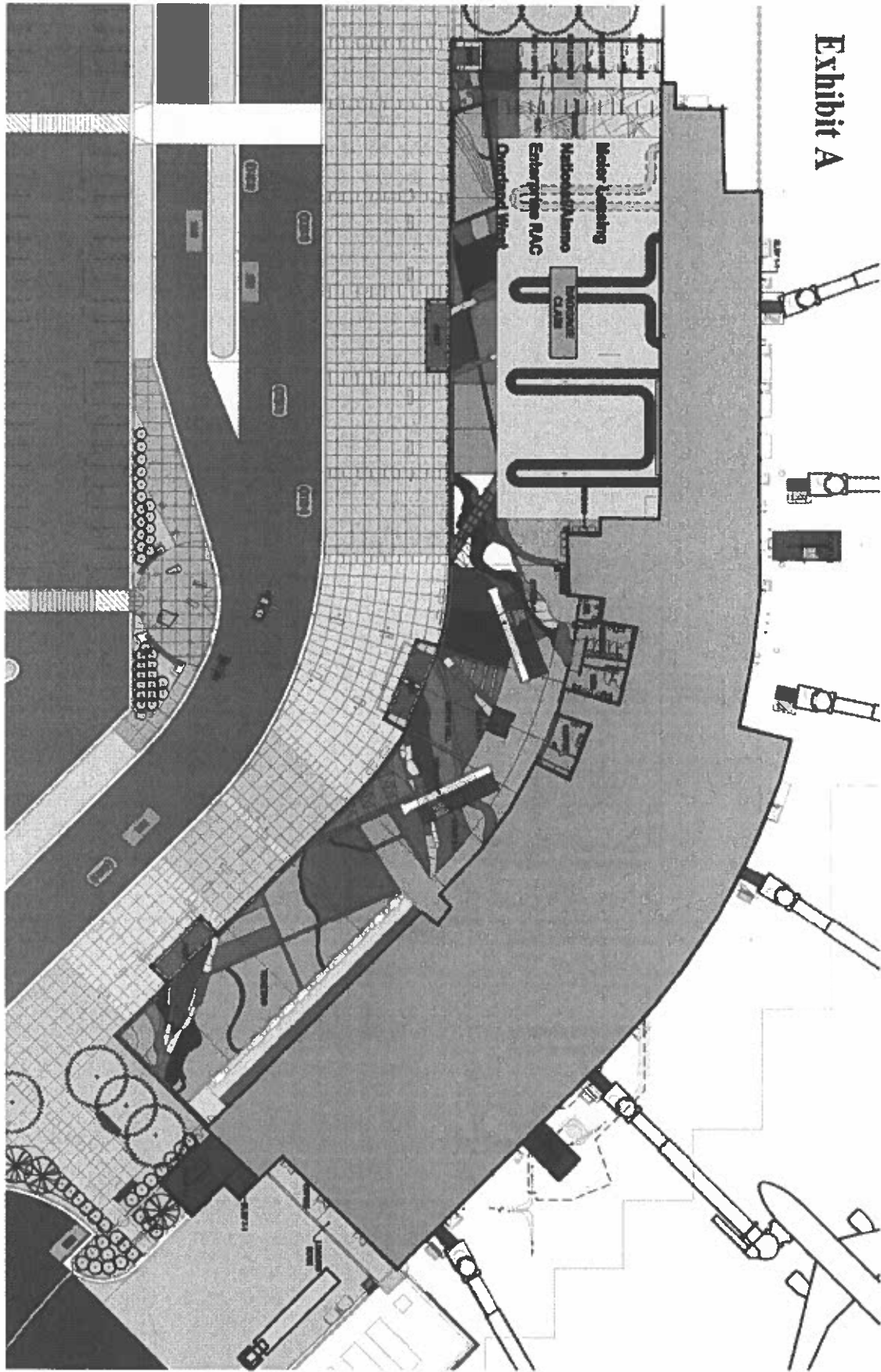
BY: \_\_\_\_\_  
Mayor

ATTEST

\_\_\_\_\_  
Witness

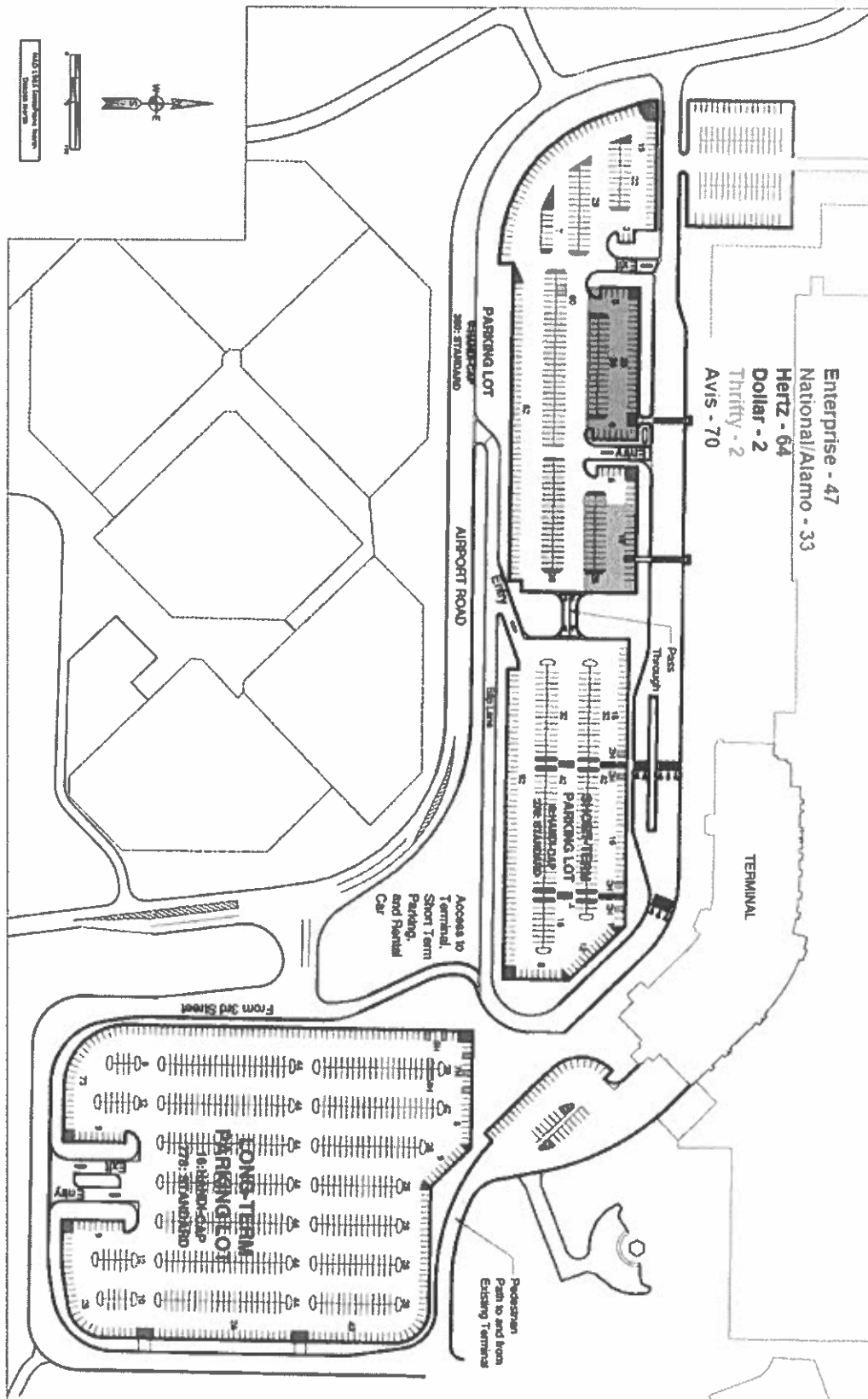
BY: \_\_\_\_\_  
Authorized Signor

Exhibit A  
Terminal Premises



## Exhibit B Parking Stalls

### Exhibit B - Ready Return Stall Allocation



Minot International Airport  
Parking Lot Facilities

## Exhibit C MAG, Ready Return Stalls, and Leased Premises

### A. MAG and Ready Return Stalls

The undersigned submits the following information which shall be included as Exhibit C to the Minot International Nono-Exclusive Airport Rental Car Concession Agreement and Lease:

1. Brand(s) to be operated (up to three brands may be operated per agreement):

Enterprise Rent-A-Car  
Alamo Rent A Car  
National Car Rental

2. Minimum Annual Guarantee per brand:

Brand	Minimum Annual Guarantee Year One (2024)
<u>Enterprise Rent-A-Car</u>	<u>\$141,174.25</u>
<u>Alamo Rent A Car</u>	<u>\$28,390.40</u>
<u>National Car Rental</u>	<u>\$73,003.90</u>
	<b>Total - \$242,568.55</b>

3. Number of ready/return stalls requested:

Brand	Ready/Return Stalls Requested
<u>Enterprise Rent-A-Car</u>	<u>47</u>
<u>Alamo Rent A Car</u>	<u>9</u>
<u>National Car Rental</u>	<u>24</u>

### B. Leased Premises

- 1a. Ticket Counter and Office Space **Enterprise Rent A Car**: 450 Square Feet

Rate per Square Foot: \$18.70 (2024 rate subject to adjustment annually)

Total Annual Amount Due: \$8415.00

Total Monthly Amount Due: \$701.25

- 1b. Ticket Counter and Office Space **National/Alamo**: 450 Square Feet

Rate per Square Foot: \$18.70 (2024 rate subject to adjustment annually)

Total Annual Amount Due: \$10,518.75<sup>1</sup>

Total Monthly Amount Due: \$876.56

<sup>1</sup> Please refer to Article 5 Section 1 Paragraph 1: in the event Concessionaire operates two (2) rental car brands as identified in Article 1, paragraph 3 from one counter position, the rental rate for a single position shall be at a rate of one hundred twenty five percent (125%) of the applicable base rental rate.

2. Ready Return Stalls: Total Per Brand

Brand Enterprise Rent-A-Car Stalls 47

Brand Alamo Rent A Car Stalls 9

Brand National Car Rental Stalls 24

Total Stalls 80

Rate per Stall: \$15.00 (2024 rate subject to adjustment annually)

Total Annual Amount Due: \$14,400.00

Total Monthly Amount Due: \$1200.00

Authorized Signature:



Typed Name: Steven Octaney

Title: VP/GM

Date: 3/6/24





**TO:** Mayor Tom Ross  
Members of the City Council

**FROM:** Jennifer Eckman, Airport Director

**DATE:** March 18, 2024

**SUBJECT: SEH CONTRACT FOR TAXIWAY C/C3 RECONSTRUCTION FINAL DESIGN (CITY PROJECT NUMBER #2024500005/ AIP 3-38-0037-72-2024)**

**I. RECOMMENDED ACTION**

1. Direct staff apply for state and federal funding to assist with the financing and rehabilitation of Taxiway C/C3 project; and
2. Approve the supplemental letter agreement with Short Elliott Hendrickson Inc. (SEH) to design the rehabilitation of Taxiway C/C3 in form; and
3. Upon receipt of federal and/or state funding, authorize the Mayor, Airport Director, and City Attorney to execute grants and the Supplemental Agreement.

**II. DEPARTMENT CONTACT PERSONS**

- |   |          |
|---|----------|
| A. Jennifer Eckman, Airport Director          | 857-4724 |
| B. Maria Romanick, Airport Operations Manager | 857-4724 |

**III. DESCRIPTION**

A. Background

Taxiway C and C3 at the Minot International Airport (MOT) are experiencing deterioration and needs repair. The 2021 Pavement Condition Index (PCI) report for these sections range from 39 – 57, with the PCI projected to deteriorate to 31-52 by 2025 when the reconstruction is anticipated to take place, warranting repair. Pavement distresses noted in the last PCI inspection include alligator cracking, depressions, longitudinal and transverse cracking, raveling, and weathering.

The construction of the southern half of Taxiway C South (between TW C4 and C5) was completed in 2002, and the northern half of TW C south (between RW 8/26 and TW C4) was last constructed in 1998 (4" overlay). Taxiway C3 was constructed in 2002.

Rehabilitation is necessary to provide adequate and safe access to and from the terminal facilities to Runway 13/31, the primary runway for the Minot International Airport.

B. Proposed Project

The proposed final design project includes project formulation, completion of the Engineer’s Design Report, Final Design, Plans and Specifications, Bidding and Award, and FAA coordination. The project will consist of a rehabilitation of the taxiway pavement, including a four-inch mill and overlay of the bituminous pavement.

The construction project will include the pavement repairs discussed above and also the replacement of associated electrical systems, edge lighting and signage. The existing electrical systems have reached the end of their useful life and need replacement to prevent failure. The existing systems will be replaced with new LED lighting systems.

While under construction, access will remain to Runway 13/31. Temporary closures of Taxiway C and C3 will be necessary during construction and a phasing plan will be determined minimize impacts to air traffic. Alternative taxi routes will be provided during these periods, so access is maintained throughout construction.

C. Consultant Selection

SEH is the engineer of record for MOT airport development as was approved at the City Council meeting on May 17, 2021.

**IV. IMPACT:**

A. Strategic Impact:

Safe use of the taxiways is of utmost importance to providing safe and efficient aviation transportation for the Minot Community.

B. Service/Delivery Impact:

By designing a solution to address the deteriorating structural components of the airport’s taxiways, this project will allow for continued safe operations for general aviation and emergency vehicles at the Minot International Airport.

C. Fiscal Impact:

The anticipated cost of this project is outlined below, and it is included in the 2024 CIP for the Minot International Airport:

Project Costs:

Project Final Design and Labor	\$ 318,800.00
<u>Direct Expenses</u>	<u>\$ 25,600.00</u>
<b>TOTAL</b>	<b>\$ 344,400.00</b>

Project Funding

The funding will come from the FAA Airport Improvement Program (AIP). The airport receives approximately \$1.6M of AIP entitlement funding annually, in addition to the carry-over from previous years. Project funding beyond the available AIP funding will be funded with FAA discretionary funding. The preliminary design effort will scope the project accordingly to match City, NDAC, and FAA budgets. It

is projected that the City of Minot share will be 5 percent of total project costs.

**V. CITY COUNCIL ASPIRATIONS**

The City Council aspirations that are achieved by adopting the proposed recommendation and completing this project include providing a safe and welcoming environment at the Airport.

**VI. ALTERNATIVES**

An alternate the City Council could recommend that this project be postponed or denied, resulting in a delay for repairs and the potential for structural failure of the airport's taxiways. Poor pavement condition could result in taxiway closure, causing delays for air traffic control's ability to taxi aircraft efficiently.

**VII. TIME CONSTRAINTS**

The following project schedule is intended to accommodate City and FAA funding and grant schedule requirements:

1. March 18 - City Council approves final design
2. March – April 2024 – Complete Final Design
3. April 2024 – Bidding and award.
4. Fall 2024/Summer 2025 – Construction

**VIII. LIST OF ATTACHMENTS**

- A. SEH Proposal - Supplemental Letter Agreement – Taxiway C/C3 Rehabilitation

## Supplemental Letter Agreement

In accordance with the Master Agreement for Professional Services between City of Minot, North Dakota ("Client"), and Short Elliott Hendrickson Inc. ("Consultant"), effective 8/31/2021, this Supplemental Letter Agreement dated \_\_\_\_\_ authorizes and describes the scope, schedule, and payment conditions for Consultant's work on the Project described as: Taxiway C/C3 Rehabilitation and Edge Lighting - Design.

**Client's Authorized Representative:** Jennifer Eckman, Airport Director

**Address:** Minot International Airport (MOT)  
305 Airport Road Suite 216, Minot ND 58703

**Telephone:** 701-857-4724 **email:** jennifer.eckman@minotnd.org

**Project Manager:** Lindsay Reidt, PE

**Address:** 3535 Vadnais Center Dr.  
St. Paul, MN 55110-5196

**Telephone:** 763-370-4055 **email:** lreidt@sehinc.com

**Scope:** The Basic Services to be provided by Consultant are included in Attachment A.

**Schedule:** Services to be initiated at the direction of the City of Minot, with a service completion date no later than September 30, 2024. A schedule is included in Attachment A.


**Payment:** A retainer in the amount of \$0.00 will be paid in advance of Consultant starting work and will be applied to the final invoice(s). The lump sum fee is \$344,400.00 including expenses and equipment. See Attachment B reflecting the estimate of labor, fees, and expenses.

The payment method, basis, frequency, and other special conditions are set forth in attached Exhibit A-2.

**Other Terms and Conditions:** Other or additional terms contrary to the Master Agreement for Professional Services that apply solely to this project as specifically agreed to by signature of the Parties and set forth herein: None.

**Short Elliott Hendrickson Inc.**

**City of Minot, North Dakota**

By:   
Shawn McMahon  
Title: Regional Practice Center Leader

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTACHMENT A**  
**Minot International Airport (MOT)**  
**Minot, North Dakota**  
**Taxiway C Rehabilitation**  
**FAA AIP 3-38-0037-072-2024 AIP**  
**Scope of Work - Design**

**General** –This project includes the design and construction of a pavement rehabilitation of Taxiway C south of Runway 8/26, as well as Taxiway C3 west of Taxiway C. Dimensions and corresponding PCIs of each section are as follows:

Txy C (between Txy D & C4) – 2200' x 75', PCI 57

Txy C (between Txy C4 & C6) – 1965' x 75', PCI 48

Txy C3 (between Txy B & C) – 920' x 75', PCI 46-48

Txy C3, (west of Txy B) – 485' x 75', PCI 39-53

This pavement is deteriorating and is in need of rehabilitation. The 2021 Pavement Condition Index (PCI) report for these sections range from 39 – 57, with the PCI projected to deteriorate to 31-52 by 2025, warranting rehabilitation. Pavement distresses noted in the last PCI inspection include alligator cracking, depressions, longitudinal and transverse cracking, raveling and weathering. The construction of the southern half of C South was completed in 2002, and the northern half of C south was last rehabilitated in 1998 (4" overlay). Last construction date for Taxiway C3 is 2002. Rehabilitation is necessary to provide adequate and safe access to and from Runway 13/31, the primary runway for the Minot International Airport.

Included in the project would be milling of the surface of the existing pavement section and installation of a new section of FAA P-401 Asphalt Surface course pavement, to re-establish the pavement crown and facilitate drainage. Additionally, the taxiway edge lights and circuitry would be replaced with state-of-the-art LED lighting. The specific number of fixtures and existing suitability will be evaluating in the Engineer's Design Report. The existing circuitry and light fixtures have exceeded their useful life and continue to pose ongoing maintenance challenges to the airport. **Per North Dakota Century Code (Section 48-01.2-06) the taxiway edge lighting portion of this project will be included as a separate bid package, including stand alone plans and specs.**

Contractor access is anticipated to be provided via a temporary haul road southwest of the project area. Alternative taxi routes can be provided during construction. See attached **Figure 1**. The phasing plan and schematics will be presented in the Engineer's Design Report.



**Figure 1. Project Exhibit**

**Proposed project schedule:**

March 18, 2024 – City of Minot consideration of Design contract

April 2024 – Submit Engineer's Design Report and CSPP to FAA

May 2024 – Final plans and specifications posted for bidding (Design contract complete)

June 2024 – Bid opening

June 2024 – City of Minot consider Construction Administration contract and Contract Award contingent upon grant reception

June 2024 – Grant application submittal

June 2024 – Start SEH Construction Administration contract

Summer 2025 – Construction

*(Construction administration services, as well as completion of the grant closeout report, will be included in subsequent work orders.)*

**Taxiway C Rehabilitation (Design) - Project Deliverables** – The project deliverables of this scope include the following:

1. Project Formulation
2. Engineer's Design Report
  - a. Including Construction Safety and Phasing Plan (CSPP) and Safety Plan Narrative
  - b. 7460/Airspace Submittal
3. Environmental determination (Categorical Exclusion)
4. Plan drawings
5. Bidding documents (separate bid sets for pavement and electrical)
6. FAA Plan and Specification review
7. Bidding and contract award recommendation
8. Project management and meetings

#### **Work Element 1: Project Formulation**

**Task 1.1 – Scoping, Review, and Coordination** – Short Elliott Hendrickson (SEH and/or Consultant) will coordinate with the Minot International Airport (MOT) (sponsor) to develop the appropriate scope of work approved by funding partners. Additional coordination will include task definition and establishment of project goals and objectives. The scope of work will be presented to FAA and NDAC for review and will be updated based on input received.

**Task 1.2 – Project Formulation** – SEH will complete the project and grant pre-application documentation, environmental review submittals, cost breakdowns, and eligibility determinations for the approved scope of work.

#### **Work Element 2: Engineer's Design Report**

**Task 2.1 – Engineer's Design Report** – Complete Engineer's Design Report according to FAA requirements and submit to FAA for review at 60%. The report will be completed with the following sections:

**Scope of Work** – SEH will develop a brief narrative of the work scope, delineation of eligible/ineligible work items, any unique or unusual situations, and historical background on the proposed project. Three meetings are estimated with sponsor and/or FAA to review the project.

**Photographs** – SEH will coordinate with MOT staff to capture photographs of representative areas of existing site conditions of the pavement. The photographs will be included within the report.

**Applicable AIP Standards** – All applicable AIP standards will be referenced in the report by FAA Advisory Circulars.

**Airport Operational Safety Considerations** – SEH will develop a preliminary Construction Safety and Phasing Plan (CSPP), and confirm with sponsor and FAA, to evaluate proposed phasing and sequencing, construction limits, haul routes, contractor staging areas, and anticipated impacts to airport users. All airport facilities, including approach procedures and navigational aids, will be evaluated for potential impacts due to construction. Special attention will be taken for the impacts at intersections, such as Taxiway D and Runway 8/26 and the connector from the GA apron to Taxiway B. Construction Safety and Phasing Plan and Safety Plan Narrative will be delivered to FAA for review and comment during EDR review process.

As part of the EDR completion and CSPP submittal, a list of local, airport, and FDC NOTAMS will be drafted.

**Pavement Design** – SEH will utilize the geotechnical information obtained during preliminary efforts, most recent PCI report date, and project as-built information to evaluate the current pavement condition and proposed design criteria. It is anticipated that varying mill depths and



overlay thicknesses may be utilized for each unique pavement section and will be analyzed throughout design. Where applicable, FAARfield analysis will be completed to validate the pavement design. Pavement thickness will be verified with FAA and the airport based on current fleet mix.

**Drainage Design** – Drainage away from taxiway pavement and intersections will be analyzed during design. Crowned slope improvements via profile milling or varying overlay thicknesses will be analyzed with previously obtained survey data. Initial requirements for grading will be discussed in the EDR.

**Airfield Lighting and Signage** – Airfield lighting and signage will be included in the design. Existing edge lighting and signage along Taxiway C and C3 will be analyzed for replacement needs. Additional impacted lights and signs will be identified for covering and/or deactivation during closures.

**Navigational Aids** – NAVAIDs are not anticipated to be impacted by the project, but full analysis will be included in design.

**Pavement Marking** – SEH will develop a preliminary pavement marking plan and details for affected work areas as part of reconstruction to be included as part of the report.

**Environmental Considerations** – SEH will complete a request for environmental Categorical Exclusion (CATEX) for the project. It is anticipated the a documented CATEX will be required. SEH will also identify necessary permits, including but not limited to NPDES and developing a Stormwater Pollution Prevention Plan (SWPPP) in concert with preliminary erosion control plans, if required for contractor to procure.

**Existing Utilities** – SEH will develop a drawing that identifies and delineates existing underground utilities in and adjacent to the project area.

**Miscellaneous Work Items** – SEH will provide a narrative to address other work components of the project, such as turf establishment, site access, and other related work items.

**Benefit Cost Analysis** – The proposed pavement will be bituminous. A detailed BCA will not be required.

**Modification to AIP Design Standards** – No modifications to design standards are anticipated, but this task will explore all preliminary design items to confirm that no modifications to design standards will be requested.

**AIP Non-eligible Work Items** – Any potential non-eligible work items will be identified. If non-eligible work items are identified, the process for separating these work components from eligible components will be addressed.

**Disadvantaged Business Enterprise (DBE)** – The current status of the Sponsor's DBE program and project requirements will be identified and included in the report.. SEH will assist Sponsor in determining goal and good faith effort determinations, as well as including specification language in bidding documents.

**Project Schedule** – SEH will develop a schedule and associated chart to identify the project schedule and milestones during the design and bidding process.

**Engineer's Estimate of Probable Cost** – SEH to provide an itemized summary of the engineer's estimate of probable construction costs. Any ineligible work components will be called out separately. Local, state, and federal funding sources will be shown.

**Preliminary Project Budget** – SEH will develop a preliminary project budget that will include anticipated engineering costs, construction costs, and administrative costs. Potential funding sources and prorations will also be included.

### **Work Element 3: Plan Drawings for Taxiway C and C3 Rehabilitation and Edge Lighting**

Final design and plan drawings will be prepared in accordance with federal and state guidelines. FAA Advisory Circular (AC) 150/5300-13B, *Airport Design*, will be utilized in the development of the plan sets (two separate bid packages). Other applicable ACs, FAA

Orders, Regulations and Policy Memorandums will be used as needed. Specific tasks included with this work element include:

**Task 3.1 – Environmental Coordination and Permits** – SEH will refine the draft Stormwater Pollution Prevention Plan (SWPPP) and erosion control plans completed as part of the Engineer's Design Report. Additionally, the scope of work includes coordination of the following permits:

- North Dakota Pollution Discharge Elimination System permit application

**Task 3.2 – Construction Safety and Phasing Plan Development** – SEH will refine and update the preliminary Construction Safety and Phasing Plan (CSPP) that was developed as part of the Engineer's Design Report. SEH will meet with MOT staff, FAA staff (including ADO and Tech Ops), airfield tenants and users to evaluate potential risks and determine appropriate mitigation tactics. The preliminary CSPP will be enhanced to determine final phasing and sequencing, construction limits, haul routes, contractor staging areas, and anticipated impacts to airport users and airfield facilities. A review and coordination meeting will be held with MOT and FAA prior to 7460 submittal to limit closure times and impact to IFR procedures. A figure will include points of interest requested by FAA, including RSA, OFZ, and TOFA. A final CSPP will be uploaded for FAA airspace review via the 7460 OE/AAA review process.

**Task 3.3 – Construction Plan Sheets** – Specific plan sheets to be developed and included in the plan set are as follows:

**3.3.1 - Plan Set 1 – Taxiway Rehabilitation**

- Title Sheet
- Construction Safety Plan
- Construction Phasing Plan
- Terminal Access Route Plan
- Statement of Estimated Quantities
- Details and Construction Notes
- Utility Locations Plan, showing impacts to lights, sign, NAVAIDS, and markings.
- Typical Section(s)
- Removal Plan
- Erosion Control Plan and Details
- Topography/Grading Plan
- Plan/Profile drawings for new pavement
- Pavement Jointing Plan and Details
- Pavement Marking Plan and Details

**3.3.2 - Plan Set 2 – Taxiway Lighting**

- Title Sheet
- Construction Safety Plan
- Construction Phasing Plan
- Terminal Access Route Plan
- Statement of Estimated Quantities
- Details and Construction Notes
- Utility Locations Plan, showing impacts to lights, sign, NAVAIDS, and markings.
- Removal Plan
- Erosion Control Plan and Details
- Electrical Plan and Details

**Task 3.4 – Quality Control Site Visit** – SEH will conduct a quality control site visit during final design to verify base maps, utility locations, light locations, grades, and other relevant site features to ensure conformance to bidding documents, and overall impacts to airport infrastructure.

#### **Work Element 4: Construction Bidding Documents for Taxiway C/C3 Rehabilitation and Taxiway Edge Lighting**

Elements of the Construction Bidding Documents will be prepared in accordance with FAA Advisory Circulars (AC) 150/5300-13B, *Airport Design* and other applicable AC's, Orders, Regulations and Policy Memorandums. Specific tasks included with this work element include:

**Task 4.1 – Construction Bidding Documents** – A bid proposal project manual will be prepared for each bid package that will consist of a table of contents, advertisement for bids, proposal documents, schedule of prices, bid alternatives (if applicable), State and Federal requirements, wage rates, technical specifications, required FAA standard contracts and clauses, DBE goals and GFE, and special provisions.

#### **Work Element 5: FAA Construction Plans and Specifications Review**

**Task 5.1 – FAA Coordination** – SEH will coordinate with the FAA on submitting a 60% EDR, complete set of construction plans, and specifications for FAA review.

**Task 5.2 – Review and Address FAA Comments** – SEH will review and address all FAA comments on the plans and specifications and develop documentation to track any comments received and how those comments were addressed.

#### **Work Element 6: Bidding and Contract Award Recommendation**

**Task 6.1 – Bidding and Award** – Assist the Client with obtaining construction bids for proposal improvements. Assist the Client with securing a grant from the Federal Aviation Administration for this project. SEH will bid two bidding packages, and advertise the documents separately. Make a recommendation to the Client on award of construction contract for each bid package.

**Work Element 7: Project Management** – This task includes the overall project management of Work Elements 1 through 6 noted above. Project Management includes administration of the project, design team meetings, agency and Sponsor meetings, airfield user and tenant outreach meetings, and related project administration tasks.

**Task 7.1 – Design Team Meetings and Sponsor Meetings** –This task includes meetings by the design team to discuss project elements, schedule, issues, and provide coordination between team members.

**Task 7.2 – Agency Meetings** –This task includes meetings by the design team, North Dakota Aeronautics Commission, FAA ADO, FAA Tech Ops, FAA ATC Tower manager, MOT staff, and other individuals and agencies as needed, to discuss the project design development, schedule, and any other related items.

**Task 7.3 – Overall Project Management** –This task includes project coordination and administration, including Sponsor and agency communication, internal meetings, subconsultant oversight, progress reports, budget updates and monthly invoices.

#### **Exclusions:**

1. Construction inspections
2. Construction administration
3. Contractor coordination
4. Post design services
5. Project Record Drawings
6. FAA Closeout Report

**Exhibit A-2**  
**to Supplemental Letter Agreement**  
**Between City of Minot, North Dakota (Client)**  
**and**  
**Short Elliott Hendrickson Inc. (Consultant)**  
**Dated \_\_\_\_\_**

**Payments to Consultant for Services and Expenses**  
**Using the Lump Sum Basis Option**

The Agreement for Professional Services is amended and supplemented to include the following agreement of the parties:

**A. Lump Sum Basis Option**

The Client and Consultant select the Lump Sum Basis for Payment for services provided by Consultant. During the course of providing its services, Consultant shall be paid monthly based on Consultant's estimate of the percentage of the work completed. Necessary expenses and equipment are provided as a part of Consultant's services and are included in the initial Lump Sum amount for the agreed upon Scope of Work. Total payments to Consultant for work covered by the Lump Sum Agreement shall not exceed the Lump Sum amount without written authorization from the Client.

The Lump Sum amount includes compensation for Consultant's services and the services of Consultant's Consultants, if any for the agreed upon Scope of Work. Appropriate amounts have been incorporated in the initial Lump Sum to account for labor, overhead, profit, expenses and equipment charges. The Client agrees to pay for other additional services, equipment, and expenses that may become necessary by amendment to complete Consultant's services at their normal charge out rates as published by Consultant or as available commercially. Amendment to be approved by Client in advance via written authorization.

**B. Expenses Not Included in the Lump Sum**

The following items involve expenditures made by Consultant employees or professional consultants on behalf of the Client and shall be paid for as described in this Agreement.

1. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client.
2. Other special expenses required in connection with the Project.

The Client shall pay Consultant monthly for expenses not included in the Lump Sum amount.

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**ATTACHMENT B**  
**ESTIMATED FEES AND EXPENSES**  
**TAXIWAY C/C3 REHABILITATION AND EDGE LIGHTING**  
**ENGINEER'S DESIGN REPORT, FINAL DESIGN, AND PLANS AND SPECIFICATIONS, BIDDING**  
**MINOT INTERNATIONAL AIRPORT (MOT)**  
**MINOT, NORTH DAKOTA**

Task No.	Task Description	Principal	Project Manager	Senior Engineer	Project Engineer	Project Engineer	Senior Airport Planner	Airport Planner	Senior Technician	Senior Technician	Admin Technician
<b>Project Formulation</b>											
1.1	Scoping, Review, and Coordination	2	10	10	10	10	12	8			
1.2	Project Formulation	2	4	6	10	10	10		5	5	2
<b>Engineer's Design Report</b>											
2.1	Engineer's Design Report	4	8	12	40	40	8	10	12	12	4
	Including:										
	Photographs										
	Applicable AIP Standards										
	Airport Operational Safety Considerations										
	Pavement Design										
	Drainage Design										
	Airfield Lighting and Signage										
	Navigational Aids										
	Pavement Marking										
	Environmental Considerations										
	Existing Utilities										
	Miscellaneous Work Items										
	Benefit Cost Analysis										
	Modification to AIP Design Standards										
	AIP Non-eligible Work Items										
	Disadvantaged Business Enterprise (DBE)										
	Project Schedule										
	Engineer's Estimate of Probable Cost										
	Preliminary Project Budget										
<b>Plan Drawings</b>											
3.1	Environmental Coordination and Permits	2	2	2	4	4	4	8	4	4	2
3.2	Construction Safety and Phasing Plan Development		8	8	20	20	4	16	20	10	
3.3.1	Construction Plan Sheets - Taxiway Rehab.	4	10	10	60	60	4	10	100	80	4
	Including:										
	Title Sheet										
	Construction Safety Plan										
	Construction Phasing Plans										
	Terminal Access Route Plan										
	Statement of Estimated Quantities										
	Details and Construction Notes										
	Utility Locations Plan										
	Removal Plan										
	Erosion Control Plan										
	Topography/Grading Plan										
	Plan/Profile Drawings										
	Pavement Jointing Plan and Details										
	Pavement Marking Plans and Details										
3.3.2	Construction Plan Sheets - Taxiway Edge Lighting	4	10	10	60	60	4	10	100	80	4
	Including:										
	Title Sheet										
	Construction Safety Plan										
	Construction Phasing Plans										
	Terminal Access Route Plan										
	Statement of Estimated Quantities										
	Details and Construction Notes										
	Utility Locations Plan										
	Removal Plan										
	Erosion Control Plan										
	Electrical Plan and Details										
3.4	Quality Control Site Visit			12	12				6		
3.5	Drawing Quality Control Reviews	8	8	8	12	12			8		
<b>Construction Bidding Documents</b>											
4.1.1	Construction Bidding Documents - Taxiway Rehab	2	10	10	20	20		10	4	4	12
4.1.2	Construction Bidding Documents - Taxiway Lighting	2	10	10	20	20		10	4	4	12
<b>FAA Construction Plans and Specifications Full Review</b>											
5.1	FAA Coordination	2	12	12	16	12	8	8	4	4	
5.2	Review and Address FAA Comments		4	6	16	12		8	10	10	
<b>Bidding and Contract Award Recommendation</b>											
6.1	Bidding and Award (two separate projects)		6	6	10	10	4	8	4	4	10
<b>Project Management</b>											
7.1	Design Team Meetings & Sponsor Meetings	8	16	20	20	20	16	24	4	4	
7.2	Agency Meetings	8	8	8			16				
7.3	Overall Project Management	2	24	20			10		5	4	5
	Total hours per labor category	50	150	170	330	310	100	130	290	225	55

**ESTIMATE OF LABOR COSTS:**

Labor Category	Hours	Rate	Extension
Principal	50	\$82.21	\$4,110.50
Project Manager	150	\$76.97	\$11,545.50
Senior Engineer	170	\$64.50	\$10,965.00
Project Engineer	330	\$49.11	\$16,206.30
Project Engineer	310	\$38.50	\$11,935.00
Senior Airport Planner	100	\$83.62	\$8,362.00
Airport Planner	130	\$45.99	\$5,978.70
Senior Technician	290	\$48.00	\$13,920.00
Senior Technician	225	\$48.00	\$10,800.00
Admin Technician	55	\$32.45	\$1,784.75
Total Direct Labor Costs:	1,810		\$95,607.75
Direct Salary Costs plus Overhead (90%)			\$181,654.73
<b>Total Labor Costs</b>			<b>\$277,262.48</b>
<b>Fixed Fee on Labor Costs (15%)</b>			<b>\$41,589.37</b>

**ESTIMATE OF EXPENSES:**

Direct Expenses	Quantity	Rate	Extension
Flight	8	\$1,000.00	\$8,000.00
Per Diem	10	\$200.00	\$2,000.00
Computer Charge	1810	\$5.80	\$10,498.00
Reproductions / Miscellaneous	1	\$100.00	\$100.00
Subconsultant - Barr Engineering	1	\$5,000.00	\$5,000.00
<b>Total Expenses</b>			<b>\$25,598.00</b>

**SUMMARY:**

Total Labor Costs + Expenses + Fixed Fee	\$344,449.85
<b>Estimated Total</b>	<b>\$344,400.00</b>

December 15, 2023

Ms. Lindsay Reidt, PE  
**SHORT, ELLIOTT, HENDRICKSON, INC.**  
3535 Vadnais Center Drive  
St. Paul, Minnesota 55110

**RE: MINOT INTERNATIONAL (MOT) AIRPORT – 2024 TAXIWAY C EDGE LIGHTING PROJECT  
PROPOSAL FOR ELECTRICAL ENGINEERING SERVICES – DESIGN AND BID PHASE**

Dear Lindsay:

Thank you for contacting us regarding electrical engineering services for design of the Minot International Airport (MOT) – Taxiway C Edge Lighting project, which will involve replacement of existing MITL's for this taxiway with new LED MITL's, to include replacement of the lights themselves, the base cans, conduit, wire and constant current regulator. We are providing this letter to outline our understanding of the project, our proposed scope of services, and our proposed fees for the design and bid phase of the project.

In support of your efforts, Barr proposes to provide the following subconsultant services to Short, Elliott, Hendrickson (SEH):

1. Provide electrical design and circuiting redlines for SEH to incorporate on the AutoCAD drawing of the airfield plan, as has been our usual method on similar past projects.
2. Provide electrical design redlines for detail sheets for SEH to incorporate in their AutoCAD drawings, as has been our usual method for airfield related details.
3. Provide technical specifications for the electrical work.
4. Bid-phase assistance including addressing questions which may arise from bidders and addenda items as necessary.
5. As mentioned above construction phase services are not included in the scope of this proposal.

Barr Engineering proposes to provide the outlined scope of services to SEH on an hourly basis to a maximum budget of \$5,000.

Services are billed monthly according to the work complete. Reimbursables such as automobile mileage are included in the total above.

Thank you for the opportunity to present this proposal. We look forward to working with you on this project.

Sincerely,

**BARR ENGINEERING CO.**

A handwritten signature in black ink, appearing to read 'Mark E. Ziemer', with a long horizontal flourish extending to the right.

Mark E. Ziemer, P.E.  
Senior Electrical Engineer





**TO:** Mayor  
Members of the City Council

**FROM:** Jennifer K. Eckman, Airport Director

**DATE:** March 18, 2024

**SUBJECT: MIDCO EASEMENT ON AIRPORT PROPERTY**

**I. RECOMMENDED ACTION**

- A. Approve the easement and subordination agreement and authorize the Mayor to sign the contracts.

**II. DEPARTMENT CONTACT PERSONS**

Jennifer K. Eckman, Airport Director	857-4724
Maria Romanick, Operations and Maintenance Manager	857-4724

**III. DESCRIPTION**

A. Background

Midco has requested an easement on City property at the airport. The easement is necessary to install new fiber optic lines for airline radio equipment.

B. Proposed Project

Midco has contracted with CTI to bore new duct for new fiber optic lines to support airline radio equipment at the request of an airline tenant. The easement language states the location of the easement with an exhibit and has language to protect the City in the event the Midco lines need to be relocated for a City project. The relocation costs are to be covered by Midco. Restoration of City property to existing condition is also an easement condition. All construction and cleanup will be done by CTI.

C. Consultant Selection

N/A

**IV. IMPACT:**

A. Strategic Impact:

Improved infrastructure for airline equipment will contribute to the operational safety of the airfield.

B. Service/Delivery Impact:

The improvements will result in more resilient resources for the aviation community.

C. Fiscal Impact:

The project is being funded entirely by Midco.

**V. CITY COUNCIL ASPIRATIONS**

The City Council aspirations that are achieved with the updated infrastructure include being resilient and prepared.

**VI. ALTERNATIVES**

Council could choose to deny the easement request, which would result in continued operations with aging and less reliable equipment.

**VII. TIME CONSTRAINTS**

The parties involved have been working on this project since August 2023. While there are no time constraints in particular, the next step is approval to begin construction. Any delay in the project would require further coordination with the airport community.

**VIII. LIST OF ATTACHMENTS**

A. Midcontinent Utility Easement – Airport Employee Lot Site

## UTILITY EASEMENT

This Easement Agreement (this "Agreement") is made effective \_\_\_\_\_, 20 \_\_\_\_\_  
by and between:

Grantor:           **City of Minot**, a political subdivision of the state of North Dakota  
P.O. Box 5006, Minot, North Dakota 58702-5006

and

Grantee:           **Midcontinent Communications**, a South Dakota partnership  
3901 North Louise Avenue, Sioux Falls, South Dakota 58707

**WHEREAS**, Grantor is the fee owner of real property located in Ward County, North Dakota more particularly described in Exhibit A attached hereto and incorporated by reference (the "**Property**"); and

**WHEREAS**, Grantor desires to grant to Grantee a utility easement over, under, upon and through a portion of the Property more particularly described in Exhibit B, attached hereto and incorporated by reference (the "**Easement Area**") for a period of ninety-nine (99) years to install and maintain **Communication Facilities** as defined and according to the terms and conditions contained in this Agreement; and

**NOW, THEREFORE**, for good and valuable consideration, receipt of which is acknowledged by Grantor:

1. Grantor grants and conveys to Grantee, its successors and assigns, an easement over, upon, under and through the Easement Area to construct, place, operate, inspect, maintain, repair, replace and remove Communication Facilities and related equipment, including but not limited to fiber and coaxial cables, conduits, strands, wires, hardware, pads, markers, pedestals, and junction boxes with wires, cables, and any necessary fixtures and appurtenances thereto (collectively, the "Communication Facilities"), as Grantee may require from time to time for transporting, distributing and receiving video, voice and data signals related to cable television, telephone, security, information, business, entertainment, interactive and high speed data services, and any other communications services available now or in the future.
2. The easement granted by this instrument includes the privilege to do all things necessary to facilitate the construction, operation, maintenance, repair, and replacement of Communication Facilities including (but not limited to):

- a. rights of ingress and egress across Grantor's adjacent property in order to access the Easement for the aforesaid purposes;
  - b. to survey;
  - c. to store, and stockpile equipment, dirt, pipe, and other miscellaneous supplies and materials for a reasonable time as determined by the Minot Airport Director that may be necessary for construction, operation, maintenance, repair, and replacement of Communication Facilities;
  - d. to remove any object, including (but not limited to) trees, shrubs, timber, and wood, which in the opinion of the Grantee, will interfere with the Communication Facilities; and
  - e. to use, relocate and/or remove the Communication Facilities within the Easement Area, and to make changes, including additions and substitutions to its Communication Facilities as it deems necessary.
3. Grantee, its contractors, successors or assigns shall restore any land disturbed during the initial installation or construction of the Communication Facilities, or during any subsequent maintenance, repair or reconstruction of the Communication Facilities, to a condition similar to that existing prior to the Grantee's actions. Grantee agrees to also restore any adjacent property damaged by Grantee's exercise of the rights conveyed to it under this instrument. For purposes of this paragraph, "restore" shall mean removing all debris, surplus material and construction equipment from the easement area and returning any disturbed land to smooth surface contours and neat condition, including, but not limited to replacing stripped topsoil, seeding previously grassed areas, and repairing and replacing surfaces on roadways with like materials.
4. Grantee shall have the right from time to time to clear the easement of all tress, undergrowth and other obstructions that, in its judgment, may injure, endanger or interfere with the exercise by Grantee of the rights and privileges granted by this easement. Grantee, its contractors, successors, or assigns, prior to entering upon lands of the Grantor for the purpose of maintaining, repairing, cleaning out, widening, deepening or extending the Communication Facilities owned by Grantee shall obtain the prior approval from the Airport Director, whose approval shall not be unreasonably withheld.
5. All of the materials, equipment, and facilities constructed on the Easement by the Grantee shall remain Grantee's property.
6. Grantee shall not permit any maintenance or construction equipment to encroach into restricted airspace or clear zones, approach slopes, runway and taxi, or safety areas, nor allow any such activities or equipment to enter upon the Property or Easement Area without prior approval from the Airport Director. Such prior approval shall not be necessary when an emergency condition exists and immediate action by Grantee is necessary to protect the public health, safety, and welfare. When an emergency situation exists, Grantee shall coordinate ingress and egress with Airport management.
7. Grantee shall not construct nor permit to stand above ground level on said easement any building, structure, poles or other objects, manmade or natural, to a height in excess of Federal Aviation Regulation (FAR) Part 77 surfaces, based upon current runways or future runways which may be constructed.
8. Grantee shall file a notice consistent with the requirements of FAR Part 77 (FAA Form No. 7460-1) prior to constructing any maintenance or improvement within said easement.
9. At such time in the future as deemed necessary by Grantor, Grantor may enter and construct airport improvements (runways, taxiways, extensions, associated lighting, etc.) provided Grantor gives adequate notice to Grantee. Should such protection or relocation of the Communication Facilities become necessary due to changes to federal, state, or local laws or to facilitate airport improvements or

other airport activities, Grantee agrees to pay all costs associated with protecting or relocating the Communication Facilities.

10. This Agreement shall be binding on all other parties, both public and private, which presently, or at a future time, are allowed by the contracting parties to occupy or utilize the easement conveyed by this Agreement.
11. Grantee agrees to maintain and protect at its own expense any electric or water lines, drains, sanitary sewers, or other appurtenances and equipment it places within the Easement Area. Should a change in airport operations or standards, or a change in federal, state, or local law require the upgrade or additional protections for Grantee's Communication Facilities or equipment or appurtenances thereto, the cost shall be paid by Grantee.
12. Grantee agrees to pay for any increased cost to maintain and operate their Communication Facilities resulting from the relocation of such lines and shall perform all necessary maintenance at its own expense in accordance with specifications approved by the Grantor and Grantee.
13. Grantee agrees to save and keep Grantor harmless from and indemnify it against any penalty, damage or charges imposed for Grantee's violation of federal, state or local laws. Grantee agrees to at all times protect, indemnify and save Grantor harmless of and from any loss, cost, damage, or expense, including attorney's fees, arising out of or from any accident or other occurrence on or about the Property and Easement Area that causes injury to any person or property, that arises by reason of Grantee's construction, operation, maintenance, and use of this easement.
14. Grantor reserves the right of full use of the Property and Easement Area, subject to the easement granted by this Agreement.
15. This easement shall be subordinate to the provisions of and requirements of any existing or future agreement between the Grantor and the United States, relative to the development, operation, or maintenance of the Airport.
16. Grantee agrees to subordinate its easement rights under this Agreement to airport use and development and will not, in the maintenance, repair, removal, relocation, or replacement of its said Communication Facilities, to upon the Property or Easement Area or in any manner interfere or interrupt the use or operation of the airport or its attendant facilities, without prior coordination with, and the approval and/or issuance of permit by the Grantor, whose permission and approval shall not be unreasonably withheld, except in the event of an emergency. In an emergency event, the Grantee shall notify by telephone the office designated by Grantor as soon as possible. Initial notification shall be made to the Minot International Airport, and secondary notification made to the City of Minot.

**NOW THEREFORE**, the Grantor has executed this Easement Agreement on the day and year first set forth above, and does hereby represent that at the time.

CITY OF MINOT

\_\_\_\_\_  
Thomas Ross, Mayor

\_\_\_\_\_  
Mikayla McWilliams, City Clerk

STATE OF NORTH DAKOTA        )  
  )ss.  
COUNTY OF WARD                )

The foregoing Easement was acknowledged before me on \_\_\_\_\_, 2023, by

\_\_\_\_\_.

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

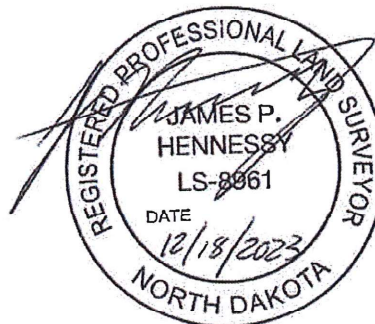
December 18, 2023

Midco  
717 20th Avenue SE  
Minot, ND 58701  
701.339.7619

**Exhibit A:**

Unplatted portion of the SE1/4 of the SW1/4, of Section 12, SW1/4 of the SW1/4 of Section 12 & The North 1/2 of the NW1/4 of Section 13, Less Minot International Airport, First Addition.

James Patrick Hennessy, PLS  
North Dakota PLS #8961  
For and on behalf of Houston Engineering, Inc.





# EASEMENT EXHIBIT

EXHIBIT B

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP  
155 NORTH RANGE 83 WEST OF THE FIFTH PRINCIPAL MERIDIAN,  
CITY OF MINOT, COUNTY OF WARD, STATE OF NORTH DAKOTA,

## Legal Description:

Utility Easement located in the Southwest quarter of Section 12, Township 155 North, Range 83 West of the Fifth Principal Meridian, City of Minot, North Dakota.

Point of Beginning at the South quarter corner of said Section 12; Thence N89°01'20"W, along the South quarter line of said Section 12, a distance of 160.68 feet to a point on said quarter line; Thence N00°58'40"E, a distance of 44.53 feet to the True Point of Beginning Thence S50°35'22"W, a distance of 10.37 feet; Thence N89°41'55"W, a distance of 102.06 feet; Thence N83°33'00"W, a distance of 59.62 feet; Thence N73°05'27"W, a distance of 85.21 feet; Thence N44°04'39"W, a distance of 150.41 feet; Thence N32°00'19"W, a distance of 65.06 feet; Thence N57°59'41"E, a distance of 10.00 feet; Thence S32°00'19"E, a distance of 64.01 feet; Thence S44°04'39"E, a distance of 146.76 feet; Thence S73°05'27"E, a distance of 81.71 feet; Thence S83°33'00"E, a distance of 58.17 feet; Thence S89°41'55"E, a distance of 97.91 feet; Thence N50°35'22"E, a distance of 6.76 feet; Thence S39°24'38"E, a distance of 10.00 feet to the True Point of Beginning

Utility Easement contains 4,640.227 sqft. or 0.107 ac., More or Less.

All located in the Southwest quarter of Section 12, Township 155 North Range 83 East of the Fifth Principal Meridian, City of Minot, County of Ward, State of North Dakota.

Bearings are based on the South Section line of Section 12 being N89°01'20"W, a distance of 2,645.10 feet, between the South quarter corner of Section 12 and Southwest section corner of Section 12.

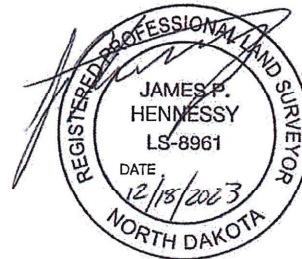
In witness whereof I have set my hand and seal.

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision, and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

JAMES P. HENNESSY  
James P. Hennessy

12/18/2023  
Date

Registration No. 8961



PROJECT NO.  
11792-0002

MIDCO  
717 20TH AVENUE SE, MINOT, NORTH DAKOTA 58701

SHEET  
1 OF 2

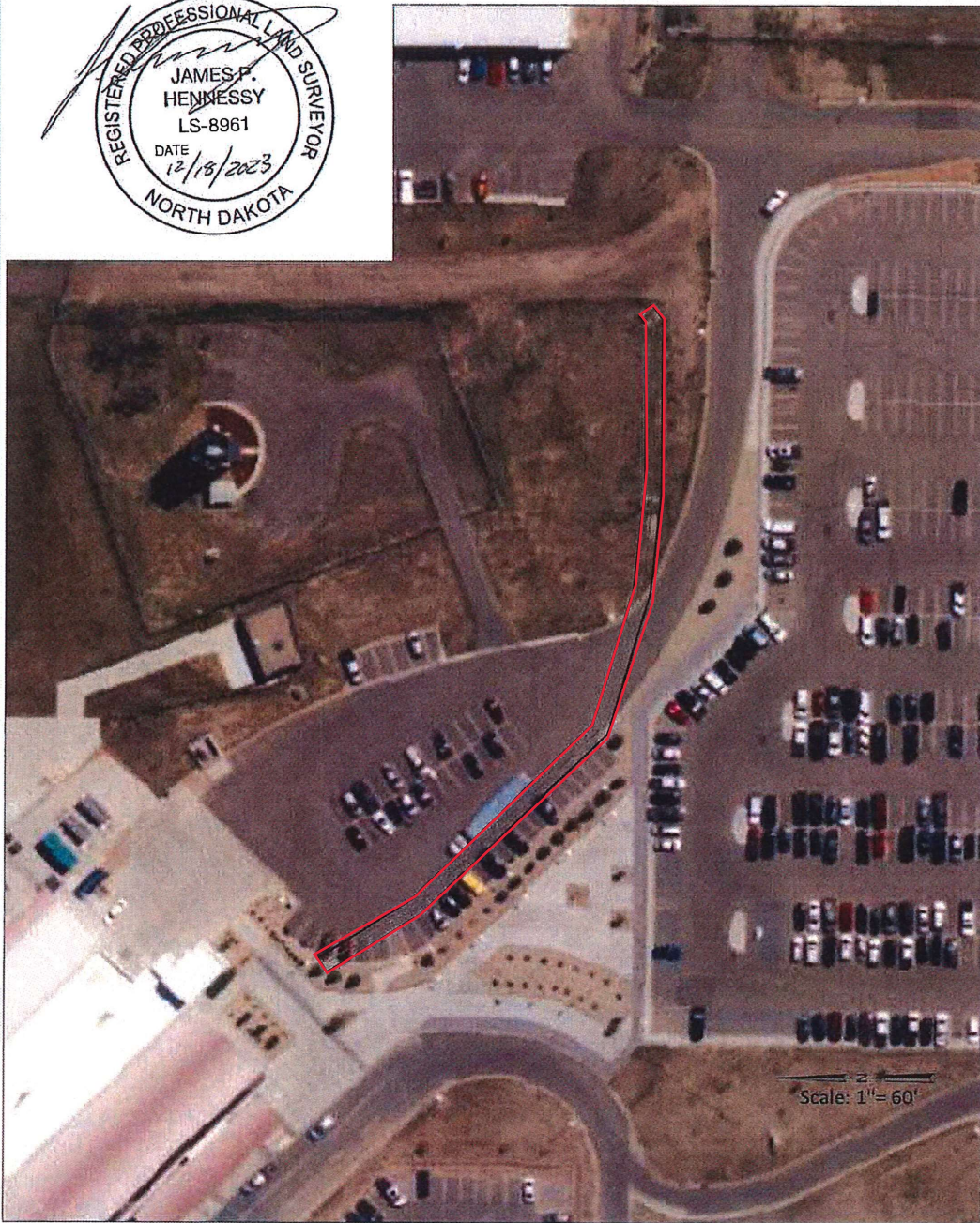
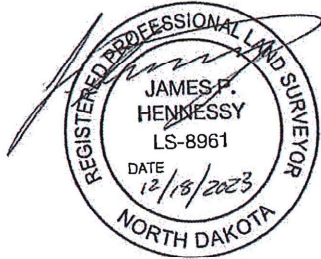
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# EASEMENT EXHIBIT

EXHIBIT B

LOCATED IN THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP  
155 NORTH RANGE 83 WEST OF THE FIFTH PRINCIPAL MERIDIAN,  
CITY OF MINOT, COUNTY OF WARD, STATE OF NORTH DAKOTA,



IRON MONUMENT FOUND  
MEASURED BEARING  
MEASURED DISTANCE  
PROPOSED CENTERLINE  
EXISTING ELECTRIC LINE  
EXISTING OVERHEAD LINE

S59°27'46"E  
105.00'

FO  
UGS  
OHP

NOTE: ALL BEARINGS AND  
DISTANCES GIVEN ARE BASED ON  
U.S. STATE PLANE COORDINATE  
SYSTEM, NORTH DAKOTA NORTH  
ZONE U.S. SURVEY FEET, GRID.



PROJECT NO.  
11792-0002

MIDCO  
717 20TH AVENUE SE, MINOT, NORTH DAKOTA 58701

SHEET  
2 OF 2

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## SUBORDINATION AGREEMENT

Midcontinent Communications ("Midco")

THIS AGREEMENT made and entered into the 4th day of March, 2024, by and between Midcontinent Communications, a South Dakota general partnership, hereinafter referred to as "Company", and the City of Minot, a municipal corporation, hereinafter referred to as "City."

WITNESSETH:

WHEREAS the City is the owner of that certain Municipal Airport located in Ward County, State of North Dakota, and

WHEREAS, Company is the owner of underground communications facilities and an easement containing 4,640.277 sq. ft. Or 0.107 acre, more or less, for underground communications facilities across a tract of land 460' feet in width lying in that part of Section 12, Township 155 North, Range 86 West of the Fifth Principal Meridian, City of Minot, Ward County, State of North Dakota, which is described as follows: Point of Beginning at the South quarter corner of said Section 12; Thence N89°01'20"W, along the South quarter line of said Section 12, a distance of 160.68 feet to a point on said quarter line; Thence N00°58'40"E, a distance of 44.53 feet to the True Point of Beginning Thence S50°35'22"W, a distance of 10.37 feet; Thence N89°41'55"W, a distance of 102.06 feet; Thence N83°33'00"W, a distance of 59.62 feet; Thence N73°05'27"W, a distance of 85.21 feet; Thence N44°04'39"W, a distance of 150.41 feet; Thence N32°00'19"W, a distance of 65.06 feet; Thence N57°59'41"E, a distance of 10.00 feet; Thence S32°00'19"E, a distance of 64.01 feet; Thence S44°04'39"E, a distance of 146.76 feet; Thence S73°05'27"W, a distance of 81.71 feet; Thence S83°33'00"E, a distance of 58.17 feet; Thence S89°41'55"E, a distance of 97.91 feet; Thence N50°35'22"W, a distance of 6.76 feet; Thence S39°24'38"E, a distance of 10.00 feet to the True Point of Beginning, which said line and easement are located in under, upon and across a part of said Municipal Airport real estate, and,

WHEREAS, Company will subordinate its rights under said easement to airport use and development and will not, in the maintenance, repair, removal, relocation, or replacement of its said underground communications facilities and all necessary and usual appurtenance equipment thereto, all for the purpose of transmitting communications, go upon the City's said airport property or in any manner interfere with or interrupt the use or operation of said airport or its attendant facilities, without prior coordination with, and the approval and/or issuance of permit by the City, except in the event of an emergency. In such event Company shall notify by telephone to the office

designated by City as soon as possible. Initial notification shall be made to Minot International Airport and *secondary notification shall be made to the City of Minot*

NOW THEREFORE, the parties hereto agree, each with the other, that Company will not, in the maintenance, repair, removal, relocation, or replacement of its above described facility, or in the exercise of any other easement right, go upon the City's said airport property or in any manner interfere with or interrupt the use or operation of said airport or its attendant facilities, without the prior approval of the City; and the City must not unreasonably withhold such approval.

This agreement is and must be binding upon and inure to the benefit of the parties and their successors and assigns. IN WITNESS WHEREOF, we hereunto set our hands and seals on the day and year below our signatures indicated.

ATTEST:   
Midcontinent Communications

BY: Derek Weigel

ITS: GM Regional Construction

DATE: 2/28/24

ATTEST: \_\_\_\_\_  
CITY OF MINOT, NORTH DAKOTA  
A MUNICIPAL CORPORATION

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

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

---NOTARIZED--- City Clerk





**TO:** Mayor Tom Ross  
Members of the City Council

**FROM:** Jennifer Eckman, Airport Director

**DATE:** March 18, 2024

**SUBJECT: BIDDING OF ELECTRICAL VAULT REHABILITATION  
(CITY PROJECT NUMBER # 20245000001 / AIP 3-38-0037-072-2024)**

**I. RECOMMENDED ACTION**

- A. Recommend staff apply for state and federal funding to assist with the financing of the electrical vault rehabilitation; and
- B. Authorize City staff to advertise and solicit bids for the Electrical Vault Rehabilitation project.
- C. Upon receipt of federal and/or state funding, authorize the Mayor, Airport Director, and City Attorney to execute grants.

**II. DEPARTMENT CONTACT PERSONS**

- |   |          |
|---|----------|
| A. Jennifer Eckman, Airport Director          | 857-4724 |
| B. Maria Romanick, Airport Operations Manager | 857-4724 |

**III. DESCRIPTION**

A. Background

The airfield electrical vault building was originally constructed in 1993. The building houses the infrastructure required for the airfield lighting, including the runway and taxiway edge lighting, signage, and airport navigational aids. Most of the equipment in the building is original to the 1993 construction. It is 30 years old and has exceeded its useful life and needs replacement. Per Table J-4 in the AIP Handbook, the minimum useful life for airfield electrical/lighting equipment is 10 years. Considering it has surpassed the 10-year timeframe, it is considered eligible for replacement through Federal Aviation Administration (FAA) funding. Airport staff have experienced and documented consistent maintenance challenges with the equipment and replacement parts are becoming increasingly challenging to obtain. The current infrastructure in its current condition poses a risk that airfield lighting will become inoperable without notice with the potential delayed maintenance period, potentially causing safety issue and flight delays.

B. Proposed Project

The project will replace several pieces of equipment inside the existing electrical vault, including most of the constant current regulators, the existing vault light fixtures, ATCT lighting control panel repairs, and will provide a new S-1 Cutout cabinet.

C. Consultant Selection

SEH is the engineer of record for MOT airport development as was approved at the City Council meeting on May 17, 2021.

**IV. IMPACT:**

A. Strategic Impact:

Safe use of the airport lighting systems are of utmost importance to providing safe and efficient aviation transportation for the Minot Community.

B. Service/Delivery Impact:

By designing a solution to address the unreliable and aging airport lighting systems and components, this project will allow for continued safe operations for aviation at the Minot International Airport.

C. Fiscal Impact:

The anticipated cost of this project is outlined below, and it is included in the 2024 CIP for the Minot International Airport:

Project Costs-Electrical Vault:

Engineering - Project Final Design & Bidding	\$ 89,900.00
Construction Costs (Estimated)	\$ 355,100.00
Engineering - Construction Administration (Estimated)	\$ 75,000.00
<u>Admin Costs</u>	<u>\$ 5,000.00</u>
<b>TOTAL</b>	<b>\$ 525,000.00</b>

The construction costs were not included in the FY2024 as this project was originally tied to the Runway 8-26 project. The Runway 8-26 project has been postponed to FY2025, but the components in the electrical vault are in critical condition and beyond useful life.

Project Funding

The funding will come from the FAA Airport Improvement Program (AIP). The airport receives approximately \$1.6M of AIP entitlement funding annually, in addition to the carry-over from previous years. Project funding beyond the available AIP funding will be funded with FAA discretionary funding. The preliminary design effort will scope the project accordingly to match City, NDAC, and FAA budgets. It is projected that the City of Minot share will be 5 percent of total project costs.

**V. CITY COUNCIL ASPIRATIONS**

The City Council aspirations that are achieved by adopting the proposed recommendation and completing this project include providing a safe and welcoming environment at the Airport.

**VI. ALTERNATIVES**

An alternate the City Council could recommend that this project be postponed or denied, resulting in a delay for repairs and the potential for failure of the

airport's lighting systems. Failure of airport lighting could result in runway and taxiway closures, causing delays for air traffic control's ability to land and taxi aircraft efficiently.

**VII. TIME CONSTRAINTS**

The following project schedule is intended to accommodate City and FAA funding and grant schedule requirements:

1. February – March 2024 – Complete final design
2. March 19, 2024 – Publish Bidding Documents
3. April 10, 2024 – State Grant Applications due
4. April 16, 2024 – Bid Opening
5. Spring 2024 – Federal Grant Applications due
6. May 6, 2024 – Contract Award
7. Fall 2024 – Construction

**VIII. LIST OF ATTACHMENTS**

- A. Electrical Vault Rehabilitation – Project Manual
- B. Construction Drawings
- C. Draft Advertisement for Bidders document

# Project Manual

## 2024 Electrical Vault Rehabilitation

Minot International Airport  
Minot, North Dakota

AIP No. 3-38-0037-072-2024  
SEH No. MINOT 177332

March 2024



Building a Better World  
for All of Us®

Engineers | Architects | Planners | Scientists



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**2024 Electrical Vault Rehabilitation**

**Minot International Airport  
Minot, North Dakota**

**AIP No. 3-38-0037-072-2024  
SEH No. MINOT 177332**

**March 2024**

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**CERTIFICATION**

I hereby certify that this specification was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of North Dakota.

\_\_\_\_\_  
Sarah Mattes, PE

Date: \_\_\_\_\_ License. No. PE-27245

Reviewed By: Lindsay Reidt, PE

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

**Electrical Engineering**

I hereby certify that this specification was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of North Dakota.

\_\_\_\_\_  
Mark Ziemer, PE

Date: \_\_\_\_\_ Lic. No. \_\_\_\_\_

**END OF SECTION**

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PROJECT DIRECTORY

**Project Name:** 2024 Electrical Vault Rehabilitation

**Location:** Minot International Airport

**Owner**

Name: City of Minot  
Address: Minot International Airport  
305 Airport Road, Suite 216  
Minot, ND 58703  
Contact: Maria Romanick, Airport Operations Mgr.  
Phone: 701.857.4724  
Fax:  
E-mail: [Maria.romanick@minotnd.org](mailto:Maria.romanick@minotnd.org)

**Engineer**

Name: Short Elliott Hendrickson Inc.  
Address: 3535 Vadnais Center Drive  
Saint Paul, MN 55110  
Contact: Lindsay Reidt, PE  
Phone: 651.490.2000  
Fax: 888.908.8166  
E-mail: [lreidt@sehinc.com](mailto:lreidt@sehinc.com)

**Electrical Engineer**

Name: Barr Engineering  
Address: 4300 Market Pointe Dr., Suite 200  
Minneapolis, MN 55435  
Contact: Mark Ziemer, PE  
Phone: 952.832.2600  
Fax: 952.832.2601  
E-mail: [mziemer@barr.com](mailto:mziemer@barr.com)

END OF DOCUMENT

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Number	Document
	<b>Introductory Information</b>
00 01 01	Title Page
00 01 05	Certification
00 01 08	Project Directory
00 01 10	Table of Contents
	<b>Bidding Requirements</b>
00 11 13	Advertisement for Bids
00 21 13	Instructions to Bidders
00 41 00	Bid Form
00 43 00	Bid Bond
00 43 36	List of Proposed Subcontractors
00 43 37	List of Proposed Suppliers
00 45 19	Affidavit of Non-Collusion
00 45 48	Buy American Certificate for Total Facility
00 45 49	Certification of Compliance with FAA Buy American Preferences – Equipment-Building Project
00 46 00	Demonstration of Good Faith
	<b>Contract Forms</b>
00 51 00	Notice of Award
00 52 00	Standard Form of Agreement
00 55 00	Notice to Proceed
00 61 13	Performance Bond
00 61 14	Payment Bond
	<b>FAA General Provisions</b>
Section 10	Definitions and Terms
Section 20	Proposal Requirements and Conditions
Section 30	Award and Execution of Contract
Section 40	Scope of Work
Section 50	Control of Work
Section 60	Control of Materials
Section 70	Legal Regulations and Responsibility to Public
Section 80	Execution and Progress
Section 90	Measurement and Payment
	<b>Conditions of the Contract</b>
00 72 00	Standard General Conditions
00 73 00	Supplementary Conditions
00 73 30	Additional Special Provisions for Federally-Funded Contracts
<b>DIVISION 1 - GENERAL REQUIREMENTS</b>	
	<b>Summary</b>
01 11 00	Summary of Work
	<b>Price and Payment Procedures</b>
01 25 13	Product Substitution Procedures
01 26 00	Contract Modification Procedures

	<b>Administrative Requirements</b>
01 31 13	Coordination
01 33 00	Submittal Procedures
	<b>Quality Requirements</b>
01 42 15	Specification Format, Definitions, and Abbreviations
01 42 18	Reference Standards for Infrastructure Improvements
	<b>Temporary Facilities and Controls</b>
01 52 19	Temporary Sanitary Facilities
	<b>Product Requirements</b>
01 60 00	Product Requirements
	<b>Execution and Closeout Requirements</b>
01 78 23	Operation and Maintenance Data

## **FAA TECHNICAL SPECIFICATIONS**

	<b>Part 2 – General Construction Items</b>
Item C-105	Mobilization
	<b>Part 13 – Lighting Installation</b>
Item L-109	Airport Transformer Vault and Vault Equipment
Item L-110	Airport underground Electrical Duck Banks and Conduits
Item L-125	Installation of Airport Lighting Systems

## **APPENDIX A**

Prevailing Wage Rates

## **APPENDIX B**

Equal Employment Opportunity Special Provisions (EEO)

## **APPENDIX C**

Construction Safety Plan Narrative (CSPN)

**ADVERTISEMENT FOR BIDS**  
**2024 Electrical Vault Rehabilitation**  
**Minot International Airport**  
**Minot, North Dakota**  
**SEH No. MINOT 177332**

Notice is hereby given that Online Bids will be received by the City of Minot, North Dakota, until 2 p.m., Tuesday, April 16, 2023, via [QuestCDN](#) for the furnishing of all labor and material for the construction of 2024 Electrical Vault Rehabilitation.

The bid opening will be conducted via Microsoft Teams, at which time they will be publicly opened and read aloud:

2024 ELECTRICAL VAULT REHABILITATION Bid Opening  
APRIL 16, 2:00 P.M. (CDT)

Please join my meeting from your computer, tablet or smartphone: <https://bit.ly/4c46rLD>

Or call in (audio only)  
+1 872-242-7640,,876247764# United States, Chicago  
Phone Conference ID: 876 247 764#

Any person monitoring the meeting remotely may be responsible for any documented costs. Message and data rates may apply.

Major components of the Work include: Electrical vault improvements, including constant current regulator (CCR) replacement & modifications, panel/switch repairs, and lighting fixture replacement.

The Bidding Documents may be viewed for no cost at <http://www.sehinc.com> by selecting the Project Bid Information link at the bottom of the page and the View Plans option from the menu at the top of the selected project page.

Digital image copies of the Bidding Documents are available at <http://www.sehinc.com> for a fee of \$30. These documents may be downloaded by selecting this project from the "Project Bid Information" link and by entering eBidDoc™ Number 9023000 on the SEARCH PROJECTS page. For assistance and free membership registration, contact QuestCDN at 952.233.1632 or [info@questcdn.com](mailto:info@questcdn.com).

For this project, bids will **ONLY** be received electronically. Contractors submitting an electronic bid **will** be charged an additional \$42 at the time of bid submission via the online electronic bid service [QuestCDN.com](#). To access the electronic Bid Worksheet, download the project document and click the online bidding button at the top of the advertisement. Prospective bidders must be on the plan holders list through QuestCDN for bids to be accepted. Bids shall be completed according to the Bidding Requirements prepared by SEH dated March 2024.

In addition to digital plans, paper copies of the Bidding Documents may be obtained from Docunet Corp. located at 2435 Xenium Lane North, Plymouth, MN 55441 (763.475.9600) for a fee of \$150.00.

A pre-Bid conference will not be held for this project.

Bid security in the amount of 5 percent of the Bid must accompany each Bid in accordance with the Instructions to Bidders.

The City of Minot reserves the right to reject any and all Bids, to waive irregularities and informalities therein and to award the Contract in the best interests of the City of Minot.

Maria Romanick  
Airport Operations Manager  
Minot, North Dakota

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INSTRUCTIONS TO BIDDERS

**ARTICLE 1 – DEFINED TERMS**

- 1.01 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. *Issuing Office* - The office from which the Bidding Documents are to be issued.

**ARTICLE 2 – COPIES OF BIDDING DOCUMENTS**

- 2.01 Authorized sets of the Bidding Documents may be obtained digitally or by paper copy as directed in the Advertisement for Bids.
- 2.02 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete or unauthorized sets of Bidding Documents.
- 2.03 Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

**ARTICLE 3 – QUALIFICATIONS OF BIDDERS**

- 3.01 To demonstrate Bidder's qualifications to perform the Work, Bidder shall submit with its Bid (a) Bidder's Proof of Responsibility, and (b) such other data as may be deemed necessary by the Owner.
- A. List of First Tier Subcontractors with its Bid
- B. Document 00 43 00 - Bid Bond
- C. Document 00 43 36 - List of Proposed Subcontractors
- D. Document 00 43 37 - List of Proposed Suppliers
- E. Document 00 45 19 - Affidavit of Non-Collusion
- F. Contractor's license number as evidence of Bidder's State Contractor's License or a covenant by Bidder obtain said license within the time for acceptance of Bids.
- 3.02 A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.03 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.
- 3.04 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

**ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE**

- 4.01 *Site and Other Areas*
- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

#### 4.02 *Existing Site Conditions*

##### A. Subsurface and Physical Conditions; Hazardous Environmental Conditions

1. The Supplementary Conditions identify:
  - (a) those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site.
  - (b) those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
  - (c) reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site.
  - (d) Technical Data contained in such reports and drawings.
2. Owner will make copies of reports and drawings referenced above available to any Bidder on request. These reports and drawings are not part of the Contract Documents, but the Technical Data contained therein upon whose accuracy Bidder is entitled to rely, as provided in the General Conditions, has been identified and established in the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any Technical Data or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.
3. If the Supplementary Conditions do not identify Technical Data, the default definition of Technical Data set forth in Article 1 of the General Conditions will apply.

##### B. Underground Facilities

1. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

##### C. Adequacy of Data:

1. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraphs 5.03, 5.04, and 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

#### 4.03 *Site Visit and Testing by Bidders*

- A. On request, and to the extent Owner has control over the Site, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.
- B. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.

- C. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavations and utility locates.

#### 4.04 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. As the General Conditions indicate, if an Owner safety program exists, it will be noted in the Supplementary Conditions.

#### 4.05 *Other Work at the Site*

- A. Reference is made to Article 8 of the Supplementary Conditions for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

### **ARTICLE 5 – BIDDER'S REPRESENTATIONS**

#### 5.01 It is the responsibility of each Bidder before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding documents, including Addenda;
- B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy itself as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;
- D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings;
- E. consider the information known to Bidder; information commonly known to Contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;
- F. agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;

- I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and
- J. agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

## **ARTICLE 6 – PRE-BID CONFERENCE**

- 6.01 A pre-Bid conference will not be held for this Project.

## **ARTICLE 7 – INTERPRETATIONS AND ADDENDA**

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than 5 days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

## **ARTICLE 8 – BID SECURITY**

- 8.01 A bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.
- 8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.
- 8.03 The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Contract or 121 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven days after the Bid opening.

## **ARTICLE 9 – CONTRACT TIMES**

- 9.01 Bidder shall set forth in the Bid the time by which Bidder shall achieve Substantial Completion, subject to the restrictions established in Paragraph 14.04 of these Instructions. The Owner will take Bidder's time commitment regarding Substantial Completion into consideration during the evaluation of Bids, and it will be necessary for the apparent Successful Bidder to satisfy Owner that it will be able to achieve Substantial Completion within the time such Bidder has designated in the Bid. The Successful Bidder's time commitments will be entered into the Agreement (or incorporated in the Agreement by reference to the specific terms of the Bid).

## **ARTICLE 10 – LIQUIDATED DAMAGES**

- 10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Agreement.

## **ARTICLE 11 – SUBSTITUTE AND "OR-EQUAL" ITEMS**

- 11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, and those "or-equal" or substitute or materials and equipment



subsequently approved by Engineer prior to the submittal of Bids and identified by Addendum. No item of material or equipment will be considered by Engineer as an "or-equal" or substitute unless written request for approval has been submitted by Bidder and has been received by Engineer at least 17 days prior to the date for receipt of Bids. Each such request shall comply with the requirements of Paragraphs 7.04 and 7.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any such proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

- 11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of "or-equal" or substitution requests are made at Bidder's sole risk.

## **ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS**

- 12.01 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.
- 12.02 The apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of the Subcontractors or Suppliers proposed for the following portions of the Work: Electrical Improvements.

If requested by Owner, such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, Bidder's Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award.

- 12.03 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to subsequent revocation of such acceptance as provided in Paragraph 7.06 of the General Conditions.

## **ARTICLE 13 – PREPARATION OF BID**

- 13.01 The Bid Form - Document 00 41 00 and attachments are included in the Bidding Documents. Photocopies of these documents should be made for the purpose of submitting the Bid.
- A. All blanks shall be completed by printing in ink or by typewriter and the Bid signed in ink.
- 13.02 A Bid price shall be indicated for each section, Bid Item and unit price item listed on the QuestCDN Online Bid Worksheet. The Bid Worksheet is a part of and appurtenant to the Bid Form and Bid.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.

- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.06 A Bid by an individual shall show the Bidder's name and official address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.08 All names shall be typed or printed in ink below the signatures and uploaded.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda.
- 13.10 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

#### **ARTICLE 14 – BASIS OF BID; EVALUATION OF BIDS**

##### **14.01 *Unit Price***

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity" (which Owner or its representative has set forth in the Bid Form) for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with Paragraph 13.03 of the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

#### **ARTICLE 15 – SUBMITTAL OF BID**

- 15.01 The Bid shall be submitted electronically.
  - A. The Bid Form - Document 00 41 00 is to be completed and submitted with all the attachments as required to be submitted under the terms of Article 2 of the Bid Form.
  - B. The Bid Worksheet is to be completed and submitted under the terms of Article 3 of the Bid Form.
- 15.02 The Bid shall be submitted no later than the date and time prescribed as indicated in the Advertisement for Bids, unless altered in an issued addendum.
  - A. The official time and date is the time and date displayed in QuestCDN Online.
- 15.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner will not be accepted nor opened.
- 15.04 The submitted Bid Bond shall be a copy of original signatures and the seal of the Surety. Request of actual copy upon award may be requested.

#### **ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID**

- 16.01 A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.

- 16.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 16.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

#### **ARTICLE 17 – OPENING OF BIDS**

- 17.01 Bids will be opened at the time and place indicated in the Advertisement for Bids and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base bids and major alternates, if any, will be made available to Bidders after the opening of bids. The abstract can be found by following the “Project Bid Information” link of [www.sehinc.com](http://www.sehinc.com) then following the “Project Results” link on the top of the second page.

#### **ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

#### **ARTICLE 19 – AWARD OF CONTRACT**

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, non-responsive, unbalanced, or conditional bids. Owner will reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner will reject the Bid as nonresponsive. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.
- 19.02 If Owner awards the Contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid. Owner may also reject the Bid of any bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder.
- 19.03 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.04 *Evaluation of Bids*
- A. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.05 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Bidding Documents.
- 19.06 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.

#### **ARTICLE 20 – BONDS AND INSURANCE**

- 20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

## **ARTICLE 21 – SIGNING OF AGREEMENT**

- 21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within 10 days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

## **ARTICLE 22 – RETAINAGE**

- 22.01 Provisions concerning Contractor's rights to deposit securities in lieu of retainage are set forth in the Agreement.

## **ARTICLE 23 – UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES**

- 23.01 Contract requirements for DBEs shall be in accordance with Document 00 73 30.
- 23.02 Within 3 business days following the opening of the bids and prior to the award of the Contract, all Bidders who wish to remain in competition for the Contract will be required to submit the following information:
- A. Names and addresses of DBE subcontractors,
  - B. A description of the work each DBE subcontractor is to perform,
  - C. The dollar value of each proposed DBE subcontract.
  - D. The DBE goal for this project shall be 3.38%.

## **ARTICLE 24 – CERTIFICATION OF NON-SEGREGATED FACILITIES**

- 24.01 Notice to Prospective Federally-Assisted Construction Contractors
- A. A Certification of Non-segregated Facilities shall be submitted prior to the award of a federally-assisted construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity Clause.
  - B. Contractors receiving federally-assisted construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of the following notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.
- 24.02 Notice to Prospective Subcontractors of Requirements for Certification of Non-Segregated Facilities
- A. A Certification of Non-segregated Facilities shall be submitted prior to the award of a subcontract exceeding \$10,000, which is not exempt from the provisions of the Equal Opportunity Clause.
- 24.03 Contractors receiving subcontract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause will be required to provide for the forwarding of this notice to prospective subcontractors for supplies and construction contracts where the subcontracts exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity Clause. NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

**END OF DOCUMENT**

In addition to the Bid Worksheet electronically completed and submitted online, this  
BID FORM - DOCUMENT 00 41 00 and the attachments provided must be completed and uploaded to  
QuestCDN Online prior to the Bid opening time and date.

**DOCUMENT 00 41 00**

**BID FORM**

Contractor's Name \_\_\_\_\_

Telephone \_\_\_\_\_

**PROJECT IDENTIFICATION:**            **2024 Electrical Vault Rehabilitation**  
   **Minot International Airport**  
   **SEH No. MINOT 177332**

**BIDS TO BE OPENED:**                    2:00 p.m., Tuesday, April 16, 2023

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**ARTICLE 1 – BID RECIPIENT**

- 1.01 This Bid is submitted to [QuestCDN Online](#).
- 1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

**ARTICLE 2 – ATTACHMENTS TO THIS BID**

- 2.01 The following documents are attached to and made a condition of this Bid and shall be uploaded via [QuestCDN Online](#):
- A. Required Bid security
  - B. List of Proposed Subcontractors.
  - C. List of Proposed Suppliers.
  - D. List of Project References.
  - E. Affidavit of Non-Collusion.
  - F. Contractor's license number as evidence of Bidder's State Contractor's License or a covenant by Bidder to obtain said license within the time for acceptance of Bids.

### **ARTICLE 3 – BASIS OF BID**

- 3.01 Bidder will complete the Work in accordance with the Contract Documents for the prices as indicated on the [QuestCDN](#) Online Bid Worksheet. The Bid Worksheet is a part of and appurtenant to the Bid Form and Bid.

### **UNIT PRICE BID**

Unit Prices have been computed in accordance with Paragraph 13.03 of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

### **ARTICLE 4 – TIME OF COMPLETION**

- 4.01 Bidder agrees that the Work will be substantially complete and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement
- 4.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

### **ARTICLE 5 – BIDDER'S ACKNOWLEDGEMENTS: ACCEPTANCE PERIOD, INSTRUCTIONS, AND RECEIPT OF ADDENDA**

- 5.01 Bid Acceptance Period
- A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 120 days after the day of Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.
- 5.02 Instructions to Bidder
- A. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid Security.
- 5.03 Receipt of Addenda
- A. Bidder hereby acknowledges receipt of the Addenda via QuestCDN Online.

### **ARTICLE 6 – BIDDER'S REPRESENTATION AND CERTIFICATIONS**

- 6.01 Bidders Representations
- A. In submitting this Bid, Bidder represents that:
1. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents.
  2. Bidder has visited the site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress and performance of the Work.
  4. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

5. Bidder has carefully studied reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
6. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, and (3) Bidder's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Bidder agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
9. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
10. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
11. The submission of this Bid constitutes an incontrovertible representation by Bidder that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

6.02 Bidder certifies that:

A. The Bidder certifies the following:

1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
3. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
4. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 6.02.A:
  - a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
  - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - c. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
  - d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

## **ARTICLE 7 – DEFINED TERMS**

- 7.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions



## ARTICLE 8 – BID SUBMITTAL

8.01 The Bid submitted by:

If Bidder is:

### An Individual

Name (typed or printed): \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
*(Individual's signature)*

Doing business as: \_\_\_\_\_

### A Partnership

Partnership Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
*(Signature of general partner - attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

### A Joint Venture

Name of Joint Venturer: \_\_\_\_\_

First Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
*(Signature of first joint venture partner - attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

Second Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
*(Signature - attach evidence of authority to sign)*

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

**A Corporation**

Corporation Name: \_\_\_\_\_

State of Corporation: \_\_\_\_\_

Name (General Business, Professional, Service, Limited Liability): \_\_\_\_\_

By: \_\_\_\_\_  
(Signature - attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

Title: \_\_\_\_\_  
(CORPORATE SEAL)Attest: \_\_\_\_\_  
(Signature of Corporate Secretary)Date of Qualification to do business in \_\_\_\_\_ is \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(State Where Project is Located)**Contact Information**

Bidder's Business Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ E-mail: \_\_\_\_\_

Submitted on \_\_\_\_\_, 20\_\_\_\_.

State Contractor License No. \_\_\_\_\_. (If applicable)

**END OF DOCUMENT**



1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond will be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder occurs upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation will be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions does not in the aggregate exceed 120 days from the Bid due date without Surety's written consent.
6. No suit or action will be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety, and in no case later than one year after the Bid due date.
7. Any suit or action under this Bond will be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder must be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Postal Service registered or certified mail, return receipt requested, postage pre-paid, and will be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond will be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute governs and the remainder of this Bond that is not in conflict therewith continues in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

LIST OF PROPOSED SUBCONTRACTORS

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Type of Construction \_\_\_\_\_

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Type of Construction \_\_\_\_\_

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Type of Construction \_\_\_\_\_

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Type of Construction \_\_\_\_\_

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Type of Construction \_\_\_\_\_

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Type of Construction \_\_\_\_\_

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LIST OF PROPOSED SUPPLIERS

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Material/Equipment to be Supplied \_\_\_\_\_

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Material/Equipment to be Supplied \_\_\_\_\_

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Material/Equipment to be Supplied \_\_\_\_\_

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Material/Equipment to be Supplied \_\_\_\_\_

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Material/Equipment to be Supplied \_\_\_\_\_

Company \_\_\_\_\_ Telephone No. \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Material/Equipment to be Supplied \_\_\_\_\_

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AFFIDAVIT OF NON-COLLUSION

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I Hereby swear (or affirm) under the penalty of perjury:

- 1) That I am the bidder (if the bidder is an individual), a partner in the bidder (if the bidder is a partnership) or an officer or employee of the bidder corporation having authority to sign on its behalf (if the bidder is a corporation);
- 2) That the attached bid or bids have been arrived at by the bidder individually and have been submitted without collusion with, and without any agreement, understanding or planned common course of action with any other vendor of materials, supplies, equipment or services described in the invitation to bid designed to limit individual bidding or competition;
- 3) That the contents of the bid or bids have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid or bids, and will not be communicated to any such person, prior to any official opening of the bid or bids; and
- 4) That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Bidder's Signature

\_\_\_\_\_  
Notary

\_\_\_\_\_  
Title

(Seal)

\_\_\_\_\_  
Company

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## SECTION 00 45 48

### BUY AMERICAN CERTIFICATE FOR MANUFACTURED PRODUCTS

#### **Certificate of Buy American Compliance for Manufactured Products** (Non-building construction projects, equipment acquisition projects)

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101 by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101 by:
- Only installing steel and manufactured products produced in the United States, or;
  - Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing, or;
  - Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- To provide to the Owner evidence that documents the source and origin of the steel and manufactured product.
  - To faithfully comply with providing US domestic product.
  - To furnish US domestic product for any waiver request that the FAA rejects.
  - To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100% Buy American Preferences of 49 USC § 50101(a) but may qualify for either a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- To submit to the Owner within 15 calendar days of the bid opening, a formal waiver request and required documentation that support the type of waiver being requested.
  - That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination may result in rejection of the proposal.
  - To faithfully comply with providing US domestic products at or above the approved US domestic content percentage as approved by the FAA.
  - To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

#### **Required Documentation**

**Type 3 Waiver** - The cost of the item components and subcomponents produced in the United States is more than 60% of the cost of all components and subcomponents of the "item". The required documentation for a type 3 waiver is:

- Listing of all product components and subcomponents that are not comprised of 100% US domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety)
- Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.

- c) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver** - Total cost of project using US domestic source product exceeds the total project cost using non-domestic product by 25%. The required documentation for a type 4 of waiver is:

- a) Detailed cost information for total project using US domestic product
- b) Detailed cost information for total project using non-domestic product

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the Federal Aviation Administration and the making of a false, fictitious or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

---

Date

---

Signature

---

Company Name

---

Title

**END OF DOCUMENT**

**CERTIFICATION OF COMPLIANCE WITH FAA BUY AMERICAN PREFERENCE -  
EQUIPMENT/BUILDING PROJECTS (A4.3.3)**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101, and other Made in America Laws, U.S. statutes, guidance, and FAA policies by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing steel and manufactured products produced in the United States;
  - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
  - c) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.
  - b) To faithfully comply with providing U.S. domestic product.
  - c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
  - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 2 Waiver (Nonavailability)** - The iron, steel, manufactured goods or construction materials are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

**Type 3 Waiver** - The cost of the item components and subcomponents produced in the United States is more that 60 percent of the cost of all components and subcomponents of the "item". The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108 (products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- d) Percentage of non-domestic component and subcomponent cost as compared to total "item" component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver (Unreasonable Costs)** - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the FAA and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

**END OF DOCUMENT**

DEMONSTRATION OF GOOD FAITH DBE EFFORTS

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and should submit documentation demonstrating good faith efforts.

Name of Bidder/Offeror's Firm: \_\_\_\_\_

State Registration No.: \_\_\_\_\_

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Title

**FORM 2: LETTER OF INTENT**

Name of Bidder/Offeror's Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE Firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of Work to be Performed by DBE Firm: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**

Submit this page for each DBE subcontractor.

**END OF DOCUMENT**



**DOCUMENT 00 51 00**

**NOTICE OF AWARD**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Contract: 2024 Electrical Vault Rehabilitation  
Minot International Airport, Minot, ND

SEH Project No: MINOT 177332

You are notified that your Bid dated \_\_\_\_\_, 20\_\_ for the above Contract has been considered. You are the apparent Successful Bidder and have been awarded a Contract for the above referenced project.

The Contract Price is \_\_\_\_\_.

Copies of the proposed Agreement accompany this Notice of Award. Additional sets of Project Manuals and Drawings will be sent to you under separate cover and are not part of this Notice.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award; that is by \_\_\_\_\_, 20\_\_.

1. Deliver the following documents to the Engineer:  
Notice of Award  
Agreement  
Performance Bond and Payment Bond  
Certificates of Insurance

2. (List other conditions). N/A

Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid in default, to annul this Notice of Award, and to declare your bid security forfeited.

Within fifteen days after you comply with the above conditions, OWNER will return to you one fully-executed counterpart of the Contract Documents.

SEH  
By: \_\_\_\_\_  
Title: Engineer

**ACCEPTANCE OF NOTICE**

Receipt of the above Notice of Award is hereby acknowledged  
by \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By \_\_\_\_\_

Title \_\_\_\_\_

c: Owner

**END OF DOCUMENT**

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**STANDARD FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
ON THE BASIS OF A STIPULATED PRICE**

**THIS AGREEMENT** is by and between the City of Minot, North Dakota  
(Owner) and \_\_\_\_\_ (Contractor).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: 2024 Electrical Vault Rehabilitation.

**ARTICLE 2 – THE PROJECT**

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Electrical regulator replacement and vault improvements.

**ARTICLE 3 – ENGINEER**

- 3.01 The Project has been designed by Short Elliott Hendrickson Inc. (SEH®).
- 3.02 The Owner has retained SEH (Engineer) to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

- 4.01 *Time of the Essence*
- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.
- 4.02 *Contract Times: Days*
- A. The Work will be substantially completed within 18 working days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 100 days after the date when the Contract Times commence to run.
1. The work shall be substantially complete by November 1, 2024.
- 4.03 *Liquidated Damages*
- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. Substantial Completion: Contractor shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete. This applies to each phase duration requirement. Contractor shall pay Owner \$500.00 for each hour that extends past hourly closure requirements.

2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$1,000 for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

#### 4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

### **ARTICLE 5 – CONTRACT PRICE**

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
  - A. For all Work, at the prices stated in Contractor's Bid attached hereto as Document 00 41 00.

### **ARTICLE 6 – PAYMENT PROCEDURES**

#### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions, Supplementary Conditions, and Section 90, Measurement and Payment.

#### 6.02 *Progress Payments; Retainage*

- A. Subject to the provisions of SC-15.01.C, Owner shall make monthly progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications of Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract:
  1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract:
    - a. 95 percent of Work completed (with the balance being retainage).
    - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Within 60 days after Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
  - a. 99 percent of Work completed (with the balance being retainage) less 250 percent of the cost to correct or complete work known at the time of Substantial Completion.
- B. Within 60 days of Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed; less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions; and less 250 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment. Upon completion or correction and acceptance of said Work, Owner shall pay the amounts withheld within 60 days as recommended by Engineer.
  1. After Substantial Completion Owner shall also withhold one percent of the value of the Contract or \$500, whichever is greater, pending completion and submission of all "final paperwork". Owner shall pay said amount withheld after Substantial Completion within 60 days of submission of all final paperwork as recommended by Engineer.

#### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

#### 6.04 *Interest*

All amounts not paid when due shall bear interest at the rate of 4 percent per annum.

### **ARTICLE 7 – CONTRACT DOCUMENTS**

#### 7.01 *Contents*

- A. The Contract Documents consist of the following:
  1. Addenda (numbers 00 00 1\_\_ to 00 00 1\_\_, inclusive).
  2. This Agreement (pages 00 52 00-1 to 00 52 00-6, inclusive).
  3. Performance Bond (Document 00 61 13).
  4. Payment Bond (Document 00 61 14).
  5. General Conditions (pages 00 72 00-1 to 00 72 00-66, inclusive).
  6. Supplementary Conditions (pages 00 73 00-1 to 00 73 00-8, inclusive).
  7. Specifications as listed in the table of contents of the Project Manual.
  8. Exhibits to this Agreement (enumerated as follows).
    - a. Contractor's Bid (Document 00 41 00).
    - b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_ to \_\_\_\_, inclusive).
    - c. Certificate of Insurance.
  9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Field Order(s).

- c. Work Change Directive(s).
  - d. Change Order(s).
- B. The documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## **ARTICLE 8 – REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - 1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  - 2. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
  - 5. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
  - 6. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  - 7. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  - 8. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
  - 9. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  - 10. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

## 8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

## **ARTICLE 9 – MISCELLANEOUS**

### 9.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### 9.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

### 9.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents 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.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_, \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

City of Minot, North Dakota \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Giving Notices:

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

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement).

Designated Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

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

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

CONTRACTOR:

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

[CORPORATE SEAL]

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Address for Giving Notices:

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

License No. \_\_\_\_\_  
(Where Applicable)

Agent for service of process: \_\_\_\_\_

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address \_\_\_\_\_

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

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**END OF DOCUMENT**



NOTICE TO PROCEED

CITY OF MINOT, NORTH DAKOTA  
2024 ELECTRICAL VAULT REHABILITATION  
MINOT INTERNATIONAL AIRPORT  
AIP NO. 3-38-0037-072-2024  
SEH NO. MINOT 177332

TO:

ADDRESS:

You are hereby notified to proceed with the Work on the project. The Contract Times, as described in Article 4 of the Agreement, will commence to run on \_\_\_\_\_.

Prior to starting any work on the site, the following must be completed:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

GIVEN BY:

ACCEPTED BY:

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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Title

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Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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## PERFORMANCE BOND

<b>Contractor</b> Name: _____ Address ( <i>principal place of business</i> ): _____	<b>Surety</b> Name: _____ Address ( <i>principal place of business</i> ): _____
<b>Owner</b> Name: <b>City of Minot, North Dakota</b> Mailing address ( <i>principal place of business</i> ): <b>305 Airport Road, Suite 216</b> <b>Minot, ND 58703</b>	<b>Contract</b> Description ( <i>name and location</i> ): <b>2024 Electrical Vault Rehabilitation</b> <b>Minot International Airport</b>  Contract Price: _____ Effective Date of Contract: _____
<b>Bond</b> Bond Amount: _____ Date of Bond: _____ ( <i>Date of Bond cannot be earlier than Effective Date of Contract</i> ) Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 16	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
_____ ( <i>Full formal name of Contractor</i> )	_____ ( <i>Full formal name of Surety</i> ) ( <i>corporate seal</i> )
By: _____ <div style="text-align: center;"><i>(Signature)</i></div>	By: _____ <div style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint ventures. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond will arise after:
  - 3.1. The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice may indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement does not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - 3.2. The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - 3.3. The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1. Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
  - 5.2. Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
  - 5.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
  - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
    - 5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
    - 5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment, or the Surety has denied liability, in

whole or in part, without further notice, the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner will not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety will not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:
  - 7.1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - 7.2. additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and must be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
12. Notice to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted therefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
14. Definitions
  - 14.1. *Balance of the Contract Price*—The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
  - 14.2. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
  - 14.3. *Contractor Default*—Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
  - 14.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

- 14.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
16. Modifications to this Bond are as follows:

## PAYMENT BOND

<b>Contractor</b> Name: Address ( <i>principal place of business</i> ):	<b>Surety</b> Name Address ( <i>principal place of business</i> ):
<b>Owner</b> Name: <b>City of Minot, North Dakota</b> Mailing address ( <i>principal place of business</i> ): <b>305 Airport Road, Suite 216</b> <b>Minot, ND 58703</b>	<b>Contract</b> Description ( <i>name and location</i> ): <b>2024 Electrical Vault Rehabilitation</b> <b>Minot International Airport</b>  Contract Price:  Effective Date of Contract:
<b>Bond</b> Bond Amount: Date of Bond: <i>(Date of Bond cannot be earlier than Effective Date of Contract)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 18	
Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Contractor as Principal	Surety
<i>(Full formal name of Contractor)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <div style="text-align: center;"><i>(Signature)</i></div>	By: _____ <div style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint ventures. (2) Any singular reference to Contractor, Surety, Owner, or other party is considered plural where applicable.</i>	

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond will arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
  - 5.1. Claimants who do not have a direct contract with the Contractor
    - 5.1.1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2. Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1. Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2. Pay or arrange for payment of any undisputed amounts.
  - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract will be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all



funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfying obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. Definitions

16.1. *Claim*—A written statement by the Claimant including at a minimum:

- 16.1.1. The name of the Claimant;
- 16.1.2. The name of the person for whom the labor was done, or materials or equipment furnished;
- 16.1.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
- 16.1.4. A brief description of the labor, materials, or equipment furnished;
- 16.1.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- 16.1.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
- 16.1.7. The total amount of previous payments received by the Claimant; and
- 16.1.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2. *Claimant*—An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute

against the real property upon which the Project is located. The intent of this Bond is to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

- 16.3. *Construction Contract*—The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
  - 16.4. *Owner Default*—Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
  - 16.5. *Contract Documents*—All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond will be deemed to be Subcontractor and the term Owner will be deemed to be Contractor.
18. Modifications to this Bond are as follows:

### Section 10 Definition of Terms

When the following terms are used in these specifications, in the contract, or in any documents or other instruments pertaining to construction where these specifications govern, the intent and meaning shall be defined as follows:

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-01</b>	<b>AASHTO</b>	The American Association of State Highway and Transportation Officials.
<b>10-02</b>	<b>Access Road</b>	The right-of-way, the roadway and all improvements constructed thereon connecting the airport to a public roadway.
<b>10-03</b>	<b>Advertisement</b>	A public announcement, as required by local law, inviting bids for work to be performed and materials to be furnished.
<b>10-04</b>	<b>Airport</b>	Airport means an area of land or water which is used or intended to be used for the landing and takeoff of aircraft; an appurtenant area used or intended to be used for airport buildings or other airport facilities or rights of way; airport buildings and facilities located in any of these areas, and a heliport.
<b>10-05</b>	<b>Airport Improvement Program (AIP)</b>	A grant-in-aid program, administered by the Federal Aviation Administration (FAA).
<b>10-06</b>	<b>Air Operations Area (AOA)</b>	The term air operations area (AOA) shall mean any area of the airport used or intended to be used for the landing, takeoff, or surface maneuvering of aircraft. An air operation area shall include such paved or unpaved areas that are used or intended to be used for the unobstructed movement of aircraft in addition to its associated runway, taxiway, or apron.
<b>10-07</b>	<b>Apron</b>	Area where aircraft are parked, unloaded or loaded, fueled and/or serviced.
<b>10-08</b>	<b>ASTM International (ASTM)</b>	Formerly known as the American Society for Testing and Materials (ASTM).
<b>10-09</b>	<b>Award</b>	The Owner's notice to the successful bidder of the acceptance of the submitted bid.
<b>10-10</b>	<b>Bidder</b>	Any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a proposal for the work contemplated.
<b>10-11</b>	<b>Building Area</b>	An area on the airport to be used, considered, or intended to be used for airport buildings or other airport facilities or rights-of-way together with all airport buildings and facilities located thereon.
<b>10-12</b>	<b>Calendar Day</b>	Every day shown on the calendar.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-13</b>	<b>Certificate of Analysis (COA)</b>	The COA is the manufacturer's Certificate of Compliance (COC) including all applicable test results required by the specifications.
<b>10-14</b>	<b>Certificate of Compliance (COC)</b>	The manufacturer's certification stating that materials or assemblies furnished fully comply with the requirements of the contract. The certificate shall be signed by the manufacturer's authorized representative.
<b>10-15</b>	<b>Change Order</b>	A written order to the Contractor covering changes in the plans, specifications, or proposal quantities and establishing the basis of payment and contract time adjustment, if any, for work within the scope of the contract and necessary to complete the project.
<b>10-16</b>	<b>Contract</b>	<p>A written agreement between the Owner and the Contractor that establishes the obligations of the parties including but not limited to performance of work, furnishing of labor, equipment and materials and the basis of payment.</p> <p>The awarded contract includes but may not be limited to: Advertisement, Contract form, Proposal, Performance bond, payment bond, General provisions, certifications and representations, Technical Specifications, Plans, Supplemental Provisions, standards incorporated by reference and issued addenda.</p>
<b>10-17</b>	<b>Contract Item (Pay Item)</b>	A specific unit of work for which a price is provided in the contract.
<b>10-18</b>	<b>Contract Time</b>	The number of calendar days or working days, stated in the proposal, allowed for completion of the contract, including authorized time extensions. If a calendar date of completion is stated in the proposal, in lieu of a number of calendar or working days, the contract shall be completed by that date.
<b>10-19</b>	<b>Contractor</b>	The individual, partnership, firm, or corporation primarily liable for the acceptable performance of the work contracted and for the payment of all legal debts pertaining to the work who acts directly or through lawful agents or employees to complete the contract work.
<b>10-20</b>	<b>Contractors Quality Control (QC) Facilities</b>	The Contractor's QC facilities in accordance with the Contractor Quality Control Program (CQCP).
<b>10-21</b>	<b>Contractor Quality Control Program (CQCP)</b>	Details the methods and procedures that will be taken to assure that all materials and completed construction required by the contract conform to contract plans, technical specifications and other requirements, whether manufactured by the Contractor, or procured from subcontractors or vendors.
<b>10-22</b>	<b>Control Strip</b>	A demonstration by the Contractor that the materials, equipment, and construction processes results in a product meeting the requirements of the specification.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-23</b>	<b>Construction Safety and Phasing Plan (CSPP)</b>	The overall plan for safety and phasing of a construction project developed by the airport operator, or developed by the airport operator's consultant and approved by the airport operator. It is included in the invitation for bids and becomes part of the project specifications.
<b>10-24</b>	<b>Drainage System</b>	The system of pipes, ditches, and structures by which surface or subsurface waters are collected and conducted from the airport area.
<b>10-25</b>	<b>Engineer</b>	The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for engineering, inspection, and/or observation of the contract work and acting directly or through an authorized representative.
<b>10-26</b>	<b>Equipment</b>	All machinery, together with the necessary supplies for upkeep and maintenance; and all tools and apparatus necessary for the proper construction and acceptable completion of the work.
<b>10-27</b>	<b>Extra Work</b>	An item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, but which is found by the Owner's Engineer or Resident Project Representative (RPR) to be necessary to complete the work within the intended scope of the contract as previously modified.
<b>10-28</b>	<b>FAA</b>	The Federal Aviation Administration. When used to designate a person, FAA shall mean the Administrator or their duly authorized representative.
<b>10-29</b>	<b>Federal Specifications</b>	The federal specifications and standards, commercial item descriptions, and supplements, amendments, and indices prepared and issued by the General Services Administration.
<b>10-30</b>	<b>Force Account</b>	<p><b>a.</b> Contract Force Account - A method of payment that addresses extra work performed by the Contractor on a time and material basis.</p> <p><b>b.</b> Owner Force Account - Work performed for the project by the Owner's employees.</p>
<b>10-31</b>	<b>Intention of Terms</b>	<p>Whenever, in these specifications or on the plans, the words "directed," "required," "permitted," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of the Engineer and/or Resident Project Representative (RPR) is intended; and similarly, the words "approved," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Engineer and/or RPR, subject in each case to the final determination of the Owner.</p> <p>Any reference to a specific requirement of a numbered paragraph of the contract specifications or a cited standard shall be</p>

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
		interpreted to include all general requirements of the entire section, specification item, or cited standard that may be pertinent to such specific reference.
<b>10-32</b>	<b>Lighting</b>	A system of fixtures providing or controlling the light sources used on or near the airport or within the airport buildings. The field lighting includes all luminous signals, markers, floodlights, and illuminating devices used on or near the airport or to aid in the operation of aircraft landing at, taking off from, or taxiing on the airport surface.
<b>10-33</b>	<b>Major and Minor Contract Items</b>	A major contract item shall be any item that is listed in the proposal, the total cost of which is equal to or greater than 20% of the total amount of the award contract. All other items shall be considered minor contract items.
<b>10-34</b>	<b>Materials</b>	Any substance specified for use in the construction of the contract work.
<b>10-35</b>	<b>Modification of Standards (MOS)</b>	Any deviation from standard specifications applicable to material and construction methods in accordance with FAA Order 5300.1.
<b>10-36</b>	<b>Notice to Proceed (NTP)</b>	A written notice to the Contractor to begin the actual contract work on a previously agreed to date. If applicable, the Notice to Proceed shall state the date on which the contract time begins.
<b>10-37</b>	<b>Owner</b>	The term "Owner" shall mean the party of the first part or the contracting agency signatory to the contract. Where the term "Owner" is capitalized in this document, it shall mean airport Sponsor only. The Owner for this project is the City of Minot, North Dakota.
<b>10-38</b>	<b>Passenger Facility Charge (PFC)</b>	Per 14 Code of Federal Regulations (CFR) Part 158 and 49 United States Code (USC) § 40117, a PFC is a charge imposed by a public agency on passengers enplaned at a commercial service airport it controls.
<b>10-39</b>	<b>Pavement Structure</b>	The combined surface course, base course(s), and subbase course(s), if any, considered as a single unit.
<b>10-40</b>	<b>Payment bond</b>	The approved form of security furnished by the Contractor and their own surety as a guaranty that the Contractor will pay in full all bills and accounts for materials and labor used in the construction of the work.
<b>10-41</b>	<b>Performance bond</b>	The approved form of security furnished by the Contractor and their own surety as a guaranty that the Contractor will complete the work in accordance with the terms of the contract.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-42</b>	<b>Plans</b>	The official drawings or exact reproductions which show the location, character, dimensions and details of the airport and the work to be done and which are to be considered as a part of the contract, supplementary to the specifications. Plans may also be referred to as 'contract drawings.'
<b>10-43</b>	<b>Project</b>	The agreed scope of work for accomplishing specific airport development with respect to a particular airport.
<b>10-44</b>	<b>Proposal</b>	The written offer of the bidder (when submitted on the approved proposal form) to perform the contemplated work and furnish the necessary materials in accordance with the provisions of the plans and specifications.
<b>10-45</b>	<b>Proposal guaranty</b>	The security furnished with a proposal to guarantee that the bidder will enter into a contract if their own proposal is accepted by the Owner.
<b>10-46</b>	<b>Quality Assurance (QA)</b>	Owner's responsibility to assure that construction work completed complies with specifications for payment.
<b>10-47</b>	<b>Quality Control (QC)</b>	Contractor's responsibility to control material(s) and construction processes to complete construction in accordance with project specifications.
<b>10-48</b>	<b>Quality Assurance (QA) Inspector</b>	An authorized representative of the Engineer and/or Resident Project Representative (RPR) assigned to make all necessary inspections, observations, tests, and/or observation of tests of the work performed or being performed, or of the materials furnished or being furnished by the Contractor.
<b>10-49</b>	<b>Quality Assurance (QA) Laboratory</b>	The official quality assurance testing laboratories of the Owner or such other laboratories as may be designated by the Engineer or RPR. May also be referred to as Engineer's, Owner's, or QA Laboratory.
<b>10-50</b>	<b>Resident Project Representative (RPR)</b>	The individual, partnership, firm, or corporation duly authorized by the Owner to be responsible for all necessary inspections, observations, tests, and/or observations of tests of the contract work performed or being performed, or of the materials furnished or being furnished by the Contractor, and acting directly or through an authorized representative.
<b>10-51</b>	<b>Runway</b>	The area on the airport prepared for the landing and takeoff of aircraft.
<b>10-52</b>	<b>Runway Safety Area (RSA)</b>	A defined surface surrounding the runway prepared or suitable for reducing the risk of damage to aircraft. See the construction safety and phasing plan (CSPP) for limits of the RSA.

<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-53</b>	<b>Safety Plan Compliance Document (SPCD)</b>	Details how the Contractor will comply with the CSPP.
<b>10-54</b>	<b>Specifications</b>	A part of the contract containing the written directions and requirements for completing the contract work. Standards for specifying materials or testing which are cited in the contract specifications by reference shall have the same force and effect as if included in the contract physically.
<b>10-55</b>	<b>Sponsor</b>	A Sponsor is defined in 49 USC § 47102(24) as a public agency that submits to the FAA for an AIP grant; or a private Owner of a public-use airport that submits to the FAA an application for an AIP grant for the airport.
<b>10-56</b>	<b>Structures</b>	Airport facilities such as bridges; culverts; catch basins, inlets, retaining walls, cribbing; storm and sanitary sewer lines; water lines; underdrains; electrical ducts, manholes, handholes, lighting fixtures and bases; transformers; navigational aids; buildings; vaults; and, other manmade features of the airport that may be encountered in the work and not otherwise classified herein.
<b>10-57</b>	<b>Subgrade</b>	The soil that forms the pavement foundation.
<b>10-58</b>	<b>Superintendent</b>	The Contractor's executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the RPR, and who shall supervise and direct the construction.
<b>10-59</b>	<b>Supplemental Agreement</b>	A written agreement between the Contractor and the Owner that establishes the basis of payment and contract time adjustment, if any, for the work affected by the supplemental agreement. A supplemental agreement is required if: (1) in scope work would increase or decrease the total amount of the awarded contract by more than 25%; (2) in scope work would increase or decrease the total of any major contract item by more than 25%; (3) work that is not within the scope of the originally awarded contract; or (4) adding or deleting of a major contract item.
<b>10-60</b>	<b>Surety</b>	The corporation, partnership, or individual, other than the Contractor, executing payment or performance bonds that are furnished to the Owner by the Contractor.
<b>10-61</b>	<b>Taxilane</b>	A taxiway designed for low speed movement of aircraft between aircraft parking areas and terminal areas.
<b>10-62</b>	<b>Taxiway</b>	The portion of the air operations area of an airport that has been designated by competent airport authority for movement of aircraft to and from the airport's runways, aircraft parking areas, and terminal areas.



<b>Paragraph Number</b>	<b>Term</b>	<b>Definition</b>
<b>10-63</b>	<b>Taxiway/Taxilane Safety Area (TSA)</b>	A defined surface alongside the taxiway prepared or suitable for reducing the risk of damage to an aircraft. See the construction safety and phasing plan (CSPP) for limits of the TSA.
<b>10-64</b>	<b>Work</b>	The furnishing of all labor, materials, tools, equipment, and incidentals necessary or convenient to the Contractor's performance of all duties and obligations imposed by the contract, plans, and specifications.
<b>10-65</b>	<b>Working day</b>	A working day shall be any day other than a legal holiday, Saturday, or Sunday on which the normal working forces of the Contractor may proceed with regular work for at least six (6) hours toward completion of the contract. When work is suspended for causes beyond the Contractor's control, it will not be counted as a working day. Saturdays, Sundays and holidays on which the Contractor's forces engage in regular work will be considered as working days.
<b>10-66</b>	<b>Owner Defined terms</b>	None

**END OF SECTION 10**

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## Section 20 Proposal Requirements and Conditions

**20-01 Advertisement (Notice to Bidders).** See Document 00 11 13 Advertisement for Bids

**20-02 Qualification of bidders.** See Document 00 21 13 Instructions to Bidders.

**20-03 Contents of proposal forms.** The Owner's proposal forms state the location and description of the proposed construction; the place, date, and time of opening of the proposals; and the estimated quantities of the various items of work to be performed and materials to be furnished for which unit bid prices are asked. The proposal form states the time in which the work must be completed, and the amount of the proposal guaranty that must accompany the proposal. The Owner will accept only those Proposals properly executed on physical forms or electronic forms provided by the Owner. Bidder actions that may cause the Owner to deem a proposal irregular are given in paragraph 20-09 *Irregular proposals*.

Mobilization is limited to 10 percent of the total project cost.

**20-04 Issuance of proposal forms.** The Owner reserves the right to refuse to issue a proposal form to a prospective bidder if the bidder is in default for any of the following reasons:

- a. Failure to comply with any prequalification regulations of the Owner, if such regulations are cited, or otherwise included, in the proposal as a requirement for bidding.
- b. Failure to pay, or satisfactorily settle, all bills due for labor and materials on former contracts in force with the Owner at the time the Owner issues the proposal to a prospective bidder.
- c. Documented record of Contractor default under previous contracts with the Owner.
- d. Documented record of unsatisfactory work on previous contracts with the Owner.

**20-05 Interpretation of estimated proposal quantities.** An estimate of quantities of work to be done and materials to be furnished under these specifications is given in the proposal. It is the result of careful calculations and is believed to be correct. It is given only as a basis for comparison of proposals and the award of the contract. The Owner does not expressly, or by implication, agree that the actual quantities involved will correspond exactly therewith; nor shall the bidder plead misunderstanding or deception because of such estimates of quantities, or of the character, location, or other conditions pertaining to the work. Payment to the Contractor will be made only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications. It is understood that the quantities may be increased or decreased as provided in the Section 40, paragraph 40-02, Alteration of Work and Quantities, without in any way invalidating the unit bid prices.

**20-06 Examination of plans, specifications, and site.** The bidder is expected to carefully examine the site of the proposed work, the proposal, plans, specifications, and contract forms. Bidders shall satisfy themselves to the character, quality, and quantities of work to be performed, materials to be furnished, and to the requirements of the proposed contract. The submission of a proposal shall be prima facie evidence that the bidder has made such examination and is satisfied to the conditions to be encountered in performing the work and the requirements of the proposed contract, plans, and specifications.

Records of subsurface investigations and tests are available for inspection of bidders. It is understood and agreed that such subsurface information, whether included in the plans, specifications, or otherwise made available to the bidder, was obtained and is intended for the Owner's design and estimating purposes only. Such information has been made available for the convenience of all bidders. It is further understood and agreed that each bidder is solely responsible for all assumptions, deductions, or conclusions which the bidder may make or obtain from their own examination of the boring logs and other records of subsurface investigations and tests that are furnished by the Owner.

**20-07 Preparation of proposal.** See Document 00 21 13 Instructions to Bidders.

**20-08 Responsive and responsible bidder.** A responsive bid conforms to all significant terms and conditions contained in the Owner's invitation for bid. It is the Owner's responsibility to decide if the exceptions taken by a bidder to the solicitation are material or not and the extent of deviation it is willing to accept.

A responsible bidder has the ability to perform successfully under the terms and conditions of a proposed procurement, as defined in 2 CFR § 200.318(h). This includes such matters as Contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

**20-09 Irregular proposals.** Proposals shall be considered irregular for the following reasons:

- a. If the proposal is on a form other than that furnished by the Owner, or if the Owner's form is altered, or if any part of the proposal form is detached.
- b. If there are unauthorized additions, conditional or alternate pay items, or irregularities of any kind that make the proposal incomplete, indefinite, or otherwise ambiguous.
- c. If the proposal does not contain a unit price for each pay item listed in the proposal, except in the case of authorized alternate pay items, for which the bidder is not required to furnish a unit price.
- d. If the proposal contains unit prices that are obviously unbalanced.
- e. If the proposal is not accompanied by the proposal guaranty specified by the Owner.
- f. If the applicable Disadvantaged Business Enterprise information is incomplete.

The Owner reserves the right to reject any irregular proposal and the right to waive technicalities if such waiver is in the best interest of the Owner and conforms to local laws and ordinances pertaining to the letting of construction contracts.

**20-10 Bid guarantee.** See Document 00 21 13 Instructions to Bidders.

**20-11 Delivery of proposal.** See Document 00 21 13 Instructions to Bidders.

**20-12 Withdrawal or revision of proposals.** See Document 00 21 13 Instructions to Bidders.

**20-13 Public opening of proposals.** See Document 00 21 13 Instructions to Bidders.

**20-14 Disqualification of bidders.** A bidder shall be considered disqualified for any of the following reasons:

- a. Submitting more than one proposal from the same partnership, firm, or corporation under the same or different name.
- b. Evidence of collusion among bidders. Bidders participating in such collusion shall be disqualified as bidders for any future work of the Owner until any such participating bidder has been reinstated by the Owner as a qualified bidder.
- c. If the bidder is considered to be in "default" for any reason specified in paragraph 20-04, *Issuance of Proposal Forms*, of this section.

**20-15 Discrepancies and Omissions.** A Bidder who discovers discrepancies or omissions with the project bid documents shall immediately notify the Owner's Engineer of the matter. A bidder that has doubt as to the true meaning of a project requirement may submit to the Owner's Engineer a written request for interpretation no later than 5 days prior to bid opening.

Any interpretation of the project bid documents by the Owner's Engineer will be by written addendum issued by the Owner. The Owner will not consider any instructions, clarifications or interpretations of the bidding documents in any manner other than written addendum.

## END OF SECTION 20

## Section 30 Award and Execution of Contract

**30-01 Consideration of proposals.** After the proposals are publicly opened and read, they will be compared on the basis of the summation of the products obtained by multiplying the estimated quantities shown in the proposal by the unit bid prices. If a bidder's proposal contains a discrepancy between unit bid prices written in words and unit bid prices written in numbers, the unit bid price written in words shall govern.

Until the award of a contract is made, the Owner reserves the right to reject a bidder's proposal for any of the following reasons:

a. If the proposal is irregular as specified in Section 20, paragraph 20-09, *Irregular Proposals*.

b. If the bidder is disqualified for any of the reasons specified Section 20, paragraph 20-14, *Disqualification of Bidders*.

In addition, until the award of a contract is made, the Owner reserves the right to reject any or all proposals, waive technicalities, if such waiver is in the best interest of the Owner and is in conformance with applicable state and local laws or regulations pertaining to the letting of construction contracts; advertise for new proposals; or proceed with the work otherwise. All such actions shall promote the Owner's best interests.

**30-02 Award of contract.** The initial award of a contract, if it is to be awarded, shall be made within 45 calendar days of the date specified for publicly opening proposals, unless otherwise specified herein. The final contract execution will be issued after receiving the grant and shall be executed within 120 days of the date specified for publicly opening proposal. Contractors shall not start work until a Notice to Proceed is issued and are expected to hold their pricing until final contract execution.

If the Owner elects to proceed with an award of contract, the Owner will make award to the responsible bidder whose bid, conforming with all the material terms and conditions of the bid documents, is the lowest in price.

**30-03 Cancellation of award.** The Owner reserves the right to cancel the award without liability to the bidder, except return of proposal guaranty, at any time before a contract has been fully executed by all parties and is approved by the Owner in accordance with paragraph 30-07 *Approval of Contract*.

**30-04 Return of proposal guaranty.** All proposal guaranties, except those of the two lowest bidders, will be returned immediately after the Owner has made a comparison of bids as specified in the paragraph 30-01, *Consideration of Proposals*. Proposal guaranties of the two lowest bidders will be retained by the Owner until such time as an award is made, at which time, the unsuccessful bidder's proposal guaranty will be returned. The successful bidder's proposal guaranty will be returned as soon as the Owner receives the contract bonds as specified in paragraph 30-05, *Requirements of Contract Bonds*.

**30-05 Requirements of contract bonds.** See Document 00 21 13 Instructions to Bidders. Unless otherwise specified in this subsection, the surety bond or bonds shall be in a sum equal to the full amount of the contract.

**30-06 Execution of contract.** See Document 00 21 13 Instructions to Bidders.

**30-07 Approval of contract.** See Document 00 21 13 Instructions to Bidders. Delivery of the fully executed contract to the Contractor shall constitute the Owner's approval to be bound by the successful bidder's proposal and the terms of the contract.

**30-08 Failure to execute contract.** Failure of the successful bidder to execute the contract and furnish an acceptable surety bond or bonds within the period specified in paragraph 30-06, *Execution of Contract*, of

this section shall be just cause for cancellation of the award and forfeiture of the proposal guaranty, not as a penalty, but as liquidated damages to the Owner.

**END OF SECTION 30**

## Section 40 Scope of Work

**40-01 Intent of contract.** The intent of the contract is to provide for construction and completion, in every detail, of the work described. It is further intended that the Contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract.

**40-02 Alteration of work and quantities.** The Owner reserves the right to make such changes in quantities and work as may be necessary or desirable to complete, in a satisfactory manner, the original intended work. Unless otherwise specified in the Contract, the Owner's Engineer or RPR shall be and is hereby authorized to make, in writing, such in-scope alterations in the work and variation of quantities as may be necessary to complete the work, provided such action does not represent a significant change in the character of the work.

For purpose of this section, a significant change in character of work means: any change that is outside the current contract scope of work; any change (increase or decrease) in the total contract cost by more than 25%; or any change in the total cost of a major contract item by more than 25%.

Work alterations and quantity variances that do not meet the definition of significant change in character of work shall not invalidate the contract nor release the surety. Contractor agrees to accept payment for such work alterations and quantity variances in accordance with Section 90, paragraph 90-03, *Compensation for Altered Quantities*.

Should the value of altered work or quantity variance meet the criteria for significant change in character of work, such altered work and quantity variance shall be covered by a supplemental agreement. Supplemental agreements shall also require consent of the Contractor's surety and separate performance and payment bonds. If the Owner and the Contractor are unable to agree on a unit adjustment for any contract item that requires a supplemental agreement, the Owner reserves the right to terminate the contract with respect to the item and make other arrangements for its completion.

**40-03 Omitted items.** The Owner, the Owner's Engineer or the RPR may provide written notice to the Contractor to omit from the work any contract item that does not meet the definition of major contract item. Major contract items may be omitted by a supplemental agreement. Such omission of contract items shall not invalidate any other contract provision or requirement.

Should a contract item be omitted or otherwise ordered to be non-performed, the Contractor shall be paid for all work performed toward completion of such item prior to the date of the order to omit such item. Payment for work performed shall be in accordance with Section 90, paragraph 90-04, *Payment for Omitted Items*.

**40-04 Extra work.** Should acceptable completion of the contract require the Contractor to perform an item of work not provided for in the awarded contract as previously modified by change order or supplemental agreement, Owner may issue a Change Order to cover the necessary extra work. Change orders for extra work shall contain agreed unit prices for performing the change order work in accordance with the requirements specified in the order, and shall contain any adjustment to the contract time that, in the RPR's opinion, is necessary for completion of the extra work.

When determined by the RPR to be in the Owner's best interest, the RPR may order the Contractor to proceed with extra work as provided in Section 90, paragraph 90-05, *Payment for Extra Work*. Extra work that is necessary for acceptable completion of the project, but is not within the general scope of the work covered by the original contract shall be covered by a supplemental agreement as defined in Section 10, paragraph 10-59, *Supplemental Agreement*.

If extra work is essential to maintaining the project critical path, RPR may order the Contractor to commence the extra work under a Time and Material contract method. Once sufficient detail is available

to establish the level of effort necessary for the extra work, the Owner shall initiate a change order or supplemental agreement to cover the extra work.

Any claim for payment of extra work that is not covered by written agreement (change order or supplemental agreement) shall be rejected by the Owner.

**40-05 Maintenance of traffic.** It is the explicit intention of the contract that the safety of aircraft, as well as the Contractor's equipment and personnel, is the most important consideration. The Contractor shall maintain traffic in the manner detailed in the Construction Safety and Phasing Plan (CSPP).

a. It is understood and agreed that the Contractor shall provide for the free and unobstructed movement of aircraft in the air operations areas (AOAs) of the airport with respect to their own operations and the operations of all subcontractors as specified in Section 80, paragraph 80-04, *Limitation of Operations*. It is further understood and agreed that the Contractor shall provide for the uninterrupted operation of visual and electronic signals (including power supplies thereto) used in the guidance of aircraft while operating to, from, and upon the airport as specified in Section 70, paragraph 70-15, *Contractor's Responsibility for Utility Service and Facilities of Others*.

b. With respect to their own operations and the operations of all subcontractors, the Contractor shall provide marking, lighting, and other acceptable means of identifying personnel, equipment, vehicles, storage areas, and any work area or condition that may be hazardous to the operation of aircraft, fire-rescue equipment, or maintenance vehicles at the airport in accordance with the construction safety and phasing plan (CSPP) and the safety plan compliance document (SPCD).

c. When the contract requires the maintenance of an existing road, street, or highway during the Contractor's performance of work that is otherwise provided for in the contract, plans, and specifications, the Contractor shall keep the road, street, or highway open to all traffic and shall provide maintenance as may be required to accommodate traffic. The Contractor, at their expense, shall be responsible for the repair to equal or better than preconstruction conditions of any damage caused by the Contractor's equipment and personnel. The Contractor shall furnish, erect, and maintain barricades, warning signs, flag person, and other traffic control devices in reasonable conformity with the Manual on Uniform Traffic Control Devices (MUTCD) (<http://mutcd.fhwa.dot.gov/>), unless otherwise specified. The Contractor shall also construct and maintain in a safe condition any temporary connections necessary for ingress to and egress from abutting property or intersecting roads, streets or highways.

**40-06 Removal of existing structures.** All existing structures encountered within the established lines, grades, or grading sections shall be removed by the Contractor, unless such existing structures are otherwise specified to be relocated, adjusted up or down, salvaged, abandoned in place, reused in the work or to remain in place. The cost of removing such existing structures shall not be measured or paid for directly, but shall be included in the various contract items.

Should the Contractor encounter an existing structure (above or below ground) in the work for which the disposition is not indicated on the plans, the Resident Project Representative (RPR) shall be notified prior to disturbing such structure. The disposition of existing structures so encountered shall be immediately determined by the RPR in accordance with the provisions of the contract.

Except as provided in Section 40, paragraph 40-07, *Rights in and Use of Materials Found in the Work*, it is intended that all existing materials or structures that may be encountered (within the lines, grades, or grading sections established for completion of the work) shall be used in the work as otherwise provided for in the contract and shall remain the property of the Owner when so used in the work.

**40-07 Rights in and use of materials found in the work.** Should the Contractor encounter any material such as (but not restricted to) sand, stone, gravel, slag, or concrete slabs within the established lines, grades, or grading sections, the use of which is intended by the terms of the contract to be embankment, the Contractor may at their own option either:



- a. Use such material in another contract item, providing such use is approved by the RPR and is in conformance with the contract specifications applicable to such use; or,
- b. Remove such material from the site, upon written approval of the RPR; or
- c. Use such material for the Contractor's own temporary construction on site; or,
- d. Use such material as intended by the terms of the contract.

Should the Contractor wish to exercise option a., b., or c., the Contractor shall request the RPR's approval in advance of such use.

Should the RPR approve the Contractor's request to exercise option a., b., or c., the Contractor shall be paid for the excavation or removal of such material at the applicable contract price. The Contractor shall replace, at their expense, such removed or excavated material with an agreed equal volume of material that is acceptable for use in constructing embankment, backfills, or otherwise to the extent that such replacement material is needed to complete the contract work. The Contractor shall not be charged for use of such material used in the work or removed from the site.

Should the RPR approve the Contractor's exercise of option a., the Contractor shall be paid, at the applicable contract price, for furnishing and installing such material in accordance with requirements of the contract item in which the material is used.

It is understood and agreed that the Contractor shall make no claim for delays by reason of their own exercise of option a., b., or c.

The Contractor shall not excavate, remove, or otherwise disturb any material, structure, or part of a structure which is located outside the lines, grades, or grading sections established for the work, except where such excavation or removal is provided for in the contract, plans, or specifications.

**40-08 Final cleanup.** Upon completion of the work and before acceptance and final payment will be made, the Contractor shall remove from the site all machinery, equipment, surplus and discarded materials, rubbish, temporary structures, and stumps or portions of trees. The Contractor shall cut all brush and woods within the limits indicated and shall leave the site in a neat and presentable condition. Material cleared from the site and deposited on adjacent property will not be considered as having been disposed of satisfactorily, unless the Contractor has obtained the written permission of the property Owner.

#### END OF SECTION 40

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## Section 50 Control of Work

**50-01 Authority of the Resident Project Representative (RPR).** The RPR has final authority regarding the interpretation of project specification requirements. The RPR shall determine acceptability of the quality of materials furnished, method of performance of work performed, and the manner and rate of performance of the work. The RPR does not have the authority to accept work that does not conform to specification requirements.

**50-02 Conformity with plans and specifications.** All work and all materials furnished shall be in reasonably close conformity with the lines, grades, grading sections, cross-sections, dimensions, material requirements, and testing requirements that are specified (including specified tolerances) in the contract, plans, or specifications.

If the RPR finds the materials furnished, work performed, or the finished product not within reasonably close conformity with the plans and specifications, but that the portion of the work affected will, in their opinion, result in a finished product having a level of safety, economy, durability, and workmanship acceptable to the Owner, the RPR will advise the Owner of their determination that the affected work be accepted and remain in place. The RPR will document the determination and recommend to the Owner a basis of acceptance that will provide for an adjustment in the contract price for the affected portion of the work. Changes in the contract price must be covered by contract change order or supplemental agreement as applicable.

If the RPR finds the materials furnished, work performed, or the finished product are not in reasonably close conformity with the plans and specifications and have resulted in an unacceptable finished product, the affected work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor in accordance with the RPR's written orders.

The term "reasonably close conformity" shall not be construed as waiving the Contractor's responsibility to complete the work in accordance with the contract, plans, and specifications. The term shall not be construed as waiving the RPR's responsibility to insist on strict compliance with the requirements of the contract, plans, and specifications during the Contractor's execution of the work, when, in the RPR's opinion, such compliance is essential to provide an acceptable finished portion of the work.

The term "reasonably close conformity" is also intended to provide the RPR with the authority, after consultation with the Sponsor and FAA, to use sound engineering judgment in their determinations to accept work that is not in strict conformity, but will provide a finished product equal to or better than that required by the requirements of the contract, plans and specifications.

The RPR will not be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions incident thereto.

**50-03 Coordination of contract, plans, and specifications.** The contract, plans, specifications, and all referenced standards cited are essential parts of the contract requirements. If electronic files are provided and used on the project and there is a conflict between the electronic files and hard copy plans, the hard copy plans shall govern. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, calculated dimensions will govern over scaled dimensions; contract technical specifications shall govern over contract general provisions, plans, cited standards for materials or testing, and cited advisory circulars (ACs); contract general provisions shall govern over plans, cited standards for materials or testing, and cited ACs; plans shall govern over cited standards for materials or testing and cited ACs. If any paragraphs contained in the Special Provisions conflict with General Provisions or Technical Specifications, the Special Provisions shall govern.

From time to time, discrepancies within cited testing standards occur due to the timing of the change, edits, and/or replacement of the standards. If the Contractor discovers any apparent discrepancy within

standard test methods, the Contractor shall immediately ask the RPR for an interpretation and decision, and such decision shall be final.

The Contractor shall not take advantage of any apparent error or omission on the plans or specifications. In the event the Contractor discovers any apparent error or discrepancy, Contractor shall immediately notify the Owner or the designated representative in writing requesting their written interpretation and decision.

#### **50-04 List of Special Provisions.**

- a. Document 00 73 30 - Additional Special Provisions for Federally-Funded Contracts
- b. Appendix C - Equal Employment Opportunity (EEO) Special Provisions

**50-05 Cooperation of Contractor.** The Contractor shall be supplied with [ five ] hard copies or an electronic PDF of the plans and specifications. The Contractor shall have available on the construction site at all times one hardcopy each of the plans and specifications. Additional hard copies of plans and specifications may be obtained by the Contractor for the cost of reproduction.

The Contractor shall give constant attention to the work to facilitate the progress thereof, and shall cooperate with the RPR and their inspectors and with other Contractors in every way possible. The Contractor shall have a competent superintendent on the work at all times who is fully authorized as their agent on the work. The superintendent shall be capable of reading and thoroughly understanding the plans and specifications and shall receive and fulfill instructions from the RPR or their authorized representative.

**50-06 Cooperation between Contractors.** The Owner reserves the right to contract for and perform other or additional work on or near the work covered by this contract.

When separate contracts are let within the limits of any one project, each Contractor shall conduct the work not to interfere with or hinder the progress of completion of the work being performed by other Contractors. Contractors working on the same project shall cooperate with each other as directed.

Each Contractor involved shall assume all liability, financial or otherwise, in connection with their own contract and shall protect and hold harmless the Owner from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced because of the presence and operations of other Contractors working within the limits of the same project.

The Contractor shall arrange their work and shall place and dispose of the materials being used to not interfere with the operations of the other Contractors within the limits of the same project. The Contractor shall join their work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

**50-07 Construction layout and stakes.** The Engineer/RPR shall establish necessary horizontal and vertical control. The establishment of Survey Control and/or reestablishment of survey control shall be by a State Licensed Land Surveyor. Contractor is responsible for preserving integrity of horizontal and vertical controls established by Engineer/RPR. In case of negligence on the part of the Contractor or their employees, resulting in the destruction of any horizontal and vertical control, the resulting costs will be deducted as a liquidated damage against the Contractor.

Prior to the start of construction, the Contractor will check all control points for horizontal and vertical accuracy and certify in writing to the RPR that the Contractor concurs with survey control established for the project. All lines, grades and measurements from control points necessary for the proper execution and control of the work on this project will be provided to the RPR. The Contractor is responsible to establish all layout required for the construction of the project.

Copies of survey notes will be provided to the RPR for each area of construction and for each placement of material as specified to allow the RPR to make periodic checks for conformance with plan grades, alignments and grade tolerances required by the applicable material specifications. Surveys will be provided to the RPR prior to commencing work items that cover or disturb the survey staking. Survey(s) and notes shall be provided in the following format(s): PDF CSV, and CAD formats.

Laser, GPS, String line, or other automatic control shall be checked with temporary control as necessary. In the case of error, on the part of the Contractor, their surveyor, employees or subcontractors, resulting in established grades, alignment or grade tolerances that do not concur with those specified or shown on the plans, the Contractor is solely responsible for correction, removal, replacement and all associated costs at no additional cost to the Owner.

Construction staking and layout includes, but is not limited to:

- A. Rough grade slope stakes at 100-foot stations.
- B. Drainage swales slope stakes and flow line blue tops at 50-foot stations.
- C. Subgrade blue tops at 25-foot stations and 25-foot offset distance (maximum) for the following section locations:
  - 1. Taxilanes – minimum three (3) per station
- D. Base course blue tops at 25-foot stations and 25-foot offset distance (maximum) for the following section locations:
  - 1. Taxilanes – minimum three (3) per station
- E. Pavement areas:
  - 1. Edge of pavement hubs and tacks (for stringline by Contractor) at 100-foot stations.
  - 2. Between lifts at 25-foot stations for the following section locations:
    - a. Taxilanes/Roadways – each paving lane width
  - 3. After finishing paving operations at 50-foot stations:
    - a. All paved areas – edge of each paving lane prior to next paving lot.
  - 4. Shoulder and safety area blue tops at 50-foot stations and at all break points with maximum of 50-foot (15-m) offsets.
  - 5. Drain lines, cut states and alignment on 25-foot stations, inlet and manholes.
  - 6. Painting and striping layout (pinned with 1.5 inch PK nails) marked for paint Contractor. (All nails shall be removed after painting)
  - 7. Laser, or other automatic control devices, shall be checked with temporary control point or grade hub at a minimum of once per 400 feet per pass (that is, paving lane).

As part of this task, the Contractor will also perform an As-built survey. This includes:

- A. Perform final bituminous topographic survey. Survey marks should be in a 50' by 50' grid pattern.
- B. Provide Engineer/RPR with survey files in PDF, CSV, and CAD format.

No direct payment will be made, unless otherwise specified in contract documents, for this labor, materials, or other expenses. The cost shall be included in the price of the bid for the various items of the Contract.

**50-08 Authority and duties of Quality Assurance (QA) inspectors.** QA inspectors shall be authorized to inspect all work done and all material furnished. Such QA inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. QA inspectors are not authorized to revoke, alter, or waive any provision of the contract. QA inspectors are not authorized to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

QA Inspectors are authorized to notify the Contractor or their representatives of any failure of the work or materials to conform to the requirements of the contract, plans, or specifications and to reject such nonconforming materials in question until such issues can be referred to the RPR for a decision.

**50-09 Inspection of the work.** All materials and each part or detail of the work shall be subject to inspection. The RPR shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the RPR requests it, the Contractor, at any time before acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be at the Contractor's expense.

Provide advance written notice to the RPR of work the Contractor plans to perform each week and each day. Any work done or materials used without written notice and allowing opportunity for inspection by the RPR may be ordered removed and replaced at the Contractor's expense.

Should the contract work include relocation, adjustment, or any other modification to existing facilities, not the property of the (contract) Owner, authorized representatives of the Owners of such facilities shall have the right to inspect such work. Such inspection shall in no sense make any facility owner a party to the contract, and shall in no way interfere with the rights of the parties to this contract.

**50-10 Removal of unacceptable and unauthorized work.** All work that does not conform to the requirements of the contract, plans, and specifications will be considered unacceptable, unless otherwise determined acceptable by the RPR as provided in paragraph 50-02, *Conformity with Plans and Specifications*.

Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause found to exist prior to the final acceptance of the work, shall be removed immediately and replaced in an acceptable manner in accordance with the provisions of Section 70, paragraph 70-14, *Contractor's Responsibility for Work*.

No removal work made under provision of this paragraph shall be done without lines and grades having been established by the RPR. Work done contrary to the instructions of the RPR, work done beyond the lines shown on the plans or as established by the RPR, except as herein specified, or any extra work done without authority, will be considered as unauthorized and will not be paid for under the provisions of the contract. Work so done may be ordered removed or replaced at the Contractor's expense.

Upon failure on the part of the Contractor to comply with any order of the RPR made under the provisions of this subsection, the RPR will have authority to cause unacceptable work to be remedied or removed and replaced; and unauthorized work to be removed and recover the resulting costs as a liquidated damage against the Contractor.

**50-11 Load restrictions.** The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the work. A special permit will not relieve the Contractor of liability for damage that may result from the moving of material or equipment.

The operation of equipment of such weight or so loaded as to cause damage to structures or to any other type of construction will not be permitted. Hauling of materials over the base course or surface course under construction shall be limited as directed. No loads will be permitted on a concrete pavement, base, or structure before the expiration of the curing period. The Contractor, at their own expense, shall be responsible for the repair to equal or better than preconstruction conditions of any damage caused by the Contractor's equipment and personnel.

**50-12 Maintenance during construction.** The Contractor shall maintain the work during construction and until the work is accepted. Maintenance shall constitute continuous and effective work prosecuted

day by day, with adequate equipment and forces so that the work is maintained in satisfactory condition at all times.

In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.

All costs of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various contract items, and the Contractor will not be paid an additional amount for such work.

**50-13 Failure to maintain the work.** Should the Contractor at any time fail to maintain the work as provided in paragraph 50-12, *Maintenance during Construction*, the RPR shall immediately notify the Contractor of such noncompliance. Such notification shall specify a reasonable time within which the Contractor shall be required to remedy such unsatisfactory maintenance condition. The time specified will give due consideration to the exigency that exists.

Should the Contractor fail to respond to the RPR's notification, the Owner may suspend any work necessary for the Owner to correct such unsatisfactory maintenance condition, depending on the exigency that exists. Any maintenance cost incurred by the Owner, shall be recovered as a liquidated damage against the Contractor.

**50-14 Partial acceptance.** If at any time during the execution of the project the Contractor substantially completes a usable unit or portion of the work, the occupancy of which will benefit the Owner, the Contractor may request the RPR to make final inspection of that unit. If the RPR finds upon inspection that the unit has been satisfactorily completed in compliance with the contract, the RPR may accept it as being complete, and the Contractor may be relieved of further responsibility for that unit. Such partial acceptance and beneficial occupancy by the Owner shall not void or alter any provision of the contract.

**50-15 Final acceptance.** Upon due notice from the Contractor of presumptive completion of the entire project, the RPR and Owner will make an inspection. If all construction provided for and contemplated by the contract is found to be complete in accordance with the contract, plans, and specifications, such inspection shall constitute the final inspection. The RPR shall notify the Contractor in writing of final acceptance as of the date of the final inspection.

If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the RPR will notify the Contractor and the Contractor shall correct the unsatisfactory work. Upon correction of the work, another inspection will be made which shall constitute the final inspection, provided the work has been satisfactorily completed. In such event, the RPR will make the final acceptance and notify the Contractor in writing of this acceptance as of the date of final inspection.

**50-16 Claims for adjustment and disputes.** If for any reason the Contractor deems that additional compensation is due for work or materials not clearly provided for in the contract, plans, or specifications or previously authorized as extra work, the Contractor shall notify the RPR in writing of their intention to claim such additional compensation before the Contractor begins the work on which the Contractor bases the claim. If such notification is not given or the RPR is not afforded proper opportunity by the Contractor for keeping strict account of actual cost as required, then the Contractor hereby agrees to waive any claim for such additional compensation. Such notice by the Contractor and the fact that the RPR has kept account of the cost of the work shall not in any way be construed as proving or substantiating the validity of the claim. When the work on which the claim for additional compensation is based has been completed, the Contractor shall, within 10 calendar days, submit a written claim to the RPR who will present it to the Owner for consideration in accordance with local laws or ordinances.

Nothing in this subsection shall be construed as a waiver of the Contractor's right to dispute final payment based on differences in measurements or computations.

#### END OF SECTION 50

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## Section 60 Control of Materials

**60-01 Source of supply and quality requirements.** The materials used in the work shall conform to the requirements of the contract, plans, and specifications. Unless otherwise specified, such materials that are manufactured or processed shall be new (as compared to used or reprocessed).

In order to expedite the inspection and testing of materials, the Contractor shall furnish documentation to the RPR as to the origin, composition, and manufacture of all materials to be used in the work. Documentation shall be furnished promptly after execution of the contract but, in all cases, prior to delivery of such materials.

At the RPR's option, materials may be approved at the source of supply before delivery. If it is found after trial that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources.

The Contractor shall furnish airport lighting equipment that meets the requirements of the specifications; and is listed in AC 150/5345-53, *Airport Lighting Equipment Certification Program and Addendum*, that is in effect on the date of advertisement.

**60-02 Samples, tests, and cited specifications.** All materials used in the work shall be inspected, tested, and approved by the RPR before incorporation in the work unless otherwise designated. Any work in which untested materials are used without approval or written permission of the RPR shall be performed at the Contractor's risk. Materials found to be unacceptable and unauthorized will not be paid for and, if directed by the RPR, shall be removed at the Contractor's expense.

Unless otherwise designated, quality assurance tests will be made by and at the expense of the Owner in accordance with the cited standard methods of ASTM, American Association of State Highway and Transportation Officials (AASHTO), federal specifications, Commercial Item Descriptions, and all other cited methods, which are current on the date of advertisement for bids.

The testing organizations performing on-site quality assurance field tests shall have copies of all referenced standards on the construction site for use by all technicians and other personnel. Unless otherwise designated, samples for quality assurance will be taken by a qualified representative of the RPR. All materials being used are subject to inspection, test, or rejection at any time prior to or during incorporation into the work. Copies of all tests will be furnished to the Contractor's representative at their request after review and approval of the RPR.

A copy of all Contractor QC test data shall be provided to the RPR daily, along with printed reports, in an approved format, on a weekly basis. After completion of the project, and prior to final payment, the Contractor shall submit a final report to the RPR showing all test data reports, plus an analysis of all results showing ranges, averages, and corrective action taken on all failing tests.

The Contractor shall employ a Quality Control (QC) testing organization to perform all Contractor required QC tests in accordance with Item C-100 Contractor Quality Control Program (CQCP).

**60-03 Certification of compliance/analysis (COC/COA).** The RPR may permit the use, prior to sampling and testing, of certain materials or assemblies when accompanied by manufacturer's COC stating that such materials or assemblies fully comply with the requirements of the contract. The certificate shall be signed by the manufacturer. Each lot of such materials or assemblies delivered to the work must be accompanied by a certificate of compliance in which the lot is clearly identified. The COA is the manufacturer's COC and includes all applicable test results.

Materials or assemblies used on the basis of certificates of compliance may be sampled and tested at any time and if found not to be in conformity with contract requirements will be subject to rejection whether in place or not.

The form and distribution of certificates of compliance shall be as approved by the RPR.

When a material or assembly is specified by “brand name or equal” and the Contractor elects to furnish the specified “or equal,” the Contractor shall be required to furnish the manufacturer’s certificate of compliance for each lot of such material or assembly delivered to the work. Such certificate of compliance shall clearly identify each lot delivered and shall certify as to:

- a. Conformance to the specified performance, testing, quality or dimensional requirements; and,
- b. Suitability of the material or assembly for the use intended in the contract work.

The RPR shall be the sole judge as to whether the proposed “or equal” is suitable for use in the work.

The RPR reserves the right to refuse permission for use of materials or assemblies on the basis of certificates of compliance.

**60-04 Plant inspection.** The RPR or their authorized representative may inspect, at its source, any specified material or assembly to be used in the work. Manufacturing plants may be inspected from time to time for the purpose of determining compliance with specified manufacturing methods or materials to be used in the work and to obtain samples required for acceptance of the material or assembly.

Should the RPR conduct plant inspections, the following conditions shall exist:

- a. The RPR shall have the cooperation and assistance of the Contractor and the producer with whom the Contractor has contracted for materials.
- b. The RPR shall have full entry at all reasonable times to such parts of the plant that concern the manufacture or production of the materials being furnished.
- c. If required by the RPR, the Contractor shall arrange for adequate office or working space that may be reasonably needed for conducting plant inspections. Place office or working space in a convenient location with respect to the plant.

It is understood and agreed that the Owner shall have the right to retest any material that has been tested and approved at the source of supply after it has been delivered to the site. The RPR shall have the right to reject only material which, when retested, does not meet the requirements of the contract, plans, or specifications.

**60-05 Engineer/ Resident Project Representative (RPR) field office.** An Engineer/RPR field office is not required.

**60-06 Storage of materials.** Materials shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located to facilitate their prompt inspection. The Contractor shall coordinate the storage of all materials with the RPR. Materials to be stored on airport property shall not create an obstruction to air navigation nor shall they interfere with the free and unobstructed movement of aircraft. Unless otherwise shown on the plans and/or CSPP, the storage of materials and the location of the Contractor’s plant and parked equipment or vehicles shall be as directed by the RPR. Private property shall not be used for storage purposes without written permission of the Owner or lessee of such property. The Contractor shall make all arrangements and bear all expenses for the storage of materials on private property. Upon request, the Contractor shall furnish the RPR a copy of the property Owner’s permission.

All storage sites on private or airport property shall be restored to their original condition by the Contractor at their expense, except as otherwise agreed to (in writing) by the Owner or lessee of the property.

**60-07 Unacceptable materials.** Any material or assembly that does not conform to the requirements of the contract, plans, or specifications shall be considered unacceptable and shall be rejected. The

Contractor shall remove any rejected material or assembly from the site of the work, unless otherwise instructed by the RPR.

Rejected material or assembly, the defects of which have been corrected by the Contractor, shall not be returned to the site of the work until such time as the RPR has approved its use in the work.

**60-08 Owner furnished materials.** The Contractor shall furnish all materials required to complete the work, except those specified, if any, to be furnished by the Owner. Owner-furnished materials shall be made available to the Contractor at the location specified.

All costs of handling, transportation from the specified location to the site of work, storage, and installing Owner-furnished materials shall be included in the unit price bid for the contract item in which such Owner-furnished material is used.

After any Owner-furnished material has been delivered to the location specified, the Contractor shall be responsible for any demurrage, damage, loss, or other deficiencies that may occur during the Contractor's handling, storage, or use of such Owner-furnished material. The Owner will deduct from any monies due or to become due the Contractor any cost incurred by the Owner in making good such loss due to the Contractor's handling, storage, or use of Owner-furnished materials.

#### END OF SECTION 60

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## **Section 70 Legal Regulations and Responsibility to Public**

**70-01 Laws to be observed.** The Contractor shall keep fully informed of all federal and state laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the Owner and all their officers, agents, or servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or the Contractor's employees.

**70-02 Permits, licenses, and taxes.** The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful execution of the work.

**70-03 Patented devices, materials, and processes.** If the Contractor is required or desires to use any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the Patentee or Owner. The Contractor and the surety shall indemnify and hold harmless the Owner, any third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Owner for any costs, expenses, and damages which it may be obliged to pay by reason of an infringement, at any time during the execution or after the completion of the work.

**70-04 Restoration of surfaces disturbed by others.** The Owner reserves the right to authorize the construction, reconstruction, or maintenance of any public or private utility service, FAA or National Oceanic and Atmospheric Administration (NOAA) facility, or a utility service of another government agency at any time during the progress of the work. To the extent that such construction, reconstruction, or maintenance has been coordinated with the Owner, such authorized work (by others) must be shown on the plans.

Except as listed above, the Contractor shall not permit any individual, firm, or corporation to excavate or otherwise disturb such utility services or facilities located within the limits of the work without the written permission of the RPR.

Should the Owner of public or private utility service, FAA, or NOAA facility, or a utility service of another government agency be authorized to construct, reconstruct, or maintain such utility service or facility during the progress of the work, the Contractor shall cooperate with such Owners by arranging and performing the work in this contract to facilitate such construction, reconstruction or maintenance by others whether or not such work by others is listed above. When ordered as extra work by the RPR, the Contractor shall make all necessary repairs to the work which are due to such authorized work by others, unless otherwise provided for in the contract, plans, or specifications. It is understood and agreed that the Contractor shall not be entitled to make any claim for damages due to such authorized work by others or for any delay to the work resulting from such authorized work.

**70-05 Federal Participation.** The United States Government has agreed to reimburse the Owner for some portion of the contract costs. The contract work is subject to the inspection and approval of duly authorized representatives of the FAA Administrator. No requirement of this contract shall be construed as making the United States a party to the contract nor will any such requirement interfere, in any way, with the rights of either party to the contract.

**70-06 Sanitary, health, and safety provisions.** The Contractor's worksite and facilities shall comply with applicable federal, state, and local requirements for health, safety and sanitary provisions.

**70-07 Public convenience and safety.** The Contractor shall control their operations and those of their subcontractors and all suppliers, to assure the least inconvenience to the traveling public. Under all circumstances, safety shall be the most important consideration.

The Contractor shall maintain the free and unobstructed movement of aircraft and vehicular traffic with respect to their own operations and those of their own subcontractors and all suppliers in accordance with Section 40, paragraph 40-05, *Maintenance of Traffic*, and shall limit such operations for the convenience and safety of the traveling public as specified in Section 80, paragraph 80-04, *Limitation of Operations*.

The Contractor shall remove or control debris and rubbish resulting from its work operations at frequent intervals, and upon the order of the RPR. If the RPR determines the existence of Contractor debris in the work site represents a hazard to airport operations and the Contractor is unable to respond in a prompt and reasonable manner, the RPR reserves the right to assign the task of debris removal to a third party and recover the resulting costs as a liquidated damage against the Contractor.

**70-08 Construction Safety and Phasing Plan (CSPP).** The Contractor shall complete the work in accordance with the approved Construction Safety and Phasing Plan (CSPP) developed in accordance with AC 150/5370-2, Operational Safety on Airports During Construction. The CSPP is on sheet(s) G0.10 of the project plans.

**70-09 Use of explosives.** The use of explosives is not permitted on this project.

**70-10 Protection and restoration of property and landscape.** The Contractor shall be responsible for the preservation of all public and private property, and shall protect carefully from disturbance or damage all land monuments and property markers until the Engineer/RPR has witnessed or otherwise referenced their location and shall not move them until directed.

The Contractor shall be responsible for all damage or injury to property of any character, during the execution of the work, resulting from any act, omission, neglect, or misconduct in manner or method of executing the work, or at any time due to defective work or materials, and said responsibility shall not be released until the project has been completed and accepted.

When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the non-execution thereof by the Contractor, the Contractor shall restore, at their expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, or otherwise restoring as may be directed, or the Contractor shall make good such damage or injury in an acceptable manner.

**70-11 Responsibility for damage claims.** The Contractor shall indemnify and hold harmless the Engineer/RPR and the Owner and their officers, agents, and employees from all suits, actions, or claims, of any character, brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of said Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the "Workmen's Compensation Act," or any other law, ordinance, order, or decree. Money due the Contractor under and by virtue of their own contract considered necessary by the Owner for such purpose may be retained for the use of the Owner or, in case no money is due, their own surety may be held until such suits, actions, or claims for injuries or damages shall have been settled and suitable evidence to that effect furnished to the Owner, except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that he or she is adequately protected by public liability and property damage insurance.

**70-12 Third party beneficiary clause.** It is specifically agreed between the parties executing the contract that it is not intended by any of the provisions of any part of the contract to create for the public or any member thereof, a third-party beneficiary or to authorize anyone not a party to the contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the contract.

**70-13 Opening sections of the work to traffic.** If it is necessary for the Contractor to complete portions of the contract work for the beneficial occupancy of the Owner prior to completion of the entire contract, such “phasing” of the work must be specified below and indicated on the approved Construction Safety and Phasing Plan (CSPP) and the project plans. When so specified, the Contractor shall complete such portions of the work on or before the date specified or as otherwise specified.

Upon completion of any portion of work listed above, such portion shall be accepted by the Owner in accordance with Section 50, paragraph 50-14, *Partial Acceptance*.

No portion of the work may be opened by the Contractor until directed by the Owner in writing. Should it become necessary to open a portion of the work to traffic on a temporary or intermittent basis, such openings shall be made when, in the opinion of the RPR, such portion of the work is in an acceptable condition to support the intended traffic. Temporary or intermittent openings are considered to be inherent in the work and shall not constitute either acceptance of the portion of the work so opened or a waiver of any provision of the contract. Any damage to the portion of the work so opened that is not attributable to traffic which is permitted by the Owner shall be repaired by the Contractor at their expense.

The Contractor shall make their own estimate of the inherent difficulties involved in completing the work under the conditions herein described and shall not claim any added compensation by reason of delay or increased cost due to opening a portion of the contract work.

The Contractor must conform to safety standards contained AC 150/5370-2 and the approved CSPP.

Contractor shall refer to the plans, specifications, and the approved CSPP to identify barricade requirements, temporary and/or permanent markings, airfield lighting, guidance signs and other safety requirements prior to opening up sections of work to traffic.

**70-14 Contractor’s responsibility for work.** Until the RPR’s final written acceptance of the entire completed work, excepting only those portions of the work accepted in accordance with Section 50, paragraph 50-14, *Partial Acceptance*, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part due to the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the work occasioned by any of the above causes before final acceptance and shall bear the expense thereof except damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God such as earthquake, tidal wave, tornado, hurricane or other cataclysmic phenomenon of nature, or acts of the public enemy or of government authorities.

If the work is suspended for any cause whatsoever, the Contractor shall be responsible for the work and shall take such precautions necessary to prevent damage to the work. The Contractor shall provide for normal drainage and shall erect necessary temporary structures, signs, or other facilities at their own expense. During such period of suspension of work, the Contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established planting, seeding, and sodding furnished under the contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

**70-15 Contractor’s responsibility for utility service and facilities of others.** As provided in paragraph 70-04, *Restoration of Surfaces Disturbed by Others*, the Contractor shall cooperate with the owner of any public or private utility service, FAA or NOAA, or a utility service of another government agency that may be authorized by the Owner to construct, reconstruct or maintain such utility services or facilities

during the progress of the work. In addition, the Contractor shall control their operations to prevent the unscheduled interruption of such utility services and facilities.

To the extent that such public or private utility services, FAA, or NOAA facilities, or utility services of another governmental agency are known to exist within the limits of the contract work, the approximate locations have been indicated on the plans and/or in the contract documents.

It is understood and agreed that the Owner does not guarantee the accuracy or the completeness of the location information relating to existing utility services, facilities, or structures that may be shown on the plans or encountered in the work. Any inaccuracy or omission in such information shall not relieve the Contractor of the responsibility to protect such existing features from damage or unscheduled interruption of service.

It is further understood and agreed that the Contractor shall, upon execution of the contract, notify the Owners of all utility services or other facilities of their plan of operations. Such notification shall be in writing addressed to "The Person to Contact" as provided in this paragraph and paragraph 70-04, *Restoration of Surfaces Disturbed By Others*. A copy of each notification shall be given to the RPR.

In addition to the general written notification provided, it shall be the responsibility of the Contractor to keep such individual Owners advised of changes in their plan of operations that would affect such Owners.

Prior to beginning the work in the general vicinity of an existing utility service or facility, the Contractor shall again notify each such Owner of their plan of operation. If, in the Contractor's opinion, the Owner's assistance is needed to locate the utility service or facility or the presence of a representative of the Owner is desirable to observe the work, such advice should be included in the notification. Such notification shall be given by the most expeditious means to reach the utility owner's "Person to Contact" no later than two normal business days prior to the Contractor's commencement of operations in such general vicinity. The Contractor shall furnish a written summary of the notification to the RPR.

The Contractor's failure to give the two days' notice shall be cause for the Owner to suspend the Contractor's operations in the general vicinity of a utility service or facility.

Where the outside limits of an underground utility service have been located and staked on the ground, the Contractor shall be required to use hand excavation methods within 3 feet (1 m) of such outside limits at such points as may be required to ensure protection from damage due to the Contractor's operations.

Should the Contractor damage or interrupt the operation of a utility service or facility by accident or otherwise, the Contractor shall immediately notify the proper authority and the RPR and shall take all reasonable measures to prevent further damage or interruption of service. The Contractor, in such events, shall cooperate with the utility service or facility owner and the RPR continuously until such damage has been repaired and service restored to the satisfaction of the utility or facility owner.

The Contractor shall bear all costs of damage and restoration of service to any utility service or facility due to their operations whether due to negligence or accident. The Owner reserves the right to deduct such costs from any monies due or which may become due the Contractor, or their own surety.

**70-15.1 FAA facilities and cable runs.** The Contractor is hereby advised that the construction limits of the project include existing facilities and buried cable runs that are owned, operated and maintained by the FAA. The Contractor, during the execution of the project work, shall comply with the following:

a. The Contractor shall permit FAA maintenance personnel the right of access to the project work site for purposes of inspecting and maintaining all existing FAA owned facilities.

b. The Contractor shall provide notice to the FAA Air Traffic Organization (ATO)/Technical Operations/System Support Center (SSC) Point-of-Contact through the airport Owner a minimum of



seven (7) calendar days prior to commencement of construction activities in order to permit sufficient time to locate and mark existing buried cables and to schedule any required facility outages.

c. If execution of the project work requires a facility outage, the Contractor shall contact the FAA Point-of-Contact a minimum of 72 hours prior to the time of the required outage.

d. Any damage to FAA cables, access roads, or FAA facilities during construction caused by the Contractor's equipment or personnel whether by negligence or accident will require the Contractor to repair or replace the damaged cables, access road, or FAA facilities to FAA requirements. The Contractor shall not bear the cost to repair damage to underground facilities or utilities improperly located by the FAA.

e. If the project work requires the cutting or splicing of FAA owned cables, the FAA Point-of-Contact shall be contacted a minimum of 72 hours prior to the time the cable work commences. The FAA reserves the right to have a FAA representative on site to observe the splicing of the cables as a condition of acceptance. All cable splices are to be accomplished in accordance with FAA specifications and require approval by the FAA Point-of-Contact as a condition of acceptance by the Owner. The Contractor is hereby advised that FAA restricts the location of where splices may be installed. If a cable splice is required in a location that is not permitted by FAA, the Contractor shall furnish and install a sufficient length of new cable that eliminates the need for any splice.

**70-16 Furnishing rights-of-way.** The Owner will be responsible for furnishing all rights-of-way upon which the work is to be constructed in advance of the Contractor's operations.

**70-17 Personal liability of public officials.** In carrying out any of the contract provisions or in exercising any power or authority granted by this contract, there shall be no liability upon the Engineer, RPR, their authorized representatives, or any officials of the Owner either personally or as an official of the Owner. It is understood that in such matters they act solely as agents and representatives of the Owner.

**70-18 No waiver of legal rights.** Upon completion of the work, the Owner will expeditiously make final inspection and notify the Contractor of final acceptance. Such final acceptance, however, shall not preclude or stop the Owner from correcting any measurement, estimate, or certificate made before or after completion of the work, nor shall the Owner be precluded or stopped from recovering from the Contractor or their surety, or both, such overpayment as may be sustained, or by failure on the part of the Contractor to fulfill their obligations under the contract. A waiver on the part of the Owner of any breach of any part of the contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor, without prejudice to the terms of the contract, shall be liable to the Owner for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Owner's rights under any warranty or guaranty.

**70-19 Environmental protection.** The Contractor shall comply with all federal, state, and local laws and regulations controlling pollution of the environment. The Contractor shall take necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs with fuels, oils, asphalts, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

**70-20 Archaeological and historical findings.** Unless otherwise specified in this subsection, the Contractor is advised that the site of the work is not within any property, district, or site, and does not contain any building, structure, or object listed in the current National Register of Historic Places published by the United States Department of Interior.

Should the Contractor encounter, during their operations, any building, part of a building, structure, or object that is incongruous with its surroundings, the Contractor shall immediately cease operations in that location and notify the RPR. The RPR will immediately investigate the Contractor's finding and the Owner will direct the Contractor to either resume operations or to suspend operations as directed.

Should the Owner order suspension of the Contractor's operations in order to protect an archaeological or historical finding, or order the Contractor to perform extra work, such shall be covered by an appropriate contract change order or supplemental agreement as provided in Section 40, paragraph 40-04, *Extra Work*, and Section 90, paragraph 90-05, *Payment for Extra Work*. If appropriate, the contract change order or supplemental agreement shall include an extension of contract time in accordance with Section 80, paragraph 80-07, *Determination and Extension of Contract Time*.

**70-21 Insurance Requirements.** See Document 00 73 00 Supplementary Conditions.

## END OF SECTION 70

## Section 80 Execution and Progress

**80-01 Subletting of contract.** The Owner will not recognize any subcontractor on the work. The Contractor shall at all times when work is in progress be represented either in person, by a qualified superintendent, or by other designated, qualified representative who is duly authorized to receive and execute orders of the Resident Project Representative (RPR).

The Contractor shall perform, with his organization, an amount of work equal to at least 25 percent of the total contract cost.

Should the Contractor elect to assign their contract, said assignment shall be concurred in by the surety, shall be presented for the consideration and approval of the Owner, and shall be consummated only on the written approval of the Owner.

**The Contractor shall provide copies of all subcontracts to the RPR 10 days prior to being utilized on the project. As a minimum, the information shall include the following:**

- Subcontractor's legal company name.
- Subcontractor's legal company address, including County name.
- Principal contact person's name, telephone and fax number.
- Complete narrative description, and dollar value of the work to be performed by the subcontractor.
- Copies of required insurance certificates in accordance with the specifications.
- Minority/ non-minority status.

**80-02 Notice to proceed (NTP).** The Owners notice to proceed will state the date on which contract time commences. The Contractor is expected to commence project operations within 10 days of the NTP date. The Contractor shall notify the RPR at least 72 hours in advance of the time contract operations begins. The Contractor shall not commence any actual operations prior to the date on which the notice to proceed is issued by the Owner.

**80-03 Execution and progress.** Unless otherwise specified, the Contractor shall submit their coordinated construction schedule showing all work activities for the RPR's review and acceptance at least 10 days prior to the start of work. The Contractor's progress schedule, once accepted by the RPR, will represent the Contractor's baseline plan to accomplish the project in accordance with the terms and conditions of the Contract. The RPR will compare actual Contractor progress against the baseline schedule to determine that status of the Contractor's performance. The Contractor shall provide sufficient materials, equipment, and labor to guarantee the completion of the project in accordance with the plans and specifications within the time set forth in the proposal.

If the Contractor falls significantly behind the submitted schedule, the Contractor shall, upon the RPR's request, submit a revised schedule for completion of the work within the contract time and modify their operations to provide such additional materials, equipment, and labor necessary to meet the revised schedule. Should the execution of the work be discontinued for any reason, the Contractor shall notify the RPR at least [ 24 hours ] in advance of resuming operations.

The Contractor shall not commence any actual construction prior to the date on which the NTP is issued by the Owner.

The project schedule shall be prepared as a network diagram in Critical Path Method (CPM), Program Evaluation and Review Technique (PERT), or other format, or as otherwise specified. It shall include information on the sequence of work activities, milestone dates, and activity duration. The schedule shall

show all work items identified in the project proposal for each work area and shall include the project start date and end date.

The Contractor shall maintain the work schedule and provide an update and analysis of the progress schedule on a [ twice ] monthly basis, or as otherwise specified in the contract. Submission of the work schedule shall not relieve the Contractor of overall responsibility for scheduling, sequencing, and coordinating all work to comply with the requirements of the contract.

**80-04 Limitation of operations.** The Contractor shall control their operations and the operations of their subcontractors and all suppliers to provide for the free and unobstructed movement of aircraft in the air operations areas (AOA) of the airport.

When the work requires the Contractor to conduct their operations within an AOA of the airport, the work shall be coordinated with airport operations (through the RPR) at least [ 48 hours ] prior to commencement of such work. The Contractor shall not close an AOA until so authorized by the RPR and until the necessary temporary marking, signage and associated lighting is in place as provided in Section 70, paragraph 70-08, *Construction Safety and Phasing Plan (CSPP)*.

When the contract work requires the Contractor to work within an AOA of the airport on an intermittent basis (intermittent opening and closing of the AOA), the Contractor shall maintain constant communications as specified; immediately obey all instructions to vacate the AOA; and immediately obey all instructions to resume work in such AOA. Failure to maintain the specified communications or to obey instructions shall be cause for suspension of the Contractor's operations in the AOA until satisfactory conditions are provided. The areas of the AOA identified in the Construction Safety Phasing Plan (CSPP) and as listed below, cannot be closed to operating aircraft to permit the Contractor's operations on a continuous basis and will therefore be closed to aircraft operations intermittently as follows:

The Contractor shall be required to conform to safety standards contained in AC 150/5370-2, Operational Safety on Airports During Construction and the approved CSPP.

**80-04.1 Operational safety on airport during construction.** All Contractors' operations shall be conducted in accordance with the approved project Construction Safety and Phasing Plan (CSPP) and the Safety Plan Compliance Document (SPCD) and the provisions set forth within the current version of AC 150/5370-2, Operational Safety on Airports During Construction. The CSPP included within the contract documents conveys minimum requirements for operational safety on the airport during construction activities. The Contractor shall prepare and submit a SPCD that details how it proposes to comply with the requirements presented within the CSPP.

The Contractor shall implement all necessary safety plan measures prior to commencement of any work activity. The Contractor shall conduct routine checks to assure compliance with the safety plan measures.

The Contractor is responsible to the Owner for the conduct of all subcontractors it employs on the project. The Contractor shall assure that all subcontractors are made aware of the requirements of the CSPP and SPCD and that they implement and maintain all necessary measures.

No deviation or modifications may be made to the approved CSPP and SPCD unless approved in writing by the Owner. The necessary coordination actions to review Contractor proposed modifications to an approved CSPP or approved SPCD can require a significant amount of time.

**80-05 Character of workers, methods, and equipment.** The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the contract, plans, and specifications.

All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.

Any person employed by the Contractor or by any subcontractor who violates any operational regulations or operational safety requirements and, in the opinion of the RPR, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the RPR, be removed immediately by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the work without approval of the RPR.

Should the Contractor fail to remove such person or persons, or fail to furnish suitable and sufficient personnel for the proper execution of the work, the RPR may suspend the work by written notice until compliance with such orders.

All equipment that is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the work shall not cause injury to previously completed work, adjacent property, or existing airport facilities due to its use.

When the methods and equipment to be used by the Contractor in accomplishing the work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the contract, plans, and specifications.

When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless otherwise authorized by the RPR. If the Contractor desires to use a method or type of equipment other than specified in the contract, the Contractor may request authority from the RPR to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with contract requirements. If, after trial use of the substituted methods or equipment, the RPR determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the RPR may direct. No change will be made in basis of payment for the contract items involved nor in contract time as a result of authorizing a change in methods or equipment under this paragraph.

**80-06 Temporary suspension of the work.** The Owner shall have the authority to suspend the work wholly, or in part, for such period or periods the Owner may deem necessary, due to unsuitable weather, or other conditions considered unfavorable for the execution of the work, or for such time necessary due to the failure on the part of the Contractor to carry out orders given or perform any or all provisions of the contract.

In the event that the Contractor is ordered by the Owner, in writing, to suspend work for some unforeseen cause not otherwise provided for in the contract and over which the Contractor has no control, the Contractor may be reimbursed for actual money expended on the work during the period of shutdown. No allowance will be made for anticipated profits. The period of shutdown shall be computed from the effective date of the written order to suspend work to the effective date of the written order to resume the work. Claims for such compensation shall be filed with the RPR within the time period stated in the RPR's order to resume work. The Contractor shall submit with their own claim information substantiating the amount shown on the claim. The RPR will forward the Contractor's claim to the Owner for consideration in accordance with local laws or ordinances. No provision of this article shall be construed as entitling the Contractor to compensation for delays due to inclement weather or for any other delay provided for in the contract, plans, or specifications.

If it becomes necessary to suspend work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction nor become damaged in any way. The Contractor shall take every precaution to prevent damage or deterioration of the work performed and provide for normal drainage of the work. The Contractor shall erect temporary structures where necessary to provide for traffic on, to, or from the airport.

**80-07 Determination and extension of contract time.** The number of working days shall be stated in the proposal and contract and shall be known as the Contract Time.

If the contract time requires extension for reasons beyond the Contractor's control, it shall be adjusted as follows:

**80-07.1 Contract time based on working days.** Contract time based on working days shall be calculated weekly by the Resident Project Representative (RPR). The RPR will furnish the Contractor a copy of their weekly statement of the number of working days charged against the contract time during the week and the number of working days currently specified for completion of the contract (the original contract time plus the number of working days, if any, that have been included in approved Change Orders or Supplemental Agreements covering Extra Work).

The weekly statement of contract time charged is based on the following considerations:

(1) Time will be charged for days on which the Contractor could proceed with scheduled work under construction at the time for at least six (6) hours with the normal work force employed on such items. When normal work force is a double-shift, use 12 hours; and when the normal work force is on a triple-shift, use 18 hours. Conditions beyond the Contractor's control such as strikes, lockouts, unusual delays in transportation, temporary suspension of the scheduled work items under construction or temporary suspension of the entire work which have been ordered by the Owner for reasons not the fault of the Contractor, shall not be charged against the contract time.

(2) The RPR will not make charges against the contract time prior to the effective date of the notice to proceed.

(3) The RPR will begin charges against the contract time on the first working day after the effective date of the notice to proceed.

(4) The RPR will not make charges against the contract time after the date of final acceptance as defined in Section 50, paragraph 50-14, *Final Acceptance*.

(5) The Contractor will be allowed one (1) week in which to file a written protest setting forth their own objections to the RPR's weekly statement. If no objection is filed within such specified time, the weekly statement shall be considered as acceptable to the Contractor.

The contract time (stated in the proposal) is based on the originally estimated quantities as described in the Section 20, paragraph 20-05, *Interpretation of Estimated Proposal Quantities*. Should the satisfactory completion of the contract require performance of work in greater quantities than those estimated in the proposal, the contract time shall be increased in the same proportion as the cost of the actually completed quantities bears to the cost of the originally estimated quantities in the proposal. Such increase in contract time shall not consider either the cost of work or the extension of contract time that has been covered by change order or supplemental agreement and shall be made at the time of final payment.

**80-08 Failure to complete on time.** For each calendar day or working day, as specified in the contract, that any work remains uncompleted after the contract time (including all extensions and adjustments as provided in paragraph 80-07, *Determination and Extension of Contract Time*) the sum specified in the contract and proposal as liquidated damages (LD) will be deducted from any money due or to become due the Contractor or their own surety. Such deducted sums shall not be deducted as a penalty but shall be considered as liquidation of a reasonable portion of damages including but not limited to additional

engineering services that will be incurred by the Owner should the Contractor fail to complete the work in the time provided in their contract. See Document 00 52 00 Standard Form of Agreement.

Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, will in no way operate as a waiver on the part of the Owner of any of its rights under the contract.

**80-09 Default and termination of contract.** The Contractor shall be considered in default of their contract and such default will be considered as cause for the Owner to terminate the contract for any of the following reasons, if the Contractor:

- a. Fails to begin the work under the contract within the time specified in the Notice to Proceed, or
- b. Fails to perform the work or fails to provide sufficient workers, equipment and/or materials to assure completion of work in accordance with the terms of the contract, or
- c. Performs the work unsuitably or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable, or
- d. Discontinues the execution of the work, or
- e. Fails to resume work which has been discontinued within a reasonable time after notice to do so, or
- f. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
- g. Allows any final judgment to stand against the Contractor unsatisfied for a period of 10 days, or
- h. Makes an assignment for the benefit of creditors, or
- i. For any other cause whatsoever, fails to carry on the work in an acceptable manner.

Should the Owner consider the Contractor in default of the contract for any reason above, the Owner shall immediately give written notice to the Contractor and the Contractor's surety as to the reasons for considering the Contractor in default and the Owner's intentions to terminate the contract.

If the Contractor or surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the Owner will, upon written notification from the RPR of the facts of such delay, neglect, or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract, to take the execution of the work out of the hands of the Contractor. The Owner may appropriate or use any or all materials and equipment that have been mobilized for use in the work and are acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the RPR will be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the Owner, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due the Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the Owner the amount of such excess.

**80-10 Termination for national emergencies.** The Owner shall terminate the contract or portion thereof by written notice when the Contractor is prevented from proceeding with the construction contract as a direct result of an Executive Order of the President with respect to the execution of war or in the interest of national defense.

When the contract, or any portion thereof, is terminated before completion of all items of work in the contract, payment will be made for the actual number of units or items of work completed at the contract price or as mutually agreed for items of work partially completed or not started. No claims or loss of anticipated profits shall be considered.

Reimbursement for organization of the work, and other overhead expenses, (when not otherwise included in the contract) and moving equipment and materials to and from the job will be considered, the intent being that an equitable settlement will be made with the Contractor.

Acceptable materials, obtained or ordered by the Contractor for the work and that are not incorporated in the work shall, at the option of the Contractor, be purchased from the Contractor at actual cost as shown by receipted bills and actual cost records at such points of delivery as may be designated by the RPR.

Termination of the contract or a portion thereof shall neither relieve the Contractor of their responsibilities for the completed work nor shall it relieve their surety of its obligation for and concerning any just claim arising out of the work performed.

**80-11 Work area, storage area and sequence of operations.** The Contractor shall obtain approval from the RPR prior to beginning any work in all areas of the airport. No operating runway, taxiway, or air operations area (AOA) shall be crossed, entered, or obstructed while it is operational. The Contractor shall plan and coordinate work in accordance with the approved CSPP and SPCD.

#### END OF SECTION 80



## Section 90 Measurement and Payment

**90-01 Measurement of quantities.** All work completed under the contract will be measured by the RPR, or their authorized representatives, using United States Customary Units of Measurement.

The method of measurement and computations to be used in determination of quantities of material furnished and of work performed under the contract will be those methods generally recognized as conforming to good engineering practice.

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures (or leave-outs) having an area of 9 square feet (0.8 square meters) or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered in writing by the RPR.

Unless otherwise specified, all contract items which are measured by the linear foot such as electrical ducts, conduits, pipe culverts, underdrains, and similar items shall be measured parallel to the base or foundation upon which such items are placed.

The term “lump sum” when used as an item of payment will mean complete payment for the work described in the contract. When a complete structure or structural unit (in effect, “lump sum” work) is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

When requested by the Contractor and approved by the RPR in writing, material specified to be measured by the cubic yard (cubic meter) may be weighed, and such weights will be converted to cubic yards (cubic meters) for payment purposes. Factors for conversion from weight measurement to volume measurement will be determined by the RPR and shall be agreed to by the Contractor before such method of measurement of pay quantities is used.

### Measurement and Payment Terms

Term	Description
<b>Excavation and Embankment Volume</b>	In computing volumes of excavation, the average end area method will be used unless otherwise specified.
<b>Measurement and Proportion by Weight</b>	The term “ton” will mean the short ton consisting of 2,000 pounds (907 kg) avoirdupois. All materials that are measured or proportioned by weights shall be weighed on accurate, independently certified scales by competent, qualified personnel at locations designated by the RPR. If material is shipped by rail, the car weight may be accepted provided that only the actual weight of material is paid for. However, car weights will not be acceptable for material to be passed through mixing plants. Trucks used to haul material being paid for by weight shall be weighed empty daily at such times as the RPR directs, and each truck shall bear a plainly legible identification mark.
<b>Measurement by Volume</b>	Materials to be measured by volume in the hauling vehicle shall be hauled in approved vehicles and measured therein at the point of delivery. Vehicles for this purpose may be of any size or type acceptable for the materials hauled, provided that the body is of such shape that the actual contents may be readily and accurately determined. All vehicles shall be loaded to at least their water level capacity, and all loads shall be leveled when the vehicles arrive at the point of delivery.
<b>Asphalt Material</b>	Asphalt materials will be measured by the gallon (liter) or ton (kg). When measured by volume, such volumes will be measured at 60°F (16°C) or will be corrected to the

Term	Description
	volume at 60°F (16°C) using ASTM D1250 for asphalts. Net certified scale weights or weights based on certified volumes in the case of rail shipments will be used as a basis of measurement, subject to correction when asphalt material has been lost from the car or the distributor, wasted, or otherwise not incorporated in the work. When asphalt materials are shipped by truck or transport, net certified weights by volume, subject to correction for loss or foaming, will be used for computing quantities.
<b>Cement</b>	Cement will be measured by the ton (kg) or hundredweight (km).
<b>Structure</b>	Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.
<b>Timber</b>	Timber will be measured by the thousand feet board measure (MFBM) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the extreme length of each piece.
<b>Plates and Sheets</b>	The thickness of plates and galvanized sheet used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fraction of inch.
<b>Miscellaneous Items</b>	When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by gauge, unit weight, section dimensions, etc., such identification will be considered to be nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.
<b>Scales</b>	<p>Scales must be tested for accuracy and serviced before use. Scales for weighing materials which are required to be proportioned or measured and paid for by weight shall be furnished, erected, and maintained by the Contractor, or be certified permanently installed commercial scales. Platform scales shall be installed and maintained with the platform level and rigid bulkheads at each end.</p> <p>Scales shall be accurate within 0.5% of the correct weight throughout the range of use. The Contractor shall have the scales checked under the observation of the RPR before beginning work and at such other times as requested. The intervals shall be uniform in spacing throughout the graduated or marked length of the beam or dial and shall not exceed 0.1% of the nominal rated capacity of the scale, but not less than one pound (454 grams). The use of spring balances will not be permitted.</p> <p>In the event inspection reveals the scales have been “overweighing” (indicating more than correct weight) they will be immediately adjusted. All materials received subsequent to the last previous correct weighting-accuracy test will be reduced by the percentage of error in excess of 0.5%.</p> <p>In the event inspection reveals the scales have been under-weighing (indicating less than correct weight), they shall be immediately adjusted. No additional payment to the Contractor will be allowed for materials previously weighed and recorded.</p> <p>Beams, dials, platforms, and other scale equipment shall be so arranged that the operator and the RPR can safely and conveniently view them.</p> <p>Scale installations shall have available ten standard 50-pound (2.3 km) weights for testing the weighing equipment or suitable weights and devices for other approved equipment.</p> <p>All costs in connection with furnishing, installing, certifying, testing, and maintaining scales; for furnishing check weights and scale house; and for all other items specified in</p>

Term	Description
	this subsection, for the weighing of materials for proportioning or payment, shall be included in the unit contract prices for the various items of the project.
<b>Rental Equipment</b>	Rental of equipment will be measured by time in hours of actual working time and necessary traveling time of the equipment within the limits of the work. Special equipment ordered in connection with extra work will be measured as agreed in the change order or supplemental agreement authorizing such work as provided in paragraph 90-05 <i>Payment for Extra Work</i> .
<b>Pay Quantities</b>	When the estimated quantities for a specific portion of the work are designated as the pay quantities in the contract, they shall be the final quantities for which payment for such specific portion of the work will be made, unless the dimensions of said portions of the work shown on the plans are revised by the RPR. If revised dimensions result in an increase or decrease in the quantities of such work, the final quantities for payment will be revised in the amount represented by the authorized changes in the dimensions.

**90-02 Scope of payment.** The Contractor shall receive and accept compensation provided for in the contract as full payment for furnishing all materials, for performing all work under the contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the execution thereof, subject to the provisions of Section 70, paragraph 70-18, *No Waiver of Legal Rights*.

When the “basis of payment” subsection of a technical specification requires that the contract price (price bid) include compensation for certain work or material essential to the item, this same work or material will not also be measured for payment under any other contract item which may appear elsewhere in the contract, plans, or specifications.

**90-03 Compensation for altered quantities.** When the accepted quantities of work vary from the quantities in the proposal, the Contractor shall accept as payment in full, so far as contract items are concerned, payment at the original contract price for the accepted quantities of work actually completed and accepted. No allowance, except as provided for in Section 40, paragraph 40-02, *Alteration of Work and Quantities*, will be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor which results directly from such alterations or indirectly from their own unbalanced allocation of overhead and profit among the contract items, or from any other cause.

**90-04 Payment for omitted items.** As specified in Section 40, paragraph 40-03, *Omitted Items*, the RPR shall have the right to omit from the work (order nonperformance) any contract item, except major contract items, in the best interest of the Owner.

Should the RPR omit or order nonperformance of a contract item or portion of such item from the work, the Contractor shall accept payment in full at the contract prices for any work actually completed and acceptable prior to the RPR’s order to omit or non-perform such contract item.

Acceptable materials ordered by the Contractor or delivered on the work prior to the date of the RPR’s order will be paid for at the actual cost to the Contractor and shall thereupon become the property of the Owner.

In addition to the reimbursement hereinbefore provided, the Contractor shall be reimbursed for all actual costs incurred for the purpose of performing the omitted contract item prior to the date of the RPR’s order. Such additional costs incurred by the Contractor must be directly related to the deleted contract item and shall be supported by certified statements by the Contractor as to the nature the amount of such costs.

**90-05 Payment for extra work.** Extra work, performed in accordance with Section 40, paragraph 40-04, *Extra Work*, will be paid for at the contract prices or agreed prices specified in the change order or supplemental agreement authorizing the extra work.

**90-06 Partial payments.** Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RPR, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-07, *Payment for Materials on Hand*. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

See Document 00 72 00, General Conditions and Document 00 73 00, Supplementary Conditions for retainage amounts.

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the RPR to be a part of the final quantity for the item of work in question.

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in paragraph 90-09, *Acceptance and Final Payment*.

The Contractor shall deliver to the Owner a complete release of all claims for labor and material arising out of this contract before the final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the Owner may be compelled to pay in discharging any such lien or claim.

**90-07 Payment for materials on hand.** Partial payments may be made to the extent of the delivered cost of materials to be incorporated in the work, provided that such materials meet the requirements of the contract, plans, and specifications and are delivered to acceptable sites on the airport property or at other sites in the vicinity that are acceptable to the Owner. Such delivered costs of stored or stockpiled materials may be included in the next partial payment after the following conditions are met:

- a. The material has been stored or stockpiled in a manner acceptable to the RPR at or on an approved site.
- b. The Contractor has furnished the RPR with acceptable evidence of the quantity and quality of such stored or stockpiled materials.
- c. The Contractor has furnished the RPR with satisfactory evidence that the material and transportation costs have been paid.
- d. The Contractor has furnished the Owner legal title (free of liens or encumbrances of any kind) to the material stored or stockpiled.
- e. The Contractor has furnished the Owner evidence that the material stored or stockpiled is insured against loss by damage to or disappearance of such materials at any time prior to use in the work.

It is understood and agreed that the transfer of title and the Owner's payment for such stored or stockpiled materials shall in no way relieve the Contractor of their responsibility for furnishing and placing such materials in accordance with the requirements of the contract, plans, and specifications.

In no case will the amount of partial payments for materials on hand exceed the contract price for such materials or the contract price for the contract item in which the material is intended to be used.

No partial payment will be made for stored or stockpiled living or perishable plant materials.

The Contractor shall bear all costs associated with the partial payment of stored or stockpiled materials in accordance with the provisions of this paragraph.

**90-08 Payment of withheld funds.** At the Contractor's option, if an Owner withholds retainage in accordance with the methods described in paragraph 90-06 *Partial Payments*, the Contractor may request that the Owner deposit the retainage into an escrow account. The Owner's deposit of retainage into an escrow account is subject to the following conditions:

- a. The Contractor shall bear all expenses of establishing and maintaining an escrow account and escrow agreement acceptable to the Owner.
- b. The Contractor shall deposit to and maintain in such escrow only those securities or bank certificates of deposit as are acceptable to the Owner and having a value not less than the retainage that would otherwise be withheld from partial payment.
- c. The Contractor shall enter into an escrow agreement satisfactory to the Owner.
- d. The Contractor shall obtain the written consent of the surety to such agreement.

**90-09 Acceptance and final payment.** When the contract work has been accepted in accordance with the requirements of Section 50, paragraph 50-15, *Final Acceptance*, the RPR will prepare the final estimate of the items of work actually performed. The Contractor shall approve the RPR's final estimate or advise the RPR of the Contractor's objections to the final estimate which are based on disputes in measurements or computations of the final quantities to be paid under the contract as amended by change order or supplemental agreement. The Contractor and the RPR shall resolve all disputes (if any) in the measurement and computation of final quantities to be paid within 30 calendar days of the Contractor's receipt of the RPR's final estimate. If, after such 30-day period, a dispute still exists, the Contractor may approve the RPR's estimate under protest of the quantities in dispute, and such disputed quantities shall be considered by the Owner as a claim in accordance with Section 50, paragraph 50-16, *Claims for Adjustment and Disputes*.

After the Contractor has approved, or approved under protest, the RPR's final estimate, and after the RPR's receipt of the project closeout documentation required in paragraph 90-11, *Contractor Final Project Documentation*, final payment will be processed based on the entire sum, or the undisputed sum in case of approval under protest, determined to be due the Contractor less all previous payments and all amounts to be deducted under the provisions of the contract. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

If the Contractor has filed a claim for additional compensation under the provisions of Section 50, paragraph 50-16, *Claims for Adjustments and Disputes*, or under the provisions of this paragraph, such claims will be considered by the Owner in accordance with local laws or ordinances. Upon final adjudication of such claims, any additional payment determined to be due the Contractor will be paid pursuant to a supplemental final estimate.

**90-10 Construction warranty.**

- a. In addition to any other warranties in this contract, the Contractor warrants that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, workmanship, or design furnished, or performed by the Contractor or any subcontractor or supplier at any tier.
- b. This warranty shall continue for a period of one year from the date of final acceptance of the work, except as noted. If the Owner takes possession of any part of the work before final acceptance, this warranty shall continue for a period of one year from the date the Owner takes possession.

c. The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Owner real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements; or any defect of equipment, material, workmanship, or design furnished by the Contractor.

d. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for one year from the date of repair or replacement.

e. The Owner will notify the Contractor, in writing, within [ seven (7) ] days after the discovery of any failure, defect, or damage.

f. If the Contractor fails to remedy any failure, defect, or damage within [ 14 ] days after receipt of notice, the Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

g. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall: (1) Obtain all warranties that would be given in normal commercial practice; (2) Require all warranties to be executed, in writing, for the benefit of the Owner, as directed by the Owner, and (3) Enforce all warranties for the benefit of the Owner.

h. This warranty shall not limit the Owner's rights with respect to latent defects, gross mistakes, or fraud.

**90-11 Contractor Final Project Documentation.** Approval of final payment to the Contractor is contingent upon completion and submittal of the items listed below. The final payment will not be approved until the RPR approves the Contractor's final submittal. The Contractor shall:

a. Provide two (2) copies of all manufacturers warranties specified for materials, equipment, and installations.

b. Provide weekly payroll records (not previously received) from the general Contractor and all subcontractors.

c. Complete final cleanup in accordance with Section 40, paragraph 40-08, *Final Cleanup*.

d. Complete all punch list items identified during the Final Inspection.

e. Provide complete release of all claims for labor and material arising out of the Contract.

f. Provide a certified statement signed by the subcontractors, indicating actual amounts paid to the Disadvantaged Business Enterprise (DBE) subcontractors and/or suppliers associated with the project.

g. When applicable per state requirements, return copies of sales tax completion forms.

h. Manufacturer's certifications for all items incorporated in the work.

i. All required record drawings, as-built drawings or as-constructed drawings.

j. Project Operation and Maintenance (O&M) Manual(s).

k. Security for Construction Warranty.

l. Equipment commissioning documentation submitted, if required.

## END OF SECTION 90

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

## STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
  2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
  3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
  5. *Bidder*—An individual or entity that submits a Bid to Owner.
  6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
  7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
  8. *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 Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
  9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
  10. *Claim*
    - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
  - d. A demand for money or services by a third party is not a Claim.
- 11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
  - 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
  - 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
  - 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
  - 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
  - 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
  - 17. *Cost of the Work*—See Paragraph 13.01 for definition.
  - 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
  - 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
  - 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
  - 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
  - 22. *Engineer*—The individual or entity named as such in the Agreement.
  - 23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
- a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *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 Work to be performed under the Contract Documents is a part.
33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *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.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

37. *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 Contract Documents.
38. *Site*—Lands or areas indicated in the 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 or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract 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.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *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 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 of such Work.
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, 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.
46. *Technical Data*
- Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of



subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

- c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the 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 Contract Documents.

50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - 1. does not conform to the Contract Documents;

2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
3. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word "furnish," when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word "install," when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words "perform" or "provide," when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

F. *Contract Price or Contract Times*: References to a change in "Contract Price or Contract Times" or "Contract Times or Contract Price" or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term "or both" is not expressed.

G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2—PRELIMINARY MATTERS

### 2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor's Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner's Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

## 2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

## 2.03 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
  - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
  - 2. a preliminary Schedule of Submittals; and
  - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

## 2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

## 2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
  - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
  - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

#### 2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents 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 Electronic Documents.

### **ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will 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.
- G. Nothing in the Contract Documents creates:
  1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
  2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

### 3.02 *Reference Standards*

#### A. *Standards Specifications, Codes, Laws and Regulations*

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

#### B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or

- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

### 3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

### 3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
  - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

## **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

### 4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

#### 4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

#### 4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

#### 4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
  - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
  - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Abnormal weather conditions;

3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.



- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 5.02 *Use of Site and Other Areas*

### A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
  - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

#### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
2. is of such a nature as to require a change in the Drawings or Specifications;
3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
  1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
    - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
  2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
    - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;

- b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
- 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
  - 1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  - 2. complying with applicable state and local utility damage prevention Laws and Regulations;
  - 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  - 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  - 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
  - 1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;

2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
    - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
    - c. Contractor gave the notice required in Paragraph 5.05.B.
  2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
  4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface

Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

**5.06 Hazardous Environmental Conditions at Site**

**A. Reports and Drawings:** The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

**B. Reliance by Contractor on Technical Data Authorized:** Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

**C.** Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

**D.** Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.

**E.** If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the

Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against 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 a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against 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 or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

## ARTICLE 6—BONDS AND INSURANCE

### 6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.



- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party’s full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party’s obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. Owner’s liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner’s liability policies for any of Contractor’s obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker’s compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor’s liability policies) on each Subcontractor’s commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

#### 6.03 Contractor's Insurance

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
  - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  - 5. include all necessary endorsements to support the stated requirements.

- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
  4. not seek contribution from insurance maintained by the additional insured; and
  5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

#### 6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
  - 1. Owner and Contractor waive all rights against each other 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, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
  - 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
  - 1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the 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 fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the 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, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

#### 6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

### **ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES**

#### 7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

#### 7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

#### 7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.

- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

#### 7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

#### 7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
      - 3) has a proven record of performance and availability of responsive service; and
      - 4) is not objectionable to Owner.

- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
    - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
    - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
    - a. will certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design;
      - 2) be similar in substance to the item specified; and
      - 3) be suited to the same use as the item specified.

- b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.



#### 7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.

- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### **7.08 *Patent Fees and Royalties***

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against 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 or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against 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 or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

#### **7.09 *Permits***

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

#### **7.10 *Taxes***

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

#### **7.11 *Laws and Regulations***

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against 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 or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

#### 7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

#### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

#### 7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

## 7.16 Submittals

### A. Shop Drawing and Sample Requirements

1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.
3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

### B. Submittal Procedures for Shop Drawings and Samples: Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.

#### 1. Shop Drawings

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.

#### 2. Samples

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

**C. *Engineer's Review of Shop Drawings and Samples***

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

**D. *Resubmittal Procedures for Shop Drawings and Samples***

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

**E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs***

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
  - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
  - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
  - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
  - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.

**F. *Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.***

**7.17 *Contractor's General Warranty and Guarantee***

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  2. normal wear and tear under normal usage.

- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
1. Observations by Engineer;
  2. Recommendation by Engineer or payment by Owner of any progress or final payment;
  3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
  4. Use or occupancy of the Work or any part thereof by Owner;
  5. Any review and approval of a Shop Drawing or Sample submittal;
  6. The issuance of a notice of acceptability by Engineer;
  7. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or
  9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### **7.18 Indemnification**

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage 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 Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.



#### 7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

### **ARTICLE 8—OTHER WORK AT THE SITE**

#### 8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.

- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

#### 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
  - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
  - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
  - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

#### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other

contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
  - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9—OWNER'S RESPONSIBILITIES**

### **9.01   *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

### **9.02   *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

### **9.03   *Furnish Data***

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

### **9.04   *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

**ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION**

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

#### 10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

#### 10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

#### 10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

#### 10.05 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

#### 10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will

not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

#### **10.07 *Limitations on Engineer's Authority and Responsibilities***

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

#### **10.08 *Compliance with Safety Program***

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

### **ARTICLE 11—CHANGES TO THE CONTRACT**

#### **11.01 *Amending and Supplementing the Contract***

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

## 11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

## 11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and:
  - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

## 11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

#### 11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
  - 1. A mutually acceptable fixed fee; or
  - 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
    - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;



- c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
- d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
- f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

#### 11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.
- B. *Change Proposal Procedures*
  - 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
  4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
  5. *Binding Decision:* Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion:* Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## ARTICLE 12—CLAIMS

### 12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
  2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
  3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
  4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
  2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
  3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim

is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.

- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

## **ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK**

### **13.01 Cost of the Work**

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
  2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
  2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
  - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
    - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
  - c. *Construction Equipment Rental*
    - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
    - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
    - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
  - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
  - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
  - g. The cost of utilities, fuel, and sanitary facilities at the Site.
  - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
  - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
  - 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
  - 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
  - 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
  - 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
  - 6. Expenses incurred in preparing and advancing Claims.
  - 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
    - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.

- b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
  - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
  - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
- 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.
- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
  - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

### 13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
  - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
    - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
    - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
  - 2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
  - 3. Adjusted unit prices will apply to all units of that item.

## **ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

### **14.01 Access to Work**

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

### **14.02 Tests, Inspections, and Approvals**

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.



- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
  - 3. by manufacturers of equipment furnished under the Contract Documents;
  - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.
- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

#### 14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

- F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

#### 14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

### **ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

#### 15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
  - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

*C. Review of Applications*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
  - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Work;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
  - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
  - a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

**D. *Payment Becomes Due***

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

**E. *Reductions in Payment by Owner***

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
  - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;

- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
  - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

#### 15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

#### 15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
  - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
  - 2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

#### 15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 *Final Payment*

##### A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
  - a. all documentation called for in the Contract Documents;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all duly pending Change Proposals and Claims; and
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.



- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such adjacent areas;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

## **ARTICLE 16—SUSPENSION OF WORK AND TERMINATION**

### **16.01 *Owner May Suspend Work***

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

### **16.02 *Owner May Terminate for Cause***

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
  1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
  2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;

3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
  4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
  2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### **16.03 Owner May Terminate for Convenience**

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

#### 16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

### **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

#### 17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
  1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
  1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
  2. agree with the other party to submit the dispute to another dispute resolution process; or
  3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

### **ARTICLE 18—MISCELLANEOUS**

#### 18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
  1. in person, by a commercial courier service or otherwise, to the recipient's place of business;

2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

#### 18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

#### 18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

#### 18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

#### 18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

#### 18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

#### 18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

#### 18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

## SUPPLEMENTARY CONDITIONS

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These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2018 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

#### **SC-2.02 Copies of Documents**

Delete Paragraph 2.02.A in its entirety and insert the following:

- A. Owner shall furnish to Contractor 3 printed copies of the Contract Documents (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished on request at the cost of reproduction.

#### **SC-5.03 Subsurface and Physical Conditions**

Delete Paragraphs 5.03.A and 5.03.B in their entirety and insert the following:

- A. No reports of explorations or tests of subsurface conditions at or adjacent to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner.

**SC-5.05.B Underground Facilities**

Add new paragraph immediately after Paragraph 5.05.B to read as follows:

1. Underground utility locations can be obtained from the following owners and services:

Utility	Owner	Phone
Sewer and Water		
Telephone		
Natural Gas		
Electric		
Cable TV		
Other		
Location Service	North Dakota One Call	811

**SC-6.03 Contractor's Insurance**

Add the following new paragraph immediately after Paragraph 6.03.J:

- K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
  1. Worker's Compensation and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:
    - a. State: Statutory
    - b. Federal, if applicable (e.g., Longshoreman's): Statutory
    - c. Employer's Liability:
      - 1) Bodily injury, each accident \$1,500,000
      - 2) Bodily injury by disease, each employee \$1,500,000
      - 3) Bodily injury/disease, aggregate \$1,500,000
    - d. For work performed in monopolistic states, stop-gap liability coverage shall be endorsed to either the worker's compensation or commercial general liability policy:
      - 1) Minimum limit \$ \_\_\_\_\_
    - e. Foreign voluntary worker compensation: Statutory
  2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:
    - a. General Aggregate \$1,500,000
    - b. Products - Completed Operations Aggregate \$1,500,000
    - c. Personal and Advertising Injury \$1,500,000
    - d. Each Occurrence (Bodily Injury and Property Damage) \$1,500,000
  3. Automobile Liability under Paragraph 6.03.D of the General Conditions:
    - a. Bodily Injury:
      - Each person \$1,500,000
      - Each Accident \$1,500,000
    - b. Property Damage:
      - Each Accident \$1,500,000



4. Excess or Umbrella Liability:
  - a. General Aggregate \$1,500,000
  - b. Each Occurrence \$1,500,000
6. Additional Insureds: In addition to Owner and Short Elliott Hendrickson Inc., include as additional insureds the following:
  - a. Braun Intertec Corporation

**SC-6.05 Property Losses; Subrogation**

Delete paragraphs A. through D. in their entirety and substitute the following paragraph in their place:

- A. Property Insurance will not be required of the Contractor.

**SC-6.05 Property Losses; Subrogation**

Delete Paragraph 6.05.A in its entirety and substitute the following in its place:

- A. Installation Floater: Contractor shall provide and maintain installation floater insurance for property under the care, custody, or control of Contractor. The installation floater insurance shall be a broad form or "all risk" policy providing coverage for all materials, supplies, machinery, fixtures, and equipment that will be incorporated into the Work. Coverage under the Contractor's installation floater will include:
  1. any loss to property while in transit,
  2. any loss at the Site, and
  3. any loss while in storage, both on-site and off-site.Coverage cannot be contingent on an external cause or risk, or limited to property for which the Contractor is legally liable. The Contractor will be solely responsible for any deductible carried under this coverage and claims on materials, supplies, machinery, fixture, and equipment that will be incorporated into the Work while in transit or in storage. This policy will include a waiver of subrogation applicable to Owner, Contractor, Engineer, all Subcontractors, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them.

**SC-7.09 Permits**

Add new paragraphs immediately after Paragraph 7.09.A to read as follows:

- B. Owner has made application for the following permits:
  1. NoneFees and bonding costs for these permits will be paid by the Contractor.

**SC-8.03 Legal Relationships**

Delete Paragraph 8.03.A in its entirety and substitute the following in its place:

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 20 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights

against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

#### **SC-10.03 Resident Project Representative**

Add the following new paragraphs immediately after Paragraph 10.03.A:

- B. The Resident Project Representative (RPR) will be Engineer's employee or agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
1. *General*: RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. The RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  2. *Schedules*: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.
  3. *Conferences and Meetings*: Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
  4. *Liaison*:
    - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.
    - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
    - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
  5. *Interpretation of Contract Documents*: Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
  6. *Shop Drawings and Samples*:
    - a. Record date of receipt of Samples and approved Shop Drawings.
    - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
    - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
  7. *Modifications*: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
  8. *Review of Work and Rejection of Defective Work*:
    - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
    - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress is defective, will not produce a completed Project that conforms generally

to the Contract Documents, or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Startups:*

- a. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

10. *Records:*

- a. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- b. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- c. Maintain records for use in preparing Project documentation.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the Progress Schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- c. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, delay events, damage to property by fire or other causes, or the discovery of any Constituent of Concern or Hazardous Environmental Condition.

12. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in Engineer's visits to the Site to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of a punch list of items to be completed or corrected.
- b. Participate in Engineer's final visit to the Site to determine completion of the Work, in the company of Owner and Contractor, and prepare a final punch list of items to be completed and deficiencies to be remedied.

- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the notice of acceptability of the Work.
- D. The RPR shall not:
  1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
  2. Exceed limitations of Engineer's authority as set forth in the Contract Documents.
  3. Undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.
  4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
  5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
  6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
  7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
  8. Authorize Owner to occupy the Project in whole or in part.

#### **SC-13.03 Unit Price Work**

Delete Paragraph 13.03.E in its entirety and insert the following in its place:

- E. The unit price of an item of Unit Price Work shall be subject to re-evaluation and adjustment under the following conditions:
  1. if the extended price of a particular item of Unit Price Work amounts to 25 percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Agreement; and
  2. if there is no corresponding adjustment with respect to any other item of Work; and
  3. if Contractor believes that Contractor has incurred additional expense as a result thereof; Contractor may submit a Change Proposal, or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, Owner may make a claim, seeking an adjustment in the Contract Price.

#### **SC-15.01.B Applications for Payments**

Add the following language at the end of Paragraph 15.01.B.1:

1. Supporting documentation to accompany each Application for Payment shall include:
  - a. Updated Project Schedule.
  - b. Updated list showing current status of submittals.
  - c. Documentation showing payment by Contractor for materials and/or equipment stored.
  - d. Documentation showing insurance coverage for materials and/or equipment stored.

#### **SC-15.01.C Review of Applications**

Delete Paragraph 15.01.C.1 in its entirety and insert the following:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return

the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

#### **SC-15.01.D Payment Becomes Due**

Delete Paragraph 15.01.D.1 in its entirety and insert the following:

1. 30 days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

#### **SC-15.03 Substantial Completion**

Add a new paragraph immediately after Paragraph 15.03.A which reads as follows:

1. For this Work, Substantial Completion is further defined as follows:
  - a. Taxiways and Taxilanes are open for aircraft with no restrictions. All paving, grading, drainage, and restoration work is complete.

#### **SC-15.03 Substantial Completion**

Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

#### **SC-15.05 Final Inspection**

Add the following language after the second sentence of Paragraph 15.05.A:

If, after such measures are taken, subsequent inspections by Engineer reveal that any of the previously identified particulars remain incomplete or defective, Engineer will again notify Contractor in writing of the remaining particulars. All costs associated with any subsequent inspections in which said remaining particulars are revealed, will be documented by Engineer and paid by Contractor to Owner.

Add the following new paragraph immediately after Paragraph 15.06.A.3:

Before final application for payment is made for the work, Contractor must make satisfactory showing of compliance with M.S.A. §290.92, which requires the withholding of state income taxes for wages paid employees on this project. Submittal of Certificate of Compliance from the Commissioner of Taxation to the Owner will satisfy this requirement. Contractor is advised that before such certificate can be issued, they must first place on file with the Commissioner of Taxation an affidavit that they have complied with the provisions of M.S.A. §290.92.

#### **SC-15.08 Correction Period**

Delete Paragraph 15.08.A in its entirety and insert the following in its place:

- A. If within one year after the date of Final Payment (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  1. correct the defective repairs to the Site or such other adjacent areas; or

2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

#### **SC-17.02 Dispute Resolutions**

If any question, dispute, or controversy arises between Owner and Contractor out of any provision of Contract Documents, for which a decision is not otherwise provided for in Contract Documents and that cannot be settled by Change Order, Owner and Contractor may exercise legal remedies as may be available.

**END OF DOCUMENT**

## ADDITIONAL SPECIAL PROVISIONS FOR FEDERALLY-FUNDED CONTRACTS

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## CONTRACT GUIDANCE

### 1. Applicability Matrix for Contract Provisions

[Table 1](#) Matrix summarizes the applicability of contract provisions based upon the type of contract or agreement. The dollar threshold represents the value at which, when equal to or exceeded, the Sponsor must incorporate the provision in the contract or agreement.

Supplemental information addressing applicability and use for each provision is located in Appendix A. Appendix A and the Matrix include notes indicating when the Sponsor may incorporate references in the solicitation in lieu of including the entire text.

**Sponsors are responsible for reviewing both the Matrix and each corresponding section to determine applicability of specific contract provisions.**

#### Meaning of cell values in table below:

- Info –Sponsor has discretion on whether to include clause in its contracts.
- Limited – Provision with limited applicability depending on circumstances of the procurement.
- n/a – Provision that is not applicable for that procurement type.
- NIS – Provision that does not need to be included or referenced in the solicitation document
- REF – Provision to be incorporated into the solicitation by reference.
- REQD – Provision the Sponsor must incorporate into procurement documents.



**Table 1 – Applicability of Provisions**

Provisions/Clauses	Dollar Threshold	Solicitation	Professional Services	Construction	Equipment	Property (Land)	Non-AIP Contracts
<a href="#">Access to Records and Reports</a>	\$0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Affirmative Action Requirement</a>	\$10,000	REQD	Limited	REQD	Limited	Limited	n/a
<a href="#">Breach of Contract</a>	\$250,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Buy American Preferences</a>	\$0	REF	Limited	REQD	REQD	Limited	n/a
(1) <a href="#">Buy American Statement</a>	\$0	NIS	Limited	REQD	REQD	Limited	n/a
(2) <a href="#">Construction</a>	\$0	NIS	Limited	REQD	REQD	Limited	n/a
(3) <a href="#">Equipment/Building Projects</a>	\$0	NIS	Limited	REQD	REQD	Limited	n/a
<a href="#">Civil Rights – General</a>	\$0	NIS	REQD	REQD	REQD	REQD	REQD
<a href="#">Civil Rights - Title VI Assurances</a>	\$0	REF	REQD	REQD	REQD	REQD	REQD
(1) <a href="#">Notice - Solicitation</a>	\$0	REQD	REQD	REQD	REQD	REQD	REQD
(2) <a href="#">Clause - Contracts</a>	\$0	NIS	REQD	REQD	REQD	REQD	REQD
(3) <a href="#">Clause – Transfer of U.S. Property</a>	\$0	NIS	n/a	n/a	n/a	Limited	REQD
(4) <a href="#">Clause – Transfer of Real Property</a>	\$0	NIS	n/a	n/a	n/a	REQD	REQD
(5) <a href="#">Clause - Construct/Use/Access to Real Property</a>	\$0	NIS	n/a	n/a	n/a	REQD	REQD
(6) <a href="#">List – Pertinent Authorities</a>	\$0	NIS	REQD	REQD	REQD	REQD	REQD
<a href="#">Clean Air/Water Pollution Control</a>	\$150,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Contract Work Hours and Safety Standards</a>	\$100,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Copeland Anti-Kickback</a>	\$2,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Davis Bacon Requirements</a>	\$2,000	REF	Limited	REQD	Limited	Limited	n/a
<a href="#">Debarment and Suspension</a>	\$25,000	REF	REQD	REQD	REQD	Limited	n/a
<a href="#">Disadvantaged Business Enterprise</a>	\$250,000	REQD	REQD	REQD	REQD	REQD	n/a
<a href="#">Distracted Driving</a>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Domestic Preferences for Procurements</a>	\$0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Equal Employment Opportunity</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(1) <a href="#">EEO Contract Clause</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
(2) <a href="#">EEO Specification</a>	\$10,000	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Federal Fair Labor Standards Act</a>	\$0	REQD	REQD	REQD	REQD	REQD	Info
<a href="#">Foreign Trade Restriction</a>	\$0	REQD	REQD	REQD	REQD	REQD	n/a
<a href="#">Lobbying Federal Employees</a>	\$100,000	REF	REQD	REQD	REQD	REQD	n/a
<a href="#">Occupational Safety and Health Act</a>	\$0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment</a>	\$0	NIS	REQD	REQD	REQD	REQD	Info
<a href="#">Prohibition of Segregated Facilities</a>	\$0	NIS	Limited	REQD	Limited	Limited	n/a
<a href="#">Recovered Materials</a>	\$10,000	REF	Limited	REQD	REQD	Limited	n/a
<a href="#">Right to Inventions</a>	\$0	NIS	Limited	Limited	Limited	n/a	n/a
<a href="#">Seismic Safety</a>	\$0	NIS	Limited	Limited	Limited	n/a	n/a
<a href="#">Tax Delinquency and Felony Conviction</a>	\$0	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Termination of Contract</a>	\$10,000	NIS	REQD	REQD	REQD	REQD	n/a
<a href="#">Veteran's Preference</a>	\$0	NIS	REQD	REQD	REQD	REQD	n/a

## **APPENDIX A – CONTRACT PROVISIONS**

### **A1 Access to Records and Reports**

#### **A1.3 Access to Records and Reports**

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

## **A2 Affirmative Action Requirement**

### **A2.3 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

#### **Timetables**

Goals for minority participation for each trade: **Refer to the provided Equal Employment Opportunity (EEO) Special Provisions for goals**

Goals for female participation in each trade: 6.9%

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

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

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

4. As used in this notice and in the contract resulting from this solicitation, the "covered area" is **project area**.

## **A3 Breach of Contract Terms**

### **A3.3 Breach of Contract Terms**

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

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

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

## **A4 Buy American Preference**

### **A4.3.1 FAA Buy American Preference**

The Contractor certifies that its bid/offer is in compliance with 49 USC § 50101, BABA and other related Made in America Laws,<sup>1</sup> U.S. statutes, guidance, and FAA policies, which provide that Federal funds may not be obligated unless all iron, steel and manufactured goods used in AIP funded projects are produced in the United States, unless the FAA has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.

The bidder or offeror must complete and submit the certification of compliance with FAA's Buy American Preference, BABA and Made in America laws included herein with their bid or offer. The Airport Sponsor/Owner will reject as nonresponsive any bid or offer that does not include a completed certification of compliance with FAA's Buy American Preference and BABA.

The bidder or offeror certifies that all constructions materials, defined to mean an article, material, or supply other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall used in the project are manufactured in the United States.

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<sup>1</sup> Per Executive Order 14005 "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to federal financial assistance awards or federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured products offered in the United States.

**A4.3.2****Certification of Compliance with FAA Buy American Preference – Construction Projects**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with its proposal. The bidder or offeror must indicate how it intends to comply with 49 USC § 50101, BABA and other related Made in America Laws, U.S. statutes, guidance, and FAA policies, by selecting one of the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (i.e., not both) by inserting a checkmark (✓) or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing iron, steel and manufactured products produced in the United States;
  - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
  - c) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- a) To provide to the Airport Sponsor or the FAA evidence that documents the source and origin of the iron, steel, and/or manufactured product.
- b) To faithfully comply with providing U.S. domestic products.
- c) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- d) Certify that all construction materials used in the project are manufactured in the U.S.

- ☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 or Type 4 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  - d) To furnish U.S. domestic product for any waiver request that the FAA rejects.
  - e) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 2 Waiver (Nonavailability)** – The iron, steel, manufactured goods or construction materials or manufactured goods are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.

**Type 3 Waiver** – The cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “facility/project.” The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all manufactured products that are not comprised of 100 percent U.S. domestic content (excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108; products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly and installation at project location.
- d) Percentage of non-domestic component and subcomponent cost as compared to total “facility” component and subcomponent costs, excluding labor costs associated with final assembly and installation at project location.

**Type 4 Waiver (Unreasonable Costs)** - Applying this provision for iron, steel, manufactured goods or construction materials would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) A completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bids and/or offers;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the FAA and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

**A4.3.3****Certification of Compliance with FAA Buy American Preference – Equipment/Building Projects**

As a matter of bid responsiveness, the bidder or offeror must complete, sign, date, and submit this certification statement with their proposal. The bidder or offeror must indicate how they intend to comply with 49 USC § 50101, and other Made in America Laws, U.S. statutes, guidance, and FAA policies by selecting one on the following certification statements. These statements are mutually exclusive. Bidder must select one or the other (not both) by inserting a checkmark (✓) or the letter "X".

- ☐ Bidder or offeror hereby certifies that it will comply with 49 USC § 50101, BABA and other related U.S. statutes, guidance, and policies of the FAA by:
- a) Only installing steel and manufactured products produced in the United States;
  - b) Only installing construction materials defined as: an article, material, or supply – other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives that are or consist primarily of non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber or drywall that have been manufactured in the United States.
  - c) Installing manufactured products for which the FAA has issued a waiver as indicated by inclusion on the current FAA Nationwide Buy American Waivers Issued listing; or
  - d) Installing products listed as an Excepted Article, Material or Supply in Federal Acquisition Regulation Subpart 25.108.

By selecting this certification statement, the bidder or offeror agrees:

- a) To provide to the Airport Sponsor or FAA evidence that documents the source and origin of the steel and manufactured product.
  - b) To faithfully comply with providing U.S. domestic product.
  - c) To furnish U.S. domestic product for any waiver request that the FAA rejects.
  - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.
- ☐ The bidder or offeror hereby certifies it cannot comply with the 100 percent Buy American Preferences of 49 USC § 50101(a) but may qualify for a Type 3 waiver under 49 USC § 50101(b). By selecting this certification statement, the apparent bidder or offeror with the apparent low bid agrees:
- a) To submit to the Airport Sponsor or FAA within 15 calendar days of being selected as the responsive bidder, a formal waiver request and required documentation that supports the type of waiver being requested.
  - b) That failure to submit the required documentation within the specified timeframe is cause for a non-responsive determination that may result in rejection of the proposal.
  - c) To faithfully comply with providing U.S. domestic products at or above the approved U.S. domestic content percentage as approved by the FAA.
  - d) To refrain from seeking a waiver request after establishment of the contract, unless extenuating circumstances emerge that the FAA determines justified.

**Required Documentation**

**Type 2 Waiver (Nonavailability)** - The iron, steel, manufactured goods or construction materials are not available in sufficient quantity or quality in the United States. The required documentation for the Nonavailability waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire
- b) Record of thorough market research, consideration where appropriate of qualifying alternate items, products, or materials including;
- c) A description of the market research activities and methods used to identify domestically manufactured items capable of satisfying the requirement, including the timing of the research and conclusions reached on the availability of sources.



**Type 3 Waiver** – The cost of the item components and subcomponents produced in the United States is more than 60 percent of the cost of all components and subcomponents of the “item”. The required documentation for a Type 3 waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire including;
- b) Listing of all product components and subcomponents that are not comprised of 100 percent U.S. domestic content (Excludes products listed on the FAA Nationwide Buy American Waivers Issued listing and products excluded by Federal Acquisition Regulation Subpart 25.108 (products of unknown origin must be considered as non-domestic products in their entirety).
- c) Cost of non-domestic components and subcomponents, excluding labor costs associated with final assembly at place of manufacture.
- d) Percentage of non-domestic component and subcomponent cost as compared to total “item” component and subcomponent costs, excluding labor costs associated with final assembly at place of manufacture.

**Type 4 Waiver (Unreasonable Costs)** - Applying this provision for iron, steel, manufactured goods or construction materials, would increase the cost of the overall project by more than 25 percent. The required documentation for this waiver is:

- a) Completed Content Percentage Worksheet and Final Assembly Questionnaire from
- b) At minimum two comparable equal bidders and/or offerors;
- c) Receipt or record that demonstrates that supplier scouting called for in Executive Order 14005, indicates that no domestic source exists for the project and/or component;
- d) Completed waiver applications for each comparable bid and/or offer.

**False Statements:** Per 49 USC § 47126, this certification concerns a matter within the jurisdiction of the FAA and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Title

## **A5 Civil Rights – General**

### **A5.3.1 General Civil Rights Provisions**

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### **A5.3.2 Specific Clause that is used for General Contract Agreements**

The above provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract.

### **A5.3.3 Specific Clause that is used for Lease Agreements or Transfer Agreements**

If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor.

The above provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the FAA.

## **A6 Civil Rights – Title VI Assurance**

### **A6.3.1 Title VI Solicitation Notice:**

The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

### **A6.4.1 Title VI List of Pertinent Nondiscrimination Acts and Authorities**

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The FAA’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, *et seq.*).

**A6.4.2****Compliance with Nondiscrimination Requirements:**

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

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
  - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
  - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### A6.4.3

#### Clauses for Deeds Transferring United States Property

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of the Airport Improvement Program grant assurances:

**NOW, THEREFORE**, the FAA as authorized by law and upon the condition that the (***Title of Sponsor***) will accept title to the lands and maintain the project constructed thereon in accordance with (***Name of Appropriate Legislative Authority***), for the (***Airport Improvement Program or other program for which land is transferred***), and the policies and procedures prescribed by the FAA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 USC §§ 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (***Title of Sponsor***) all the right, title and interest of the U.S. Department of Transportation/FAA in and to said lands described in (***Exhibit A attached hereto or other exhibit describing the transferred property***) and made a part hereof.

## (HABENDUM CLAUSE)

**TO HAVE AND TO HOLD** said lands and interests therein unto (**Title of Sponsor**) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (**Title of Sponsor**), its successors and assigns.

The (**Title of Sponsor**), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the (**Title of Sponsor**) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the FAA and its assigns as such interest existed prior to this instruction].\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

### **A6.4.4                      Clauses for Transfer of Real Property Acquired or Improved Under the Airport Improvement Program**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances:

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
  - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a FAA activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Title VI List of Pertinent Nondiscrimination Acts and Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, (**Title of Sponsor**) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the (**Title of Sponsor**) will have the right to enter or re-enter the lands and facilities thereon, and the above-described lands and facilities will there upon revert to and vest in and become the absolute property of the (**Title of Sponsor**) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**A6.4.5****Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (**Title of Sponsor**) pursuant to the provisions of the Airport Improvement Program grant assurances.

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, (**Title of Sponsor**) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, (**Title of Sponsor**) will there upon revert to and vest in and become the absolute property of (**Title of Sponsor**) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

**A7      Clean Air and Water Pollution Control**

**A7.3          Clean Air and Water Pollution Control**

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the FAA.

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



## **A8 Contract Workhours and Safety Standards Act Requirements**

### **A8.3 Contract Workhours and Safety Standards Act Requirements**

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

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

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

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

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

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

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

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

## **A9 Copeland “Anti-Kickback” Act**

### **A9.3 Copeland “Anti-Kickback” Act**

Contractor must comply with the requirements of the Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week. Owner must report any violations of the Act to the FAA.

## **A10 Davis-Bacon Requirements**

### **A10.3 Davis-Bacon Requirements**

#### **1. Minimum Wages.**

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding. The FAA or the Sponsor shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the FAA may, after written notice to the Contractor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### 3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the FAA if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the FAA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR § 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the FAA if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit them to the applicant, Sponsor, or Owner, as the case may be, for transmission to the FAA, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5 (a)(3)(i), and that such information is correct and complete;

(2) That each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Sponsor, the FAA, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

#### 4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater

than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### 5. Compliance with Copeland Act Requirements.

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

#### 6. Subcontracts.

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR §§ 5.5(a)(1) through (10) and such other clauses as the FAA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR § 5.5.

#### 7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR § 5.12.

#### 8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

#### 9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### 10. Certification of Eligibility.

(i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR § 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC § 1001.

## **A11 Debarment and Suspension**

### **A11.3**

#### **A11.3.1 Certification of Offeror/Bidder Regarding Debarment**

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

#### **A11.3.2 Certification of Lower Tier Contractors Regarding Debarment**

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

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

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

## **A12 Disadvantaged Business Enterprise**

### **A12.3.1 Solicitation Language (Solicitations that include a Contract Goal)**

#### **Bid Information Submitted as a matter of responsiveness:**

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

As a condition of responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

#### **Bid Information submitted as a matter of responsibility:**

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

As a condition of responsibility, every Bidder or Offeror must submit the following information on the forms provided herein within five days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal;
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

### **A12.3.2 Solicitation Language (Race/Gender Neutral Means)**

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

### **A12.3.3 Prime Contracts (Contracts Covered by a DBE Program)**

#### **Contract Assurance (49 CFR § 26.13; mandatory text provided) –**

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

- 1) Withholding monthly progress payments;



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

**Prompt Payment (49 CFR § 26.29; acceptable/sample text provided) –**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Owner. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Owner. This clause applies to both DBE and non-DBE subcontractors.

**Termination of DBE Subcontracts (49 CFR § 26.53(f); acceptable/sample text provided) –**

The prime contractor must not terminate a DBE subcontractor listed in response to A12.3.1 (or an approved substitute DBE firm) without prior written consent of Owner. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent Owner. Unless Owner consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Owner may provide such written consent only if Owner agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to Owner its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Owner, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise [Name of Recipient] and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why Owner should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), Owner may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

## **A13     Distracted Driving**

### **A13.3       Texting When Driving**

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

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

## **A14 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

### **A14.3 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

**A15 Drug Free Workplace Requirements**

**A15.3**

**A15.3.3 Contract Clause**

None.

## **A16 Equal Employment Opportunity (EEO)**

### **A16.3.1 Equal Opportunity Clause**

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

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **A16.3.2 Standard Federal Equal Employment Opportunity Construction Contract Specifications**

1. As used in these specifications:

- a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
- d. "Minority" includes:
  - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
  - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
  - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
  - (4) American Indian or Alaskan native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

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

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

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

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

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

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

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

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

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

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

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

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

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

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

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

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

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

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

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



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

## **A17 Federal Fair Labor Standards Act (Federal Minimum Wage)**

### **A17.3 Model Solicitation Clause**

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

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

## **A18 Lobbying and Influencing Federal Employees**

### **A18.3 Certification Regarding Lobbying**

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

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

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

## **A19 Prohibition of Segregated Facilities**

### **A19.3 Prohibition of Segregated Facilities**

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

(b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

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

## **A20 Occupational Safety and Health Act of 1970**

### **A20.3 Model Contract Clause**

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

## **A21 Procurement of Recovered Materials**

### **A21.3 Procurement of Recovered Materials**

Contractor and subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Contractor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

- 1) The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
- 2) The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at [www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products](http://www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products).

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- a) Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- b) Fails to meet reasonable contract performance requirements; or
- c) Is only available at an unreasonable price.

## **A22     Right to Inventions**

### **A22.3       Rights to Inventions**

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR § 401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

## **A23     Seismic Safety**

### **A23.3.1             Seismic Safety**

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

### **A23.3.2             Seismic Safety**

The Contractor agrees to ensure that all work performed under this contract, including work performed by subcontractors, conforms to a building code standard that provides a level of seismic safety substantially equivalent to standards established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety.



## **A24 Tax Delinquency and Felony Convictions**

### **A24.3 Certification of Offeror/Bidder Regarding Tax Delinquency and Felony Convictions**

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

#### **Certifications**

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

#### **Note**

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

#### **Term Definitions**

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

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

## **A25 Termination of Contract**

### **A25.3.1 Termination for Convenience (Construction & Equipment Contracts)**

The Owner may terminate this contract in whole or in part at any time by providing written notice to the Contractor. Such action may be without cause and without prejudice to any other right or remedy of Owner. Upon receipt of a written notice of termination, except as explicitly directed by the Owner, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining or adjusting amounts due under this clause:

1. Contractor must immediately discontinue work as specified in the written notice.
2. Terminate all subcontracts to the extent they relate to the work terminated under the notice.
3. Discontinue orders for materials and services except as directed by the written notice.
4. Deliver to the Owner all fabricated and partially fabricated parts, completed and partially completed work, supplies, equipment and materials acquired prior to termination of the work, and as directed in the written notice.
5. Complete performance of the work not terminated by the notice.
6. Take action as directed by the Owner to protect and preserve property and work related to this contract that Owner will take possession.

Owner agrees to pay Contractor for:

1. Completed and acceptable work executed in accordance with the contract documents prior to the effective date of termination;
2. Documented expenses sustained prior to the effective date of termination in performing work and furnishing labor, materials, or equipment as required by the contract documents in connection with uncompleted work;
3. Reasonable and substantiated claims, costs, and damages incurred in settlement of terminated contracts with Subcontractors and Suppliers; and
4. Reasonable and substantiated expenses to the Contractor directly attributable to Owner's termination action.

Owner will not pay Contractor for loss of anticipated profits or revenue or other economic loss arising out of or resulting from the Owner's termination action.

The rights and remedies this clause provides are in addition to any other rights and remedies provided by law or under this contract.

### **A25.3.2 Termination For Convenience (Professional Services)**

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

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

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

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

### **A25.3.3 Termination for Default**

## **TERMINATION FOR CAUSE (CONSTRUCTION)**

Section 80-09 of FAA Advisory Circular 150/5370-10 establishes standard language for conditions, rights, and remedies associated with Owner termination of this contract for cause due to default of the Contractor.

#### **TERMINATION FOR CAUSE (EQUIPMENT)**

The Owner may, by written notice of default to the Contractor, terminate all or part of this Contract for cause if the Contractor:

1. Fails to begin the Work under the Contract within the time specified in the Notice- to-Proceed;
2. Fails to make adequate progress as to endanger performance of this Contract in accordance with its terms;
3. Fails to make delivery of the equipment within the time specified in the Contract, including any Owner approved extensions;
4. Fails to comply with material provisions of the Contract;
5. Submits certifications made under the Contract and as part of their proposal that include false or fraudulent statements; or
6. Becomes insolvent or declares bankruptcy.

If one or more of the stated events occur, the Owner will give notice in writing to the Contractor and Surety of its intent to terminate the contract for cause. At the Owner's discretion, the notice may allow the Contractor and Surety an opportunity to cure the breach or default.

If within [10] days of the receipt of notice, the Contractor or Surety fails to remedy the breach or default to the satisfaction of the Owner, the Owner has authority to acquire equipment by other procurement action. The Contractor will be liable to the Owner for any excess costs the Owner incurs for acquiring such similar equipment.

Payment for completed equipment delivered to and accepted by the Owner shall be at the Contract price. The Owner may withhold from amounts otherwise due the Contractor for such completed equipment, such sum as the Owner determines to be necessary to protect the Owner against loss because of Contractor default.

Owner will not terminate the Contractor's right to proceed with the work under this clause if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such acceptable causes include: acts of God, acts of the Owner, acts of another Contractor in the performance of a contract with the Owner, and severe weather events that substantially exceed normal conditions for the location.

If, after termination of the Contractor's right to proceed, the Owner determines that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the Owner issued the termination for the convenience the Owner.

The rights and remedies of the Owner in this clause are in addition to any other rights and remedies provided by law or under this contract.

#### **TERMINATION FOR CAUSE (PROFESSIONAL SERVICES)**

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

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

- a) **Termination by Owner:** The Owner may terminate this Agreement for cause in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
  2. Make adequate progress so as to endanger satisfactory performance of the Project; or

3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

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

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

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

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

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

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

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

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

## **A26 Trade Restriction Certification**

### **A26.3 Trade Restriction Certification**

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

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

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

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

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

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

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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

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

## **A27 Veteran's Preference**

### **A27.3 Veteran's Preference**

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

## **A28 Domestic Preferences for Procurements**

### **A28.3 Certification Regarding Domestic Preferences for Procurements**

The Bidder or Offeror certifies by signing and submitting this bid or proposal that, to the greatest extent practicable, the Bidder or Offeror has provided a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including, but not limited to, iron, aluminum, steel, cement, and other manufactured products) in compliance with 2 CFR § 200.322.

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**SECTION 01 11 00**  
**SUMMARY OF WORK**

**PART 1 GENERAL**

**1.01 SUMMARY**

- A. Section Includes:
  - 1. Work Included in Contract Documents
  - 2. Contract Information
  - 3. Work Under Other Contracts
  - 4. Work Sequence
  - 5. Contractor Use of Premises
  - 6. Occupancy Requirements
  - 7. Products Ordered in Advance
  - 8. Owner Furnished Products
  - 9. Work Restrictions

**1.02 WORK INCLUDED IN CONTRACT DOCUMENTS**

- A. Description of the Project:
  - 1. Electrical Vault Improvements.

**1.03 CONTRACT INFORMATION**

- A. Type of Contract: Owner will award a Single Prime Contract.
- B. Scope of Contract:
  - 1. This Contractor is solely responsible for the Work.
  - 2. The Contract will include:
    - a. Contract Forms:
      - 1) Agreement
      - 2) Performance Bond
      - 3) Payment Bond
      - 4) Certificates
    - b. Conditions of the Contract:
      - 1) General Conditions
      - 2) Supplementary Conditions
    - c. Specifications:
      - 1) Division 1 - General Requirements
      - 2) Applicable Technical Sections
    - d. Addenda
    - e. Contract Modifications

**1.04 WORK UNDER OTHER CONTRACTS**

- A. Other Work at Site:
  - 1. Owner reserves the right to let other separate contracts for Work of the Project, or to pursue other Work at the Site with its own personnel.
  - 2. Cooperate fully with separate contractors so work on those contracts may be carried out smoothly, without interfering with or delaying work under this Contract.
  - 3. Coordinate the Work of this Contract with work performed under separate contracts.
- B. Work Not Included:
  - 1. Work not included is either marked "NIC," or "by others," on Drawings or is noted in each section of Specifications.

2. Provide all labor and materials required unless so specifically noted or marked.
3. Install Work indicated to be furnished by others or Owner unless specifically stipulated to be furnished and installed by others or Owner.

## **1.05 WORK SEQUENCE**

- A. Construct Work in stages to accommodate Owner's requirements during the construction period. Coordinate construction schedule and operations with Owner and Engineer.

## **1.06 CONTRACTOR USE OF PREMISES**

- A. Confine operations at Site to areas permitted under contract or as directed by Owner **or** Engineer.
- B. Conform to site rules and regulations affecting Work while engaged in Project construction.
- C. Existing Structures:
  1. Keep existing driveways, and adjacent streets clear and available to public in accordance with Owner's or local authority's requirements.
  2. Protect building and occupants during construction period.
  3. Repair damages caused to existing public and private property and structures due to operations of Contractor to the satisfaction of, and at no additional cost to Owner.
  4. Take complete field measurements affecting all existing construction, wiring, piping, and equipment in this Contract, and assume responsibility for proper fit between Work and existing structures and other equipment.
- D. Construction personnel may park only in areas designated by the Owner.
- E. Nonsmoking Building: Smoking is not permitted within the building or within 25 feet of entrances, operable windows, or outdoor air intakes.
- F. Damaged Property:
  1. Patch and/or clean existing improvements and restore damage of property on, or adjacent to Site occasioned by this Work, including, but not limited to, lawns, walks, curbs, pavements, roadways, structures, and utilities which are cut or damaged by operations and are not designated for removal, relocation, or replacement in the course of construction.
  2. Public Property or Utilities: Comply with laws, ordinances, rules, regulations, standards, orders of utility owner or any public authority having jurisdiction.
  3. Provide written acceptance of restoration work by authority or Owner.
- G. Product Requirements:
  1. Confine stockpiling of materials or equipment and location of storage sheds and offices to areas indicated.

## **1.07 OCCUPANCY REQUIREMENTS**

- A. General Requirements:
  1. Cooperate with Owner to minimize conflict and to facilitate Owner's operations.
  2. Schedule the Work to accommodate this requirement.
  3. Coordinate activities which could cause interruption to Owner's activities.
  4. Provide not less than 48 hours' notice to Owner of activities that will affect Owner's operations.
- B. Owner Occupation During Construction:
  1. Owner will occupy Site during the Work.
- C. Owner Occupancy of Completed Areas of Construction:
  1. Owner reserves the right to place and install equipment as necessary in completed areas of the facilities and to occupy such completed areas prior to Substantial Completion in accordance with the Supplementary Conditions. Such use shall not constitute acceptance of such portions of the

- Work or relieve the Contractor of any obligations except for improper use or damage caused by employees or agents of Owner.
2. Obtain a Certificate of Occupancy from authorities having jurisdiction before Owner occupancy.
  3. Mechanical and electrical systems shall be fully operational and required tests and inspection successfully completed.
  4. On occupancy, Owner will operate and maintain mechanical and electrical systems serving occupied portions of building.
  5. On occupancy, Owner will assume responsibility for maintenance and custodial service for occupied portions of building.

#### **1.08 PRODUCTS ORDERED IN ADVANCE**

- A. Storage:
1. Products will be allowed to be stored at the Site prior to commencement of construction activities.
  2. Contractor shall store such items as directed by Owner.

#### **1.09 OWNER FURNISHED PRODUCTS**

- A. Items furnished by Owner will be identified in the Specification sections.
- B. Owner's Responsibilities:
1. Arrange for, and deliver Owner reviewed Shop Drawings, Product Data and samples to Contractor.
  2. Arrange and pay for product delivery to Site.
  3. At time of delivery, inspect products jointly with Contractor.
  4. Submit claims for transportation damage and replace damaged, defective or deficient items.
  5. Arrange for manufacturer's warranties, inspections and service.
- C. Contractor's Responsibilities:
1. Review Owner reviewed Shop Drawings, Product Data and samples.
  2. Receive and unload products at Site; inspect for completeness or damage, jointly with Owner.
  3. Provide support systems to receive Owner's equipment.
  4. Protect Owner-furnished items from damage during storage and handling, including damage from exposure to the elements.
  5. Install and otherwise incorporate Owner-furnished items into the Work.
  6. Repair or replace items damaged after receipt, except that damage caused by Owner's employees or agents.

#### **1.10 WORK RESTRICTIONS**

- A. On-Site Work Hours:
1. Normal business working hours of 7:00 a.m. to 5:00 p.m. Monday through Saturday.
- B. Existing Utility Interruption:
1. Do not interrupt utilities serving facilities occupied by Owner or others without written permission by Engineer.
  2. Notify Engineer not less than 2 days in advance of proposed utility interruptions.

### **PART 2 PRODUCTS**

Not Used

### **PART 3 EXECUTION**

Not Used

**END OF SECTION**

## SECTION 01 25 13

### PRODUCT SUBSTITUTION PROCEDURES

#### PART 1 GENERAL

##### 1.01 SUMMARY

- A. Administrative and procedural requirements for handling requests for substitutions.
- B. The following is not included in this Section:
  - 1. Procedural requirements governing Contractor's selection of product options (Section 01 60 00).

##### 1.02 DEFINITIONS

- A. Definitions used in this Article are not intended to change or modify the meaning of other terms used in the Contract Documents.
- B. Substitutions: Requests for changes in products, materials, equipment and methods of construction required by Contract Documents proposed by Contractor.
- C. The following are not considered substitutions:
  - 1. Revisions to Contract Documents requested by Owner or Engineer.
  - 2. Specified options of products and construction methods included in Contract Documents.
  - 3. Contractor's determination of and compliance with governing regulations and orders issued by governing authorities.

##### 1.03 SUBMITTALS

- A. Substitution Request Prior to Bid: For a Product Substitution to be considered, the following conditions must be met:
  - 1. All requests must be submitted in writing no later than 10 calendar days prior to the date for receipt of the bids.
  - 2. Faxed submittals will not be considered.
  - 3. Submit each request for substitution (one material or product per form) on the attached "Substitution Request Form" attached at the end of this section (either duplicated from the Project Manual or available from Engineer's office) together with a self-addressed, stamped envelope. Submittals not accompanied by this form properly filled in and endorsed will be discarded without review. NO EXCEPTIONS.
  - 4. Identify any impact of the substituted product on related items.
  - 5. Approved items will be listed in addenda. Requests for substitution will be returned in the self-addressed, stamped envelope provided by bidder at Engineer's earliest convenience.
- B. All substitutions permitted on addenda must meet or exceed requirements of the specifications including, but not limited to:
  - 1. Warranty.
- C. Substitution Request After Bid: Requests for substitution will be considered if received within 60 days after commencement of the work. Requests received more than 60 days after commencement of the work may be considered or rejected at the discretion of Engineer.
  - 1. Submit 3 copies of each request for substitution for consideration. Submit requests in the form and in accordance with procedures required for change order proposals.
  - 2. Identify the product, or the fabrication or installation method to be replaced in each request. Include related specification section and Drawing numbers.

3. Provide complete documentation showing compliance with the requirements for substitutions, and the following information, as appropriate:
  - a. Product data, including drawings and descriptions of products, fabrication and installation procedures.
  - b. Samples, where applicable or requested.
  - c. A detailed comparison of significant qualities of the proposed substitution with those of the work specified. Significant qualities may include elements such as size, weight, durability, performance and visual effect.
  - d. Coordination information, including a list of changes or modifications needed to other parts of the work and to construction performed by Owner and separate contractors, that will become necessary to accommodate the proposed substitution.
  - e. A statement indicating the substitution's effect on Contractor's construction schedule compared to the schedule without approval of the substitution. Indicate the effect of the proposed substitution on overall contract time.
  - f. Cost information, including a proposal of the net change, if any in the contract sum.
  - g. Certification by Contractor that the substitution proposed is equal-to or better in every significant respect to that required by the Contract Documents, and that it will perform adequately in the application indicated.
  - h. Include Contractor's waiver of rights to additional payment or time, which may subsequently become necessary because of the failure of the substitution to perform adequately.
- D. Substitution Conditions:
  1. Contractor's substitution request will be received and considered by Engineer when one or more of the following conditions are satisfied, as determined by Engineer, otherwise requests will be returned without action except to record noncompliance with these requirements:
    - a. Extensive revisions to Contract Documents are not required.
    - b. Proposed changes are in keeping with the general intent of Contract Documents.
    - c. The request is timely, fully documented and properly submitted.
    - d. Contractors and suppliers will be expected to provide the specified product unless prior approval is received from Engineer's office in sufficient time so that all bidders can be notified through an addendum.
    - e. The specified product or method of construction cannot be provided within the contract time. The request will not be considered if the product or method cannot be provided as a result of failure to pursue the work promptly or coordinate activities properly.
    - f. The specified product or method of construction cannot receive necessary approval by a governing authority, and the requested substitution can be approved.
    - g. A substantial advantage is offered to Owner, in terms of cost, time, energy conservation, or other considerations of merit, after deducting offsetting responsibilities Owner may be required to bear. Additional responsibilities for Owner may include additional compensation to Engineer for redesign and evaluation services, increased cost of other construction by Owner, or separate contractors, and similar considerations.
    - h. The specified product or method of construction cannot be provided in a manner that is compatible with other materials, and where Contractor certifies that the substitution will overcome the incompatibility.
    - i. The specified product or method of construction cannot be coordinated with other materials, and where Contractor certifies that the proposed substitution can be coordinated.
    - j. The specified product or method of construction cannot provide a warranty required by the Contract Documents and where Contractor certifies that the proposed substitution provides the required warranty.
    - k. Where a proposed substitution involves more than one prime contractor, each contractor shall cooperate with the other contractors involved to coordinate the work, provide uniformity and consistency, and to assure compatibility of products.
- E. Limitations: Contractor's submittal and Engineer's acceptance of Shop Drawings, Product Data, or Samples that relate to construction activities not complying with the Contract Documents does not constitute an acceptable or valid request for substitution, nor does it constitute approval.
- F. Substitution Causing Redesign: Engineer time for redesign as a result of substitution, will be charged to Owner, then deducted by Construction Change Directive from Contract Amount.

G. Engineer's Action:

1. Request Prior to Bid: If approved, substitution will be included in an addendum.
2. Request After Bid:
  - a. If necessary, within one week of receipt of the request for substitution, Engineer will request additional information or documentation necessary for evaluation of the request.
  - b. Within two weeks of receipt of the request, or one week of receipt of the additional information or documentation, whichever is later, Engineer will notify Contractor of acceptance or rejection of the proposed substitution.
  - c. If a decision on use of a proposed substitute cannot be made or obtained within the time allocated, use the product specified by name.
  - d. Acceptance will be in the form of a change order.

**PART 2 PRODUCTS**

Not Used

**PART 3 EXECUTION**

Not Used

**END OF SECTION**

## SUBSTITUTION REQUEST FORM

TO: Attn: Lindsay Reidt, PE  
Short Elliott Hendrickson Inc. (MN)  
3535 Vadnais Center Drive  
St. Paul, MN 55110-5196  
651.490.2000

PROJECT: 2024 Electrical Vault Rehabilitation, Minot International Airport

SECTION NO.	ARTICLE NO.	SPECIFIED PRODUCT	PROPOSED SUBSTITUTION
A.	Does the substitution affect dimensions shown on Drawings?		Yes <input type="checkbox"/> No <input type="checkbox"/>
B.	Does the substitution affect other trades?		Yes <input type="checkbox"/> No <input type="checkbox"/>
C.	Does the manufacturer's guarantee differ from that specified?		Yes <input type="checkbox"/> No <input type="checkbox"/>
D.	If you indicated "Yes" to Items A, B, or C above, attach a thorough explanation on your company letterhead.		
E.	If there are other differences between proposed substitution and specified product, attach a thorough explanation on your company letterhead. If differences are not noted and acknowledged in writing by Engineer, product must comply with specification requirements.		
F.	The proposed substitution was used within the last 24 months on the following project: Project Name _____ Location _____ Engineer _____ Telephone No. _____		
G.	Has the proposed substitution been used on an SEH project within the last 12 months? Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, which project? _____		

***All questions must be answered. Incomplete forms will not be reviewed.  
Include a self-addressed, stamped envelope for reply.***

Submitted By: \_\_\_\_\_

Signature \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

Phone \_\_\_\_\_

E-mail \_\_\_\_\_

For Use by Design Consultant

- ☐ Not Accepted, Not Enough Information

☐ Not Accepted, Does Not Appear to be Equal

☐ Accepted ☐ Accepted as Noted

☐ Received Too Late

By \_\_\_\_\_

Date \_\_\_\_\_

Remarks \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



## SECTION 01 26 00

### CONTRACT MODIFICATION PROCEDURES

#### PART 1 GENERAL

##### 1.01 SUMMARY

- A. Administrative and procedural requirements for handling and processing Contract modifications:
  - 1. Request for Interpretation
  - 2. Minor Changes in Work
  - 3. Work Changes Proposal Requests
  - 4. Work Change Directive
  - 5. Change Order Procedures

##### 1.02 REQUEST FOR INTERPRETATION (RFI)

- A. Contractor's tool to request information.
- B. Submit on form at end of this Section or on Contractor's form approved by Engineer.
- C. If latent or unforeseen conditions require modifications to Contract, Contractor may propose changes by submitting request for a change to Engineer.
  - 1. Provide a complete description of proposed change, including a statement outlining reasons for the change and the effect of the change on the Work.
  - 2. Indicate the effect of the proposed change on Contract Sum and Contract Time.
  - 3. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.
  - 4. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.
  - 5. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of Contract Time.
  - 6. Comply with requirements in Section 01 25 13 if proposed change requires substitution of a product or system for product or system specified.
- D. Report to Engineer on this form any Contract Document requirements known to be in nonconformance with applicable laws, statutes, ordinances, building codes, and rules and regulations.

##### 1.03 MINOR CHANGES IN WORK

- A. Engineer will issue supplemental instructions authorizing minor changes in Work, not involving adjustment to Contract Sum or Contract Time, on EJCDC® C942 "Field Order."

##### 1.04 WORK CHANGES PROPOSAL REQUESTS (PR)

- A. Owner-Initiated:
  - 1. Engineer will issue a detailed description of proposed changes in Work that may require adjustment to Contract Sum or Contract Time. If necessary, the description will include supplemental or revised Drawings and specifications.
  - 2. Proposal Requests are for information only. Do not consider them instructions either to stop Work in progress or to execute the proposed change.
  - 3. After receipt of Proposal Request, submit a quotation estimating cost adjustments to Contract Sum and Contract Time necessary to execute change.
    - a. Submit response within time specified in Proposal Request.
    - b. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.

- c. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.
- d. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of Contract Time.

#### **1.05 WORK CHANGE DIRECTIVE**

- A. Engineer may issue a Work Change Directive on EJCDC® C-940. Work Change Directive instructs Contractor to proceed with a change in the Work, for subsequent inclusion in a Change Order.
  - 1. Contains a complete description of change in the Work and designates method to be followed to determine change in Contract Sum or Contract Time.
  - 2. Refer to General Conditions for further information on Work Change Directives.
- B. Documentation: Maintain detailed records on a time and material basis of work required by Work Change Directive.
- C. After completion of change, submit an itemized account and supporting data necessary to substantiate cost and time adjustments to Contract.

#### **1.06 CHANGE ORDER PROCEDURES**

- A. On Owner's approval of a Proposal Request, Engineer will issue a Change Order for signatures of Owner and Contractor.
- B. Proposed Work is not authorized until complete execution of Change Order.

#### **PART 2 PRODUCTS**

Not Used

#### **PART 3 EXECUTION**

Not Used

**END OF SECTION**

## REQUEST FOR INTERPRETATION

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Project: \_\_\_\_\_ RFI No.: \_\_\_\_\_

SEH Project Manager: \_\_\_\_\_ SEH Project No.: \_\_\_\_\_

Requested by: \_\_\_\_\_ Date: \_\_\_\_\_

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Specification Section:	Paragraph:	Drawing Reference:	Detail:
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Request:

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**Engineer Response:**

**Date Received:** \_\_\_\_\_

See PR # \_\_\_\_\_

☐ Attachments

Signed: \_\_\_\_\_ Date Returned: \_\_\_\_\_

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Distribution: ☐ Owner ☐ Consultant ☐ Contractor ☐ Other \_\_\_\_\_

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## SECTION 01 31 13

### COORDINATION

#### PART 1 GENERAL

##### 1.01 SUMMARY

- A. Section Includes:
  - 1. Project Coordination
  - 2. Job Site Administration

##### 1.02 COORDINATION BY GENERAL CONTRACTOR

- A. Coordinate use of premises under direction of Owner.
- B. Coordinate scheduling, submittals, and Work to ensure efficient and orderly sequence of installation.
  - 1. Coordinate activities for mutual benefit and cooperate to facilitate the general progress of the Work.
  - 2. Each subcontractor shall be thoroughly familiar with all provisions governing the Work of other contractors, and shall obtain from such contractors all information as may be required to coordinate Work with theirs.
  - 3. Each trade shall perform its Work in proper sequence and arrangement in relation to other activities and shall join their Work to that of others in accordance with the intent of the Drawings and specifications.
  - 4. Each trade shall give due notice and proper information for any special provisions necessary in the placing or setting of Work that may come in contact with Work of other contractors.
- C. Inspect the Contract Documents for Work of others that is inter-related, and afford other trades every reasonable opportunity for the installation of their Work. Coordinate Work of various specification sections having interdependent responsibilities.
- D. Prepare coordination drawings where off-site fabricated products and materials are by separate entities and must accurately interface. Coordination drawings shall indicate how Work, shown by separate Shop Drawings, will interface and shall indicate sequence for installation.
- E. Coordinate space requirements and installation of mechanical and electrical Work.
  - 1. Follow routing shown for pipes, ducts, and conduit as closely as practicable; place runs parallel with line of building.
  - 2. Utilize space efficiently to maximize accessibility for other installations, maintenance, and repairs.
  - 3. Conceal pipes, ducts, and wiring within the construction in finished areas, except as otherwise indicated.
  - 4. Coordinate locations of fixtures and outlets with finish elements.
  - 5. All final decisions as to the right-of-way and run of interfering pipes, ducts, etc., shall be made by Engineer at Project meetings.

##### 1.03 JOB SITE ADMINISTRATION

- A. Supervise and direct the Work. Employ and maintain a full time, qualified supervisor or superintendent to act as Contractor's representative at the Site.
- B. Enforce good order and conduct among contractors, installers, and construction employees.
- C. Require installers to inspect conditions under which Work is to be performed. Installer shall report all unsatisfactory conditions in writing to Contractor. Do not proceed with Work until unsatisfactory conditions have been corrected.

- D. Where installations include manufactured products, comply with manufacturer's applicable instructions and recommendations for installation to the extent that these instructions and recommendations are more explicit or more stringent than requirements indicated in the Contract Documents. Where manufacturer provides contradictory instructions, notify Engineer immediately and request clarifications.
- E. Recheck measurements and dimensions of the Work, as an integral step of starting each installation.
- F. Coordinate enclosure of Work with required inspections and tests, so as to minimize necessity of uncovering Work for that purpose.
- G. Where mounting heights are not indicated, mount individual units of work at industry recognized standard mounting heights for the particular application indicated. Refer questionable mounting height choices to Engineer.
- H. Supervise performance of the Work to ensure that none of the Work, whether completed or in progress, will be subjected to harmful, dangerous, damaging, or otherwise deleterious exposure during the construction period.
- I. Clean and perform maintenance as frequently as necessary throughout construction period. Adjust and lubricate operable components to ensure operability without damaging effects.
- J. Coordinate completion and clean up of Work.

#### **1.04 SUBMITTALS**

- A. Provide listing of Contractor's principal staff assignments and consultants, including name, home and work addresses, and telephone numbers.
- B. Provide supervisor's or superintendent's name, home and work address, and telephone numbers.
- C. Provide names, work address, telephone numbers, samples of signature, and limits of authority of each individual authorized to sign change orders, field modifications, and monthly pay requests for Contractor.

#### **1.05 FIELD CONDITIONS**

- A. Before ordering material or commencing Work, check and verify all dimensions and conditions. Notify Engineer of any omissions or discrepancies immediately.
- B. Field measurements shall be furnished in a timely manner to suppliers and fabricators who require them to complete their Work. Ascertain the requirement for such measurements at the earliest practical date and make every reasonable effort to expedite the affected Work.
- C. Conflicts: Engineer has exercised reasonable professional care to ensure there are no conflicts between the Work of the various trades. Such conflicts, however, may exist and no warranty to the contrary is made or implied.

### **PART 2 PRODUCTS**

Not Used

### **PART 3 EXECUTION**

Not Used

**END OF SECTION**

## **SECTION 01 33 00**

### **SUBMITTAL PROCEDURES**

#### **PART 1 GENERAL**

##### **1.01 SUMMARY**

- A. Requirements Included:
  - 1. Procedures
  - 2. Shop Drawings
  - 3. Product Data
  - 4. Samples
  - 5. Material Safety Data Sheets

##### **1.02 PROCEDURES**

- A. Deliver submittals to Engineer at address listed in Project Manual with a Transmittal.
- B. Submit initial progress schedules and schedule of values in duplicate within 10 days after date of Owner-Contractor Agreement. After review by Engineer, revise and resubmit as required.
- C. Submit revised schedules with each Application for Payment, reflecting changes since previous submittal.
- D. Comply with progress schedule for submittals related to Work progress. Coordinate submittal of related items.
- E. After Engineer review of submittal, revise and resubmit as required, identifying changes made since previous submittal.
- F. Distribute copies of reviewed submittals to concerned persons. Instruct recipients to promptly report any inability to comply with provisions.

##### **1.03 SHOP DRAWINGS**

- A. Shop Drawings will not be accepted for review by Engineer until after they have been checked and approved by the Contractor as evidenced by their approval stamp and signature.
- B. Submit all Shop Drawings electronically in pdf format via the Project website.
- C. Submit showing system fabrication, installation drawings including plans, elevations, section details of components, and configuration between system and adjoining systems.

##### **1.04 PRODUCT DATA**

- A. Mark each copy to identify applicable products, models, options, testing compliance, warranty, and other data; supplement manufacturers' standard data to provide information unique to the Work.
- B. Submit all Product Data electronically in pdf format via the Project website.
- C. Submit manufacturer's printed instructions for delivery, storage, assembly, installation start-up, adjusting, finishing, and maintenance.

##### **1.05 SAMPLES**

- A. Include identification on each sample, giving full information.

- B. Submit the number specified in respective specification section; 1 will be retained by Engineer. Reviewed samples that may be used in the Work are indicated in the technical sections.
- C. Field Samples:
  - 1. Provide field samples of finishes as required by individual technical section.

#### **1.06 MATERIAL SAFETY DATA SHEETS**

- A. Submit MSDS to the Site on all products with chemical emissions and as called for in individual technical sections.

#### **PART 2 PRODUCTS**

Not Used

#### **PART 3 EXECUTION**

Not Used

**END OF SECTION**



**SPECIFICATION FORMAT, DEFINITIONS AND ABBREVIATIONS**

**PART 1 GENERAL**

**1.01 SUMMARY**

- A. Section Includes:
  - 1. Specification Format and Content Explanation
  - 2. Definitions
  - 3. Abbreviations and Names
- B. Related Sections:
  - 1. Document 00 72 00 - General Conditions

**1.02 SPECIFICATION FORMAT AND CONTENT EXPLANATION**

- A. Specification Format: These Specifications are organized into divisions and sections based on the Construction Specifications Institute's *MASTERFORMAT* numbering system, and Federal Aviation Administration Standards for Specifying Construction of Airports.
- B. Specification Content:
  - 1. This Specification uses certain conventions in the use of language and the intended meaning of certain terms, words, and phrases when used in particular situations or circumstances. These conventions are explained as follows:
    - a. Abbreviated language:
      - 1) Language used in Specifications and other Contract Documents is the abbreviated type.
      - 2) Implied words and meanings will be appropriately interpreted.
      - 3) Singular words will be interpreted as plural and plural words interpreted as singular where applicable and the full context of the Contract Documents so indicates.
    - b. Imperative and streamlined language:
      - 1) The Specifications generally use the imperative mood and streamlined language.
      - 2) Requirements expressed in the imperative mood are to be performed by Contractor.
      - 3) At certain locations in the text, for clarity, subjective language is used to describe responsibilities that must be fulfilled indirectly by the Contractor, or by others when so noted.
      - 4) The words "shall be" shall be included by inference wherever a colon (:) is used within a sentence or phrase.

**1.03 DEFINITIONS**

- A. Reference: Basic Contract definitions are included in Document 00 72 00.
- B. General Definitions:
  - 1. Indicated:
    - a. The term "indicated" refers to graphic representations, notes, schedules on the Drawings, other paragraphs or schedules in the Specifications, and similar requirements in the Contract Documents.
    - b. Where terms such as "shown," "noted," "scheduled," and "specified" are used, it is to help the reader locate the reference; no limitation on location is intended.
  - 2. Directed: Terms such as "directed," "requested," "authorized," "selected," "approved," "required," and "permitted" mean "directed by the Engineer," "requested by the Engineer," and similar phrases.

3. **Approved:** The term “approved,” where used in conjunction with the Engineer’s action on the Contractor’s submittals, applications, and requests, is limited to the Engineer’s duties and responsibilities, as stated in General and Supplementary Conditions.
4. **Regulations:** The term “Regulations” includes laws, ordinances, statutes, and lawful orders issued by authorities having jurisdiction, as well as rules, conventions, and agreements within the construction industry that control performance of the Work.
5. **Furnish:** The term “furnish” is used to mean “supply and deliver to the Site, ready for unloading, unpacking, assembly, installation, and similar operations.”
6. **Install:** The term “install” is used to describe operations at Site including the actual “unloading, unpacking, storage at Site, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.”
7. **Provide:** The term “provide” means “to furnish and install, complete and ready for the intended use.”
8. **Installer:**
  - a. An “Installer” is the Contractor or an entity engaged by the Contractor, either as an employee, subcontractor, or sub-subcontractor, for performance of a particular construction activity, including installation, erection, application, and similar operations.
  - b. Installers are required to be experienced in the operations they are engaged to perform:
  - c. The term “experienced” when used with the term “Installer” means having a minimum of 5 previous projects similar in size and scope to this Project, being familiar with the precautions required, and having complied with requirements of the authority having jurisdiction.
9. **Trades:**
  - a. Use of titles such as “carpentry” is not intended to imply that certain construction activities must be performed by accredited or unionized individual of a corresponding generic name, such as “carpenter.”
  - b. It also does not imply that requirements specified apply exclusively to trades persons of the corresponding generic name.
10. **Assignment of Specialists:**
  - a. Certain sections of the Specifications require that specific construction activities shall be performed by specialists who are recognized experts in the operations to be performed.
  - b. The specialists must be engaged for those activities, and assignments are requirements over which Contractor has no choice or option.
  - c. Nevertheless, the ultimate responsibility for fulfilling contract requirements remains with the Contractor.
  - d. This requirement shall not be interpreted to conflict with enforcement of building codes and similar regulations governing the work. It is also not intended to interfere with local trade union jurisdictional settlements and similar conventions.
11. **Site:**
  - a. The space available to Contractor for performance of construction activities, either exclusively or in conjunction with, others performing other Work as part of the Project.
  - b. The extent of the Site is shown on the Drawings or will be discussed at the Preconstruction Meeting and may or may not be identical with the description of the land upon which the Project is to be built.
12. **Testing Laboratories:** A “testing laboratory” is an independent entity engaged to perform specific inspections or tests, either at the Site or elsewhere, and to report on and, if required, to interpret results of those inspections or tests.
13. **PDF:** The acronym “PDF” is used to include any industry standard digital image file format.

#### **1.04 ABBREVIATIONS AND NAMES**

- A. **Trade Names:**
  1. Trade association names and titles of general standards are frequently abbreviated.
  2. Where such acronyms or abbreviations are used in the Specifications or other Contract Documents, they mean the recognized name of the trade association, standards generating organization, authority having jurisdiction, or other entity applicable to the context of the text provision.
  3. If the acronyms or abbreviations are not included in the referenced industry standards above, refer to the “Encyclopedia of Associations,” published by Gale Research Co., available in most libraries.

## **PART 2 PRODUCTS**

Not Used

## **PART 3 EXECUTION**

Not Used

**END OF SECTION**

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## SECTION 01 42 18

### REFERENCE STANDARDS FOR INFRASTRUCTURE IMPROVEMENTS

#### PART 1 GENERAL

##### 1.01 SUMMARY

- A. Quality Assurance.
- B. List of References.

##### 1.02 QUALITY ASSURANCE

- A. For products or workmanship specified by Association, trade, or federal and state standards, comply with requirements of the standard, except when more rigid requirements are specified or are required by applicable codes.
- B. Conform to reference standard by date of issue current on date of Contract Documents.
- C. Obtain copies of standards when required by Contract Documents.
- D. Maintain copy at jobsite during submittals, planning, and progress of the specific work, until Substantial Completion.
- E. Should specified reference standards conflict with Contract Documents, request clarification from Engineer before proceeding.
- F. The contractual relationship of the parties to the Contract shall not be altered from the Contract Documents by mention or inference otherwise in any reference document.

##### 1.03 LIST OF NATIONAL REFERENCES

AABC	Associated Air Balance Council 1518 K Street NW Washington, DC 20005 202.737.0202 <a href="http://www.aabc.com">www.aabc.com</a>	ADA	Americans with Disabilities Act US Dept. of Justice 950 Pennsylvania Avenue NW Civil Rights Division/Disability Rights Section - NYA Washington, DC 20530 800.514.0301 <a href="http://www.ada.gov">www.ada.gov</a>
AASHTO	Am. Assoc. of State Hwy. & Transportation Officials 444 N. Capital Street NW, Ste. 249 Washington, DC 20001 202.624.5800 <a href="http://www.transportation.org">www.transportation.org</a>	AGA	American Gas Assoc. 400 N. Capitol Street NW Washington, DC 20001 202.824.7000 <a href="http://www.aga.org">www.aga.org</a>
ABMA	American Bearing Manufacturers Association 2025 M Street, NW, Suite 800 Washington, DC 20036 202.367.1155	AGC	Associated General Contractors of America 2300 Wilson Boulevard., Ste. 400 Arlington, VA 22201 703.548.3118 <a href="http://www.agc.org">www.agc.org</a>
ACC	American Chemistry Council 700 Second Street NE Washington, DC 20002 202.249.7000 <a href="http://www.plastics.americanchemistry.com">www.plastics.americanchemistry.com</a>	AI	Asphalt Institute 2696 Research Park Drive Lexington, KY 40511-8480 859.288.4960 <a href="http://www.asphaltinstitute.org">www.asphaltinstitute.org</a>
ACEC	American Council of Engineering Companies 1015 15th Street, 8th Floor, NW Washington DC 20005-2605 202.347.7474 <a href="http://www.acec.org">www.acec.org</a>	AISI	American Iron & Steel Institute 1140 Connecticut Avenue NW, Ste. 705 Washington, DC 20036 202.452.7100 <a href="http://www.steel.org">www.steel.org</a>

ANSI	American National Standards Institute 1819 L Street NW, 6th Floor Washington, DC 20036 202.293.8020 <a href="http://www.ansi.org">www.ansi.org</a>	EIMA	EIFS Industry Members Assoc. 513 West Broad Street, Ste. 210 Falls Church, VA 22046-3257 800.294.3462 <a href="http://www.eima.com">www.eima.com</a>
ARRA	Asphalt Recycling & Reclaiming Assoc. #3 Church Circle – PMB 250 Annapolis, MD 21401 410.267.0023 <a href="http://www.arra.org">www.arra.org</a>	EJCDC®	Engineers' Joint Contract Documents Committee® See ACEC, AGC, ASCE, and NSPE <a href="http://www.ejcdc.org">www.ejcdc.org</a>
ASCE	American Society of Civil Engineers 1801 Alexander Bell Drive Reston, VA 20191-4400 800.548.2723 <a href="http://www.asce.org">www.asce.org</a>	EPA	U.S. Environmental Protection Agency Ariel Rios Building 1200 Pennsylvania Ave. NW Washington, DC 20004 202.272.0167 <a href="http://www.epa.gov">www.epa.gov</a>
ASTM	American Society for Testing and Materials 100 Barr Harbor Drive West Conshohocken, PA 19428-2959 610.832.9500 <a href="http://www.astm.org">www.astm.org</a>	FEMA	Federal Emergency Management Assoc. 500 C Street SW Washington, DC 20472 800.621.3362 <a href="http://www.fema.gov">www.fema.gov</a>
AWMA	Air & Waste Management Assoc. One Gateway Center, 3rd Floor 420 Fort Duquesne Blvd. Pittsburgh, PA 15222-1435 412.232.3444 <a href="http://www.awma.org">www.awma.org</a>	FMG	FM Global (Factory Mutual System) 270 Central Avenue, PO Box 7500 Johnston, RI 02919 401.275.3000 <a href="http://www.fmgglobal.com">www.fmgglobal.com</a>
AWWA	American Water Works Assoc. 6666 W. Quincy Avenue Denver, CO 80235 800.926.7337 <a href="http://www.awwa.org">www.awwa.org</a>	Green Seal	Green Seal 1001 Connecticut Avenue NW, Ste. 827 Washington, DC 20036-5525 202.872.6400 <a href="http://www.greenseal.org">www.greenseal.org</a>
CDA	Copper Development Assoc. 260 Madison Avenue New York, NY 10016 212.251.7200 <a href="http://www.copper.org">www.copper.org</a>	Green-e	Green-e Program Center for Resource Solutions 1012 Torney Avenue, Second Floor PO Box 29512 San Francisco, CA 94129 415.561.2100 <a href="http://www.green-e.org">www.green-e.org</a>
CPI	Concrete Paver Institute, a division of NCMA See ICPI	Green Guard	Greenguard Environmental Institute 2211 Newmarket Parkway, Ste. 110 Marietta, GA 30067 800.427.9681 <a href="http://www.greenguard.org">www.greenguard.org</a>
CLFMI	Chain Link Fence Manufacturers Institute 10015 Old Columbia Rd, Ste. B-215 Columbia, MD 21046 410.290.6267 <a href="http://www.chainlinkinfo.org">www.chainlinkinfo.org</a>	GRI	Geosynthetic Research Institute See GSI
CMRA	Construction Materials Recycling Assoc. 1001 I Street, PO Box 40125 Sacramento, CA 95812-4025 916.341.4027 <a href="http://www.calrecycle.ca.gov/RCP">www.calrecycle.ca.gov/RCP</a>	GSI	Geosynthetic Institute 475 Kedron Avenue Folsom, PA 19033-1208 610.522.8440 <a href="http://www.geosynthetic-institute.org">www.geosynthetic-institute.org</a>
CRSI	Concrete Reinforcing Steel Institute 933 North Plum Grove Road Schaumburg, IL 60173-4758 847.517.1200 <a href="http://www.crsi.org">www.crsi.org</a>	ICEA	Insulated Cable Engineers Association, Inc. P.O. Box 1568 Carrollton, GA 30112 <a href="http://www.icea.net">www.icea.net</a>
CSI	Construction Specifications Institute 110 South Union Street, Ste. 100 Alexandria VA 22314 800.689.2900 <a href="http://www.csinet.org">www.csinet.org</a>	ICPI	Interlocking Concrete Pavement Institute 13921 Park Center Road, Ste. 270 Herndon VA 20171 703.657.6900 <a href="http://www.icpi.org">www.icpi.org</a>
DOE	U.S. Department of Energy 1000 Independence Ave. SW Washington DC 20585 202.586.5000 <a href="http://www.energy.gov">www.energy.gov</a>	IMI	International Masonry Institute 42 East Street Annapolis, MD 21401 410.280.1305 <a href="http://www.imiweb.org">www.imiweb.org</a>
DOT	U.S. Department of Transportation 1200 New Jersey Ave, SE Washington, DC 20590 202.366.4000 <a href="http://www.dot.gov">www.dot.gov</a>	IPBA	International Pipe Bursting Assoc. Division of NASSCO 410.486.3500 <a href="http://www.nassco.org/about_nassco/an_div_ipba.html">www.nassco.org/about_nassco/an_div_ipba.html</a>
EEOC	Equal Employment Opportunity Commission 131 M Street NE Washington, DC 20507 800.669.4000 <a href="http://www.eeoc.gov">www.eeoc.gov</a>	LEED	Leadership in Energy and Environmental Design See USGBC

MIA	Masonry Institute of America 22815 Frampton Avenue Torrance, CA 90501-5034 800.221.4000 <a href="http://www.masonryinstitute.org">www.masonryinstitute.org</a>	NSSGA	National Stone, Sand & Gravel Assoc. 1605 King Street Alexandria, VA 22314 703.525.8788 <a href="http://www.nssga.org">www.nssga.org</a>
MSS	Manufacturers Standardization Society of the Valve and Fitting Industry 127 Park St NE Vienna, VA 22180-4602 703.281.6613 <a href="http://www.mss-hq.com">www.mss-hq.com</a>	OSHA	U. S. Occupational Safety and Health Administration 200 Constitution Avenue NW Washington, DC 20210 800.321.6742 <a href="http://www.osha.gov">www.osha.gov</a>
MUTCD	Manual on Uniform Traffic Control Devices <a href="http://www.mutcd.fhwa.dot.gov">www.mutcd.fhwa.dot.gov</a>	PCA	Portland Cement Assoc. 5420 Old Orchard Road Skokie, IL 60077 847.966.6200 <a href="http://www.cement.org">www.cement.org</a>
NACE	National Assoc. of Corrosion Engineers 1440 S. Creek Drive Houston, TX 77084-4906 281.228.6200 <a href="http://www.nace.org">www.nace.org</a>	PCI	Precast/Prestressed Concrete Institute 200 W. Adams Street, #2100 Chicago, IL 60606 312.786.0300 <a href="http://www.pci.org">www.pci.org</a>
NCMA	National Concrete Masonry Assoc. 13750 Sunrise Valley Drive Herndon, VA 20171-4662 703.713.1900 <a href="http://www.ncma.org">www.ncma.org</a>		PCI Midwest 952.806.9997 <a href="http://www.midwestprecast.com">www.midwestprecast.com</a>
NEC	National Electric Code See NFPA	PPI	Plastics Pipe Institute 105 Decker Court, Ste. 825 Irving TX, 75062 469.499.1044 <a href="http://www.plasticpipe.org">www.plasticpipe.org</a>
NEBB	National Environmental Balancing Bureau 8575 Grovemont Circle Gaithersburg, MD 20877 301.977.3698 <a href="http://www.nebb.org">www.nebb.org</a>	SSPC	Society for Protective Coatings 40 24th Street, 6th Floor Pittsburgh, PA 15222-4656 877.281.7772 <a href="http://www.sspc.org">www.sspc.org</a>
NEMA	National Electrical Manufacturers Assoc. 1300 N. 17th Street., Ste. 1752 Rosslyn, VA 22209 703.841.3200 <a href="http://www.nema.org">www.nema.org</a>	TMS	The Masonry Society 105 South Sunset Street, Ste. Q Longmont, Colorado, 80501-6172 303.939.9700 <a href="http://www.masonrysociety.org">www.masonrysociety.org</a>
NFPA	National Fire Protection Assoc. 1 Batterymarch Park Quincy, MA 02169-7471 617.770.3000 <a href="http://www.nfpa.org">www.nfpa.org</a>	TPI	Turfgrass Producers International 2 East Main Street East Dundee, IL 60118 800.405.8873 <a href="http://www.turfgrasssod.org">www.turfgrasssod.org</a>
NIOSH	National Institute for Occupational Safety and Health Centers for Disease Control and Prevention 1600 Clifton Road Atlanta, GA 30333 800.232.4636 <a href="http://www.cdc.gov/niosh">www.cdc.gov/niosh</a>	UL	Underwriters' Laboratories, Inc. 2600 N.W. Lake Rd. Camas, WA 98607-8542 877.854.3577 <a href="http://www.ul.com">www.ul.com</a>
NPCA	National Precast Concrete Assoc. 1320 City Center Drive, Suite 200 Carmel, IN 46032 800.366.7731 <a href="http://www.precast.org">www.precast.org</a>	USACE	U.S. Army Corps of Engineers Publication Department 2803 52nd Avenue Hyattsville, MD 20781-1102 301.394.0081 <a href="http://www.usace.army.mil">www.usace.army.mil</a>
NPDES	National Pollutant Discharge Elimination System <a href="http://www.epa.gov">www.epa.gov</a>	USGBC	U.S. Green Building Council 2101 L Street, Ste. 500 Washington DC 20037 800.795.1747 <a href="http://www.usgbc.org">www.usgbc.org</a>
NSF	NSF International 789 N. Dixboro Road, PO Box 130140 Ann Arbor, MI 48113-0140 800.673.6275 <a href="http://www.nsf.org">www.nsf.org</a>	WQA	Water Quality Assoc. 4151 Naperville Road Lisle, IL 60532-3696 630.505.0160 <a href="http://www.wqa.org">www.wqa.org</a>
NSPE	National Society of Professional Engineers 1420 King Street Alexandria, VA 22314-2794 703.684.2800 <a href="http://www.nspe.org">www.nspe.org</a>		
NSWMA	National Solid Wastes Management Assoc. 4301 Connecticut Avenue NW, Ste. 300 Washington, DC 20008 800.424.2869 <a href="http://www.environmentalistseveryday.org/about-nswma-solid-waste-management">www.environmentalistseveryday.org/about-nswma-solid-waste-management</a>		

## **PART 2 PRODUCTS**

Not Used

## **PART 3 EXECUTION**

Not Used

**END OF SECTION**



## **SECTION 01 52 19**

### **TEMPORARY SANITARY FACILITIES**

#### **PART 1 GENERAL**

##### **1.01 SUMMARY**

- A. Provide temporary closet or privy.
- B. Maintain throughout Project duration.
- C. Type and location subject to Engineer's approval.
- D. Remove upon completion of Project.
- E. Incidental to the project. No payment will be made.

#### **PART 2 PRODUCTS**

Not Used

#### **PART 3 EXECUTION**

Not Used

**END OF SECTION**

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## SECTION 01 60 00

### PRODUCT REQUIREMENTS

#### PART 1 GENERAL

##### 1.01 SUMMARY

- A. Section Includes:
  - 1. Administrative and procedural requirements governing:
    - a. Products.
    - b. Delivery, storage and handling.
  - 2. The following is not included in this section: Product Substitution Procedures (Section 01 25 13).
  - 3. New products consisting of recycled materials are allowed unless stated otherwise in technical sections.
  - 4. Products shall contain no asbestos containing material (ACM).

##### 1.02 PRODUCT DEFINITIONS

- A. Products:
  - 1. Unless indicated otherwise, the term "products" represents new material, machinery, components, equipment, fixtures, and systems forming the Work.
  - 2. Does not include machinery and equipment used for preparation, fabrication, conveying, or erection of the Work.
- B. Named Products: Items identified by manufacturer's product name, including make or model designation, indicated in the manufacturer's published product literature, that is current as of the date of the Contract Documents.
- C. Materials: Products that are substantially shaped, cut, worked, mixed, finished, refined, or otherwise fabricated, processed, or installed as part of the Work.
- D. Equipment: A product with operational parts, whether motorized or manually operated, that requires service connections such as wiring or piping.

##### 1.03 PRODUCT QUALITY ASSURANCE

- A. Source Limitations: To the fullest extent possible, provide products of the same kind, from a single source.
- B. Limited Quantities:
  - 1. When specified products are available only from sources that do not or cannot produce a quantity adequate to complete Project requirements in a timely manner, consult with Engineer for a determination of the most important product qualities before proceeding.
  - 2. Qualities may include attributes relating to:
    - a. Visual appearance.
    - b. Strength.
    - c. Durability.
    - d. Compatibility.
  - 3. When a determination has been made, select products from sources that possess these qualities to the fullest extent possible.

##### 1.04 PRODUCT REQUIREMENTS

- A. Minimum Requirements: Comply with specifications and referenced standards.

- B. Product Provision: Provide products complete with all accessories, trim, finish, safety guards, and other devices and details needed for a complete installation and for the intended use and effect.
- C. Components: Items required to be supplied in quantity within a specification section shall be the same and shall be interchangeable.
- D. Compatibility of Options: When Contractor is given the option of selecting between 2 or more products for use on the Project, the product selected shall be compatible with products previously selected, even if previously selected products were also options.
- E. Existing Products: Do not use materials and equipment removed from existing premises, except as specifically required or permitted by Contract Documents.
- F. Nameplates:
  - 1. Except for required labels and operating data, do not attach or imprint manufacturer's nameplates or trademarks on exposed surfaces of products that will be exposed to view in occupied spaces or on the exterior.
  - 2. Labels: Locate required product labels and stamps on concealed surfaces or, where required for observation after installation, on an accessible surface that is not conspicuous.
  - 3. Equipment Nameplates:
    - a. Provide permanent nameplate on each item of service-connected or power-operated equipment.
    - b. Locate on an easily accessible surface that is inconspicuous in occupied spaces.
    - c. Provide the following information and other essential operating data on nameplate:
      - 1) Name of product and manufacturer.
      - 2) Model and serial number.
      - 3) Capacity.
      - 4) Speed.
      - 5) Ratings.

## **1.05 DELIVERY, STORAGE, AND HANDLING**

- A. General Requirements:
  - 1. Deliver, store and handle products in accordance with the manufacturer's recommendations.
  - 2. Schedule and coordinate the delivery of materials to ensure personnel and equipment will be available at the Site.
  - 3. Sequence deliveries to avoid delays but minimize on-site storage.
  - 4. Prevent damage, deterioration, soiling, and loss, including theft.
  - 5. Repair or replace damaged materials at no additional cost to Owner.
- B. Packing and Shipping: Deliver products to the jobsite in manufacturer's sealed containers bearing the manufacturer's name and brand, and appropriate UL labels for fire hazard and fire resistance classification.
- C. Acceptance at Site:
  - 1. Promptly inspect shipments to ensure that:
    - a. Products comply with requirements.
    - b. Quantities are correct.
    - c. Products are undamaged.
  - 2. Replace damaged or defective materials.
- D. Storage and Protection:
  - 1. Store with manufacturer's seals and labels intact and legible.
  - 2. Store sensitive products in weather-tight, climate-controlled enclosures.
  - 3. Cover products subject to deterioration with impervious sheet covering, providing ventilation to avoid condensation.
  - 4. For exterior storage of fabricated products, place on sloped supports, above ground.
  - 5. Store loose granular materials on solid flat surfaces in a well-drained area. Prevent mixing with foreign matter.

6. Provide off-site storage and protection when Site does not permit on-site storage or protection.
7. Protect stored materials from damage by adjacent work, falling debris, or equipment.
8. Arrange storage of products to permit access for inspection. Periodically inspect to assure products are undamaged and are maintained under required conditions.

## 1.06 PRODUCT SELECTION

- A. Product selection is governed by the Contract Documents, and governing regulations by previous project experience.
- B. Proprietary Specification Requirements: Where only a single product or manufacturer is named, provide the product indicated. No substitutions will be permitted.
- C. Semi-Proprietary Specification Requirements:
  1. Where 2 or more products or manufacturers are named, provide 1 of the products indicated. No substitutions will be permitted.
  2. Where products or manufacturers are specified by name, accompanied by the term "or equal," or "or approved equal", comply with Section 01 25 13 or other Contract Document provisions concerning "substitutions" to obtain approval for use of an unnamed product.
  3. Contractors and suppliers will be expected to provide the specified product unless prior approval is received from Engineer's office in sufficient time to notify Bidders through addendum.
- D. Descriptive Specification Requirements: Where specifications describe a product or assembly, listing exact characteristics required, with or without use of a brand or trade name, provide a product or assembly that provides the characteristics and otherwise complies with Contract requirements.
- E. Performance Specification Requirements:
  1. Where specifications require compliance with performance requirements, provide products that comply with these requirements, and are recommended by the manufacturer for the application indicated.
  2. Manufacturer's recommendations may be contained in published product literature, or by the manufacturer's certification of performance.
  3. General overall performance of a product is implied where the product is specified for a specific application.
- F. Compliance with Standards, Codes and Regulations: Where the specifications only require compliance with an imposed code, standard or regulation, select a product that complies with applicable standards, codes and regulations.
- G. Visual Matching:
  1. Where specifications require matching an established sample, Engineer's decision will be final on whether a proposed product matches satisfactorily.
  2. Where no product available within the specified category matches satisfactorily but complies with other specified requirements, comply with provisions of the Contract Documents concerning "substitutions" for selection of a matching product, or for noncompliance with specified requirements.
- H. Visual Selection: Where specified product requirements include the phrase "*...as selected from manufacturer's standard colors, patterns, textures...*" or a similar phrase, select a product and manufacturer that comply with other specified requirements. Engineer will select the color, pattern and texture from the product line selected.

## PART 2 PRODUCTS

Not Used

## **PART 3 EXECUTION**

### **3.01 CLEANING AND PROTECTION**

- A. Clean exposed surfaces and protect as necessary to ensure freedom from damage and deterioration at time of Substantial Completion.

**END OF SECTION**

## SECTION 01 78 23

### OPERATION AND MAINTENANCE DATA

#### PART 1 GENERAL

##### 1.01 SUMMARY

- A. Section includes administrative and procedural requirements for operation and maintenance data:
  - 1. Submittals.
- B. Related Sections:
  - 1. Section 01 33 00 - Submittal Procedures
  - 2. Individual Technical Sections

##### 1.02 SUBMITTALS

- A. Refer to Section 01 33 00.
- B. Form and Format:
  - 1. Organize operation, maintenance data for equipment prepared in the form of an instruction manual of manageable size.
  - 2. Bind into individual heavy-duty, 2-inch, 3-ring vinyl-covered binders with pocket folders, each set of data, marked with appropriate identification on both front and spine of each binder.
  - 3. Text shall be manufacturer's printed data or typewritten data on 20-pound paper; page size 8-1/2-inch by 11-inch. Computer generated data shall be by letter quality printers or laser printers.
  - 4. Clearly mark each sheet of product data to specify products, component parts, and data applicable to installation; delete inapplicable information.
  - 5. Drawings and photographs shall have reinforced, punched binder tabs. Bind in with text, folding larger drawings to size of text pages.
- C. Submittal Schedule:
  - 1. Submit 2 individually bound copies of preliminary draft of contents no later than 45 calendar days after approval of Shop Drawings.
  - 2. Submit 6 individually bound copies of completed data in final form not later than 7 calendar days prior to first instruction of Owner personnel.
  - 3. If instruction of Owner personnel is not required, submit completed data no later than 14 calendar days prior to final inspection.
  - 4. Submit 6 copies of additional requested data no later than 21 calendar days following instruction of Owner personnel.

##### 1.03 QUALITY ASSURANCE

- A. Preparation of Project-specific data shall be by personnel trained and experienced in maintenance and operation of described products, equipment, systems, materials, or finishes.
- B. Photocopies: Drawings shall be legible and suitable for photocopying. All materials shall be reproducible. On material that contains data on several types/sizes/models of equipment, the specific type/size/model provided shall be clearly highlighted.

##### 1.04 CONTENTS

- A. Table of Contents: Include with each volume, with each product or system description identified.
- B. Directory:
  - 1. List names, addresses and telephone numbers of:
    - a. Engineer.

- b. Contractor.
  - c. Manufacturers and suppliers, including local source of supplies and replacement parts.
- C. Data to be Included:
  - 1. Assembly, installation, alignment, inspection procedures.
  - 2. Critical tolerances.
  - 3. Startup procedures.
  - 4. Complete parts listing.
  - 5. Spare parts listing.
  - 6. Emergency instructions.
  - 7. Fabrication drawings.
  - 8. Copies of warranties.
  - 9. Recommended "turn-around" cycles.
  - 10. Inspection procedures.
  - 11. Shop Drawings and Product Data.
  - 12. Fixture lamping schedule.
- D. Data for Equipment and Systems:
  - 1. Provide manufacturer's printed operation and maintenance instructions.
  - 2. Provide sequence of operation and as-installed control diagrams by controls manufacturer.
  - 3. Provide composite wiring diagrams for supervisory control systems. Include wiring diagrams showing connections between equipment wiring, electrical wiring, and supervisory control system wiring.
  - 4. For equipment, include description of unit and component parts. Give function, normal operation characteristics and limiting conditions. Include performance curves, with engineering data and tests, and complete nomenclature and commercial number of replacement parts.
  - 5. For panelboard circuit directories, indicate electrical service characteristics, controls, and communications. Include as-installed color coded wiring diagrams.
  - 6. Provide manufacturer's printed operation and maintenance instructions, including start-up, break-in, and normal operation instructions and sequences. Include regulation, control, stopping, shut-down, and emergency instructions. Include summer, winter, and any special operation instructions.
  - 7. For maintenance and preventative maintenance procedures include routine procedures; guide for "trouble-shooting;" and alignment, adjusting, balancing, and checking instructions.
  - 8. Provide servicing and lubrication schedule, and list of lubricants required.
  - 9. Provide manufacturer's parts list, illustrations, assembly drawings, and diagrams required for maintenance. Include recommended items and quantities to be stocked as spare parts.
- E. Data for Materials and Finishes:
  - 1. For building products, applied materials, and finishes, include manufacturer's product data with catalog number, size, composition, and color and texture designations.
  - 2. List instructions for care, maintenance, and preventative maintenance; include manufacturer's recommendations for cleaning agents and methods, precautions against detrimental agents and methods, and recommended schedule for cleaning and maintenance.
  - 3. For moisture-protection and weather exposed products, include manufacturer's product data listing applicable reference standards, chemical composition, and details of installation. Provide recommendations for inspections, maintenance, and repair.

## **PART 2 PRODUCTS**

Not Used

## **PART 3 EXECUTION**

Not Used

**END OF SECTION**



### **Item C-105 Mobilization**

**105-01 Description.** This item of work shall consist of, but is not limited to, work and operations necessary for the movement of personnel, equipment, material and supplies to and from the project site for work on the project except as provided in the contract as separate pay items.

**105-02 Mobilization limit.** Mobilization shall be limited to 10 percent of the total project cost.

**105-03 Posted notices.** Prior to commencement of construction activities, the Contractor must post the following documents in a prominent and accessible place where they may be easily viewed by all employees of the prime Contractor and by all employees of subcontractors engaged by the prime Contractor: Equal Employment Opportunity (EEO) Poster "Equal Employment Opportunity is the Law" in accordance with the Office of Federal Contract Compliance Programs Executive Order 11246, as amended; Davis Bacon Wage Poster (WH 1321) - DOL "Notice to All Employees" Poster; and Applicable Davis-Bacon Wage Rate Determination. These notices must remain posted until final acceptance of the work by the Owner.

**105-04 Engineer/RPR field office.** An Engineer/RPR field office is not required.

### **METHOD OF MEASUREMENT**

**105-05 Basis of measurement and payment.** Based upon the contract lump sum price for "Mobilization" partial payments will be allowed as follows:

- a. With first pay request, 25%.
- b. When 25% or more of the original contract is earned, an additional 25%.
- c. When 50% or more of the original contract is earned, an additional 40%.
- d. After Final Inspection, Staging area clean-up and delivery of all Project Closeout materials as required by Section 90, paragraph 90-11, *Contractor Final Project Documentation*, the final 10%.

### **BASIS OF PAYMENT**

**105-06 Payment will be made under:**

Item C-105      Mobilization

### **REFERENCES**

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

Office of Federal Contract Compliance Programs (OFCCP)

Executive Order 11246, as amended

EEOC-P/E-1 – Equal Employment Opportunity is the Law Poster

United States Department of Labor, Wage and Hour Division (WHD)

WH 1321 – Employee Rights under the Davis-Bacon Act Poster

### **END OF ITEM C-105**

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## **Item L-108 Underground Power Cable for Airports**

### **DESCRIPTION**

**108-1.1** This item shall consist of furnishing and installing power cables that are direct buried and furnishing and/or installing power cables within conduit or duct banks per these specifications at the locations shown on the plans. It includes excavation and backfill of trench for direct-buried cables only. Also included are the installation of counterpoise wires, ground wires, ground rods and connections, cable splicing, cable marking, cable testing, and all incidentals necessary to place the cable in operating condition as a completed unit to the satisfaction of the RPR. This item shall not include the installation of duct banks or conduit, trenching and backfilling for duct banks or conduit, or furnishing or installation of cable for FAA owned/operated facilities.

### **EQUIPMENT AND MATERIALS**

#### **108-2.1 General.**

**a.** Airport lighting equipment and materials covered by advisory circulars (AC) shall be approved under the Airport Lighting Equipment Certification Program per AC 150/5345-53, current version.

**b.** All other equipment and materials covered by other referenced specifications shall be subject to acceptance through manufacturer's certification of compliance with the applicable specification, when requested by the RPR.

**c.** Manufacturer's certifications shall not relieve the Contractor of the responsibility to provide materials per these specifications. Materials supplied and/or installed that do not comply with these specifications shall be removed (when directed by the RPR) and replaced with materials that comply with these specifications at the Contractor's cost.

**d.** All materials and equipment used to construct this item shall be submitted to the RPR for approval prior to ordering the equipment. Submittals consisting of marked catalog sheets or shop drawings shall be provided. Submittal data shall be presented in a clear, precise and thorough manner. Original catalog sheets are preferred. Photocopies are acceptable provided they are as good a quality as the original. Clearly and boldly mark each copy to identify products or models applicable to this project. Indicate all optional equipment and delete any non-pertinent data. Submittals for components of electrical equipment and systems shall identify the equipment to which they apply on each submittal sheet. Markings shall be made bold and clear with arrows or circles (highlighting is not acceptable). The Contractor is solely responsible for delays in the project that may accrue directly or indirectly from late submissions or resubmissions of submittals.

**e.** The data submitted shall be sufficient, in the opinion of the RPR, to determine compliance with the plans and specifications electronically submitted in pdf format. The RPR reserves the right to reject any and all equipment, materials, or procedures that do not meet the system design and the standards and codes, specified in this document.

**f.** All equipment and materials furnished and installed under this section shall be guaranteed against defects in materials and workmanship for at least twelve (12) months from the date of final acceptance by the Owner. The defective materials and/or equipment shall be repaired or replaced, at the Owner's discretion, with no additional cost to the Owner. The Contractor shall maintain a minimum insulation resistance in accordance with paragraph 108-3.10e with isolation transformers connected in new circuits and new segments of existing circuits through the end of the contract warranty period when tested in accordance with AC 150/5340-26, *Maintenance Airport Visual Aid Facilities*, paragraph 5.1.3.1, Insulation Resistance Test.

**108-2.2 Cable.** Underground cable for airfield lighting facilities (runway and taxiway lights and signs) shall conform to the requirements of AC 150/5345-7, Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits latest edition. Conductors for use on 6.6 ampere primary airfield lighting series circuits shall be single conductor, seven strand, #8 American wire gauge (AWG), L-824 Type C, 5,000 volts, non-shielded, with cross-linked polyethylene insulation. L-824 conductors for use on the L-830 secondary of airfield lighting series circuits shall be sized in accordance with the manufacturer's recommendations. All other conductors shall comply with FAA and National Electric Code (NEC) requirements. Conductor sizes noted above shall not apply to leads furnished by manufacturers on airfield lighting transformers and fixtures.

Wire for electrical circuits up to 600 volts shall comply with Specification L-824 and/or Commercial Item Description A-A-59544A and shall be type XHHW-2, 75°C for installation in conduit and RHW-2, 75°C for direct burial installations. Conductors for parallel (voltage) circuits shall be type and size and installed in accordance with NFPA-70, National Electrical Code.

Unless noted otherwise, all 600-volt and less non-airfield lighting conductor sizes are based on a 75°C, THWN-2, 600-volt insulation, copper conductors, not more than three single insulated conductors, in raceway, in free air. The conduit/duct sizes are based on the use of THWN-2, 600-volt insulated conductors. The Contractor shall make the necessary increase in conduit/duct sizes for other types of wire insulation. In no case shall the conduit/duct size be reduced. The minimum power circuit wire size shall be #12 AWG.

Conductor sizes may have been adjusted due to voltage drop or other engineering considerations. Equipment provided by the Contractor shall be capable of accepting the quantity and sizes of conductors shown in the Contract Documents. All conductors, pigtails, cable step-down adapters, cable step-up adapters, terminal blocks and splicing materials necessary to complete the cable termination/splice shall be considered incidental to the respective pay items provided.

Cable type, size, number of conductors, strand and service voltage shall be as specified in the Contract Document.

**108-2.3 Bare copper wire (counterpoise, bare copper wire ground and ground rods).** Wire for counterpoise or ground installations for airfield lighting systems shall be No. 6 AWG bare solid copper wire for counterpoise and/or No. 6 AWG insulated stranded for grounding bond wire per ASTM B3 and ASTM B8, and shall be bare copper. For voltage powered circuits, the equipment grounding conductor shall comply with NEC Article 250.

Ground rods shall be copper-clad steel. The ground rods shall be of the length and diameter specified on the plans, but in no case be less than 8 feet (2.4 m) long and 3/4 inch (19 mm) in diameter.

**108-2.4 Cable connections.** In-line connections or splices of underground primary cables shall be of the type called for on the plans, and shall be one of the types listed below. No separate payment will be made for cable connections.

**a. The cast splice.** A cast splice, employing a plastic mold and using epoxy resin equivalent to that manufactured by 3M™ Company, "Scotchcast" Kit No. 82-B, or an approved equivalent, used for potting the splice is acceptable.

**b. The field-attached plug-in splice.** Field attached plug-in splices shall be installed as shown on the plans. The Contractor shall determine the outside diameter of the cable to be spliced and furnish appropriately sized connector kits and/or adapters. Tape or heat shrink tubing with integral sealant shall be in accordance with the manufacturer's requirements. Primary Connector Kits manufactured by Amerace, "Super Kit", Integro "Complete Kit", or approved equal is acceptable.

**c. The factory-molded plug-in splice.** Specification for L-823 Connectors, Factory-Molded to Individual Conductors, is acceptable.

**d. The taped or heat-shrink splice.** Taped splices employing field-applied rubber, or synthetic rubber tape covered with plastic tape is acceptable. The rubber tape should meet the requirements of ASTM D4388 and the plastic tape should comply with Military Specification MIL-I-24391 or Commercial Item Description A-A-55809. Heat shrinkable tubing shall be heavy-wall, self-sealing tubing rated for the voltage of the wire being spliced and suitable for direct-buried installations. The tubing shall be factory coated with a thermoplastic adhesive-sealant that will adhere to the insulation of the wire being spliced forming a moisture- and dirt-proof seal. Additionally, heat shrinkable tubing for multi-conductor cables, shielded cables, and armored cables shall be factory kits that are designed for the application. Heat shrinkable tubing and tubing kits shall be manufactured by Tyco Electronics/ Raychem Corporation, Energy Division, or approved equivalent.

In all the above cases, connections of cable conductors shall be made using crimp connectors using a crimping tool designed to make a complete crimp before the tool can be removed. All L-823/L-824 splices and terminations shall be made per the manufacturer's recommendations and listings.

All connections of counterpoise, grounding conductors and ground rods shall be made by the exothermic process or approved equivalent, except that a light base ground clamp connector shall be used for attachment to the light base. All exothermic connections shall be made per the manufacturer's recommendations and listings.

**108-2.5 Splicer qualifications.** Every airfield lighting cable splicer shall be qualified in making airport cable splices and terminations on cables rated at or above 5,000 volts AC. The Contractor shall submit to the RPR proof of the qualifications of each proposed cable splicer for the airport cable type and voltage level to be worked on. Cable splicing/terminating personnel shall have a minimum of three (3) years continuous experience in terminating/splicing medium voltage cable.

**108-2.6 Concrete.** Concrete shall be proportioned, placed, and cured per Item P-610, Concrete for Miscellaneous Structures.

**108-2.7 Flowable backfill.** Flowable material used to backfill trenches for power cable trenches shall conform to the requirements of Item P-153, Controlled Low Strength Material.

**108-2.8 Cable identification tags.** Cable identification tags shall be made from a non-corrosive material with the circuit identification stamped or etched onto the tag. The tags shall be of the type as detailed on the plans.

**108-2.9 Tape.** Electrical tapes shall be Scotch™ Electrical Tapes –Scotch™ 88 (1-1/2 inch (38 mm) wide) and Scotch™ 130C® linerless rubber splicing tape (2-inch (50 mm) wide), as manufactured by the Minnesota Mining and Manufacturing Company (3M™), or an approved equivalent.

**108-2.10 Electrical coating.** Electrical coating shall be Scotchkote™ as manufactured by 3M™, or an approved equivalent.

**108-2.11 Existing circuits.** Whenever the scope of work requires connection to an existing circuit, the existing circuit's insulation resistance shall be tested, in the presence of the RPR. The test shall be performed per this item and prior to any activity that will affect the respective circuit. The Contractor shall record the results on forms acceptable to the RPR. When the work affecting the circuit is complete, the circuit's insulation resistance shall be checked again, in the presence of the RPR. The Contractor shall record the results on forms acceptable to the RPR. The second reading shall be equal to or greater than the first reading or the Contractor shall make the necessary repairs to the existing circuit to bring the second reading above the first reading. All repair costs including a complete replacement of the L-823 connectors, L-830 transformers and L-824 cable, if necessary, shall be borne by the Contractor. All test results shall be submitted in the Operation and Maintenance (O&M) Manual.

**108-2.12 Detectable warning tape.** Plastic, detectable, American Public Works Association (APWA) Red (electrical power lines, cables, conduit and lighting cable) with continuous legend tape shall be

polyethylene film with a metalized foil core and shall be 3-6 inches (75-150 mm) wide. Detectable tape is incidental to the respective bid item. Detectable warning tape for communication cables shall be orange. Detectable warning tape color code shall comply with the APWA Uniform Color Code.

## CONSTRUCTION METHODS

**108-3.1 General.** The Contractor shall install the specified cable at the approximate locations indicated on the plans. Unless otherwise shown on the plans, all cable required to cross under pavements expected to carry aircraft loads shall be installed in concrete encased duct banks. Cable shall be run without splices, from fixture to fixture.

Cable connections between lights will be permitted only at the light locations for connecting the underground cable to the primary leads of the individual isolation transformers. The Contractor shall be responsible for providing cable in continuous lengths for home runs or other long cable runs without connections unless otherwise authorized in writing by the RPR or shown on the plans.

In addition to connectors being installed at individual isolation transformers, L-823 cable connectors for maintenance and test points shall be installed at locations shown on the plans. Cable circuit identification markers shall be installed on both sides of the L-823 connectors installed and on both sides of slack loops where a future connector would be installed.

Provide not less than 3 feet (1 m) of cable slack on each side of all connections, isolation transformers, light units, and at points where cable is connected to field equipment. Where provisions must be made for testing or for future above grade connections, provide enough slack to allow the cable to be extended at least one foot (30 cm) vertically above the top of the access structure. This requirement also applies where primary cable passes through empty light bases, junction boxes, and access structures to allow for future connections, or as designated by the RPR.

Primary airfield lighting cables installed shall have cable circuit identification markers attached on both sides of each L-823 connector and on each airport lighting cable entering or leaving cable access points, such as manholes, hand holes, pull boxes, junction boxes, etc. Markers shall be of sufficient length for imprinting the cable circuit identification legend on one line, using letters not less than 1/4 inch (6 mm) in size. The cable circuit identification shall match the circuits noted on the construction plans.

**108-3.2 Installation in duct banks or conduits.** This item includes the installation of the cable in duct banks or conduit per the following paragraphs. The maximum number and voltage ratings of cables installed in each single duct or conduit, and the current-carrying capacity of each cable shall be per the latest version of the National Electric Code, or the code of the local agency or authority having jurisdiction.

The Contractor shall make no connections or splices of any kind in cables installed in conduits or duct banks.

Unless otherwise designated in the plans, where ducts are in tiers, use the lowest ducts to receive the cable first, with spare ducts left in the upper levels. Check duct routes prior to construction to obtain assurance that the shortest routes are selected and that any potential interference is avoided.

Duct banks or conduits shall be installed as a separate item per Item L-110, Airport Underground Electrical Duct Banks and Conduit. The Contractor shall run a mandrel through duct banks or conduit prior to installation of cable to ensure that the duct bank or conduit is open, continuous and clear of debris. The mandrel size shall be compatible with the conduit size. The Contractor shall swab out all conduits/ducts and clean light bases, manholes, etc., interiors immediately prior to pulling cable. Once cleaned and swabbed, the light bases and all accessible points of entry to the duct/conduit system shall be kept closed except when installing cables. Cleaning of ducts, light bases, manholes, etc., is incidental to the pay item of the item being cleaned. All raceway systems left open, after initial cleaning, for any

reason shall be re-cleaned at the Contractor's expense. The Contractor shall verify existing ducts proposed for use in this project as clear and open. The Contractor shall notify the RPR of any blockage in the existing ducts.

The cable shall be installed in a manner that prevents harmful stretching of the conductor, damage to the insulation, or damage to the outer protective covering. The ends of all cables shall be sealed with moisture-seal tape providing moisture-tight mechanical protection with minimum bulk, or alternately, heat shrinkable tubing before pulling into the conduit and it shall be left sealed until connections are made. Where more than one cable is to be installed in a conduit, all cable shall be pulled in the conduit at the same time. The pulling of a cable through duct banks or conduits may be accomplished by hand winch or power winch with the use of cable grips or pulling eyes. Maximum pulling tensions shall not exceed the cable manufacturer's recommendations. A non-hardening cable-pulling lubricant recommended for the type of cable being installed shall be used where required.

The Contractor shall submit the recommended pulling tension values to the RPR prior to any cable installation. If required by the RPR, pulling tension values for cable pulls shall be monitored by a dynamometer in the presence of the RPR. Cable pull tensions shall be recorded by the Contractor and reviewed by the RPR. Cables exceeding the maximum allowable pulling tension values shall be removed and replaced by the Contractor at the Contractor's expense.

The manufacturer's minimum bend radius or NEC requirements (whichever is more restrictive) shall apply. Cable installation, handling and storage shall be per manufacturer's recommendations. During cold weather, particular attention shall be paid to the manufacturer's minimum installation temperature. Cable shall not be installed when the temperature is at or below the manufacturer's minimum installation temperature. At the Contractor's option, the Contractor may submit a plan, for review by the RPR, for heated storage of the cable and maintenance of an acceptable cable temperature during installation when temperatures are below the manufacturer's minimum cable installation temperature.

Cable shall not be dragged across base can or manhole edges, pavement or earth. When cable must be coiled, lay cable out on a canvas tarp or use other appropriate means to prevent abrasion to the cable jacket.

#### **108-3.3 Installation of direct-buried cable in trenches.** Not required.

a.

#### **108-3.4 Cable markers for direct-buried cable.** Not required.

**108-3.5 Splicing.** Connections of the type shown on the plans shall be made by experienced personnel regularly engaged in this type of work and shall be made as follows:

**a. Cast splices.** These shall be made by using crimp connectors for jointing conductors. Molds shall be assembled, and the compound shall be mixed and poured per the manufacturer's instructions and to the satisfaction of the RPR.

**b. Field-attached plug-in splices.** These shall be assembled per the manufacturer's instructions. These splices shall be made by plugging directly into mating connectors. The joint where the connectors come together shall be finished by one of the following methods: (1) wrapped with at least one layer of rubber or synthetic rubber tape and one layer of plastic tape, one-half lapped, extending at least 1-1/2 inches (38 mm) on each side of the joint (2) Covered with heat shrinkable tubing with integral sealant extending at least 1-1/2 inches (38 mm) on each side of the joint or (3) On connector kits equipped with water seal flap; roll-over water seal flap to sealing position on mating connector.

**c. Factory-molded plug-in splices.** These shall be made by plugging directly into mating connectors. The joint where the connectors come together shall be finished by one of the following methods: (1) Wrapped with at least one layer of rubber or synthetic rubber tape and one layer of plastic tape, one-half lapped, extending at least 1-1/2 inches (38 mm) on each side of the joint. (2) Covered with heat

shrinkable tubing with integral sealant extending at least 1-1/2 inches (38 mm) on each side of the joint. or (3) On connector kits so equipped with water seal flap; roll-over water seal flap to sealing position on mating connector.

**d. Taped or heat-shrink splices.** A taped splice shall be made in the following manner:

Bring the cables to their final position and cut so that the conductors will butt. Remove insulation and jacket allowing for bare conductor of proper length to fit compression sleeve connector with 1/4 inch (6 mm) of bare conductor on each side of the connector. Prior to splicing, the two ends of the cable insulation shall be penciled using a tool designed specifically for this purpose and for cable size and type. Do not use emery paper on splicing operation since it contains metallic particles. The copper conductors shall be thoroughly cleaned. Join the conductors by inserting them equidistant into the compression connection sleeve. Crimp conductors firmly in place with crimping tool that requires a complete crimp before tool can be removed. Test the crimped connection by pulling on the cable. Scrape the insulation to assure that the entire surface over which the tape will be applied (plus 3 inches (75 mm) on each end) is clean. After scraping, wipe the entire area with a clean lint-free cloth. Do not use solvents.

Apply high-voltage rubber tape one-half lapped over bare conductor. This tape should be tensioned as recommended by the manufacturer. Voids in the connector area may be eliminated by highly elongating the tape, stretching it just short of its breaking point. The manufacturer's recommendation for stretching tape during splicing shall be followed. Always attempt to exactly half-lap to produce a uniform buildup. Continue buildup to 1-1/2 times cable diameter over the body of the splice with ends tapered a distance of approximately one inch (25 mm) over the original jacket. Cover rubber tape with two layers of vinyl pressure-sensitive tape one-half lapped. Do not use glyptol or lacquer over vinyl tape as they react as solvents to the tape. No further cable covering or splice boxes are required.

Heat shrinkable tubing shall be installed following manufacturer's instructions. Direct flame heating shall not be permitted unless recommended by the manufacturer. Cable surfaces within the limits of the heat-shrink application shall be clean and free of contaminants prior to application.

**e. Assembly.** Surfaces of equipment or conductors being terminated or connected shall be prepared in accordance with industry standard practice and manufacturer's recommendations. All surfaces to be connected shall be thoroughly cleaned to remove all dirt, grease, oxides, nonconductive films, or other foreign material. Paints and other nonconductive coatings shall be removed to expose base metal. Clean all surfaces at least 1/4 inch (6.4 mm) beyond all sides of the larger bonded area on all mating surfaces. Use a joint compound suitable for the materials used in the connection. Repair painted/coated surface to original condition after completing the connection.

**108-3.6 Bare counterpoise wire installation for lightning protection and grounding.** If shown on the plans or included in the job specifications, bare solid #6 AWG copper counterpoise wire shall be installed for lightning protection of the underground cables. The RPR shall select one of two methods of lightning protection for the airfield lighting circuit based upon sound engineering practice and lightning strike density.

**a. Equipotential.** – may be used by the RPR for areas that have high rates of lightning strikes. The counterpoise size is determined by the RPR. The equipotential method is applicable to all airfield lighting systems; i.e. runway, taxiway, apron – touchdown zone, centerline, edge, threshold and approach lighting systems. The equipotential method is also successfully applied to provide lightning protection for power, signal and communication systems. The light bases, counterpoise, etc – all components - are bonded together and bonded to the vault power system ground loop/electrode.

Counterpoise wire shall be installed in the same trench for the entire length of buried cable, conduits and duct banks that are installed to contain airfield cables. The counterpoise is centered over the cable/conduit/duct to be protected.



The counterpoise conductor shall be installed no less than 8 inches (200 mm) minimum or 12 inches (300 mm) maximum above the raceway or cable to be protected, except as permitted below:

(1) The minimum counterpoise conductor height above the raceway or cable to be protected shall be permitted to be adjusted subject to coordination with the airfield lighting and pavement designs.

(2) The counterpoise conductor height above the protected raceway(s) or cable(s) shall be calculated to ensure that the raceway or cable is within a 45-degree area of protection, (45 degrees on each side of vertical creating a 90 degree angle).

The counterpoise conductor shall be bonded to each metallic light base, mounting stake, and metallic airfield lighting component.

All metallic airfield lighting components in the field circuit on the output side of the constant current regulator (CCR) or other power source shall be bonded to the airfield lighting counterpoise system.

All components rise and fall at the same potential; with no potential difference, no damaging arcing and no damaging current flow.

See AC 150/5340-30, Design and Installation Details for Airport Visual Aids and NFPA 780, Standard for the Installation of Lightning Protection Systems, Chapter 11, for a detailed description of the Equipotential Method of lightning protection.

Reference FAA STD-019E, Lightning and Surge Protection, Grounding Bonding and Shielding Requirements for Facilities and Electronic Equipment, Part 4.1.1.7.

**b. Isolation** – used in areas where lightning strikes are not common. Counterpoise size is selected by the RPR. The isolation method is an alternate method for use only with edge lights installed in turf and stabilized soils and raceways installed parallel to and adjacent to the edge of the pavement. NFPA 780 uses 15 feet to define “adjacent to”.

The counterpoise conductor shall be installed halfway between the pavement edge and the light base, mounting stake, raceway, or cable being protected.

The counterpoise conductor shall be installed 8 inches (203 mm) minimum below grade. The counterpoise is not connected to the light base or mounting stake. An additional grounding electrode is required at each light base or mounting stake. The grounding electrode is bonded to the light base or mounting stake with a 6 AWG solid copper conductor.

See AC 150/5340-30, Design and Installation Details for Airport Visual Aids and NFPA 780, Standard for the Installation of Lightning Protection Systems, Chapter 11, for a detailed description of the Isolation Method of lightning protection.

**c. Common Installation requirements.** When a metallic light base is used, the grounding electrode shall be bonded to the metallic light base or mounting stake with a No. 6 AWG bare, annealed or soft drawn, solid copper conductor.

When a nonmetallic light base is used, the grounding electrode shall be bonded to the metallic light fixture or metallic base plate with a No. 6 AWG bare, annealed or soft drawn, solid copper conductor.

Grounding electrodes may be rods, ground dissipation plates, radials, or other electrodes listed in the NFPA 70 (NEC) or NFPA 780.

Where raceway is installed by the directional bore, jack and bore, or other drilling method, the counterpoise conductor shall be permitted to be installed concurrently with the directional bore, jack and bore, or other drilling method raceway, external to the raceway or sleeve.

The counterpoise wire shall also be exothermically welded to ground rods installed as shown on the plans but not more than 500 feet (150 m) apart around the entire circuit. The counterpoise system shall be

continuous and terminate at the transformer vault or at the power source. It shall be securely attached to the vault or equipment external ground ring or other made electrode-grounding system. The connections shall be made as shown on the plans and in the specifications.

Where an existing airfield lighting system is being extended or modified, the new counterpoise conductors shall be interconnected to existing counterpoise conductors at each intersection of the new and existing airfield lighting counterpoise systems.

**d. Parallel Voltage Systems.** Provide grounding and bonding in accordance with NFPA 70, National Electrical Code.

**108-3.7 Counterpoise installation above multiple conduits and duct banks.** Not required.

**108-3.8 Counterpoise installation at existing duct banks.** Not required. When airfield lighting cables are indicated on the plans to be routed through existing duct banks, the new counterpoise wiring shall be terminated at ground rods at each end of the existing duct bank where the cables being protected enter and exit the duct bank. The new counterpoise conductor shall be bonded to the existing counterpoise system.

**108-3.9 Exothermic bonding.** Bonding of counterpoise wire shall be by the exothermic welding process or equivalent method accepted by the RPR. Only personnel experienced in and regularly engaged in this type of work shall make these connections.

Contractor shall demonstrate to the satisfaction of the RPR, the welding kits, materials and procedures to be used for welded connections prior to any installations in the field. The installations shall comply with the manufacturer's recommendations and the following:

**a.** All slag shall be removed from welds.

**b.** Using an exothermic weld to bond the counterpoise to a lug on a galvanized light base is not recommended unless the base has been specially modified. Consult the manufacturer's installation directions for proper methods of bonding copper wire to the light base. See AC 150/5340-30 for galvanized light base exception.

**c.** If called for in the plans, all buried copper and weld material at weld connections shall be thoroughly coated with 6 mm of 3M™ Scotchkote™, or approved equivalent, or coated with coal tar Bitumastic® material to prevent surface exposure to corrosive soil or moisture.

**108-3.10 Testing.** The Contractor shall furnish all necessary equipment and appliances for testing the airport electrical systems and underground cable circuits before and after installation. The Contractor shall perform all tests in the presence of the RPR. The Contractor shall demonstrate the electrical characteristics to the satisfaction of the RPR. All costs for testing are incidental to the respective item being tested. For phased projects, the tests must be completed by phase. The Contractor must maintain the test results throughout the entire project as well as during the warranty period that meet the following:

**a.** Earth resistance testing methods shall be submitted to the RPR for approval. Earth resistance testing results shall be recorded on an approved form and testing shall be performed in the presence of the RPR. All such testing shall be at the sole expense of the Contractor.

**b.** Should the counterpoise or ground grid conductors be damaged or suspected of being damaged by construction activities the Contractor shall test the conductors for continuity with a low resistance ohmmeter. The conductors shall be isolated such that no parallel path exists and tested for continuity. The RPR shall approve of the test method selected. All such testing shall be at the sole expense of the Contractor.

After installation, the Contractor shall test and demonstrate to the satisfaction of the RPR the following:

- c. That all affected lighting power and control circuits (existing and new) are continuous and free from short circuits.
- d. That all affected circuits (existing and new) are free from unspecified grounds.
- e. That the insulation resistance to ground of all new non-grounded high voltage series circuits or cable segments is not less than 50 megohms. Verify continuity of all series airfield lighting circuits prior to energization.
- f. That the insulation resistance to ground of all new non-grounded conductors of new multiple circuits or circuit segments is not less than 100 megohms.
- g. That all affected circuits (existing and new) are properly connected per applicable wiring diagrams.
- h. That all affected circuits (existing and new) are operable. Tests shall be conducted that include operating each control not less than 10 times and the continuous operation of each lighting and power circuit for not less than 1/2 hour.
- i. That the impedance to ground of each ground rod does not exceed 25 ohms prior to establishing connections to other ground electrodes. The fall-of-potential ground impedance test shall be used, as described by American National Standards Institute/Institute of Electrical and Electronic Engineers (ANSI/IEEE) Standard 81, to verify this requirement. As an alternate, clamp-on style ground impedance test meters may be used to satisfy the impedance testing requirement. Test equipment and its calibration sheets shall be submitted for review and approval by the RPR prior to performing the testing.

Two copies of tabulated results of all cable tests performed shall be supplied by the Contractor to the RPR. Where connecting new cable to existing cable, insulation resistance tests shall be performed on the new cable prior to connection to the existing circuit.

There are no approved "repair" procedures for items that have failed testing other than complete replacement.

## METHOD OF MEASUREMENT

**108-4.1** Cable or counterpoise wire installed in duct bank or conduit shall be measured by the number of linear feet (meters) installed and grounding connectors, and trench marking tape ready for operation, and accepted as satisfactory. Separate measurement shall be made for each cable or counterpoise wire installed in trench, duct bank or conduit. Cable and counterpoise slack is considered incidental to this item and is included in the Contractor's unit price. No separate measurement or payment will be made for cable or counterpoise slack.

**108-4.2** No separate payment will be made for ground rods.

## BASIS OF PAYMENT

**108-5.1** Payment will be made at the contract unit price for trenching, cable and bare counterpoise wire installed in trench (direct-buried), or cable and equipment ground installed in duct bank or conduit, in place by the Contractor and accepted by the RPR. This price shall be full compensation for furnishing all materials and for all preparation and installation of these materials, and for all labor, equipment, tools, and incidentals, including ground rods and ground connectors and trench marking tape, necessary to complete this item.

Payment will be made as indicated in the bid form.

Item L-108-5.1	No. 8 AWG, 600V , XHHW, Installed in Duct Bank or Conduit - per liner foot
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## REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

### Advisory Circulars (AC)

AC 150/5340-26	Maintenance of Airport Visual Aid Facilities
AC 150/5340-30	Design and Installation Details for Airport Visual Aids
AC 150/5345-7	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits
AC 150/5345-26	Specification for L-823 Plug and Receptacle, Cable Connectors
AC 150/5345-53	Airport Lighting Equipment Certification Program

### Commercial Item Description

A-A-59544A	Cable and Wire, Electrical (Power, Fixed Installation)
A-A-55809	Insulation Tape, Electrical, Pressure-Sensitive Adhesive, Plastic

### ASTM International (ASTM)

ASTM B3	Standard Specification for Soft or Annealed Copper Wire
ASTM B8	Standard Specification for Concentric-Lay-Stranded Copper Conductors, Hard, Medium-Hard, or Soft
ASTM B33	Standard Specification for Tin-Coated Soft or Annealed Copper Wire for Electrical Purposes
ASTM D4388	Standard Specification for Nonmetallic Semi-Conducting and Electrically Insulating Rubber Tapes

### Mil Spec

MIL-PRF-23586F	Performance Specification: Sealing Compound (with Accelerator), Silicone Rubber, Electrical
MIL-I-24391	Insulation Tape, Electrical, Plastic, Pressure Sensitive

### National Fire Protection Association (NFPA)

NFPA-70	National Electrical Code (NEC)
NFPA-780	Standard for the Installation of Lightning Protection Systems

### American National Standards Institute (ANSI)/Institute of Electrical and Electronics Engineers (IEEE)

ANSI/IEEE STD 81	IEEE Guide for Measuring Earth Resistivity, Ground Impedance, and Earth Surface Potentials of a Ground System
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### Federal Aviation Administration Standard

FAA STD-019E	Lightning and Surge Protection, Grounding Bonding and Shielding Requirements for Facilities and Electronic Equipment
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**END OF ITEM L-108**

## Item L-110 Airport Underground Electrical Duct Banks and Conduits

### DESCRIPTION

**110-1.1** This item shall consist of underground electrical conduits and duct banks (single or multiple conduits encased in concrete or buried in sand) installed per this specification at the locations and per the dimensions, designs, and details shown on the plans. This item shall include furnishing and installing of all underground electrical duct banks and individual and multiple underground conduits and removal of existing duct banks. It shall also include all turfing trenching, backfilling, removal, and restoration of any paved or turfed areas; concrete encasement, mandrelling, pulling lines, duct markers, plugging of conduits, and the testing of the installation as a completed system ready for installation of cables per the plans and specifications. This item shall also include furnishing and installing conduits and all incidentals for providing positive drainage of the system. Verification of existing ducts is incidental to the pay items provided in this specification.

### EQUIPMENT AND MATERIALS

#### 110-2.1 General.

**a.** All equipment and materials covered by referenced specifications shall be subject to acceptance through manufacturer's certification of compliance with the applicable specification when requested by the RPR.

**b.** Manufacturer's certifications shall not relieve the Contractor of the responsibility to provide materials per these specifications and acceptable to the RPR. Materials supplied and/or installed that do not comply with these specifications shall be removed, when directed by the RPR and replaced with materials, that comply with these specifications, at the Contractor's cost.

**c.** All materials and equipment used to construct this item shall be submitted to the RPR for approval prior to ordering the equipment. Submittals consisting of marked catalog sheets or shop drawings shall be provided. Submittal data shall be presented in a clear, precise and thorough manner. Original catalog sheets are preferred. Photocopies are acceptable provided they are as good a quality as the original. Clearly and boldly mark each copy to identify products or models applicable to this project. Indicate all optional equipment and delete non-pertinent data. Submittals for components of electrical equipment and systems shall identify the equipment for which they apply on each submittal sheet. Markings shall be made bold and clear with arrows or circles (highlighting is not acceptable). The Contractor is solely responsible for delays in project that accrue directly or indirectly from late submissions or resubmissions of submittals.

**d.** The data submitted shall be sufficient, in the opinion of the RPR, to determine compliance with the plans and specifications. The Contractor's submittals shall be electronically submitted in pdf format, tabbed by specification section. The RPR reserves the right to reject any and all equipment, materials or procedures that do not meet the system design and the standards and codes specified in this document.

**e.** All equipment and materials furnished and installed under this section shall be guaranteed against defects in materials and workmanship for a period of at least twelve (12) months from final acceptance by the Owner. The defective materials and/or equipment shall be repaired or replaced, at the Owner's discretion, with no additional cost to the Owner.

**110-2.2 Steel conduit.** Rigid galvanized steel (RGS) conduit and fittings shall be hot dipped galvanized inside and out and conform to the requirements of Underwriters Laboratories Standards 6, 514B, and 1242. All RGS conduits or RGS elbows installed below grade, in concrete, permanently wet locations or other similar environments shall be painted with a 10-mil thick coat of asphaltum sealer or shall have a

factory-bonded polyvinyl chloride (PVC) cover. Any exposed galvanizing or steel shall be coated with 10 mils of asphaltum sealer. When using PVC coated RGS conduit, care shall be exercised not to damage the factory PVC coating. Damaged PVC coating shall be repaired per the manufacturer's written instructions. In lieu of PVC coated RGS, corrosion wrap tape shall be permitted to be used where RGS is in contact with direct earth."

**110-2.3 Plastic conduit.** Plastic conduit and fittings shall conform to the following requirements:

- UL 514B covers W-C-1094-Conduit fittings all types, classes 1 thru 3 and 6 thru 10.
- UL 514C covers W-C-1094- all types, Class 5 junction box and cover in plastic (PVC).
- UL 651 covers W-C-1094-Rigid PVC Conduit, types I and II, Class 4.
- UL 651A covers W-C-1094-Rigid PVC Conduit and high-density polyethylene (HDPE) Conduit type III and Class 4.

Underwriters Laboratories Standards UL-651 and Article 352 of the current National Electrical Code shall be one of the following, as shown on the plans:

a. Type I–Schedule 40 and Schedule 80 PVC suitable for underground use either direct-buried or encased in concrete.

b. Type II–Schedule 40 PVC suitable for either above ground or underground use.

c. Type III – Schedule 80 PVC suitable for either above ground or underground use either direct-buried or encased in concrete.

d. Type III –HDPE pipe, minimum standard dimensional ratio (SDR) 11, suitable for placement with directional boring under pavement.

The type of solvent cement shall be as recommended by the conduit/fitting manufacturer.

**110-2.4 Split conduit.** Split conduit shall be pre-manufactured for the intended purpose and shall be made of steel or plastic.

**110-2.5 Conduit spacers.** Conduit spacers shall be prefabricated interlocking units manufactured for the intended purpose. They shall be of double wall construction made of high grade, high density polyethylene complete with interlocking cap and base pads. They shall be designed to accept No. 4 reinforcing bars installed vertically.

**110-2.6 Concrete.** Concrete shall be proportioned, placed, and cured per Item P-610, Concrete for Miscellaneous Structures.

**110-2.7 Precast concrete structures.** Precast concrete structures shall be furnished by a plant meeting National Precast Concrete Association Plant Certification Program or another RPR approved third party certification program. Precast concrete structures shall conform to ASTM C478.

**110-2.8 Flowable backfill.** Flowable material used to back fill conduit and duct bank trenches shall conform to the requirements of Item P-153, Controlled Low Strength Material.

**110-2.9 Detectable warning tape.** Plastic, detectable, American Public Works Association (APWA) red (electrical power lines, cables, conduit and lighting cable), orange (telephone/fiber optic cabling) with continuous legend magnetic tape shall be polyethylene film with a metallized foil core and shall be 3-6 inches (75-150 mm) wide. Detectable tape is incidental to the respective bid item.

## CONSTRUCTION METHODS

**110-3.1 General.** The Contractor shall install underground duct banks and conduits at the approximate locations indicated on the plans. The RPR shall indicate specific locations as the work progresses, if required to differ from the plans. Duct banks and conduits shall be of the size, material, and type indicated on the plans or specifications. Where no size is indicated on the plans or in the specifications, conduits shall be not less than 2 inches (50 mm) inside diameter or comply with the National Electrical Code based on cable to be installed, whichever is larger. All duct bank and conduit lines shall be laid so as to grade toward access points and duct or conduit ends for drainage. Unless shown otherwise on the plans, grades shall be at least 3 inches (75 mm) per 100 feet (30 m). On runs where it is not practicable to maintain the grade all one way, the duct bank and conduit lines shall be graded from the center in both directions toward access points or conduit ends, with a drain into the storm drainage system. Pockets or traps where moisture may accumulate shall be avoided. Under pavement, the top of the duct bank shall not be less than 18 inches (0.5 m) below the subgrade; in other locations, the top of the duct bank or underground conduit shall be not less than 18 inches (0.5 m) below finished grade.

The Contractor shall mandrel each individual conduit whether the conduit is direct-buried or part of a duct bank. An iron-shod mandrel, not more than 1/4 inch (6 mm) smaller than the bore of the conduit shall be pulled or pushed through each conduit. The mandrel shall have a leather or rubber gasket slightly larger than the conduit hole.

The Contractor shall swab out all conduits/ducts and clean base can, manhole, pull boxes, etc., interiors immediately prior to pulling cable. Once cleaned and swabbed the light bases, manholes, pull boxes, etc., and all accessible points of entry to the duct/conduit system shall be kept closed except when installing cables. Cleaning of ducts, base cans, manholes, etc., is incidental to the pay item of the item being cleaned. All raceway systems left open, after initial cleaning, for any reason shall be recleaned at the Contractor's expense. All accessible points shall be kept closed when not installing cable. The Contractor shall verify existing ducts proposed for use in this project as clear and open. The Contractor shall notify the RPR of any blockage in the existing ducts.

For pulling the permanent wiring, each individual conduit, whether the conduit is direct-buried or part of a duct bank, shall be provided with a 200-pound (90 kg) test polypropylene pull rope. The ends shall be secured and sufficient length shall be left in access points to prevent it from slipping back into the conduit. Where spare conduits are installed, as indicated on the plans, the open ends shall be plugged with removable tapered plugs, designed for this purpose.

All conduits shall be securely fastened in place during construction and shall be plugged to prevent contaminants from entering the conduits. Any conduit section having a defective joint shall not be installed. Ducts shall be supported and spaced apart using approved spacers at intervals not to exceed 5 feet (1.5 m).

Unless otherwise shown on the plans, concrete encased duct banks shall be used when crossing under pavements expected to carry aircraft loads, such as runways, taxiways, taxilanes, ramps and aprons. When under paved shoulders and other paved areas, conduit and duct banks shall be encased using flowable fill for protection.

All conduits within concrete encasement of the duct banks shall terminate with female ends for ease in current and future use. Install factory plugs in all unused ends. Do not cover the ends or plugs with concrete.

Where turf is well established and the sod can be removed, it shall be carefully stripped and properly stored.

Trenches for conduits and duct banks may be excavated manually or with mechanical trenching equipment unless in pavement, in which case they shall be excavated with mechanical trenching

equipment. Walls of trenches shall be essentially vertical so that a minimum of shoulder surface is disturbed. Blades of graders shall not be used to excavate the trench.

When rock is encountered, the rock shall be removed to a depth of at least 3 inches (75 mm) below the required conduit or duct bank depth and it shall be replaced with bedding material of earth or sand containing no mineral aggregate particles that would be retained on a 1/4-inch (6.3 mm) sieve. Flowable backfill may alternatively be used

Underground electrical warning (Caution) tape shall be installed in the trench above all underground duct banks and conduits in unpaved areas. Contractor shall submit a sample of the proposed warning tape for approval by the RPR. If not shown on the plans, the warning tape shall be located 6 inches above the duct/conduit or the counterpoise wire if present.

Joints in plastic conduit shall be prepared per the manufacturer's recommendations for the particular type of conduit. Plastic conduit shall be prepared by application of a plastic cleaner and brushing a plastic solvent on the outside of the conduit ends and on the inside of the couplings. The conduit fitting shall then be slipped together with a quick one-quarter turn twist to set the joint tightly. Where more than one conduit is placed in a single trench, or in duct banks, joints in the conduit shall be staggered a minimum of 2 feet (60 cm).

Changes in direction of runs exceeding 10 degrees, either vertical or horizontal, shall be accomplished using manufactured sweep bends.

Whether or not specifically indicated on the drawings, where the soil encountered at established duct bank grade is an unsuitable material, as determined by the RPR, the unsuitable material shall be removed per Item P-152 and replaced with suitable material. Additional duct bank supports shall be installed, as approved by the RPR.

All excavation shall be unclassified and shall be considered incidental to Item L-110. Dewatering necessary for duct installation, and erosion per federal, state, and local requirements is incidental to Item L-110.

Unless otherwise specified, excavated materials that are deemed by the RPR to be unsuitable for use in backfill or embankments shall be removed and disposed of offsite.

Any excess excavation shall be filled with suitable material approved by the RPR and compacted per Item P-152.

It is the Contractor's responsibility to locate existing utilities within the work area prior to excavation. Where existing active cables cross proposed installations, the Contractor shall ensure that these cables are adequately protected. Where crossings are unavoidable, no splices will be allowed in the existing cables, except as specified on the plans. Installation of new cable where such crossings must occur shall proceed as follows:

- a. Existing cables shall be located manually. Unearthed cables shall be inspected to assure absolutely no damage has occurred

- b. Trenching, etc., in cable areas shall then proceed with approval of the RPR, with care taken to minimize possible damage or disruption of existing cable, including careful backfilling in area of cable.

In the event that any previously identified cable is damaged during the course of construction, the Contractor shall be responsible for the complete repair.

**110-3.2 Duct banks.** Unless otherwise shown in the plans, duct banks shall be installed so that the top of the concrete envelope is not less than 18 inches (0.5 m) below the bottom of the base or stabilized base course layers where installed under runways, taxiways, aprons, or other paved areas, and not less than 18 inches (0.5 m) below finished grade where installed in unpaved areas.



Unless otherwise shown on the plans, duct banks under paved areas shall extend at least 3 feet (1 m) beyond the edges of the pavement or 3 feet (1 m) beyond any under drains that may be installed alongside the paved area. Trenches for duct banks shall be opened the complete length before concrete is placed so that if any obstructions are encountered, provisions can be made to avoid them. Unless otherwise shown on the plans, all duct banks shall be placed on a layer of concrete not less than 3 inches (75 mm) thick prior to its initial set. The Contractor shall space the conduits not less than 3 inches (75 mm) apart (measured from outside wall to outside wall). All such multiple conduits shall be placed using conduit spacers applicable to the type of conduit. As the conduit laying progresses, concrete shall be placed around and on top of the conduits not less than 3 inches (75 mm) thick unless otherwise shown on the plans. All conduits shall terminate with female ends for ease of access in current and future use. Install factory plugs in all unused ends. Do not cover the ends or plugs with concrete.

Conduits forming the duct bank shall be installed using conduit spacers. No. 4 reinforcing bars shall be driven vertically into the soil a minimum of 6 inches (150 mm) to anchor the assembly into the earth prior to placing the concrete encasement. For this purpose, the spacers shall be fastened down with locking collars attached to the vertical bars. Spacers shall be installed at 5-foot (1.5-m) intervals. Spacers shall be in the proper sizes and configurations to fit the conduits. Locking collars and spacers shall be submitted to the RPR for review prior to use.

When specified, the Contractor shall reinforce the bottom side and top of encasements with steel reinforcing mesh or fabric or other approved metal reinforcement. When directed, the Contractor shall supply additional supports where the ground is soft and boggy, where ducts cross under roadways, or where shown on the plans. Under such conditions, the complete duct structure shall be supported on reinforced concrete footings, piers, or piles located at approximately 5-foot (1.5-m) intervals.

All pavement surfaces that are to have ducts installed therein shall be neatly saw cut to form a vertical face. All excavation shall be included in the contract with price for the duct.

Install a plastic, detectable, color as noted, 3 to 6 inches (75 to 150 mm) wide tape, 8 inches (200 mm) minimum below grade above all underground conduit or duct lines not installed under pavement. Utilize the 3-inch (75-mm) wide tape only for single conduit runs. Utilize the 6-inch (150-mm) wide tape for multiple conduits and duct banks. For duct banks equal to or greater than 24 inches (600 mm) in width, utilize more than one tape for sufficient coverage and identification of the duct bank as required.

When existing cables are to be placed in split duct, encased in concrete, the cable shall be carefully located and exposed by hand tools. Prior to being placed in duct, the RPR shall be notified so that he may inspect the cable and determine that it is in good condition. Where required, split duct shall be installed as shown on the drawings or as required by the RPR.

**110-3.3 Conduits without concrete encasement.** Trenches for single-conduit lines shall be not less than 6 inches (150 mm) nor more than 12 inches (300 mm) wide. The trench for 2 or more conduits installed at the same level shall be proportionately wider. Trench bottoms for conduits without concrete encasement shall be made to conform accurately to grade so as to provide uniform support for the conduit along its entire length.

Unless otherwise shown on the plans, a layer of fine earth material, at least 4 inches (100 mm) thick (loose measurement) shall be placed in the bottom of the trench as bedding for the conduit. The bedding material shall consist of soft dirt, sand or other fine fill, and it shall contain no particles that would be retained on a 1/4-inch (6.3 mm) sieve. The bedding material shall be tamped until firm. Flowable backfill may alternatively be used.

Unless otherwise shown on plans, conduits shall be installed so that the tops of all conduits within the Airport's secured area where trespassing is prohibited are at least 18 inches (0.5 m) below the finished grade. Conduits outside the Airport's secured area shall be installed so that the tops of the conduits are at least 24 inches (60 cm) below the finished grade per National Electric Code (NEC), Table 300.5.

When two or more individual conduits intended to carry conductors of equivalent voltage insulation rating are installed in the same trench without concrete encasement, they shall be spaced not less than 3 inches (75 mm) apart (measured from outside wall to outside wall) in a horizontal direction and not less than 6 inches (150 mm) apart in a vertical direction. Where two or more individual conduits intended to carry conductors of differing voltage insulation rating are installed in the same trench without concrete encasement, they shall be placed not less than 3 inches (75 mm) apart (measured from outside wall to outside wall) in a horizontal direction and not less than 6 inches (150 mm) apart in a vertical direction.

Trenches shall be opened the complete length between normal termination points before conduit is installed so that if any unforeseen obstructions are encountered, proper provisions can be made to avoid them.

Conduits shall be installed using conduit spacers. No. 4 reinforcing bars shall be driven vertically into the soil a minimum of 6 inches (150 mm) to anchor the assembly into the earth while backfilling. For this purpose, the spacers shall be fastened down with locking collars attached to the vertical bars. Spacers shall be installed at 5-foot (1.5-m) intervals. Spacers shall be in the proper sizes and configurations to fit the conduits. Locking collars and spacers shall be submitted to the RPR for review prior to use.

**110-3.4 Markers.** The location of each end and of each change of direction of conduits and duct banks shall be marked by a concrete slab marker 2 feet (60 cm) square and 4 - 6 inches (100 - 150 mm) thick extending approximately one inch (25 mm) above the surface. The markers shall also be located directly above the ends of all conduits or duct banks, except where they terminate in a junction/access structure or building. Each cable or duct run from a line of lights and signs to the equipment vault must be marked at approximately every 200 feet (61 m) along the cable or duct run, with an additional marker at each change of direction of cable or duct run.

The Contractor shall impress the word "DUCT" or "CONDUIT" on each marker slab. Impression of letters shall be done in a manner, approved by the RPR, for a neat, professional appearance. All letters and words must be neatly stenciled. After placement, all markers shall be given one coat of high-visibility orange paint, as approved by the RPR. The Contractor shall also impress on the slab the number and size of conduits beneath the marker along with all other necessary information as determined by the RPR. The letters shall be 4 inches (100 mm) high and 3 inches (75 mm) wide with width of stroke 1/2 inch (12 mm) and 1/4 inch (6 mm) deep or as large as the available space permits. Furnishing and installation of duct markers is incidental to the respective duct pay item.

**110-3.5 Backfilling for conduits.** For conduits, 8 inches (200 mm) of sand, soft earth, or other fine fill (loose measurement) shall be placed around the conduits ducts and carefully tamped around and over them with hand tampers. The remaining trench shall then be backfilled and compacted per Item P-152 except that material used for back fill shall be select material not larger than 4 inches (100 mm) in diameter.

Flowable backfill may alternatively be used.

Trenches shall not contain pools of water during back filling operations.

The trench shall be completely backfilled and tamped level with the adjacent surface; except that, where sod is to be placed over the trench, the backfilling shall be stopped at a depth equal to the thickness of the sod to be used, with proper allowance for settlement.

Any excess excavated material shall be removed and disposed of per instructions issued by the RPR.

**110-3.6 Backfilling for duct banks.** After the concrete has cured, the remaining trench shall be backfilled and compacted per Item P-152 "Excavation and Embankment" except that the material used for backfill shall be select material not larger than 4 inches (100 mm) in diameter. In addition to the requirements of Item P-152, where duct banks are installed under pavement, one moisture/density test per

lift shall be made for each 250 linear feet (76 m) of duct bank or one work period's construction, whichever is less.

Flowable backfill may alternatively be used.

Trenches shall not contain pools of water during backfilling operations.

The trench shall be completely backfilled and tamped level with the adjacent surface; except that, where sod is to be placed over the trench, the backfilling shall be stopped at a depth equal to the thickness of the sod to be used, with proper allowance for settlement.

Any excess excavated material shall be removed and disposed of per instructions issued by the RPR.

**110-3.7 Restoration.** Where sod has been removed, it shall be replaced as soon as possible after the backfilling is completed. All areas disturbed by the work shall be restored to its original condition. The restoration shall include sodding, topsoiling, fertilizing, liming, seeding, and mulching shown on the plans. The Contractor shall be held responsible for maintaining all disturbed surfaces and replacements until final acceptance. All restoration shall be considered incidental to the respective L-110 pay item. Following restoration of all trenching near airport movement surfaces, the Contractor shall thoroughly visually inspect the area for foreign object debris (FOD), and remove any such FOD that is found. This FOD inspection and removal shall be considered incidental to the pay item of which it is a component part.

**110-3.8** Ownership of removed cable (if any) shall become property of Contractor.

## **METHOD OF MEASUREMENT**

**110-4.1** Underground conduits and duct banks shall be measured by the linear feet (meter) of conduits and duct banks installed, including encasement, locator tape, trenching and backfill with designated material, and restoration, and for drain lines, the termination at the drainage structure, all measured in place, completed, and accepted. Separate measurement shall be made for the various types and sizes.

## **BASIS OF PAYMENT**

**110-5.1** Payment will be made at the contract unit price per linear foot for each type and size of conduit and duct bank completed and accepted, including trench and backfill with the designated material, and, for drain lines, the termination at the drainage structure. This price shall be full compensation for removal and disposal of existing duct banks and conduits as shown on the plans, furnishing all materials and for all preparation, assembly, and installation of these materials, and for all labor, equipment, tools, and incidentals necessary to complete this item per the provisions and intent of the plans and specifications.

Payment will be made as shown on the bid form.

## **REFERENCES**

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

Advisory Circular (AC)

AC 150/5340-30	Design and Installation Details for Airport Visual Aids
AC 150/5345-53	Airport Lighting Equipment Certification Program

ASTM International (ASTM)

ASTM A615	Standard Specification for Deformed and Plain Carbon-Steel Bars for Concrete Reinforcement
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National Fire Protection Association (NFPA)

NFPA-70	National Electrical Code (NEC)
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Underwriters Laboratories (UL)

UL Standard 6	Electrical Rigid Metal Conduit - Steel
UL Standard 514B	Conduit, Tubing, and Cable Fittings
UL Standard 514C	Nonmetallic Outlet Boxes, Flush-Device Boxes, and Covers
UL Standard 1242	Electrical Intermediate Metal Conduit Steel
UL Standard 651	Schedule 40, 80, Type EB and A Rigid PVC Conduit and Fittings
UL Standard 651A	Type EB and A Rigid PVC Conduit and HDPE Conduit

**END OF ITEM L-110**

## **Item L-125 Installation of Airport Lighting Systems**

### **DESCRIPTION**

**125-1.1** This item shall consist of airport lighting systems furnished and installed in accordance with this specification, the referenced specifications, and the applicable advisory circulars (ACs). The systems shall be installed at the locations and in accordance with the dimensions, design, and details shown in the plans. This item shall include the furnishing of all equipment, materials, services, and incidentals necessary to place the systems in operation as completed units to the satisfaction of the RPR.

### **EQUIPMENT AND MATERIALS**

#### **125-2.1 General.**

**a.** Airport lighting equipment and materials covered by Federal Aviation Administration (FAA) specifications shall be certified under the Airport Lighting Equipment Certification Program in accordance with AC 150/5345-53, current version. FAA certified airfield lighting shall be compatible with each other to perform in compliance with FAA criteria and the intended operation. If the Contractor provides equipment that does not perform as intended because of incompatibility with the system, the Contractor assumes all costs to correct the system for to operate properly.

**b.** Manufacturer's certifications shall not relieve the Contractor of their responsibility to provide materials in accordance with these specifications and acceptable to the RPR. Materials supplied and/or installed that do not comply with these specifications shall be removed, when directed by the RPR and replaced with materials, which do comply with these specifications, at the sole cost of the Contractor.

**c.** All materials and equipment used shall be submitted to the RPR for approval prior to ordering the equipment. Submittals consisting of marked catalog sheets or shop drawings shall be provided. Clearly mark each copy to identify pertinent products or models applicable to this project. Indicate all optional equipment and delete non-pertinent data. Submittals for components of electrical equipment and systems shall identify the equipment for which they apply on each submittal sheet. Markings shall be clearly made with arrows or circles (highlighting is not acceptable). The Contractor shall be responsible for delays in the project accruing directly or indirectly from late submissions or resubmissions of submittals.

**d.** The data submitted shall be sufficient, in the opinion of the RPR, to determine compliance with the plans and specifications. The Contractor's submittals shall be submitted in electronic PDF format, tabbed by specification section. The RPR reserves the right to reject any or all equipment, materials or procedures, which, in the RPR's opinion, does not meet the system design and the standards and codes, specified herein.

**e.** All equipment and materials furnished and installed under this section shall be guaranteed against defects in materials and workmanship for a period of at least twelve (12) months from final acceptance by the Owner. The defective materials and/or equipment shall be repaired or replaced, at the Owner's discretion, with no additional cost to the Owner.

### **EQUIPMENT AND MATERIALS**

**125-3.1 Conduit/Duct.** Conduit shall conform to Specification Item L-110 Airport Underground Electrical Duct Banks and Conduits.

**125-3.2 Cable and Counterpoise.** Cable and Counterpoise shall conform to Item L-108 Underground Power Cable for Airports.

**125-3.3 Tape.** Rubber and plastic electrical tapes shall be Scotch Electrical Tape Numbers 23 and 88 respectively, as manufactured by 3M Company or an approved equal.

**125-3.4 Cable Connections.** Cable Connections shall conform to Item L-108 Installation of Underground Cable for Airports.

**125-3.5 Retroreflective Markers.** Not required.

**125-3.6 Runway and Taxiway Lights.** Not required.

**125-3.7 Runway and Taxiway Signs.** Not required.

**125-3.7 Runway End Identifier Light (REIL).** Not required.

**125-3.8 Precision Approach Path Indicator (PAPI).** Not required.

**125-3.9 Circuit Selector Cabinet.** not required.

**125-3.10 Light Base and Transformer Housings.** Not required.

**125-3.11 Isolation Transformers.** Not required.

**125-3.12 Constant Current Regulators, FAA Type L-829** (monitored) per AC 150/5345-10 (latest edition). Units shall meet the following requirements:

- a. Continuous KW rating, output to load as indicated on plans.
- b. Shall fit limited available space – field verify.
- c. Input voltage: 240VAC single-phase (field verify).
- d. Output: 3-step or 5-step (per FAA standards), as indicated.
- e. Control: Compatible with existing ALCMS via compatible DCMU's, field confirm with manufacturer.
- f. Design: Dry-type construction. Regulator shall have saturable-reactor ferroresonant design, without using solid-state components directly connected to the series circuit.
- g. Unit-mounted 5-position intensity control switch ("REMOTE-OFF-B10-B30-B100") OR 7-position intensity control switch ("REMOTE-OFF-B1-B2-B3-B4-B5") as applicable.
- h. Distribution-class lightning arresters on output circuit.

## INSTALLATION

**125-4.1 Installation.** The Contractor shall furnish, install, connect and test all equipment, accessories, conduit, cables, wires, buses, grounds and support items necessary to ensure a complete and operable airport lighting system as specified here and shown in the plans.

The equipment installation and mounting shall comply with the requirements of the National Electrical Code and state and local code agencies having jurisdiction.

The Contractor shall install the specified equipment in accordance with the applicable advisory circulars and the details shown on the plans.

**125-4.2 Testing.** All lights shall be fully tested by continuous operation for not less than 24 hours as a completed system prior to acceptance. The test shall include operating the constant current regulator in each step not less than 10 times at the beginning and end of the 24-hour test. The fixtures shall illuminate properly during each portion of the test.

**125-4.3 Shipping and Storage.** Equipment shall be shipped in suitable packing material to prevent damage during shipping. Store and maintain equipment and materials in areas protected from weather and physical damage. Any equipment and materials, in the opinion of the RPR, damaged during construction or storage shall be replaced by the Contractor at no additional cost to the owner. Painted or galvanized surfaces that are damaged shall be repaired in accordance with the manufacturer's recommendations.

**125-4.4 Elevated and In-pavement Lights.** Water, debris, and other foreign substances shall be removed prior to installing fixture base and light.

A jig or holding device shall be used when installing each light fixture to ensure positioning to the proper elevation, alignment, level control, and azimuth control. Light fixtures shall be oriented with the light beams parallel to the runway or taxiway centerline and facing in the required direction. The outermost edge of fixture shall be level with the surrounding pavement. Surplus sealant or flexible embedding material shall be removed. The holding device shall remain in place until sealant has reached its initial set.

## **METHOD OF MEASUREMENT**

**125-5.1** Reflective markers will be measured by the number installed as completed units in place, ready for operation, and accepted by the RPR. Runway and taxiway lights will be measured by the number of each type installed as completed units in place, ready for operation, and accepted by the RPR. Guidance signs will be measured by the number of each type and size installed as completed units, in place, ready for operation, and accepted by the RPR. Runway End Identifier Lights shall be measured by each system installed as a completed unit in place, ready for operation, and accepted by the RPR.

Precision Approach Path Indicator shall be measured by each system installed as a completed unit, in place, ready for operation, and accepted by the RPR. Abbreviated Precision Approach Path Indicator shall be measured by each system installed as a completed unit, in place, ready for operation, and accepted by the RPR.

## **BASIS OF PAYMENT**

**125-6.1** Payment will be made at the Contract unit price for each complete runway or taxiway light, guidance sign, reflective marker, runway end identification light, precision approach path indicator, or abbreviated precision approach path indicator installed by the Contractor and accepted by the RPR. This payment will be full compensation for furnishing all materials and for all preparation, assembly, and installation of these materials, and for all labor, equipment, tools and incidentals necessary to complete this item.

Payment will be made as indicated on the bid form.

## **REFERENCES**

The publications listed below form a part of this specification to the extent referenced. The publications are referred to within the text by the basic designation only.

Advisory Circulars (AC)

AC 150/5340-18	Standards for Airport Sign Systems
AC 150/5340-26	Maintenance of Airport Visual Aid Facilities

AC 150/5340-30	Design and Installation Details for Airport Visual Aids
AC 150/5345-5	Circuit Selector Switch
AC 150/5345-7	Specification for L-824 Underground Electrical Cable for Airport Lighting Circuits
AC 150/5345-26	Specification for L-823 Plug and Receptacle, Cable Connectors
AC 150/5345-28	Precision Approach Path Indicator (PAPI) Systems
AC 150/5345-39	Specification for L-853, Runway and Taxiway Retroreflective Markers
AC 150/5345-42	Specification for Airport Light Bases, Transformer Housings, Junction Boxes, and Accessories
AC 150/5345-44	Specification for Runway and Taxiway Signs
AC 150/5345-46	Specification for Runway and Taxiway Light Fixtures
AC 150/5345-47	Specification for Series to Series Isolation Transformers for Airport Lighting Systems
AC 150/5345-51	Specification for Discharge-Type Flashing Light Equipment
AC 150/5345-53	Airport Lighting Equipment Certification Program
Engineering Brief (EB)	
EB No. 67	Light Sources Other than Incandescent and Xenon for Airport and Obstruction Lighting Fixtures

**END OF ITEM L-125**







Building a Better World  
for All of Us®

Engineers | Architects | Planners | Scientists

**ADVERTISEMENT FOR BIDS**  
**2024 Electrical Vault Rehabilitation**  
**Minot International Airport**  
**Minot, North Dakota**  
**SEH No. MINOT 177332**

Notice is hereby given that Online Bids will be received by the City of Minot, North Dakota, until 2 p.m., Tuesday, April 16, 2023, via [QuestCDN](#) for the furnishing of all labor and material for the construction of 2024 Electrical Vault Rehabilitation.

The bid opening will be conducted via Microsoft Teams, at which time they will be publicly opened and read aloud:

2024 ELECTRICAL VAULT REHABILITATION Bid Opening  
APRIL 16, 2:00 P.M. (CDT)

Please join my meeting from your computer, tablet or smartphone: <https://bit.ly/4c46rLD>

Or call in (audio only)  
+1 872-242-7640,,876247764# United States, Chicago  
Phone Conference ID: 876 247 764#

Any person monitoring the meeting remotely may be responsible for any documented costs. Message and data rates may apply.

Major components of the Work include: Electrical vault improvements, including constant current regulator (CCR) replacement & modifications, panel/switch repairs, and lighting fixture replacement.

The Bidding Documents may be viewed for no cost at <http://www.sehinc.com> by selecting the Project Bid Information link at the bottom of the page and the View Plans option from the menu at the top of the selected project page.

Digital image copies of the Bidding Documents are available at <http://www.sehinc.com> for a fee of \$30. These documents may be downloaded by selecting this project from the "Project Bid Information" link and by entering eBidDoc™ Number 9023000 on the SEARCH PROJECTS page. For assistance and free membership registration, contact QuestCDN at 952.233.1632 or [info@questcdn.com](mailto:info@questcdn.com).

For this project, bids will **ONLY** be received electronically. Contractors submitting an electronic bid **will** be charged an additional \$42 at the time of bid submission via the online electronic bid service [QuestCDN.com](#). To access the electronic Bid Worksheet, download the project document and click the online bidding button at the top of the advertisement. Prospective bidders must be on the plan holders list through QuestCDN for bids to be accepted. Bids shall be completed according to the Bidding Requirements prepared by SEH dated March 2024.

In addition to digital plans, paper copies of the Bidding Documents may be obtained from Docunet Corp. located at 2435 Xenium Lane North, Plymouth, MN 55441 (763.475.9600) for a fee of \$150.00.

A pre-Bid conference will not be held for this project.

Bid security in the amount of 5 percent of the Bid must accompany each Bid in accordance with the Instructions to Bidders.

The City of Minot reserves the right to reject any and all Bids, to waive irregularities and informalities therein and to award the Contract in the best interests of the City of Minot.

Maria Romanick  
Airport Operations Manager  
Minot, North Dakota



**TO:** Mayor Thomas Ross  
Members of the City Council

**FROM:** Jason Sorensen, Utilities Director

**DATE:** March 18, 2024

**SUBJECT: PURCHASE OF TRANSIT FIXED ROUTE SOFTWARE (4833)**

**I. RECOMMENDED ACTION**

1. Recommend council approve the purchase of Transit Fixed Route Software from TripSpark Technologies. This will replace our current RouteMatch software system.
2. Recommend council approve the mayor or transit superintendent to sign the necessary agreements.

**II. DEPARTMENT CONTACT PERSONS**

Jason Sorenson, Utilities Director	857-4140
Brian Horinka, Transit Superintendent	857-4140

**III. DESCRIPTION**

A. Background

This project will replace our current RouteMatch Fixed Route Transit Software System that is eight years old, extremely unreliable, and no longer provides the best information available to our passengers.

B. Proposed Project

This system will provide a full-featured scheduling and routing system for Computer Aided Dispatch and Automatic Vehicle Locating. It will also offer an advanced passenger information and communication system allowing us to provide our passengers with up to the minute bus arrival times and any other information such as detours and weather related changes to our routes. The system will provide information to bus operators as well to help keep them on schedule and improve our On-Time Performance. Additional functionality such as Automatic Passenger Counters and Automatic Voice Announcements will also be provided that will keep us compliant with federal regulations on passenger announcements and ridership tracking. The reporting functions will allow us to track key data to make future operational decisions on how well our system is performing and where operational changes can be made in order to reduce wasted resources. The software will be locally hosted which will provide a significant cost savings over the life of the product.

C. Consultant Selection

The selection of this vendor was done using North Dakota State Procurement Contract #283. This is a cooperative purchasing multi-vendor contract awarded pursuant to North Dakota Century code section 54-44.4-13. Transit staff evaluated all vendors that were awarded a contract and determined that the product and services proposed by TripSpark Technologies best met our requirements.

#### **IV. IMPACT:**

A. Strategic Impact:

The purchase and implantation of this system will provide more accurate and timely information to our passengers and allow transit staff to monitor and analyze our system and routes to continually improve our services to the community.

B. Service/Delivery Impact:

N/A

C. Fiscal Impact:

Project Costs

The total initial cost for this project is \$465,151.00. Annual maintenance costs will start out at \$29,151.00 a year and increase approximately 5% a year. Total first year costs will be \$497,597.00

Project Funding

This project is accounted for in the 2024 City Budget. There is currently \$500,000.00 approved for this project. The approved section 5339 grant will reimburse \$398,077.00 (80%) of the costs of this project with the remaining \$99,520.00 (20%) required match coming from local mill levy.

#### **V. CITY COUNCIL ASPIRATIONS**

This project will be able to meet all of the council's aspirations.

#### **VI. ALTERNATIVES**

N/A

#### **VII. TIME CONSTRAINTS**

Approval by the Council would allow us to move forward with this purchase and have the system installed and operational before our peak ridership season begins in September 2024.

#### **VIII. LIST OF ATTACHMENTS**

- A. TripSpark Fixed Route Software Pricing Summary

## Minot - Streets Suite



Item	Product	Licenses	Services	Expenses	Hardware	Installation	Discount	Total
<b>Core Components</b>								
	TripSpark Streets - CAD/AVL Solution	\$53,550	\$85,544	\$5,625	\$0	\$0	(\$48,195)	\$96,524
	myDrive In-Vehicle MDT & Vehicle Gateway	\$5,250	\$28,515	\$5,625	\$54,440	\$9,375	(\$4,725)	\$98,479
								<b>\$195,003</b>
<b>In-Vehicle Add-Ons</b>								
	Automatic Passenger Counters	\$0	\$24,338	\$3,200	\$37,810	\$11,250	\$0	\$76,598
	Headsign Integration	\$2,620	\$9,075	\$0	\$1,480	\$3,125	(\$2,358)	\$13,942
	TextSpeak Annunciator	\$5,250	\$35,888	\$3,200	\$34,324	\$8,750	(\$4,725)	\$82,687
	Sunrise Internal LED Signs	\$0	\$0	\$0	\$14,510	\$0	\$0	\$14,510
	CradlePoint Modems	\$0	\$6,600	\$0	\$31,004	\$5,625	\$0	\$43,229
								<b>\$230,965</b>
<b>Back Office Add-Ons</b>								
	MyRide/Dynamic Passenger Information	\$12,080	\$3,300	\$0	\$0	\$0	(\$10,872)	\$4,508
	MyRide Native Apps	\$7,750	\$21,450	\$0	\$0	\$0	(\$6,975)	\$22,225
	Web Services	\$22,050	\$3,300	\$0	\$0	\$0	(\$19,845)	\$5,505
	GTFS Real Time Feed	\$19,950	\$4,950	\$0	\$0	\$0	(\$17,955)	\$6,945
								<b>\$39,183</b>
<b>Total</b>								<b>\$465,151</b>

Extended Warranty Pricing	Year 1	Total
myDrive In-Vehicle MDT & Vehicle Gateway	\$1,475	\$1,475
TextSpeak Annunciator	\$1,820	\$1,820
		<b>\$3,295</b>

Software Maintenance	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Streets CAD/AVL	\$10,710	\$11,246	\$11,808	\$12,398	\$13,018	\$59,180
myDrive In-Vehicle MDT & Vehicle Gateway	\$1,050	\$1,103	\$1,158	\$1,216	\$1,276	\$24,368
Web Services	\$4,410	\$4,631	\$4,862	\$5,105	\$5,360	\$24,368
MyRide/Dynamic Passenger Information	\$2,416	\$2,537	\$2,664	\$2,797	\$2,937	\$13,350
MyRide Native Apps	\$1,938	\$2,034	\$2,136	\$2,243	\$2,355	\$10,706
Automatic Passenger Counters	\$3,063	\$3,216	\$3,377	\$3,546	\$3,723	\$16,925
Headsign Integration	\$524	\$550	\$578	\$607	\$637	\$2,895
GTFS Real Time Feed	\$3,990	\$4,190	\$4,399	\$4,619	\$4,850	\$22,047
TextSpeak Annunciator	\$1,050	\$1,103	\$1,158	\$1,216	\$1,276	\$5,802
						<b>\$161,075</b>

Maintenance commences with first operational use of the software, is paid yearly, and is based on then current license value of software in use.  
24/7 support is provided via TripSpark's standard support procedures.

### Pricing is based on the following operational metrics:

Fixed Route Vehicles 10

Prices are budgetary only, in US dollars and valid for 90 days.

All applicable sales/use taxes are additional and payment of such is the sole responsibility of the purchaser.

### Payment Terms

- Milestone 1: 100% of License fees (and hosting services if applicable) due upon execution of the Agreement.
- Milestone 2: 100% Equipment hardware due upon drop ship delivery to Customer site.
- Milestone 3: 25% of Services and Expenses due upon delivery of draft Operational Review document
- Milestone 4: 25% of Services and Expenses due upon installation of Software
- Milestone 5: 25% of Services and Expenses due upon delivery of initial training session
- Milestone 6: 25% of Services and Expenses due upon System Acceptance

### Spare Hardware

- Additional spare in-vehicle equipment should be purchased to support swap-out maintenance.
- TripSpark recommends a minimum spare ratio of 5%, one spare unit per training kit is required to conduct driver training.

### Assumptions

#### Client will be responsible for providing the following if not hosted by TripSpark:

Client is responsible for the computer hardware & off-the-shelf software as per TripSpark's most current specifications.

#### TripSpark will provide:

- All of the onboard equipment included above
- Technical services to include: project management; system testing; 'train the trainer' training; implementation; and remote support.

#### Client will be responsible for providing the following:

- Space, power, network (LAN/WAN) connectivity, for required servers and workstations.
- Access to the servers via the internet (i.e. VPN, PCAnywhere) to support remote trouble-shooting/support.
- Provision/configuration of router/firewall to allow two-way IP based communications with the mobile devices.
- Public data network activations and monthly airtime subscriptions for each vehicle.
- Wi-Fi access points at the garages.
- Swap-out maintenance of in-vehicle equipment during and after the warranty period.
- Data entry/verification including but not limited to stops, routes, schedules, timepoints.
- Third party interface fees to existing agency equipment (incl. fareboxes, annunciators, onboard signs, etc.)

Interfacing with Google's technical team for GTFS export, including testing and schedule adjustments required to get approval.  
SQL for databases for all TripSpark Software

**Dynamic Passenger Information / My Ride Assumptions**

\* SMS requires annual contract with monthly service charges and message fees based on number of messages sent or received  
Client will be responsible for monthly transaction fees of \$0.02 per SMS message. TripSpark will bill monthly.  
Client responsible for providing MyRide server and OS as specified by TripSpark  
MyRide requires a Google Maps API key, the costs of which are the responsibility of the client. Use of the MyRide Native App may increase these costs  
Client Responsible for purchase of Google and/or Apple developer Accounts

**Automated Passenger Counter Assumptions**

\* Other configurations are available for additional doors and/or wider door widths, pricing will vary accordingly.



**TO:** Mayor Tom Ross  
Members of the City Council

**FROM:** Jason Sorenson, Utilities Director

**DATE:** March 18, 2024

**SUBJECT: WELLS 5 & 6 RAW WATER LINE REPLACEMENT – AWARD OF BID (4758)**

**I. RECOMMENDED ACTION**

1. Recommend council approve the bid in the amount of \$552,699.50 from Steen Construction for the Riverside Park Raw Water Line project.
2. Recommend council authorize the mayor to sign the contract.
3. Recommend council approve the budget amendment to allocate remaining unspent funds for the construction contract.

**II. DEPARTMENT CONTACT PERSONS**

Jason Sorenson, Utilities Director                      857-4140

**III. DESCRIPTION**

A. Background

Wells 5 and 6 were drilled in the early 1900s and are located in the area of 3<sup>rd</sup> St and 5<sup>th</sup> Ave NW. They originally fed water to the old water plant by 5<sup>th</sup> Ave NW. In the 1950s, when the existing water treatment plant was constructed, a line was installed to bring water from wells 5 and 6 directly to the water plant. Over the years that line has shown significant deterioration. In 2021, about 2,000 feet that runs along the old Ramstad School site was replaced. In 2022, another portion was relocated to avoid having infrastructure running under the new flood protect.

B. Proposed Project

The proposed project will start near 8<sup>th</sup> St NW and River Drive and extend about 2,200 feet along the river to 2<sup>nd</sup> Ave NW near 10<sup>th</sup> St. Steen Construction submitted the lowest responsible bid and award is warranted.

C. Consultant Selection

Houston Engineering was competitively selected during and RFQ in 2022 to provide consulting services for water related projects.

**IV. IMPACT:**

A. Strategic Impact:

Delivering enough water to meet peak demands is an important function of the water treatment plant. Replacing old deteriorating infrastructure increases reliability.

B. Service/Delivery Impact:

The water plant has struggled to meet peak demands due to well maintenance and raw water capacity. This replacement allows wells 5 and 6 to be online at



the same time, thus increasing capacity. This should help minimize conservation warnings due to failures in the system.

C. Fiscal Impact:

Project Costs

Engineering	\$170,366.00
<u>Construction Cost</u>	<u>\$552,699.50</u>
Total Project Cost	\$723,065.50

Project Funding

Funding in the amount of \$500,000 was budgeted in the 2023 water treatment plant budget and an additional \$600,000 was budgeted in 2024. A previous budget amendment allocated funds for the design and construction engineering. The attached budget will allocate unspent funds for the project construction.

**V. CITY COUNCIL ASPIRATIONS**

Resilient and Prepared

**VI. ALTERNATIVES**

Council could elect to deny this request. This item would then have to be added to a later budget.

**VII. TIME CONSTRAINTS**

N/A

**VIII. LIST OF ATTACHMENTS**

- A. Bid Review Letter
- B. Budget Amendment

March 7, 2024

Jason Sorenson  
Utilities Director  
1025 31<sup>st</sup> St. SE  
Minot, ND 58701

**Subject: Riverside Park Raw Water Project Bid Review Letter**  
**City Project No. 4758**  
**HEI Project No. 6027-0085**

Dear Jason:

We have completed our review of the bids received for construction of the Riverside Park Raw Water project. Please find attached to this letter the bid tabulation for the four sealed bids that were received through the Quest vBid system and ready publicly on March 7, 2024, in a virtual meeting.

The three lowest bids were evaluated for conformance with the bidding requirements as listed in the Instructions to Bidders and Bid Form. All of the bids received are summarized in the following table:

Contractor	Bid Total	Amount Greater Than Low Bid
Steen Construction - DUS Minot, ND	\$ 552,699.50	\$ --
Post Construction, Inc. Minot, ND	\$ 587,946.00	\$ 35,246.50
Kemper Construction Co. Minot, ND	\$ 625,439.00	\$ 72,739.50
Wagner Construction, Inc. International Falls, MN	\$ 1,391,265.00	\$ 838,565.50
ENGINEER'S OPCC	\$ 490,212.50	(\$ 62,487.00)

Dakota Underground Specialties LLC dba Steen Construction

- 1) A valid 5% Bid Bond, Power of Attorney, Acknowledgement of Principal, and Acknowledgement of Surety were uploaded with the bid.
- 2) A valid ND Contractor's License was uploaded with the bid.
- 3) Acknowledgement of Addendums #1 & #2 by a bidder is a requirement of the Quest vBid system prior to uploading a bid.
- 4) The Bid Form was properly executed and signed by Eric Wanner as President of Dakota Underground Specialties, LLC.
- 5) A list of subcontractors and suppliers was also uploaded with the bid.
- 6) No bid irregularities were found.

Post Construction

- 1) A valid 5% Bid Bond, Power of Attorney, Acknowledgement of Principal, and Acknowledgement of Surety were uploaded with the bid.
- 2) A valid ND Contractor's License was uploaded with the bid.

- 3) Acknowledgement of Addendums #1 & #2 by a bidder is a requirement of the Quest vBid system prior to uploading a bid.
- 4) A list of subcontractors and suppliers was provided with the bid.
- 5) The Bid Form was properly executed and signed by Conley Post as President of Post Construction, Inc.

Kemper Construction, Co.

- 1) A valid 5% Bid Bond, Power of Attorney, Acknowledgement of Principal, and Acknowledgement of Surety were uploaded with the bid.
- 2) A valid ND Contractor's License was uploaded with the bid.
- 3) Acknowledgement of Addendums #1 & #2 by a bidder is a requirement of the Quest vBid system prior to uploading a bid.
- 4) A list of subcontractors and suppliers was provided with the bid.
- 5) A signed Bid Form was properly executed, but only the signature page of the Bid Form was uploaded with the bid. In reviewing the EJCDC documents, this does not appear to be a non-conforming issue as it would with the Bid Bond. This could be reviewed further with the City Attorney, but at this point it does not affect the lowest submitted bid.

Steen Construction's bid is approximately 6.5% lower than the bid submitted by Post Construction and 13% lower than Kemper Construction. The Steen Construction bid is approximately 13% higher than HEI's Opinion of Probably Construction Cost for the project. When comparing Steen's bid to the HEI OPCC, the unit price for removing existing pipe along the project route resulted in an additional \$26,000 above the estimate. The unit price bids for removing the existing pipe varied from \$2/LF to \$140/LF based on how each contractor viewed the risk and effort needed to complete the removal. Additionally, the horizontal directional drilling cost for installing the Owner-provided HDPE pipe was higher than estimated by approximately \$40,000. When considering the pipe installed by HDD, the cost savings for the Owner-provided pipe bid item was smaller than anticipated when compared to the Contractor purchased pipe, on all four submitted bids.

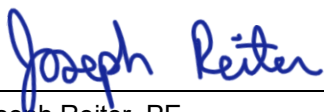
The basis for our award recommendation includes criteria for bidder "responsiveness" and "responsibility". Based on our bid review, and in accordance with Article 18 of the Instructions to Bidders, Steen Construction of Minot, ND submitted the lowest responsive bid. Therefore, HEI recommends award of the contract to Steen Construction for the bid price of \$552,699.50. After concurrence of the contract award by the Minot City Council, Houston Engineering, Inc. will provide a completed Notice of Award for execution by Mayor Tom Ross followed by delivery to the Contractor with the agreement, bonds, and insurance documents for execution.

The Notice to Proceed will be discussed at the preconstruction conference, and issuance will be contingent upon the satisfactory completion and submission of the contract documents by the Contractor and the City's legal counsel review.

If you have any questions or require additional information, please contact me at (701) 852-7931 or by e-mail at [jreiter@houstoneng.com](mailto:jreiter@houstoneng.com).

Sincerely,

HOUSTON ENGINEERING, INC.



Joseph Reiter, PE  
Project Engineer

**BID TABULATION**  
**City of Minot Riverside Park Raw Water Pipeline Project**  
**HEI Project 6027-0085**  
**City of Minot Project No. 4758**

**Engineer:** Houston Engineering, Inc.  
**3900 13th Avenue SE**  
**Minot, ND 58701**  
**Phone (701) 852-7931**

**Bid Opening: March 7, 2024**  
**Time: 11:00 am**

				Engineer's OPCC		Steen Construction - DUS		Post Construction, Inc.		Kemper Construction Co.		Wagner Construction, Inc.	
Item No.	Description	Unit	Quantity	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	Mobilization/Demobilization/Bonds/Insurance	LS	1	\$ 36,000.00	\$ 36,000.00	\$ 40,000.00	\$ 40,000.00	\$ 35,000.00	\$ 35,000.00	\$ 37,000.00	\$ 37,000.00	\$ 309,000.00	\$ 309,000.00
2	Temporary Traffic Control	LS	1	\$ 7,500.00	\$ 7,500.00	\$ 3,500.00	\$ 3,500.00	\$ 6,500.00	\$ 6,500.00	\$ 3,500.00	\$ 3,500.00	\$ 2,000.00	\$ 2,000.00
3	Fiber Roll (All Sizes)	LF	565	\$ 3.50	\$ 1,977.50	\$ 4.50	\$ 2,542.50	\$ 5.00	\$ 2,825.00	\$ 10.00	\$ 5,650.00	\$ 6.00	\$ 3,390.00
4	Erosion Control Blanket	SY	300	\$ 3.00	\$ 900.00	\$ 8.00	\$ 2,400.00	\$ 9.00	\$ 2,700.00	\$ 15.00	\$ 4,500.00	\$ 4.00	\$ 1,200.00
5	Remove Bituminous Pavement (All Thickness)	SY	400	\$ 20.00	\$ 8,000.00	\$ 15.00	\$ 6,000.00	\$ 8.00	\$ 3,200.00	\$ 10.00	\$ 4,000.00	\$ 37.00	\$ 14,800.00
6	Remove Gas Valve and Box (All Sizes)	EA	2	\$ 600.00	\$ 1,200.00	\$ 1,000.00	\$ 2,000.00	\$ 1,500.00	\$ 3,000.00	\$ 2,000.00	\$ 4,000.00	\$ 500.00	\$ 1,000.00
7	Remove Valve Manhole	EA	4	\$ 2,500.00	\$ 10,000.00	\$ 1,500.00	\$ 6,000.00	\$ 800.00	\$ 3,200.00	\$ 4,125.00	\$ 16,500.00	\$ 5,000.00	\$ 20,000.00
8	Remove Pipe (All Types and >4 inches)	LF	1,045	\$ 20.00	\$ 20,900.00	\$ 45.00	\$ 47,025.00	\$ 2.00	\$ 2,090.00	\$ 76.00	\$ 79,420.00	\$ 140.00	\$ 146,300.00
9	Bulkhead Existing Pipe (Watermain, All Sizes)	EA	12	\$ 500.00	\$ 6,000.00	\$ 750.00	\$ 9,000.00	\$ 250.00	\$ 3,000.00	\$ 531.00	\$ 6,372.00	\$ 7,500.00	\$ 90,000.00
10	6" C900 DR18 PVC Water Main (Owner Provided)	LF	30	\$ 110.00	\$ 3,300.00	\$ 95.00	\$ 2,850.00	\$ 195.00	\$ 5,850.00	\$ 89.00	\$ 2,670.00	\$ 190.00	\$ 5,700.00
11	12" DR11 IPS HDPE Water Main installed by Open Cut	LF	625	\$ 170.00	\$ 106,250.00	\$ 160.00	\$ 100,000.00	\$ 263.00	\$ 164,375.00	\$ 136.00	\$ 85,000.00	\$ 322.00	\$ 201,250.00
12	12" DR11 IPS HDPE Water Main installed by HDD (Owner Provided)	LF	1150	\$ 110.00	\$ 126,500.00	\$ 145.00	\$ 166,750.00	\$ 187.00	\$ 215,050.00	\$ 125.00	\$ 143,750.00	\$ 240.00	\$ 276,000.00
13	12" DR11 IPS HDPE Water Main installed by HDD (Owner Provided)	LF	313	\$ 160.00	\$ 50,080.00	\$ 160.00	\$ 50,080.00	\$ 227.00	\$ 71,051.00	\$ 176.00	\$ 55,088.00	\$ 275.00	\$ 86,075.00
14	12" Gate Valve w/Box (Owner Provided)	EA	2	\$ 3,000.00	\$ 6,000.00	\$ 3,500.00	\$ 7,000.00	\$ 5,000.00	\$ 10,000.00	\$ 4,300.00	\$ 8,600.00	\$ 6,500.00	\$ 13,000.00
15	Flush Hydrant Assembly with 6" Gate Valve and Tee Connection to Main (Partially Owner Provided. Refer to M&P Specification)	EA	1	\$ 7,500.00	\$ 7,500.00	\$ 13,500.00	\$ 13,500.00	\$ 4,500.00	\$ 4,500.00	\$ 9,945.00	\$ 9,945.00	\$ 12,500.00	\$ 12,500.00
16	Connect to Existing Water Main	EA	2	\$ 5,000.00	\$ 10,000.00	\$ 3,500.00	\$ 7,000.00	\$ 5,000.00	\$ 10,000.00	\$ 16,326.00	\$ 32,652.00	\$ 15,000.00	\$ 30,000.00
17	6" Aggregate Surface Course, Compacted Class 5	SY	1020	\$ 50.00	\$ 51,000.00	\$ 37.00	\$ 37,740.00	\$ 15.00	\$ 15,300.00	\$ 14.00	\$ 14,280.00	\$ 85.00	\$ 86,700.00
18	Hot Bituminous Pavement Superpave FAA 43, PG 58S-28	SY	400	\$ 85.00	\$ 34,000.00	\$ 115.00	\$ 46,000.00	\$ 68.00	\$ 27,200.00	\$ 273.00	\$ 109,200.00	\$ 205.00	\$ 82,000.00
19	Seeding and Hydro-Mulch	SY	414	\$ 7.50	\$ 3,105.00	\$ 8.00	\$ 3,312.00	\$ 7.50	\$ 3,105.00	\$ 8.00	\$ 3,312.00	\$ 25.00	\$ 10,350.00
<b>BID SCHEDULE TOTAL</b>					<b>\$ 490,212.50</b>		<b>\$ 552,699.50</b>		<b>\$ 587,946.00</b>		<b>\$ 625,439.00</b>		<b>\$ 1,391,265.00</b>

**ORDINANCE NO:**

**AN ORDINANCE AMENDING THE 2024 ANNUAL BUDGET TO INCREASE THE WATER  
PLANT WATER WELL MAINTENANCE EXPENSE FOR THE RIVERSIDE PARK RAW  
WATER LINE PROJECT.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINOT:**

§1: Amend the 2024 annual budget to increase the water plant water well maintenance expense for the Riverside Park raw water line project:

14060000-44507		\$600,000
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§2: This ordinance shall be in effect from and after its passage and approval.

PASSED FIRST READING:

PASSED SECOND READING:

APPROVED:

ATTEST:

\_\_\_\_\_  
Thomas Ross, Mayor

\_\_\_\_\_  
Mikayla McWilliams, City Clerk



**TO:** Mayor  
Members of the City Council

**FROM:** Emily Huettl, PE – Assistant City Engineer

**DATE:** March 18, 2024

**SUBJECT: 2024 STREET IMPROVEMENT CEMENT STABILIZATION – AWARD OF BID (4802.1)**

**I. RECOMMENDED ACTION**

1. Award the bid for 2024 Street Improvement – Cement Stabilization to the low bidder, Keller Paving & Landscaping, Inc. in the amount of \$2,409,475.33.
2. Authorize the Mayor to sign the Agreement.

**II. DEPARTMENT CONTACT PERSONS**

Lance Meyer, City Engineer (701) 857-4100  
Emily Huettl, Assistant City Engineer (701) 857-4100

**III. DESCRIPTION**

A. Background

This is the annual maintenance project to repair and rehabilitate streets that are showing moderate to severe pavement distresses. Mill and overlays, leveling, cement stabilized base, asphalt reconstruction and other treatments to distressed streets will improve ride and safety, and increase the pavement life. This project's scope is focused just on roads that will be receiving a cement stabilized base treatment.

The \$8 million Street Maintenance budget will be split between this street improvement project, the street seal project, the concrete pavement rehab project, the street patching project, and the microsurfacing project.

B. Proposed Project

This project includes 2 proposed areas of work. The areas are summarized below and shown on the attached plan sheet.

Area	Description/Location
1	Mill/Cement Stabilize 20 <sup>th</sup> Ave SW Frontage Road, from 16 <sup>th</sup> St SW to 4 <sup>th</sup> St SW
2	Mill/Cement Stabilize Evergreen Hills & Foothills Road

C. Consultant Selection

On Tuesday, March 12, 2024, at 11:00 AM, bids were opened for this project. Below and attached is a bid tabulation summary that shows the bid comparisons as they relate to the engineer's estimate:

BID TABULATIONS 2024 Street Improvement Cement Stabilization City Project #4802.1 Tuesday, 3/12/2024, 11:00 AM	
Engineer's Estimate: \$ 2,545,952.00	
Bidder	Total Bid
Minot Paving Co., Inc.	\$2,572,634.14
Keller Paving & Landscaping, Inc.	\$2,409,475.33
Bechtold Paving, Inc.	\$2,567,108.30

It is recommended that the project be awarded to Keller Paving & Landscaping, Inc. with their low bid of \$2,409,475.33 which is 5.4% below the Engineer's Estimate.

#### IV. IMPACT:

##### A. Strategic Impact:

Overall maintenance of City streets and sidewalks ranked first overall in importance to residents in the 2023 City of Minot Community Survey.

##### B. Service/Delivery Impact:

This project will provide needed maintenance and rehabilitation of existing infrastructure throughout the City to extend the life of the roadways. Some units include heavily traveled roadways. Traffic control and detour routes will be in place to manage traffic during construction.

##### C. Fiscal Impact:

###### Project Costs

Contractor's Bid Price	\$ 2,409,475.33
<u>Other Project Expenses</u>	<u>\$ 30,000.00</u>
Total	\$ 2,439,475.33

###### Project Funding

Street Maintenance	\$ 8,000,000.00
Account No. 10038000-44508	

#### V. CITY COUNCIL ASPIRATIONS

*Resilient and Prepared* – This project moves us in the right direction as we address our roadway maintenance backlog.

*Excellent and Connected* – This project directly addresses what residents have said they wanted to see, better roadway maintenance.

#### VI. ALTERNATIVES

- A. The Council could choose not to award the project, which would further delay needed roadway maintenance.

#### VII. TIME CONSTRAINTS

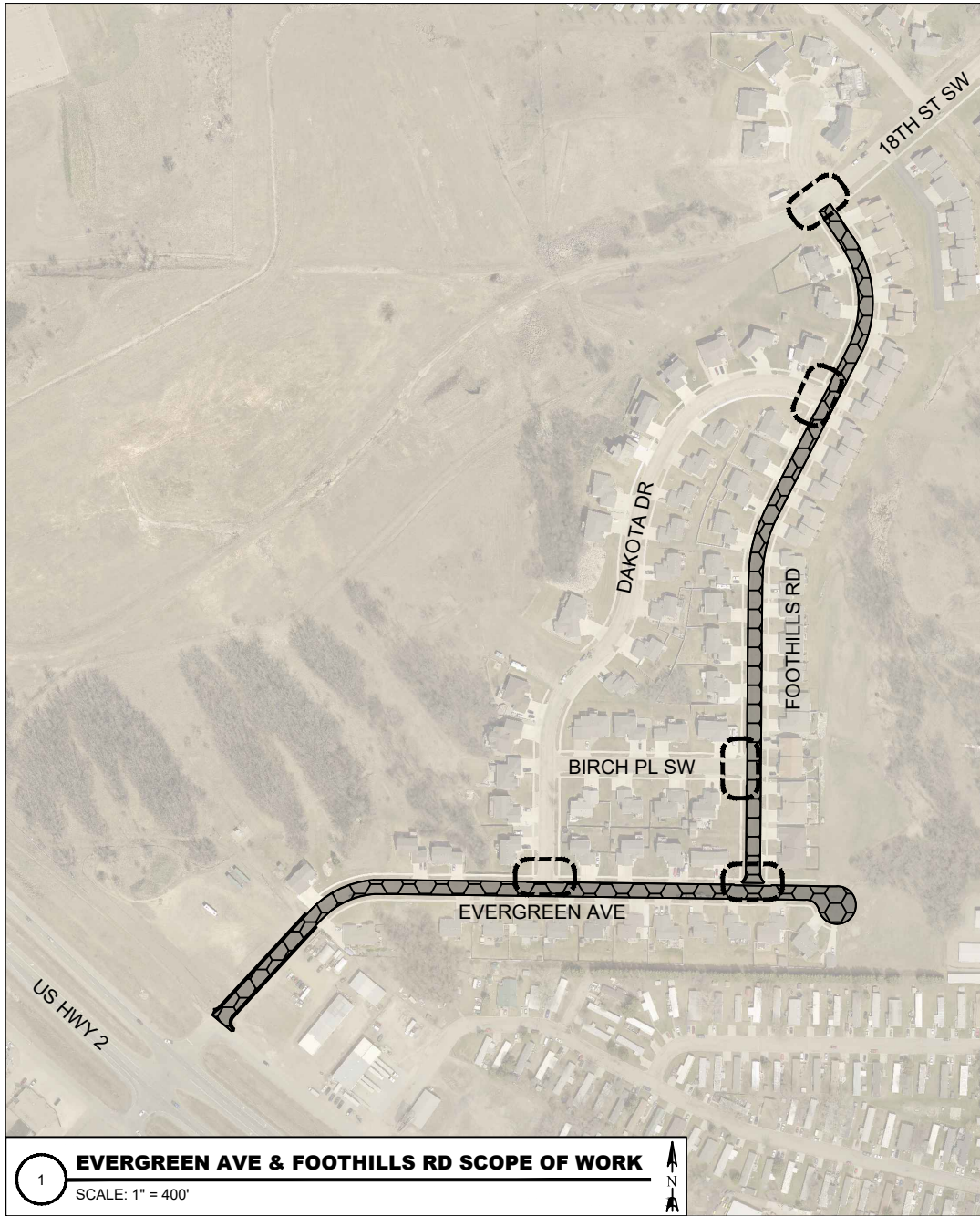
Approving the contract in a timely manner will allow the paperwork to be in place so construction may begin as soon as the weather allows.

**VIII. LIST OF ATTACHMENTS**

- A. Scope of Work
- B. Bid Tab



P:\PROJECTS\4802 - 2024 Street Improvement\Contract 1 - Cement Stabilize Areas\Design\Plans\4802.1 - 2024 Street Improvement CSA.dwg-Scope-2/13/2024 3:38 PM-(jesse.hoffart)



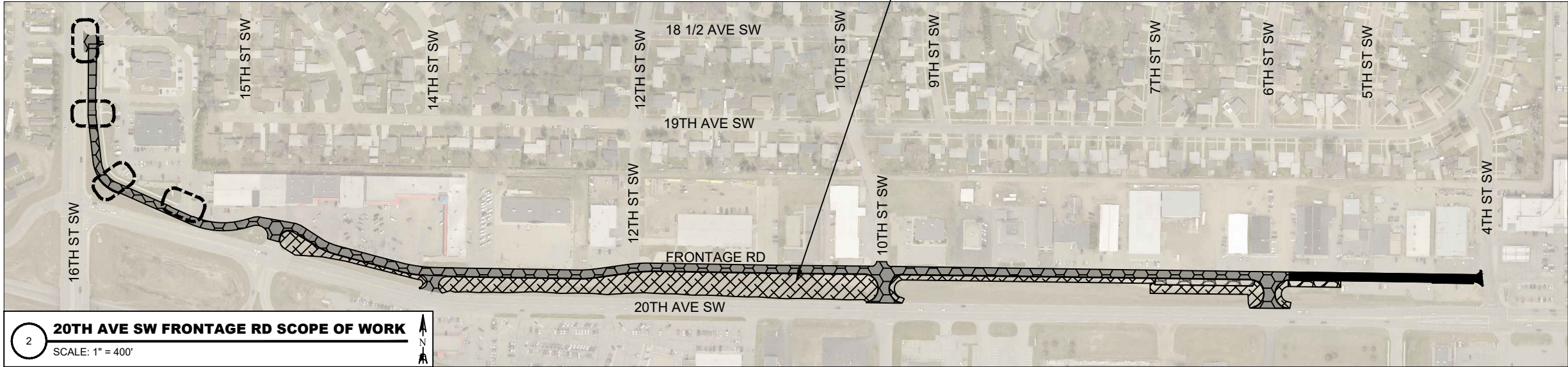
**EVERGREEN AVE**  
MILL PAVEMENT (6098 SY)  
CEMENT STABILIZED BASE (6098 SY)  
HOT MIX ASPHALT (HMA) FAA 43 PG 58-28 (1354 TONS)  
BITUMINOUS TACK COAT (305 GAL)  
ADJUST GV (12 EA)  
ADJUST CASTING - MANHOLE ( 6 EA)  
REPLACE VALVE BOX TOP SECTION WHERE NEEDED, TYP (3 EA)  
REPLACE CASTING - MANHOLE WHERE NEEDED, TYP (2 EA)  
FILL VOLUME FROM EXISTING HMA SURFACE TO NEW HMA SURFACE (229 CY) - SEE SECTIONS & NOTES

**FOOTHILLS RD**  
MILL PAVEMENT (5787 SY)  
CEMENT STABILIZED BASE (5787 SY)  
HOT MIX ASPHALT (HMA) FAA 43 PG 58-28 (1285 TONS)  
BITUMINOUS TACK COAT (289 GAL)  
ADJUST GV (18 EA)  
ADJUST CASTING - MANHOLE (6 EA)  
REPLACE VALVE BOX TOP SECTION WHERE NEEDED (4 EA)  
REPLACE CASTING - MANHOLE WHERE NEEDED (2 EA)  
FILL VOLUME FROM EXISTING HMA SURFACE TO NEW HMA SURFACE (63 CY) - SEE SECTIONS & NOTES

**20TH AVE SW FRONTAGE RD (STABILIZED)**  
MILL PAVEMENT (15225 SY)  
CEMENT STABILIZED BASE (15225 SY)  
HOT MIX ASPHALT (HMA) FAA 43 PG 58-28 (3380 TONS)  
BITUMINOUS TACK COAT (761 GAL)  
ADJUST GV (18 EA)  
ADJUST CASTING - MANHOLE ( 5 EA)  
REPLACE VALVE BOX TOP SECTION WHERE NEEDED (6 EA)  
REPLACE CASTING - MANHOLE WHERE NEEDED (2 EA)  
FILL VOLUME FROM EXISTING HMA SURFACE TO NEW HMA SURFACE (227 CY) - SEE SECTIONS & NOTES

**20TH AVE SW FRONTAGE RD (MILL & OVERLAY)**  
MILL PAVEMENT (1871 SY)  
HOT MIX ASPHALT (HMA) FAA 43 PG 58-28 (208 TONS)  
BITUMINOUS TACK COAT (131 GAL)  
FILL VOLUME FROM EXISTING HMA SURFACE TO NEW HMA SURFACE (1 CY) - SEE SECTIONS & NOTES

RESHAPING OF FORESLOPES AND DITCH BOTTOM  
AT THE RURAL RURAL ROAD SECTION OF 20TH AVE SW FRONTAGE RD  
(SEE GRADING, SEEDING, AND EROSION CONTROL PLAN)



LEGEND

2" MILL AND 2" HMA OVERLAY

FULL DEPTH MILL, CEMENT STABILIZATION, AND 4" HMA

RESHAPING OF FORESLOPES AND DITCH BOTTOM

ENLARGED PLAN IMPROVEMENT AREA

-	-	-	-	By
-	-	-	-	Date
-	-	-	-	Revision
-	-	-	-	No.

2024 STREET IMPROVEMENT  
SCOPE OF WORK

Surveyed by	MK
Drawn by	AR
Designed by	MK
Date	02/12/2024
Project No.	4802.1

SHEET  
2 OF 97

2024 Street Improvement - Cement Stabilization (#8944622)  
Owner: Minot ND, City of  
Solicitor: Minot ND, City of  
03/12/2024 11:00 AM CDT

Section Title	Line Item	Item Description	Uofm	Quantity	Engineer Estimate		Keller Paving & Landscaping, Inc.		Bechtold Paving Inc.		Minot Paving Co LLC	
					Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
						\$2,545,952.00		\$2,409,475.33		\$2,567,108.30		\$2,572,634.14
SECTION A	1	CONTRACT BOND	LS	1	\$8,000.00	\$8,000.00	\$10,500.00	\$10,500.00	\$14,000.00	\$14,000.00	\$11,524.99	\$11,524.99
	2	MOBILIZATION - 20th Ave SW Frontage Road	LS	1	\$15,000.00	\$15,000.00	\$35,000.00	\$35,000.00	\$80,000.00	\$80,000.00	\$26,135.00	\$26,135.00
	3	MOBILIZATION - Evergreen Ave SW & Foothills RD SW	LS	1	\$15,000.00	\$15,000.00	\$35,000.00	\$35,000.00	\$66,000.00	\$66,000.00	\$35,300.00	\$35,300.00
	4	TRAFFIC CONTROL TYPE 1 - 20th Ave SW Frontage Road	LS	1	\$20,000.00	\$20,000.00	\$25,000.00	\$25,000.00	\$48,200.00	\$48,200.00	\$37,000.00	\$37,000.00
	5	TRAFFIC CONTROL TYPE 1 - Evergreen Ave SW & Foothills RD SW	LS	1	\$10,000.00	\$10,000.00	\$25,000.00	\$25,000.00	\$33,000.00	\$33,000.00	\$22,500.00	\$22,500.00
	6	STORM DRAIN INLET PROTECTION	EA	14	\$250.00	\$3,500.00	\$350.00	\$4,900.00	\$200.00	\$2,800.00	\$250.00	\$3,500.00
	7	DITCH CHECK - FIBER ROLLS 12"	LF	200	\$6.00	\$1,200.00	\$7.50	\$1,500.00	\$4.00	\$800.00	\$5.25	\$1,050.00
	8	SILT FENCE	LF	75	\$10.00	\$750.00	\$15.00	\$1,125.00	\$7.90	\$592.50	\$7.00	\$525.00
	9	REMOVE SIDEWALK	SY	325	\$25.00	\$8,125.00	\$23.00	\$7,475.00	\$28.00	\$9,100.00	\$16.00	\$5,200.00
	10	REMOVE DRIVEWAY PAVEMENT	SY	80	\$30.00	\$2,400.00	\$19.00	\$1,520.00	\$55.00	\$4,400.00	\$16.75	\$1,340.00
	11	REMOVE CURB & GUTTER	LF	981	\$20.00	\$19,620.00	\$26.00	\$25,506.00	\$18.00	\$17,658.00	\$14.00	\$13,734.00
	12	REMOVE VALLEY GUTTER	SY	329	\$30.00	\$9,870.00	\$23.00	\$7,567.00	\$27.00	\$8,883.00	\$27.00	\$8,883.00
	13	REMOVE BITUMINOUS PAVEMENT	SY	91	\$20.00	\$1,820.00	\$19.00	\$1,729.00	\$45.00	\$4,095.00	\$7.00	\$637.00
	14	MILL PAVEMENT	SY	28981	\$5.00	\$144,905.00	\$6.25	\$181,131.25	\$5.00	\$144,905.00	\$4.25	\$123,169.25
	15	REMOVE PIPE - STORM SEWER (ALL SIZES AND TYPES)	LF	105	\$100.00	\$10,500.00	\$225.00	\$23,625.00	\$61.00	\$6,405.00	\$130.00	\$13,650.00
	16	REMOVE CATCH BASIN STRUCTURE AND CASTING	EA	1	\$3,000.00	\$3,000.00	\$5,000.00	\$5,000.00	\$2,750.00	\$2,750.00	\$1,800.00	\$1,800.00
	17	SALVAGE AND REINSTALL SIGN	EA	11	\$250.00	\$2,750.00	\$350.00	\$3,850.00	\$195.00	\$2,145.00	\$225.00	\$2,475.00
	18	SALVAGE AND REINSTALL MAILBOX	EA	2	\$400.00	\$800.00	\$350.00	\$700.00	\$400.00	\$800.00	\$225.00	\$450.00
	19	ADJUST CASTING	EA	17	\$900.00	\$15,300.00	\$1,250.00	\$21,250.00	\$800.00	\$13,600.00	\$460.00	\$7,820.00
	20	ADJUST GATE VALVE BOX	EA	48	\$300.00	\$14,400.00	\$350.00	\$16,800.00	\$350.00	\$16,800.00	\$160.00	\$7,680.00
	21	REPLACE CASTING - MANHOLE	EA	6	\$1,500.00	\$9,000.00	\$2,000.00	\$12,000.00	\$1,300.00	\$7,800.00	\$1,300.00	\$7,800.00
	22	REPLACE CASTING - SINGLE CATCH BASIN	EA	2	\$1,500.00	\$3,000.00	\$1,650.00	\$3,300.00	\$1,800.00	\$3,600.00	\$1,100.00	\$2,200.00
	23	REPLACE CASTING - DOUBLE CATCH BASIN	EA	4	\$2,500.00	\$10,000.00	\$2,750.00	\$11,000.00	\$2,500.00	\$10,000.00	\$1,715.00	\$6,860.00
	24	REPLACE VALVE BOX TOP SECTION	EA	13	\$600.00	\$7,800.00	\$1,500.00	\$19,500.00	\$1,000.00	\$13,000.00	\$375.00	\$4,875.00
	25	COMMON EXCAVATION	CY	594	\$40.00	\$23,760.00	\$29.00	\$17,226.00	\$45.00	\$26,730.00	\$23.00	\$13,662.00
	26	TOPSOIL - IMPORT	CY	1349	\$40.00	\$53,960.00	\$49.00	\$66,101.00	\$60.00	\$80,940.00	\$71.50	\$96,453.50
	27	MUCK EXCAVATION (FOR UNSUITABLE BACKFILL)	CY	30	\$40.00	\$1,200.00	\$40.00	\$1,200.00	\$50.00	\$1,500.00	\$30.00	\$900.00
	28	IMPORTED BACKFILL	CY	30	\$40.00	\$1,200.00	\$29.00	\$870.00	\$50.00	\$1,500.00	\$28.00	\$840.00
	29	STORM SEWER PIPE - 15" RCP, CL III	LF	58	\$200.00	\$11,600.00	\$150.00	\$8,700.00	\$210.00	\$12,180.00	\$90.00	\$5,220.00
	30	CATCH BASIN MANHOLE (48" DIAMETER)	EA	1	\$12,000.00	\$12,000.00	\$1,250.00	\$1,250.00	\$6,000.00	\$6,000.00	\$7,000.00	\$7,000.00
	31	CONNECT TO EXISTING STRUCTURE	EA	2	\$2,000.00	\$4,000.00	\$5,500.00	\$11,000.00	\$5,000.00	\$10,000.00	\$3,000.00	\$6,000.00
	32	AGGREGATE BASE - CLASS 5	TN	1222	\$45.00	\$54,990.00	\$37.75	\$46,130.50	\$50.00	\$61,100.00	\$43.50	\$53,157.00
	33	CEMENT STABILIZED BASE	SY	27110	\$20.00	\$542,200.00	\$16.50	\$447,315.00	\$19.20	\$520,512.00	\$20.70	\$561,177.00
	34	BITUMINOUS TACK COAT	GAL	1486	\$6.00	\$8,916.00	\$6.00	\$8,916.00	\$6.00	\$8,916.00	\$6.50	\$9,659.00
	35	HOT MIX ASPHALT (HMA) FAA 43 PG 58S-28	TN	6227	\$125.00	\$778,375.00	\$103.00	\$641,381.00	\$108.00	\$672,516.00	\$124.00	\$772,148.00
	36	BITUMINOUS LEVELING	TN	28	\$300.00	\$8,400.00	\$206.00	\$5,768.00	\$325.00	\$9,100.00	\$270.00	\$7,560.00
	37	HMA FULL DEPTH PATCH	SF	7773	\$9.00	\$69,957.00	\$7.10	\$55,188.30	\$7.80	\$60,629.40	\$7.75	\$60,240.75
	38	CONCRETE CURB & GUTTER (ALL TYPES 24" WIDE)	LF	1987	\$75.00	\$149,025.00	\$66.00	\$131,142.00	\$85.00	\$168,895.00	\$68.00	\$135,116.00
	39	CONCRETE CURB & GUTTER (MOUNTABLE 30" WIDE)	LF	615	\$80.00	\$49,200.00	\$70.00	\$43,050.00	\$79.00	\$48,585.00	\$75.00	\$46,125.00
	40	VALLEY GUTTER - CLASS ASE	SY	447	\$150.00	\$67,050.00	\$143.42	\$64,108.74	\$215.00	\$96,105.00	\$180.00	\$80,460.00
	41	DRIVEWAY PAVEMENT	SY	80	\$150.00	\$12,000.00	\$143.42	\$11,473.60	\$160.00	\$12,800.00	\$132.00	\$10,560.00
	42	4" CONCRETE SIDEWALK	SY	237	\$120.00	\$28,440.00	\$113.00	\$26,781.00	\$110.00	\$26,070.00	\$69.00	\$16,353.00
	43	6" CONCRETE SIDEWALK	SY	121	\$140.00	\$16,940.00	\$126.00	\$15,246.00	\$152.00	\$18,392.00	\$112.00	\$13,552.00
	44	PIGMENTED IMPRINTED CONCRETE	SY	127	\$300.00	\$38,100.00	\$170.00	\$21,590.00	\$164.00	\$20,828.00	\$255.00	\$32,385.00
	45	DETECTABLE WARNING PANEL	SF	235	\$60.00	\$14,100.00	\$90.00	\$21,150.00	\$59.00	\$13,865.00	\$68.00	\$15,980.00
	46	PAINT PVMT MK 4" LINE - YELLOW	LF	1690	\$1.00	\$1,690.00	\$1.50	\$2,535.00	\$0.30	\$507.00	\$0.75	\$1,267.50
	47	PAINT PVMT MK 4" LINE - WHITE	LF	5831	\$1.00	\$5,831.00	\$1.50	\$8,746.50	\$0.30	\$1,749.30	\$0.75	\$4,373.25
	48	PAINT PVMT MK 6" LINE - WHITE	LF	120	\$1.50	\$180.00	\$9.00	\$1,080.00	\$3.50	\$420.00	\$4.00	\$480.00
	49	EPOXY PVMT MK 24" LINE - WHITE	LF	100	\$6.00	\$600.00	\$11.50	\$1,150.00	\$20.00	\$2,000.00	\$24.00	\$2,400.00

50	SEEDING (SUNNY MIX)	SY	16184	\$4.00	\$64,736.00	\$2.40	\$38,841.60	\$0.75	\$12,138.00	\$2.10	\$33,986.40
51	HYDRAULIC MULCH	SY	1185	\$6.00	\$7,110.00	\$1.00	\$1,185.00	\$2.25	\$2,666.25	\$2.50	\$2,962.50
52	EROSION CONTROL BLANKET (ECB TYPE 2)	SY	14999	\$4.00	\$59,996.00	\$2.66	\$39,897.34	\$1.90	\$28,498.10	\$3.00	\$44,997.00
53	CURB 6 IN	LF	274	\$120.00	\$32,880.00	\$95.00	\$26,030.00	\$60.00	\$16,440.00	\$78.50	\$21,509.00
54	SHOULDER PREPARATION	LF	3602	\$3.00	\$10,806.00	\$6.75	\$24,313.50	\$3.50	\$12,607.00	\$12.00	\$43,224.00
55	SHOULDER MILLINGS PLACEMENT WITH FOG SEAL	LF	3602	\$3.00	\$10,806.00	\$10.00	\$36,020.00	\$7.00	\$25,214.00	\$12.00	\$43,224.00
56	RESHAPING FORESLOPES AND DITCH BOTTOM	SY	15911	\$4.00	\$63,644.00	\$6.00	\$95,466.00	\$4.25	\$67,621.75	\$5.00	\$79,555.00
57	REMOVE LARGE ROCKS (APPROX 12" DIAMETER OR LESS)	SY	65	\$40.00	\$2,600.00	\$43.00	\$2,795.00	\$40.00	\$2,600.00	\$20.00	\$1,300.00
58	SALVAGE AND REINSTALL LANDSCAPING ROCKS	SY	48	\$40.00	\$1,920.00	\$50.00	\$2,400.00	\$100.00	\$4,800.00	\$28.00	\$1,344.00
59	CURB STOP CASTING COVER & LID FOR CURB STOPS IN SIDEWALK	EA	3	\$200.00	\$600.00	\$650.00	\$1,950.00	\$350.00	\$1,050.00	\$325.00	\$975.00
60	REMOVE FIBER ROLLS	LF	200	\$2.00	\$400.00	\$7.50	\$1,500.00	\$1.50	\$300.00	\$1.90	\$380.00

Base Bid Total:

**\$2,545,952.00**

**\$2,409,475.33**

**\$2,567,108.30**

**\$2,572,634.14**





**TO:** Mayor Tom Ross  
Members of the City Council

**FROM:** Stephen Joersz, PE, PTOE, Traffic Engineer

**DATE:** March 18, 2024

**SUBJECT: 2024 PAVEMENT MARKINGS – AWARD OF BID (4800)**

**I. RECOMMENDED ACTION**

1. Award the bid for the 2024 Pavement Markings Project to the low bidder, West River Striping Company, in the amount of \$225,728.75.
2. Authorize the Mayor to sign the Agreement for the project.

**II. DEPARTMENT CONTACT PERSONS**

Lance Meyer, City Engineer (701) 857-4100  
Stephen Joersz, Traffic Engineer (701) 857-4100

**III. DESCRIPTION**

A. Background

This is the annual maintenance project to stripe pavement markings throughout the City's streets. This project maintains all pavement markings on all of the City of Minot roads.

On Tuesday, March 12, 2024 at 11:00 a.m., bids were opened for the 2024 Pavement Marking Project. Below is a copy of the bid tabulation:

2024 Pavement Markings Bid Tabulation City Project #4800	
Engineers Estimate: \$236,379.51	
Bidder	Total Bid
West River Striping Company	\$ 234,243.90

The lowest bid was received by West River Striping Company with the bid amount of \$234,243.90; which is approximately 0.9% below the Engineer's Estimate. The Traffic Department has a 2024 Pavement Marking line item budget of \$230,000.00. The 2024 Pavement Marking project is a unit-based payment project; staff understands that quantities will need to be adjusted so that the total payment is less than the overall Pavement Marking line item budget.

B. Proposed Project

Work for this project will take place during the summer month with substantial completion on September 13, 2024.

- C. Consultant Selection  
N/A

**IV. IMPACT:**

- A. Strategic Impact:  
N/A
- B. Service/Delivery Impact:  
N/A
- C. Fiscal Impact:  
This project will be paid for with Traffic Department budgeted funds.

<u>Project Costs</u>	
Engineer's Estimate	\$ 236,379.51
Contractor's Low Bid	\$ 234,243.90
 <u>Budgeted Funds</u>	
Pavement Markings	\$ 230,000.00

**V. CITY COUNCIL ASPIRATIONS**

This item achieves the aspirations of Safe and Welcoming.

**VI. ALTERNATIVES**

Alt 1. City Council could choose not to award the pavement marking bid. This will result in staff reevaluating the 2024 Pavement Marking project and rebidding at a later date.

**VII. TIME CONSTRAINTS**

Approving the contract in a timely manner will allow the contractor time to purchase and procure the pavement marking materials. Similar to other industries, lead times and availability of product can be an issue.

**VIII. LIST OF ATTACHMENTS**

- A. 2024 Pavement Marking Cover Sheet
- B. Bid Tabs

CITY OF MINOT  
WARD COUNTY, ND  
2024 PAVEMENT MARKINGS  
PROJECT NO. 4800



STATE OF NORTH DAKOTA

CITY HALL

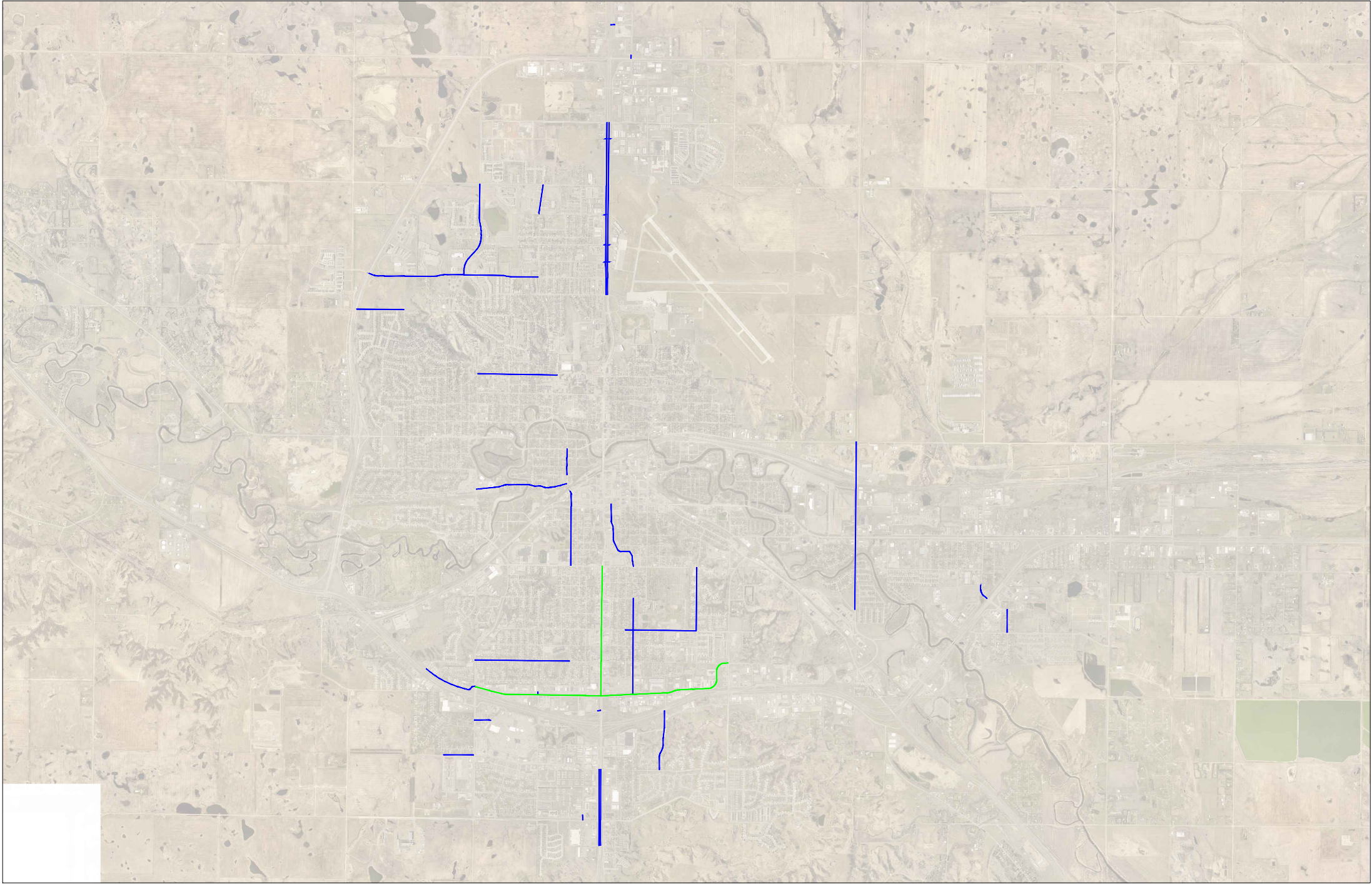
10 3RD AVE SW, MINOT, ND 58701

PUBLIC WORKS & ENGINEERING

1025 31ST ST SE, MINOT, ND 58701

SHEET INDEX

SHEET	DRAWING
1	COVER SHEET & INDEX
2	LONG LINE LAYOUT
3	LONG LINE BREAKDOWN
4	ARROW BREAKDOWN
5	STOP BARS & CROSSWALKS
6	STOP BAR BREAKDOWN
7	CROSSWALK BREAKDOWN
8	QUANTITY SUMMARY



I hereby certify that the attached plans were prepared by me or under my direct supervision and that I am a duly registered professional engineer under the laws of the State of ND.

*Lance Meyer*  
LANCE MEYER, P.E. CITY ENGINEER  
PE-7121 2/16/2024  
LIC. NO. DATE



2024 PAVEMENT MARKINGS  
COVER SHEET & INDEX

Surveyed by	SJ
Drawn by	AR
Designed by	AR
Date	02/16/2024
Project No.	4800

SHEET  
1 OF 8



2024 Pavement Markings (#8954573)

Owner: Minot ND, City of

Solicitor: Minot ND, City of

03/12/2024 11:00 AM CDT

Section Title	Line Item	Item Description	UofM	Quantity	Engineer Estimate	Extension	West River Striping Co.	Extension
					Unit Price		Unit Price	
SECTION A						<b>\$236,379.51</b>		<b>\$234,243.90</b>
	1	MOBILIZATION	LSUM	1	\$29,296.25	\$29,296.25	\$20,500.00	\$20,500.00
	2	4IN PAINTED PVMT MK LINE - YELLOW	LF	33727	\$0.37	\$12,478.99	\$0.49	\$16,526.23
	3	4IN PAINTED PVMT MK LINE - WHITE	LF	12847	\$0.37	\$4,753.39	\$0.49	\$6,295.03
	4	8IN PAINTED PVMT MK LINE - WHITE	LF	5932	\$1.07	\$6,347.24	\$0.98	\$5,813.36
	5	4IN EPOXY PVMT MK LINE - YELLOW	LF	71028	\$0.81	\$57,532.68	\$0.86	\$61,084.08
	6	4IN EPOXY PVMT MK LINE - WHITE	LF	51130	\$0.81	\$41,415.30	\$0.86	\$43,971.80
	7	6IN EPOXY PVMT MK LINE - WHITE	LF	1800	\$4.24	\$7,632.00	\$5.33	\$9,594.00
	8	8IN EPOXY PVMT MK LINE - WHITE	LF	25818	\$1.99	\$51,377.82	\$1.68	\$43,374.24
	9	24IN EPOXY PVMT MK LINE - WHITE	LF	990	\$14.52	\$14,374.80	\$15.74	\$15,582.60
	10	EPOXY PVMT MK MESSAGE ARROWS	SF	592	\$18.87	\$11,171.04	\$19.43	\$11,502.56
Base Bid Total:						<b>\$236,379.51</b>		<b>\$234,243.90</b>



**TO:** Mayor  
Members of the City Council

**FROM:** Emily Huettl, PE – Assistant City Engineer

**DATE:** March 18, 2024

**SUBJECT: 2024 CONCRETE PAVEMENT REHAB – AWARD OF BID (4807)**

**I. RECOMMENDED ACTION**

- A. Award the bid for 2024 Concrete Pavement Rehab to the low bidder, Keller Paving & Landscaping, Inc., in the amount of \$327,905.75.
- B. Authorize the Mayor to sign the Agreement.

**II. DEPARTMENT CONTACT PERSONS**

Lance Meyer, City Engineer	(701) 857-4100
Emily Huettl, Assistant City Engineer	(701) 857-4100

**III. DESCRIPTION**

A. Background

This is the annual maintenance project to repair and rehabilitate concrete pavement streets that are showing moderate to severe pavement distresses. Joint re-sealing, crack sealing, concrete replacement, mud-jacking and other treatments to distressed streets will improve riding and safety and increase pavement life.

B. Proposed Project

This project includes 1 proposed area of work. It is focused on the 37<sup>th</sup> Ave SW area, from 16<sup>th</sup> St SW to 30<sup>th</sup> St SW.

C. Consultant Selection

On Tuesday, March 12, 2024, at 11:00 AM, bids were opened for this project. Below and attached is a bid tabulation summary that shows the bid comparisons as they relate to the Engineer's estimate:

BID TABULATIONS 2024 Concrete Pavement Rehab City Project #4807 Tuesday, 3/12/2024, 11:00 AM	
Engineer's Estimate: \$ 361,419.00	
Bidder	Total Bid
Keller Paving & Landscaping, Inc.	\$327,905.75
Ti-Zack Concrete, LLC	\$428,495.98
Strata Corporation	\$477,990.00

It is recommended that the project be awarded to Keller Paving & Landscaping, Inc. with their low bid of \$327,905.75 which is 9.3% below the Engineer's estimate.



#### IV. IMPACT:

A. Strategic Impact:

Overall maintenance of City streets and sidewalks ranked first overall in importance to residents in the 2023 City of Minot Community Survey.

B. Service/Delivery Impact:

This project will provide needed maintenance and rehabilitation of existing infrastructure throughout the City to extend the life of the roadways. The work area of this project is a heavily traveled roadway and serves the main route to Trinity Hospital. Traffic control and detour routes will be in place to manage traffic during construction.

C. Fiscal Impact:

Project Costs

Contractor's Bid Price	\$ 327,905.75
<u>Other Project Expenses</u>	<u>\$ 10,000.00</u>
Total	\$ 337,905.75

Project Funding

Street Maintenance	\$ 8,000,000.00
Account No. 10038000-44508	

#### V. CITY COUNCIL ASPIRATIONS

*Resilient and Prepared* – This project moves us in the right direction as we address our roadway maintenance backlog.

*Excellent and Connected* – This project directly addresses what residents have said they wanted to see, better roadway maintenance.

#### VI. ALTERNATIVES

A. The Council could choose not to award the project, which would further delay needed roadway maintenance.

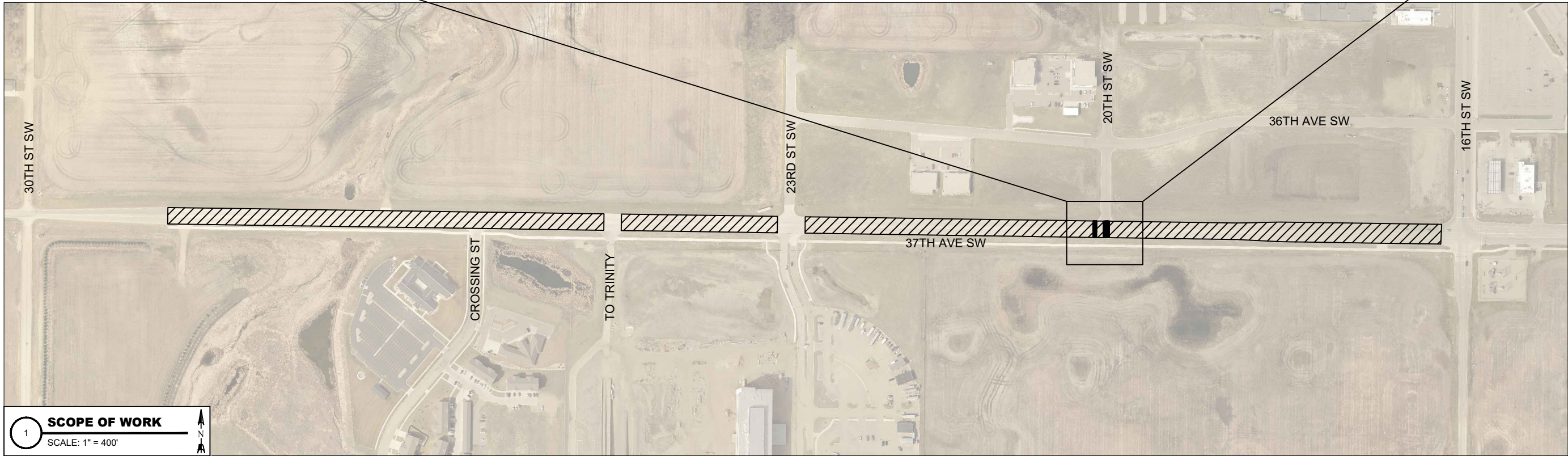
#### VII. TIME CONSTRAINTS

Approving the contract in a timely manner will allow the paperwork to be in place so construction may begin as soon as possible.

#### VIII. LIST OF ATTACHMENTS

- A. Scope of Work
- B. Bid Tab

P:\PROJECTS\4807 - 2024 Concrete Pavement Rehab\Design\Plans\4807 - 2024 Concrete Pavement Rehab.dwg-SOW & PLAN-2/16/2024 9:48 AM-(jesse.hoffart)



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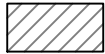
SCOPE OF WORK

SCALE: 1" = 400'

N

↑

LEGEND



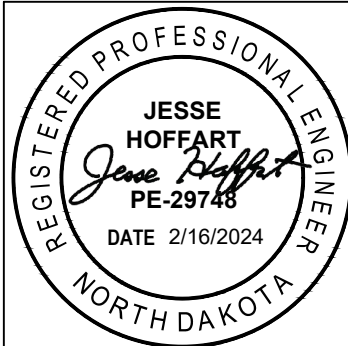
CONCRETE JOINT REPAIR & CRACK SEAL



PARTIAL-DEPTH AND FULL-DEPTH CONCRETE PAVEMENT REPAIR

NOTES:

- WORK ZONES SHOWN ABOVE HAVE NOT BEEN CLOSELY SURVEYED. REPAIR AREAS MAY BE LARGER OR SMALLER THAN EXPECTED DUE TO DAMAGE OVER THE WINTER SEASON. FINAL REPAIR QUANTITIES AND AREAS WILL BE SURVEYED IN THE SPRING FOR MORE ACCURATE AMOUNTS OF WORK.
- ADDITIONAL FULL-DEPTH AND PARTIAL-DEPTH CONCRETE PAVEMENT REPAIR AREAS MAY BE MARKED IN THE FIELD THAT ARE NOT SHOWN ABOVE. THE REPAIR AREAS MAY ALSO BE SMALLER IN THE FIELD THAN SHOWN ABOVE.



Surveyed by	MK & JH	SHEET
Drawn by	JH	
Designed by	MK & JH	
Date	02/16/2024	
Project No.	4807	4 OF 16

2024 CONCRETE PAVEMENT REHAB  
SCOPE OF WORK & PLAN

No.	Revision	Date	By
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-

2024 Concrete Pavement Rehab (#8948835)  
Owner: Minot ND, City of  
Solicitor: Minot ND, City of  
03/12/2024 11:00 AM CDT

Section Title	Line Item	Item Description	UofM	Quantity	Engineer Estimate		Keller Paving & Landscaping, Inc.		Ti-Zack Concrete, LLC		Strata Corporation	
					Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
SECTION A						<b>\$361,419.00</b>		<b>\$327,905.75</b>		<b>\$428,495.98</b>		<b>\$477,990.00</b>
	1	CONTRACT BOND	LS	1	\$10,000.00	\$10,000.00	\$2,500.00	\$2,500.00	\$1,100.00	\$1,100.00	\$3,200.00	\$3,200.00
	2	MOBILIZATION	LS	1	\$30,000.00	\$30,000.00	\$44,700.00	\$44,700.00	\$39,561.98	\$39,561.98	\$48,000.00	\$48,000.00
	3	TRAFFIC CONTROL-TYPE 2	LS	1	\$20,000.00	\$20,000.00	\$18,600.00	\$18,600.00	\$16,500.00	\$16,500.00	\$28,000.00	\$28,000.00
	4	REMOVE CONCRETE PAVEMENT	SY	300	\$50.00	\$15,000.00	\$40.00	\$12,000.00	\$39.90	\$11,970.00	\$63.00	\$18,900.00
	5	REMOVE CURB AND GUTTER	LF	200	\$45.00	\$9,000.00	\$45.00	\$9,000.00	\$19.95	\$3,990.00	\$12.00	\$2,400.00
	6	ADJUST CASTING (ALL TYPES AND SIZES)	EA	2	\$850.00	\$1,700.00	\$1,250.00	\$2,500.00	\$1,197.00	\$2,394.00	\$2,500.00	\$5,000.00
	7	REPLACE VALVE BOX TOP SECTION	EA	1	\$1,350.00	\$1,350.00	\$900.00	\$900.00	\$999.25	\$999.25	\$1,300.00	\$1,300.00
	8	ADJUST VALVE BOX	EA	3	\$275.00	\$825.00	\$550.00	\$1,650.00	\$532.00	\$1,596.00	\$800.00	\$2,400.00
	9	COMMON EXCAVATION	CY	50	\$82.00	\$4,100.00	\$35.00	\$1,750.00	\$159.60	\$7,980.00	\$55.00	\$2,750.00
	10	TOPSOIL-IMPORTED	CY	7	\$125.00	\$875.00	\$100.00	\$700.00	\$152.50	\$1,067.50	\$140.00	\$980.00
	11	AGGREGATE BASE, CLASS 5	TON	100	\$66.00	\$6,600.00	\$37.00	\$3,700.00	\$118.30	\$11,830.00	\$100.00	\$10,000.00
	12	HMA FULL DEPTH PATCH	SF	1000	\$8.30	\$8,300.00	\$9.00	\$9,000.00	\$13.20	\$13,200.00	\$24.00	\$24,000.00
	13	10 IN NON-REINFORCED CONCRETE PAVEMENT - CL ASE	SY	300	\$190.00	\$57,000.00	\$201.80	\$60,540.00	\$231.42	\$69,426.00	\$215.00	\$64,500.00
	14	CONCRETE CURB AND GUTTER	LF	200	\$100.00	\$20,000.00	\$85.00	\$17,000.00	\$65.72	\$13,144.00	\$95.00	\$19,000.00
	15	EPOXY PVMT MK 4 IN LINE-GROOVED (YELLOW)	LF	300	\$2.00	\$600.00	\$8.22	\$2,466.00	\$7.54	\$2,262.00	\$8.00	\$2,400.00
	16	SEEDING (HYDRO-MULCH)	SY	40	\$45.00	\$1,800.00	\$32.50	\$1,300.00	\$22.00	\$880.00	\$15.00	\$600.00
	17	THERMOPLASTIC PVMT MK MESSAGE GROOVED	SF	64	\$46.00	\$2,944.00	\$174.00	\$11,136.00	\$159.50	\$10,208.00	\$90.00	\$5,760.00
	18	SPALL REPAIR-PARTIAL DEPTH	SF	300	\$55.00	\$16,500.00	\$80.00	\$24,000.00	\$97.52	\$29,256.00	\$140.00	\$42,000.00
	19	LONGITUDINAL PCC JOINT RESEAL (HOT POUR)	LF	27717	\$3.00	\$83,151.00	\$2.05	\$56,819.85	\$3.75	\$103,938.75	\$4.00	\$110,868.00
	20	TRANSVERSE PCC JOINT RESEAL (HOT POUR)	LF	18558	\$3.00	\$55,674.00	\$2.05	\$38,043.90	\$3.75	\$69,592.50	\$4.00	\$74,232.00
	21	RANDOM PCC CRACK SEALING (SILICONE) - 5/8" WIDTH	LF	2000	\$8.00	\$16,000.00	\$4.80	\$9,600.00	\$8.80	\$17,600.00	\$5.85	\$11,700.00
Base Bid Total:						<b>\$361,419.00</b>		<b>\$327,905.75</b>		<b>\$428,495.98</b>		<b>\$477,990.00</b>



**TO:** Mayor  
Members of the City Council

**FROM:** Emily Huettl, PE – Assistant City Engineer

**DATE:** March 18, 2024

**SUBJECT:** 2024 STREET PATCHING (4805)

**I. RECOMMENDED ACTION**

- A. Award the bid for the 2024 Street Patching to the low bidder, Keller Paving & Landscaping, Inc., in the amount of \$557,660.00.
- B. Authorize the Mayor to sign the Agreement.

**II. DEPARTMENT CONTACT PERSONS**

Lance Meyer, City Engineer	(701) 857-4100
Emily Huettl, Assistant City Engineer	(701) 857-4100

**III. DESCRIPTION**

A. Background

This is the annual maintenance project to patch and repair pavement surfaces that have failed or are showing distress. Repairing failed and distressed pavement prolongs the lifespan of the roadway.

The \$8 million Street Maintenance budget will be split between this street patching project, the street seal project, the concrete pavement rehab project, the street improvement project, and the microsurfacing project.

B. Proposed Project

This year's project covers various areas of town, as shown on the attached plan sheet. This project will be used as a precursor to the 2025 Street Seal project, patching the areas planned to be sealed next year. This project will also address spot pavement distresses of road segments below PCI 55, in conjunction with the Public Works patching crew.

C. Consultant Selection

On Tuesday, March 12, 2024 at 11:00 am, bids were opened for the 2024 Street Patching project. Below and attached is a bid tabulation summary that shows the bid comparisons as they relate to the engineer's estimate:

<p style="text-align: center;">BID TABULATIONS  2024 Street Patching  City Project #4805  Tuesday, 3/12/2024, 11:00 AM</p>	
Engineer's Estimate: \$ 623,575.00	
Bidder	Total Bid
Keller Paving & Landscaping, Inc.	\$557,660.00
Bechtold Paving, Inc.	\$722,700.00

It is recommended that the project be awarded to Minot Paving Co. LLC with their low bid of \$557,660.00 which is 10.6% below the Engineer's Estimate.

#### IV. IMPACT:

A. Strategic Impact:

Overall maintenance of City streets and sidewalks ranked first overall in importance to residents in the 2023 City of Minot Community Survey.

B. Service/Delivery Impact:

This project will provide needed maintenance and rehabilitation of existing infrastructure throughout the City to extend the life of the roadways. Some units include heavily traveled roadways. Traffic control and detour routes will be in place to manage traffic during construction.

C. Fiscal Impact:

Project Costs

Contractor's Bid Price	\$ 557,660.00
<u>Other Project Expenses</u>	<u>\$ 5,000.00</u>
Total	\$ 562,660.00

Project Funding

Street Maintenance	\$ 8,000,000.00
Account No. 10038000-44508	

#### V. CITY COUNCIL ASPIRATIONS

*Resilient and Prepared* – This project moves us in the right direction as we address our roadway maintenance backlog.

*Excellent and Connected* – This project directly addresses what residents have said they wanted to see, better roadway maintenance.

#### VI. ALTERNATIVES

- A. The Council could choose not to award the project, which would further delay needed roadway maintenance.

#### VII. TIME CONSTRAINTS

Approving the contract in a timely manner will allow the paperwork to be in place so construction may begin as soon as the weather allows.

#### VIII. LIST OF ATTACHMENTS

- A. Scope of Work
- B. Bid Tab



**City of Minot**  
Engineering Department

SHEET  
1 OF 19



Lance Meyer PE-7121 2/15/2024  
LANCE MEYER P.E. CITY ENGINEER LIC. NO. DATE



2024 Street Patching (#8946739)  
Owner: Minot ND, City of  
Solicitor: Minot ND, City of  
03/12/2024 11:00 AM CDT

Section Title	Line Item	Item Description	UofM	Quantity	Engineer Estimate		Keller Paving & Landscaping, Inc.		Bechtold Paving Inc.	
					Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
SECTION A						<b>\$623,575.00</b>		<b>\$557,660.00</b>		<b>\$722,700.00</b>
	1	CONTRACT BOND	LS	1	\$5,000.00	\$5,000.00	\$3,500.00	\$3,500.00	\$3,650.00	\$3,650.00
	2	MOBILIZATION	LS	1	\$15,000.00	\$15,000.00	\$25,000.00	\$25,000.00	\$10,000.00	\$10,000.00
	3	TRAFFIC CONTROL-TYPE 1	LS	1	\$5,000.00	\$5,000.00	\$17,500.00	\$17,500.00	\$20,000.00	\$20,000.00
	4	REMOVE CURB AND GUTTER	LF	300	\$35.00	\$10,500.00	\$45.00	\$13,500.00	\$42.00	\$12,600.00
	5	REMOVE DRIVEWAY PAVEMENT	SY	20	\$40.00	\$800.00	\$65.00	\$1,300.00	\$120.00	\$2,400.00
	6	ADJUST CASTING	EA	5	\$1,100.00	\$5,500.00	\$1,250.00	\$6,250.00	\$1,000.00	\$5,000.00
	7	REPLACE CASTING	EA	2	\$1,900.00	\$3,800.00	\$1,550.00	\$3,100.00	\$1,900.00	\$3,800.00
	8	ADJUST VALVE BOX	EA	15	\$385.00	\$5,775.00	\$350.00	\$5,250.00	\$350.00	\$5,250.00
	9	REPLACE VALVE BOX TOP SECTION	EA	10	\$2,200.00	\$22,000.00	\$1,600.00	\$16,000.00	\$1,500.00	\$15,000.00
	10	COMMON EXCAVATION	CY	200	\$110.00	\$22,000.00	\$35.00	\$7,000.00	\$100.00	\$20,000.00
	11	TOPSOIL-IMPORTED	CY	20	\$85.00	\$1,700.00	\$50.00	\$1,000.00	\$110.00	\$2,200.00
	12	12 INCH SUBGRADE PREPARATION	SY	50	\$4.00	\$200.00	\$10.00	\$500.00	\$20.00	\$1,000.00
	13	AGGREGATE BASE CLASS 5	TON	480	\$45.00	\$21,600.00	\$37.00	\$17,760.00	\$75.00	\$36,000.00
	14	BITUMINOUS LEVELING	TON	50	\$340.00	\$17,000.00	\$206.00	\$10,300.00	\$350.00	\$17,500.00
	15	HMA FULL DEPTH PATCH	SF	60000	\$7.50	\$450,000.00	\$6.75	\$405,000.00	\$8.95	\$537,000.00
	16	CURB AND GUTTER	LF	300	\$110.00	\$33,000.00	\$67.00	\$20,100.00	\$83.00	\$24,900.00
	17	DRIVEWAY PAVEMENT	SY	20	\$200.00	\$4,000.00	\$130.00	\$2,600.00	\$225.00	\$4,500.00
	18	SEEDING (HYDRO-MULCH)	SY	50	\$14.00	\$700.00	\$40.00	\$2,000.00	\$38.00	\$1,900.00
Base Bid Total:						<b>\$623,575.00</b>		<b>\$557,660.00</b>		<b>\$722,700.00</b>





**TO:** Mayor  
Members of the City Council

**FROM:** Emily Huettl, PE – Assistant City Engineer

**DATE:** March 18, 2024

**SUBJECT: 2024 SIDEWALK, CURB & GUTTER – AWARD OF BID (4806)**

**I. RECOMMENDED ACTION**

- A. Award the bid for 2024 Sidewalk, Curb & Gutter to the low bidder, Ti-Zack Concrete, LLC in the amount of \$247,288.78.
- B. Authorize the Mayor to sign the Agreement.

**II. DEPARTMENT CONTACT PERSONS**

Lance Meyer, City Engineer	(701) 857-4100
Emily Huettl, Assistant City Engineer	(701) 857-4100

**III. DESCRIPTION**

A. Background

This annual maintenance project consists of the constructing, rebuilding, or repairing of sidewalk and curb & gutter in the right of way. In addition to the City's regular maintenance portion of the project, this also includes any assessment roll work.

B. Proposed Project

This year's project is broken into three units of work as described below and shown in the attached plan sheet.

Unit	Location
Unit 1	8th St NW – West of Minot State University
Unit 2	Timberwood Ave SE
Unit 3	City Wide – General Repair
Unit 4	City Wide – Sidewalk Special Assessments

Unit 1 and 2 are identified areas that require detailed design for sidewalk ramps and water drainage. Unit 3 will include any additional areas identified by the Engineering Department, as the budget allows. Unit 4 will include all assessment roll work of constructing, rebuilding, or repairing sidewalks that are deemed a safety issue. An estimate of quantities was created for bidding purposes.

Unit 3 will include the work involved with making the sidewalk around the north entrance to City Hall fully PROWAG and ADA compliant.

C. Consultant Selection

On Tuesday, March 12, 2024 at 11:00 AM, bids were opened for this project. Below and attached is a bid tabulation summary that shows the bid comparisons as they relate to the engineer's estimate:

<p style="text-align: center;"> <b>BID TABULATIONS</b>            2024 Sidewalk, Curb &amp; Gutter            City Project #4806            Tuesday, 3/12/2024, 11:00 AM         </p>	
Engineer's Estimate: \$ 328,311.30	
<b>Bidder</b>	<b>Total Bid</b>
Ti-Zack Concrete, LLC	\$247,288.78
Keller Paving & Landscaping, Inc.	\$282,653.30

It is recommended that the project be awarded to Ti-Zack Concrete, LLC with their low bid of \$247,288.78 which is 24.7% below the Engineer's Estimate.

#### **IV. IMPACT:**

A. Strategic Impact:

Overall maintenance of City streets and sidewalks ranked first overall in importance to residents in the 2023 City of Minot Community Survey.

B. Service/Delivery Impact:

This project will provide needed maintenance of existing infrastructure throughout the City.

C. Fiscal Impact:

Briefly state how this project is being funded. Add written context in the paragraph so the dollar amounts, sources of funding, and expenses are made clear and document whether the project was included in the approved budget.

Project Costs

Contractor's Bid Price (Units 1-2)	\$ 44,678.19
Contractor's Bid Price (Unit 3)	\$ 133,689.61 (Streets Alleys & Road Mtce)
Contractor's Bid Price (Unit 4)	\$ 42,746.47 (for bidding purposes only)

Project Funding

Sidewalk, Curb & Gutter (Units 1-2) Account No. 10038000-44506	\$ 350,000.00
Streets Alleys & Road Mtce (Unit 3) Account No. 14061000-44504	\$ 133,689.61
Special Assessments (Unit 4)	Assessed to property owners as necessary

#### **V. CITY COUNCIL ASPIRATIONS**

*Excellent and Connected* – This project directly addresses what residents have said they wanted to see, better sidewalk maintenance.

#### **VI. ALTERNATIVES**

- A. The Council could choose not to award the project, which would further delay needed roadway maintenance.

**VII. TIME CONSTRAINTS**

Approving the contract in a timely manner will allow the paperwork to be in place so construction may begin as soon as the weather allows.

**VIII. LIST OF ATTACHMENTS**

- A. Scope of Work
- B. Bid Tab



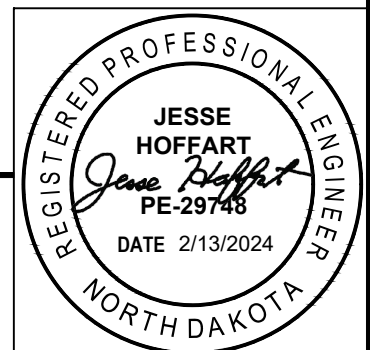
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1025 31ST ST SE, MINOT, ND 58701

1	COVER SHEET & INDEX
2	QUANTITIES
3	NOTES
4	TRAFFIC CONTROL NOTES
5 - 13	DETAILS
14	UNIT 1
15	UNIT 2
16	UNIT 3



PE-7121    2/15/2024  
LIC. NO.    DATE



2024 SIDEWALK, CURB & GUTTER  
COVER SHEET & INDEX

No.	Revision	Date	By
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-

SHEET		Surveyed by	TF & JH
1 OF 16		Drawn by	AR
		Designed by	TF & JH
		Date	02/13/2024
		Project No.	4806



2024 Sidewalk, Curb & Gutter (#8946756)  
Owner: Minot ND, City of  
Solicitor: Minot ND, City of  
03/12/2024 11:00 AM CDT

Section Title	Item Code	Item Description	UofM	Quantity	Engineer Estimate		Ti-Zack Concrete, LLC		Keller Paving & Landscaping, Inc.	
					Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
SECTION A						\$328,311.30		\$247,288.78		\$282,653.30
	1	CONTRACT BOND	LS	1	\$20,000.00	\$20,000.00	\$1,100.00	\$1,100.00	\$1,500.00	\$1,500.00
	2	MOBILIZATION	LS	1	\$50,000.00	\$50,000.00	\$25,074.50	\$25,074.50	\$50,000.00	\$50,000.00
	3	TRAFFIC CONTROL-TYPE 1 (UNIT 1)	LS	1	\$5,000.00	\$5,000.00	\$1,650.00	\$1,650.00	\$5,200.00	\$5,200.00
	4	TRAFFIC CONTROL-TYPE 1 (UNIT 2)	LS	1	\$5,000.00	\$5,000.00	\$2,750.00	\$2,750.00	\$5,200.00	\$5,200.00
	5	TRAFFIC CONTROL-TYPE 1 (UNIT 3)	LS	1	\$5,000.00	\$5,000.00	\$2,750.00	\$2,750.00	\$9,500.00	\$9,500.00
	6	TRAFFIC CONTROL-TYPE 1 (UNIT 4)	LS	1	\$5,000.00	\$5,000.00	\$4,950.00	\$4,950.00	\$7,000.00	\$7,000.00
	7	REMOVE SIDEWALK	SY	147.4	\$31.00	\$4,569.40	\$43.31	\$6,383.89	\$25.00	\$3,685.00
	8	REMOVE CURB AND GUTTER	LF	954	\$40.00	\$38,160.00	\$16.73	\$15,960.42	\$24.00	\$22,896.00
	9	REMOVE DRIVEWAY PAVEMENT	SY	24.9	\$31.00	\$771.90	\$64.10	\$1,596.09	\$95.00	\$2,365.50
	10	REMOVE VALLEY GUTTER	SY	42	\$40.00	\$1,680.00	\$57.00	\$2,394.00	\$80.00	\$3,360.00
	11	ADJUST CASTING (ALL TYPES AND SIZES)	EA	4	\$1,500.00	\$6,000.00	\$997.50	\$3,990.00	\$725.00	\$2,900.00
	12	REPLACE CASTING (SINGLE CATCH BASIN)	EA	2	\$2,500.00	\$5,000.00	\$1,312.50	\$2,625.00	\$1,250.00	\$2,500.00
	13	ADJUST VALVE BOX	EA	2	\$800.00	\$1,600.00	\$399.00	\$798.00	\$550.00	\$1,100.00
	14	COMMON EXCAVATION	CY	33	\$65.00	\$2,145.00	\$120.91	\$3,990.03	\$60.00	\$1,980.00
	15	TOPSOIL-IMPORTED	CY	52	\$65.00	\$3,380.00	\$115.23	\$5,991.96	\$75.00	\$3,900.00
	16	AGGREGATE BASE, CLASS 5	TON	171	\$60.00	\$10,260.00	\$85.17	\$14,564.07	\$50.00	\$8,550.00
	17	HMA FULL DEPTH PATCH	SF	1908	\$8.75	\$16,695.00	\$13.20	\$25,185.60	\$7.00	\$13,356.00
	18	CONCRETE CURB AND GUTTER	LF	954	\$85.00	\$81,090.00	\$65.72	\$62,696.88	\$72.50	\$69,165.00
	19	VALLEY GUTTER (CL ASE)	SY	42	\$180.00	\$7,560.00	\$209.35	\$8,792.70	\$144.00	\$6,048.00
	20	CONCRETE SIDEWALK (6 IN)	SY	36	\$155.00	\$5,580.00	\$177.48	\$6,389.28	\$156.00	\$5,616.00
	21	CONCRETE SIDEWALK (4 IN)	SY	250.4	\$140.00	\$35,056.00	\$129.89	\$32,524.46	\$149.00	\$37,309.60
	22	DRIVEWAY PAVEMENT	SY	24.9	\$180.00	\$4,482.00	\$177.48	\$4,419.25	\$216.00	\$5,378.40
	23	PIGMENTED IMPRINTED CONCRETE	SY	24.4	\$250.00	\$6,100.00	\$194.76	\$4,752.14	\$252.00	\$6,148.80
	24	DETECTABLE WARNING PANEL	SF	30	\$80.00	\$2,400.00	\$47.25	\$1,417.50	\$60.00	\$1,800.00
	25	SEEDING (HYDRO-MULCH)	SY	413	\$14.00	\$5,782.00	\$11.00	\$4,543.00	\$15.00	\$6,195.00
Base Bid Total:						\$328,311.30		\$247,288.78		\$282,653.30



**TO:** Mayor  
Members of the City Council

**FROM:** Emily Huettl, PE – Assistant City Engineer

**DATE:** March 18, 2024

**SUBJECT:** 2024 STREET IMPROVEMENT MILL AND OVERLAY – AWARD OF BID  
(4802.2)

**I. RECOMMENDED ACTION**

1. Award the bid for 2024 Street Improvement – Mill and Overlay to the low bidder, Bechtold Paving, Inc. in the amount of \$2,520,844.25.
2. Authorize the Mayor to sign the Agreement.

**II. DEPARTMENT CONTACT PERSONS**

Lance Meyer, City Engineer (701) 857-4100  
Emily Huettl, Assistant City Engineer (701) 857-4100

**III. DESCRIPTION**

A. Background

This is the annual maintenance project to repair and rehabilitate streets that are showing moderate to severe pavement distresses. Mill and overlays, leveling, cement stabilized base, asphalt reconstruction and other treatments to distressed streets will improve ride and safety, and increase the pavement life. This project's scope is focused just on roads that will be receiving a mill and overlay treatment.

The \$8 million Street Maintenance budget will be split between this street improvement project, the street seal project, the concrete pavement rehab project, the street patching project, and the microsurfacing project.

B. Proposed Project

This project includes 2 proposed areas of work. The areas are summarized below and shown on the attached plan sheet.

Area	Description/Location
1	Mill & Overlay 3 <sup>rd</sup> St NE, from 6 <sup>th</sup> Ave NE to Minot Airport
2	Mill & Overlay Burdick Expwy, from 16 <sup>th</sup> St SW to 4 <sup>th</sup> St SW

C. Consultant Selection

On Wednesday, March 13, 2024, at 11:00 AM, bids were opened for this project. Below and attached is a bid tabulation summary that shows the bid comparisons as they relate to the engineer's estimate:

<p style="text-align: center;">BID TABULATIONS 2024 Street Improvement Mill and Overlay City Project #4802.2 Wednesday, 3/13/2024, 11:00 AM</p>	
Engineer's Estimate: \$ 2,710,532.10	
Bidder	Total Bid
Keller Paving & Landscaping, Inc.	\$3,099,827.50
Bechtold Paving, Inc.	\$2,520,844.25

It is recommended that the project be awarded to Bechtold Paving, Inc. with their low bid of \$2,520,844.25 which is 7.0% below the Engineer's Estimate.

#### IV. IMPACT:

##### A. Strategic Impact:

Overall maintenance of City streets and sidewalks ranked first overall in importance to residents in the 2023 City of Minot Community Survey.

##### B. Service/Delivery Impact:

This project will provide needed maintenance and rehabilitation of existing infrastructure throughout the City to extend the life of the roadways. Some units include heavily traveled roadways. Traffic control and detour routes will be in place to manage traffic during construction.

##### C. Fiscal Impact:

###### Project Costs

Contractor's Bid Price	\$ 2,520,844.25
<u>Other Project Expenses</u>	<u>\$ 20,000.00</u>
Total	\$ 2,540,844.25

###### Project Funding

Street Maintenance	\$ 8,000,000.00
Account No. 10038000-44508	

#### V. CITY COUNCIL ASPIRATIONS

*Resilient and Prepared* – This project moves us in the right direction as we address our roadway maintenance backlog.

*Excellent and Connected* – This project directly addresses what residents have said they wanted to see, better roadway maintenance.

#### VI. ALTERNATIVES

- A. The Council could choose not to award the project, which would further delay needed roadway maintenance.

#### VII. TIME CONSTRAINTS

Approving the contract in a timely manner will allow the paperwork to be in place so construction may begin as soon as weather allows.

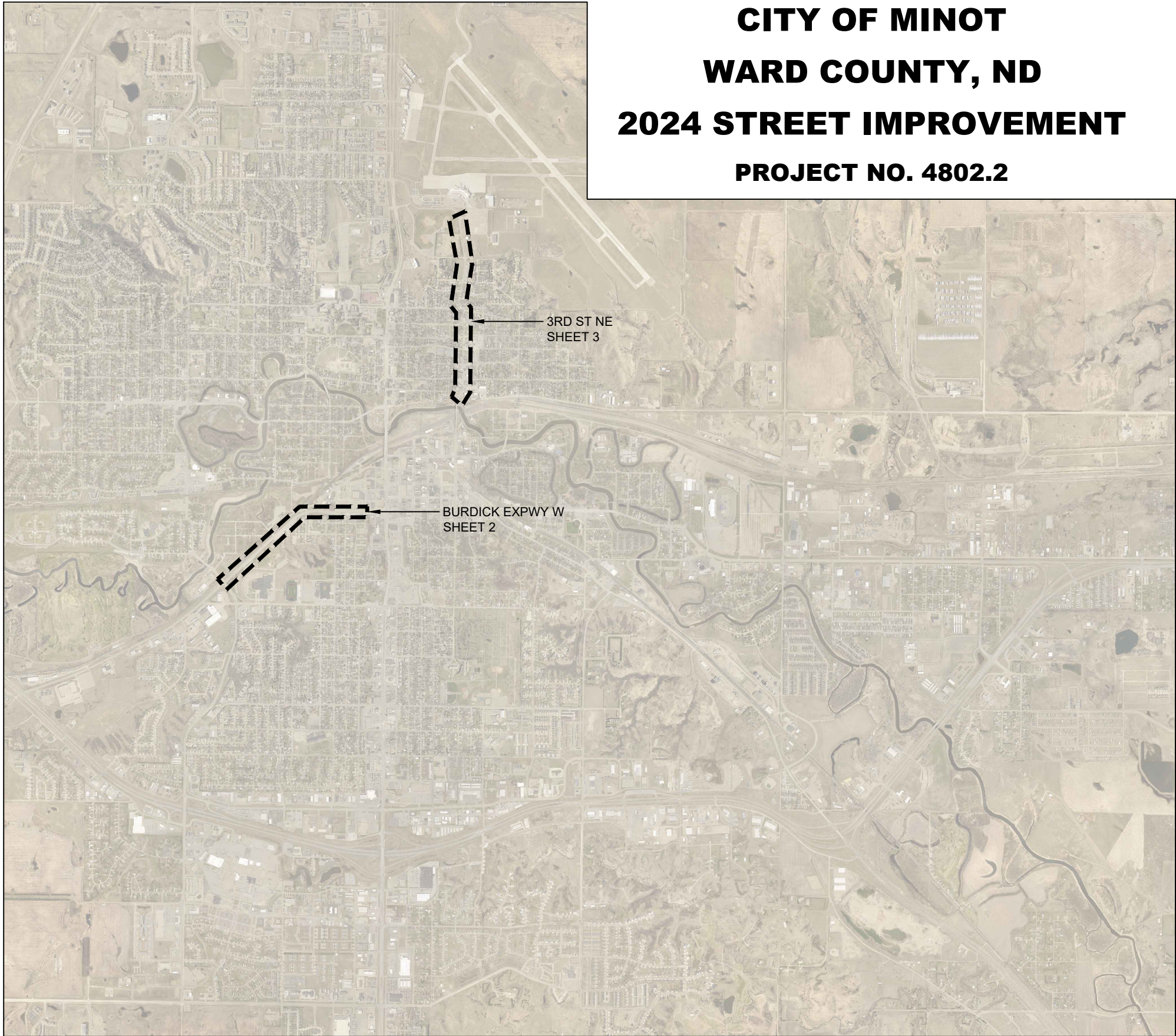
#### VIII. LIST OF ATTACHMENTS

- A. Scope of Work
- B. Bid Tab

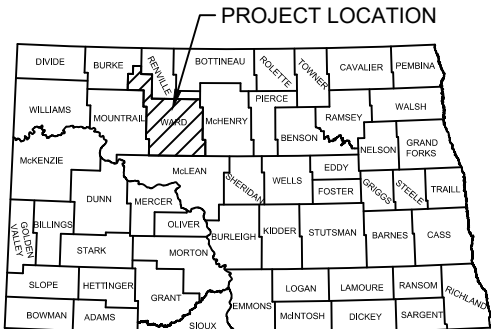




P:\PROJECTS\4802 - 2024 Street Improvement\Contract 2 - Mill & Overlay Areas\Design\Plans\4802 - 2024 Street Improvement.dwg-Cover-2/16/2024 10:31 AM (jesse.hoffart)



CITY OF MINOT  
WARD COUNTY, ND  
2024 STREET IMPROVEMENT  
PROJECT NO. 4802.2



STATE OF NORTH DAKOTA

CITY HALL

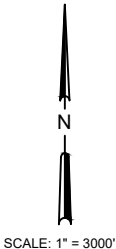
10 3RD AVE SW, MINOT, ND 58701

PUBLIC WORKS & ENGINEERING

1025 31ST ST SE, MINOT, ND 58701

SHEET INDEX

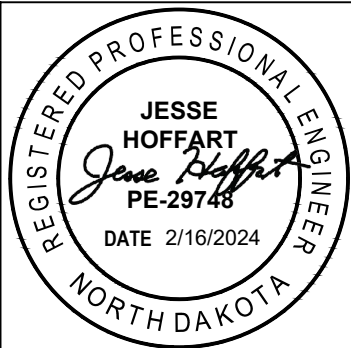
SHEET	DRAWING
1	COVER SHEET & INDEX
2-3	SCOPE OF WORK
4	TEMP CONSTRUCTION EASEMENTS
5-6	NOTES
7	QUANTITIES
8	BASIS OF ESTIMATE
9-21	DETAILS
22-23	TYPICAL SECTIONS
24-37	REMOVALS
38-42	STORM WATER PLAN
43-54	PLAN SHEETS
55-80	ENLARGED PLANS
81-89	SEEDING PLANS
90-123	TRAFFIC CONTROL (NOTES, DETAILS, & PLAN)
124-129	PERMANENT PAVEMENT MARKINGS



I hereby certify that the attached plans were prepared by me or under my direct supervision and that I am a duly registered professional engineer under the laws of the State of ND.

*Lance Meyer*  
LANCE MEYER, P.E. CITY ENGINEER

PE-7121 2/16/2024  
LIC. NO. DATE



Surveyed by	MK
Drawn by	AR
Designed by	MK
Date	02/16/2024
Project No.	4802.2

2024 STREET IMPROVEMENT  
COVER SHEET & INDEX

SHEET  
1 OF 129

-	-	-	-	By
-	-	-	-	Date
-	-	-	-	No.
-	-	-	-	Revision



2024 Street Improvement - Mill and Overlay (#8946735)

Owner: Minot ND, City of

Solicitor: Minot ND, City of

03/13/2024 11:00 AM CDT

Section Title	Item Code	Item Description	UoM	Quantity	Engineer Estimate		Bechtold Paving Inc.		Keller Paving & Landscaping, Inc.	
					Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
SECTION A						<b>\$2,710,532.10</b>		<b>\$2,520,844.25</b>		<b>\$3,099,827.50</b>
	1	CONTRACT BOND	LS	1	\$8,000.00	\$8,000.00	\$13,200.00	\$13,200.00	\$14,000.00	\$14,000.00
	2	MOBILIZATION - BURDICK EXPRESSWAY	LS	1	\$15,000.00	\$15,000.00	\$66,000.00	\$66,000.00	\$115,000.00	\$115,000.00
	3	MOBILIZATION - 3RD ST NE	LS	1	\$15,000.00	\$15,000.00	\$61,000.00	\$61,000.00	\$115,000.00	\$115,000.00
	4	TRAFFIC CONTROL TYPE 1 - BURDICK EXPRESSWAY	LS	1	\$25,000.00	\$25,000.00	\$46,500.00	\$46,500.00	\$86,030.00	\$86,030.00
	5	TRAFFIC CONTROL TYPE 1 - 3RD ST NE	LS	1	\$50,000.00	\$50,000.00	\$100,000.00	\$100,000.00	\$115,000.00	\$115,000.00
	6	STORM DRAIN INLET PROTECTION	EA	54	\$200.00	\$10,800.00	\$200.00	\$10,800.00	\$200.00	\$10,800.00
	7	REMOVE SIDEWALK	SY	1049	\$25.00	\$26,225.00	\$28.00	\$29,372.00	\$40.00	\$41,960.00
	8	REMOVE DRIVEWAY PAVEMENT	SY	89	\$30.00	\$2,670.00	\$50.00	\$4,450.00	\$25.00	\$2,225.00
	9	REMOVE CURB & GUTTER	LF	3548	\$18.00	\$63,864.00	\$15.75	\$55,881.00	\$25.00	\$88,700.00
	10	REMOVE VALLEY GUTTER	SY	15	\$30.00	\$450.00	\$59.00	\$885.00	\$25.00	\$375.00
	11	REMOVE BITUMINOUS PAVEMENT	SY	190	\$15.00	\$2,850.00	\$46.00	\$8,740.00	\$25.00	\$4,750.00
	12	MILL PAVEMENT	SY	50695	\$5.00	\$253,475.00	\$3.00	\$152,085.00	\$5.00	\$253,475.00
	13	REMOVE PIPE - STORM SEWER (ALL SIZES AND TYPES)	LF	247	\$100.00	\$24,700.00	\$44.00	\$10,868.00	\$141.00	\$34,827.00
	14	REMOVE CATCH BASIN STRUCTURE AND CASTING	EA	13	\$2,500.00	\$32,500.00	\$1,650.00	\$21,450.00	\$1,750.00	\$22,750.00
	15	SALVAGE AND REINSTALL SIGN	EA	20	\$250.00	\$5,000.00	\$195.00	\$3,900.00	\$500.00	\$10,000.00
	16	SALVAGE AND REINSTALL MAILBOX	EA	2	\$400.00	\$800.00	\$350.00	\$700.00	\$500.00	\$1,000.00
	17	ADJUST CASTING	EA	46	\$900.00	\$41,400.00	\$800.00	\$36,800.00	\$1,350.00	\$62,100.00
	18	ADJUST GATE VALVE BOX	EA	31	\$300.00	\$9,300.00	\$350.00	\$10,850.00	\$550.00	\$17,050.00
	19	REPLACE CASTING - MANHOLE	EA	7	\$1,500.00	\$10,500.00	\$1,700.00	\$11,900.00	\$1,700.00	\$11,900.00
	20	REPLACE CASTING - SINGLE CATCH BASIN (R-3067-L OR R-3065-L)	EA	14	\$1,500.00	\$21,000.00	\$1,200.00	\$16,800.00	\$1,825.00	\$25,550.00
	21	REPLACE CASTING - DOUBLE CATCH BASIN (R-3295-2-L)	EA	1	\$2,500.00	\$2,500.00	\$3,160.00	\$3,160.00	\$2,900.00	\$2,900.00
	22	REPLACE CASTING - TRIPLE CATCH BASIN (R-3295-3-L)	EA	2	\$3,500.00	\$7,000.00	\$3,995.00	\$7,990.00	\$3,900.00	\$7,800.00
	23	REPLACE VALVE BOX TOP SECTION	EA	9	\$600.00	\$5,400.00	\$1,000.00	\$9,000.00	\$1,050.00	\$9,450.00
	24	COMMON EXCAVATION	CY	949	\$40.00	\$37,960.00	\$60.00	\$56,940.00	\$25.00	\$23,725.00
	25	TOPSOIL - IMPORT	CY	95	\$50.00	\$4,750.00	\$90.00	\$8,550.00	\$50.00	\$4,750.00
	26	MUCK EXCAVATION (FOR UNSUITABLE BACKFILL)	CY	130	\$40.00	\$5,200.00	\$28.00	\$3,640.00	\$51.00	\$6,630.00
	27	IMPORTED BACKFILL	CY	130	\$40.00	\$5,200.00	\$28.00	\$3,640.00	\$30.00	\$3,900.00
	28	STORM SEWER PIPE - 12" RCP, CL III	LF	82	\$200.00	\$16,400.00	\$160.00	\$13,120.00	\$217.00	\$17,794.00
	29	STORM SEWER PIPE - 21" RCP, CL III	LF	6	\$400.00	\$2,400.00	\$275.00	\$1,650.00	\$291.00	\$1,746.00
	30	STORM SEWER PIPE - 24" RCP, CL III	LF	6	\$400.00	\$2,400.00	\$325.00	\$1,950.00	\$325.00	\$1,950.00
	31	STORM SEWER PIPE - 10" TO 12" PVC	LF	76	\$150.00	\$11,400.00	\$150.00	\$11,400.00	\$216.00	\$16,416.00
	32	CATCH BASIN 2'X3'	EA	9	\$7,000.00	\$63,000.00	\$7,000.00	\$63,000.00	\$7,935.00	\$71,415.00
	33	CATCH BASIN MANHOLE (48" DIAMETER)	EA	3	\$9,000.00	\$27,000.00	\$7,000.00	\$21,000.00	\$9,246.00	\$27,738.00
	34	CONNECT TO EXISTING STRUCTURE	EA	3	\$2,000.00	\$6,000.00	\$7,000.00	\$21,000.00	\$8,200.00	\$24,600.00
	35	CONNECT TO EXISTING PIPE	EA	12	\$1,000.00	\$12,000.00	\$440.00	\$5,280.00	\$875.00	\$10,500.00
	36	RCP PIPE REPAIR BAND (FOR 60" RCP PIPE)	EA	1	\$2,000.00	\$2,000.00	\$6,500.00	\$6,500.00	\$8,250.00	\$8,250.00
	37	CB FALSE WALL	EA	3	\$1,000.00	\$3,000.00	\$2,200.00	\$6,600.00	\$3,500.00	\$10,500.00
	38	AGGREGATE BASE - CLASS 5	TN	1779	\$45.00	\$80,055.00	\$65.00	\$115,635.00	\$47.00	\$83,613.00
	39	BITUMINOUS TACK COAT	GAL	3549	\$6.00	\$21,294.00	\$6.00	\$21,294.00	\$6.00	\$21,294.00
	40	HOT MIX ASPHALT (HMA) FAA 43 PG 58S-28	TN	6127	\$125.00	\$765,875.00	\$104.00	\$637,208.00	\$120.00	\$735,240.00
	41	BITUMINOUS LEVELING	TN	150	\$300.00	\$45,000.00	\$275.00	\$41,250.00	\$250.00	\$37,500.00
	42	HMA FULL DEPTH PATCH	SF	27387	\$7.50	\$205,402.50	\$6.00	\$164,322.00	\$7.50	\$205,402.50
	43	2" MILL AND FILL PATCH - HMA FAA 43 PG 58S-28	SF	12000	\$13.00	\$156,000.00	\$8.00	\$96,000.00	\$9.00	\$108,000.00
	44	CONCRETE CURB & GUTTER	LF	3560	\$70.00	\$249,200.00	\$73.00	\$259,880.00	\$75.00	\$267,000.00
	45	VALLEY GUTTER - CLASS ASE	SY	112	\$150.00	\$16,800.00	\$189.00	\$21,168.00	\$180.00	\$20,160.00
	46	DRIVEWAY PAVEMENT	SY	180	\$150.00	\$27,000.00	\$160.00	\$28,800.00	\$160.00	\$28,800.00

47	4" CONCRETE SIDEWALK	SY	715	\$120.00	\$85,800.00	\$106.00	\$75,790.00	\$130.00	\$92,950.00
48	6" CONCRETE SIDEWALK	SY	206	\$140.00	\$28,840.00	\$160.00	\$32,960.00	\$140.00	\$28,840.00
49	PIGMENTED IMPRINTED CONCRETE	SY	275	\$300.00	\$82,500.00	\$187.00	\$51,425.00	\$200.00	\$55,000.00
50	DETECTABLE WARNING PANEL - CAST IRON	SF	412	\$110.00	\$45,320.00	\$69.00	\$28,428.00	\$110.00	\$45,320.00
51	PAINT PVMT MK 4" LINE - WHITE	LF	2810	\$0.80	\$2,248.00	\$0.25	\$702.50	\$2.00	\$5,620.00
52	PAINT PVMT MK 4" LINE - YELLOW	LF	16947	\$0.80	\$13,557.60	\$0.25	\$4,236.75	\$1.00	\$16,947.00
53	PAINT PVMT MK 6" LINE - WHITE	LF	1208	\$3.00	\$3,624.00	\$2.20	\$2,657.60	\$3.50	\$4,228.00
54	PAINT PVMT MK 8" LINE - WHITE	LF	1274	\$4.00	\$5,096.00	\$0.60	\$764.40	\$1.50	\$1,911.00
55	PAINT PVMT MK 24" LINE - WHITE	LF	426	\$8.00	\$3,408.00	\$8.00	\$3,408.00	\$18.00	\$7,668.00
56	PAINT PVMT MK - MESSAGE	SF	852	\$14.00	\$11,928.00	\$5.00	\$4,260.00	\$14.00	\$11,928.00
57	SEEDING (SUNNY MIX) WITH HYDRAULIC MULCH	SY	1128	\$10.00	\$11,280.00	\$5.00	\$5,640.00	\$10.00	\$11,280.00
58	CURB 6 IN	LF	156	\$100.00	\$15,600.00	\$61.50	\$9,594.00	\$95.00	\$14,820.00
59	REMOVE CURB	LF	20	\$40.00	\$800.00	\$44.00	\$880.00	\$50.00	\$1,000.00
60	SALVAGE AND REINSTALL LANDSCAPING BOULDERS	SY	14	\$40.00	\$560.00	\$350.00	\$4,900.00	\$250.00	\$3,500.00
61	CURB STOP CASTING COVER & LID FOR CURB STOPS IN SIDEWALK	EA	3	\$200.00	\$600.00	\$580.00	\$1,740.00	\$1,750.00	\$5,250.00
62	CUT MANHOLE CONCRETE CONE DOWN 6" TO 12"	EA	1	\$600.00	\$600.00	\$1,300.00	\$1,300.00	\$4,000.00	\$4,000.00
				<b>\$2,710,532.10</b>		<b>\$2,520,844.25</b>		<b>\$3,099,827.50</b>	

Base Bid Total:



**TO:** Mayor Tom Ross  
Members of the City Council

**FROM:** Brian Billingsley, AICP, Community & Economic Development Director

**DATE:** February 24, 2024

**SUBJECT:** **APPROVE APPLICATION FI-12 (FAÇADE IMPROVEMENT PROGRAM) FOR KAMP COLLECTIVE, LLC LOCATED AT 11 CENTRAL AVENUE EAST IN AN AMOUNT NOT TO EXCEED \$130,554.00**

## **I. RECOMMENDED ACTION**

1. The Renaissance Zone Review Board recommends approval of a forgivable loan application FI-12 for Kamp Collective, LLC for a property located at 11 Central Avenue East in an amount not to exceed \$130,554.00, subject to conditions of the program.

## **II. DEPARTMENT CONTACT PERSONS**

Brian Billingsley, Community & Economic Development Director – 857-4147

## **III. DESCRIPTION**

### **1. Background**

The applicants, Aaron Bofenkamp and Miranda Nichols, submitted an application for a Façade Improvement Program forgivable loan on February 8, 2024. The recommended amount is determined from the lowest of three bids obtained by the applicant. The property is on a corner lot and qualifies for a second facade.

The lowest bid for this project was submitted by Fargo Glass for \$174,073.00. Design work is also eligible for reimbursement and was done for \$12,000.00, demolition of inappropriate materials will cost \$13,157.00. The total cost for this project is \$174,073.00. The City will cover 75% of the total cost (\$130,554.00) and the applicant will be responsible for the remaining \$43,518.00, plus an overages.

### **2. Proposed Project**

The renovations will restore the façade of the building to true-to-period condition by removing the awning, installing same size windows, installing new storefront glass, and an ADA push button door opener.

#### **IV. IMPACT:**

1. Strategic Impact:

The City of Minot approved a program committed to façade improvements in downtown Minot's Central Business District on July 6, 2021. This façade renovations will improve the appearance and viability of downtown as a place for retail businesses and cultural institutions to thrive and as a place making effort as a unique, regional attraction in north central North Dakota.

2. Service/Delivery Impact:

The construction will be permitted and inspected by city departments. The program activity will be monitored by the economic development administrator. Sidewalk encroachments are regulated by the Engineering Department.

3. Fiscal Impact:

This program utilizes sales tax funds already budgeted for this purpose. These projects are expected to increase downtown property values and revenues over time.

#### **V. ALTERNATIVES**

1. The City Council can send the project back for review by the Renaissance Zone Review Board.
2. The City Council can reject the application if it decides the application sent to them does not significantly adhere to the program guidelines adopted by the city council.

#### **VI. TIME CONSTRAINTS**

None.

#### **VII. CITY COUNCIL ASPIRATIONS**

This proposal fulfills the following City Council aspirations:

1. Dynamic and Prosperous – Improving the appearances of building facades downtown will help to increase business redevelopment and occupancy.
2. Excellent and Connected – Improving the fabric of the downtown neighborhood, making it more livable and user friendly while increasing usage and local commerce.

#### **VIII. LIST OF ATTACHMENTS**

1. Application FI-12 and supporting materials such as renderings, bids, property information, photos of property, etc.
2. Contract

## **FAÇADE IMPROVEMENT PROGRAM LOAN AGREEMENT**

This Agreement (hereinafter “Agreement”) is executed and made effective as of March 19, 2024 (hereinafter “Effective Date”), and is by and between the City of Minot, a North Dakota municipality (hereinafter “City”) and Kamp Collective, LLC (hereinafter “Property Owner”). City and Property Owner are jointly referred to herein as the Parties. This Agreement concerns façade improvements made to the following property:

NAME OF BUSINESS/DESCRIPTION OF PROPERTY: Kamp Collective, LLC

ADDRESS OF PROPERTY TO BE IMPROVED: 11 Central Avenue E

PARCEL ID: MI24.238.190.0221

LEGAL DESCRIPTION: Original Minot Addition East 60’ of Lots 21 & 22 Block 19

WHEREAS, the City implemented a Façade Improvement Program (hereinafter “Program”) to provide public funds as an incentive to encourage private investment for exterior true-to-period façade improvements to properties located in the City’s Central Business District;

WHEREAS, Property Owner applied for funding assistance related to a complete façade renovation or replacement;

WHEREAS, City proposes to make financial support available to assist the Property Owner to complete the façade renovation or replacement in accordance with the approved application;

WHEREAS, City’s financial support will consist of a no-interest forgivable loan up to 75% of the total project costs, but in no event more than \$130,554 (APPROVED BY COUNCIL);

WHEREAS Façade Loans are to be reimbursable and used solely for a portion of the project costs.

NOW, THEREFORE, in consideration of the promises of the parties’ and other valuable consideration, the receipt and adequacy of which are acknowledged by each party to the other, City and Property Owner covenant and agree, as follows:

1. Loan Amount. City shall lend Property Owner and Property Owner shall borrow from City the sum of up to \$130,554 (APPROVED BY COUNCIL); in the form of a no-interest, forgivable loan, the terms of which are contained in the promissory note attached hereto as Exhibit A (hereinafter “Façade Loan”). The Façade Loan shall be used solely for reimbursement of costs associated with the Property Owner’s approved complete façade renovation or replacement, more specifically described in the Property Owner’s application for funding (hereinafter “Project”). The Façade Loan will be disbursed to Property Owner, subject to the conditions of the Agreement, and provided the Property Owner has met and fully satisfied the following requirements: (i) this Agreement and the promissory note have been duly-executed by an authorized representative of Property

Owner; (ii) personal guarantees have been duly-executed by each principal of the Property Owner; and (iii) Property Owner has satisfied the Conditions Precedent set forth in Section 2 of this Agreement.

The Façade Loan shall be repaid to City in one installment, without interest, ten years after the City distributes the Façade Loan to Property Owner (hereinafter “Façade Loan Repayment Date,” subject to the provisions of Section 3 of this Agreement.

2. Conditions Precedent to Payment of Façade Loan. The Parties expressly acknowledge and agree that the following listed conditions shall be considered conditions precedent and that all of these conditions must be satisfied in full before the City disburses any Façade Loan funds.
  - a. Project Plan. Property Owner’s application, as approved, is attached and incorporated into this Agreement as Exhibit C. Property Owner agrees to complete the Project in accordance with the approved plans, design drawings, and specifications set forth in Exhibit C and attachments thereto and in accordance with the terms of this Agreement.
  - b. Project Completion. The Project shall be completed on or before April 30, 2025. The City Council, in its reasonable discretion, may allow extensions due to inclement weather or difficulty in obtaining building materials.
  - c. Verification of Project Completion. Within 30 days of completion of the Project, the Property Owner shall notify the City’s Economic Development Administrator and schedule a time for an inspection.
    - i. If the Project is deemed complete and in compliance with Exhibit C, the Economic Development Administrator shall inform the Property Owner of that, in writing.
    - ii. In the event that the Economic Development Administrator identifies inconsistencies in the approved plans and actual work completed, the Economic Development Administrator shall notify the Property Owner, in writing, and provide a timeframe for correction of the required work. All work that is not in conformance with the approved plans, design drawings, and specifications must be remedied by the Property Owner and made to comply with the approved plans, design drawings, and specifications at the Property Owner’s expense. The City will not reimburse the Property Owner for any expense required to correct deficient or improper work.
  - d. Submission of Necessary Documentation. Within 30 days of receiving written verification that the Project is complete and in compliance with Exhibit C, Property Owner shall submit invoices, receipts, bank statements, credit card receipts, or other allowable written proof of Project costs to the Economic Development Administrator. If a contractor is retained to complete the façade improvements, a properly executed and notarized contractor’s statement to the Economic Development Administrator showing the full cost of the work, as well as each separate component amount due to the contractor and each and every subcontractor involved in furnishing labor, materials, or equipment necessary to complete the façade and streetscape improvement related work. In addition, the Property Owner shall submit to the Economic Development Administrator proof

of payment of the contract cost pursuant to the contractor's statement and final lien waivers from all contractors and subcontractors. The Economic Development Administrator and Finance Director shall review the documentation and provide written verification that the costs submitted are eligible for reimbursement.

- e. No Default. The Property Owner shall not be in default under this Agreement or adjudicated in default by a court of competent jurisdiction on any other agreement, obligation, representation, or promise with any other entity doing business in the State of North Dakota.
  - f. In Good Standing. The Property Owner shall be, and remain throughout the term of this Agreement, in good standing under the laws of the State of North Dakota.
  - g. Duly Authorized. The Property Owner shall be duly-authorized to enter into this Agreement and to perform its obligations hereunder.
  - h. Solvent. Property Owner shall be, and remain throughout the term of this Agreement, a solvent corporation capable of fulfilling its obligations hereunder, and shall not be the subject of any "Insolvency Event." For purposes of this Agreement, the term Insolvency Event means (a) Property Owner's (i) failure to generally pay its debts as such debts become due; (ii) admission in writing that it is unable to pay its debts generally; or (iii) general assignment for the benefit of creditors; (b) a proceeding instituted by or against Property Owner (i) seeking to adjudicate it bankrupt or insolvent; (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency, or reorganization or relief of debtors; or (iii) seeking entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property (and in the case of any such proceeding instituted against Property Owner, such proceeding shall remain undismissed for a period of sixty (60) days or any of the actions sought in such proceeding shall occur); or (c) Property Owner takes any action to authorize any of the aforementioned actions.
  - i. No Conflicting Obligations. Neither the execution and delivery of this Agreement, nor Property Owner's performance of its obligations hereunder, shall breach any known obligation, right or interest of a third party, regulatory agency, Board of Directors or other governing body with authority over Property Owner.
3. Repayment and Forgiveness of Façade Loan. Property Owner shall repay the Façade Loan, in full, on or before the Façade Loan Repayment Date. However, Property Owner will be deemed to have made full payment against the balance of the Façade Loan if the described conditions are satisfied on or before the Façade Loan Repayment Date:
- a. Annual Inspections. The Property Owner shall allow the Economic Development Administrator to complete annual inspections of the facade. The Economic Development Administrator will document their annual inspection in writing and provide a copy of the annual inspection to the Property Owner.
  - b. Façade Maintenance. The Property Owner shall maintain their facade in a manner that is consistent with the approved application, approved plans, design drawings and specifications and in accordance with this Agreement and any



applicable laws or regulations. In the event the Property Owner intends to modify the facade for any reason, including for general maintenance, and the modification will produce visible differences in the approved application and design, the modification must be first reviewed and approved, in writing, by the Economic Development Administrator. Such approval shall not be unreasonably withheld if the proposed changes do not substantially alter the original design concept of the improvements as specified in the original plans, design drawings, and specifications approved pursuant to this Agreement.

- c. Graffiti Removal. The Property Owner shall maintain the façade in appearance and agrees to remove any graffiti within forty-eight hours, or if not possible within that timeframe because of weather conditions, as soon as weather conditions reasonably permit.
- d. Insurance. The Property Owner shall secure and keep in force insurance for the replacement value of the structure, proof of which will be provided to the City within twenty-four hours of City's request. The insurance must cover restoration of the façade in compliance with the Program, and such insurance must be secured upon completion of the renovated façade. To the extent required by North Dakota law, Property Owner and their contractor(s) shall carry worker's compensation insurance to cover all workers involved in the project. Property Owner shall also maintain, at their own expense, general liability insurance covering the subject property and the resultant uses thereof. The Property Owner shall provide the City with copies of these Certificates of Insurance and shall provide the City with notice of any cancellation or change in coverage during the term of this Agreement. Any lapse of insurance coverage during the term of this Agreement shall be considered a material breach of this Agreement.
- e. Lighting Requirements. The Property Owner shall light all display windows and signs every day, from dusk until 10:00 P.M.
- f. Signage Requirements. After completion, Property Owner shall display a sign (provided by the City) indicating participation in the City's Façade Improvement Program. The sign shall be displayed on either the exterior or in the front window of the building for a period of thirty (30) days.
- g. Property Occupation. Property Owner agrees to maintain use and occupancy of the first floors of the building or, in the event of a vacancy, actively market the space to attempt to maintain use and occupancy of the first floor of the building.
- h. Successors. This Agreement shall be binding upon the City and Property Owner and its successors. It shall be the responsibility of the Property Owner to inform subsequent property owners of the provisions of this Agreement. In the event the Property Owner sells the real property enrolled in the Façade Improvement Program, he or she shall assign, with prior written approval from the City Council, all of the obligations to the buyer of the real property.
- i. Observe Common Hours. In the event that a Business Improvement District (BID) is formed downtown, retail uses shall conform to hours of operation as set by the district.

4. Default. In the event of default by Property Owner of any of the material terms or conditions of this Agreement, where City has provided written notice of such default to Property Owner and where such default is not cured within 30 days of the written notice, City may, upon ten (10) days' notice to Property Owner, declare the Façade Loan immediately due and payable.
5. Consequences of Default. If Property Owner breaches the terms of this Agreement, Property Owner shall not be entitled to be eligible for a future façade improvement program loan until Property Owner completes the Façade Loan repayment to City. This qualification attaches to Property Owner and to each principal of Property Owner (including other entities owned in whole or in part by a Principal of Property Owner).
6. Payment to Third Parties. The City shall not be a party to nor is it liable for any contractual payments to any contractors, architects, or other third parties. Payments to any contractors, architects, or other parties are the sole responsibility of the Property Owner, and the Property Owner agrees to indemnify, warrant and defend the City from any such claims from third parties for payment.
7. Further Assurances. Property Owner shall, upon request from City, execute and delivery all further instruments and cause to be done all further acts that may be necessary and/or proper to carry out the provisions and purposes of this Agreement.
8. Amendments. This Agreement may be amended at any time by agreement of the Parties evidenced in writing, signed by both Parties.
9. Survival. The terms and conditions of this Agreement shall survive execution of any additional documents contemplated by this Agreement, including (but not limited to) the Promissory Notes, unless the subsequent documents clearly reference this Agreement and contain a statement or statements that the terms and conditions are amended or superseded.
10. Assignment of this Agreement. Property Owner may not, voluntarily or involuntarily, transfer, assign, or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior written consent of City.
11. Authority to Execute Agreement. Each party represents and warrants that this Agreement has been duly authorized, executed, and delivered by it; that the undersigned representatives are duly authorized to sign this Agreement on behalf of the party for whom they are signing and whom they represent; and that this Agreement constitutes a valid and binding obligation, enforceable in accordance with its terms.
12. Notices. All notices, certifications, or communications required by this Agreement shall be given in writing and shall be deemed delivered.

To CITY:

City of Minot City Manager's Office  
c/o Economic Development Administrator  
PO Box 5006  
Minot ND 58702

To PROPERTY OWNERS:

Aaron Bofenkamp and Miranda Nichols  
14 West Central Avenue

13. Complete Agreement. This Agreement, including exhibits hereto, contains all agreements between the Parties. There are no other representations, warranties, agreements, or understandings, oral, written, or implied, among the Parties, except to the extent reference is made thereto in this Agreement.
14. Severability. If a court of competent jurisdiction finds any part of this Agreement to be invalid, the remainder of this Agreement shall not be invalidated. Any part of any section found to be invalid shall not invalidate the remaining part of said section, and the invalid section may be reformed to be valid and enforceable to the extent allowed by law.
15. Signatures. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
16. Captions. The captions and headings in this Agreement are for convenience only and do not limit, define, or describe the scope or intent of any provision of this Agreement.
17. Applicable Law and Jurisdiction. This Agreement shall be governed in all respects, whether as to validity, construction, performance, or otherwise, by the laws of the State of North Dakota. All parties agree the proper forum for the resolution of any dispute or claim pursuant to this Agreement shall be the District Court of Ward County, North Dakota, and irrevocably consent to the jurisdiction of these courts, waiving all defenses of inconvenient forum or otherwise.
18. Indemnification. The Property Owner understands and agrees that the City, and its officers, agents, and employees shall have no responsibility or liability of any failure of inadequacy of performance or defective workmanship or materials in regard to the agreed-upon improvements that this Agreement contemplates. Property Owner shall indemnify, release, and defend and hold the City, its officers, employees, and agents harmless from all claims, losses, liabilities, damages, suits, actions or proceedings by any person including the Property Owner, its employees and agency from personal injury, death, or property damage from any cause whatsoever in whole or in part arising out of this Agreement or the activities contemplated hereunder.
19. Attorneys' Fees. In the event any lawsuit is initiated under this Agreement, and City is the prevailing party, Property Owner shall, except when prohibited by law, pay City's reasonable attorney fees and costs in connection with the lawsuit.
20. Binding Effect. This Agreement shall be binding upon the Parties hereto and upon their respective successors and assigns.
21. Open Records. Property Owner understands that the City must comply with the state's open records laws, and will make all books and records pertaining to the City's façade improvement project available to the City for inspection, review and audit purposes at all reasonable times upon requests for records for the period of this agreement and for three (3) years thereafter.

Dated: \_\_\_\_\_, 20\_\_\_\_.      CITY OF MINOT

By:

\_\_\_\_\_  
Thomas Ross  
Its:    Mayor

STATE OF NORTH DAKOTA    )  
  ) SS.  
COUNTY OF WARD                )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_  
by Mayor Thomas Ross on behalf of the City of Minot.

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

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Dated: \_\_\_\_\_, 20\_\_.

PROPERTY OWNER

By:

\_\_\_\_\_

Its:

\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_.

PROPERTY OWNER

By:

\_\_\_\_\_

Its:

\_\_\_\_\_

STATE OF NORTH DAKOTA     )  
  ) SS.  
COUNTY OF WARD                     )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_

by \_\_\_\_\_ on behalf of Aaron Bofenkamp and  
Miranda Nichols, PROPERTY OWNER(S).

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

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EXHIBIT A: PROMISSORY NOTE

Date: (Date of Disbursement)

FOR VALUE RECEIVED, and in accordance with that certain Façade Improvement Program Loan Agreement by and between the City of Minot, North Dakota (hereinafter "City") and Kamp Collective, LLC (hereinafter "Property Owner") effective the (date of execution of agreement) (the "Façade Loan Agreement"), Property Owner promises to pay to the order of City, at the times and in the manner hereinafter provided, the sum of (NOT TO EXCEED \$00,000 AMOUNT DISBURSED) (Forgivable Loan) with no interest on or before INSERT FAÇADE LOAN REPAYMENT DATE (THE "Façade Loan Repayment Date") as provided by the Façade Loan Agreement, the terms of which are incorporated and made part of this instrument; *provided*, however, in the event that the conditions specified in Section 3 of the Façade Loan Agreement are satisfied, the Loan payment shall be forgiven by City as if the payment due had been paid by Property Owner on its due date.

In the event of default in any payment due under this Note or in the event of default by Property Owner under the Façade Loan Agreement, then at the option of the holder of this Note, all of the amount then owing under this Note shall immediately become due and payable, with five days written notice to Property Owner, which hereby waives demand, presentment, notice of protest and notice of dishonor. The failure to assert this right shall not be deemed a waiver.

Property Owner shall have the right to prepay the obligation set forth in this Note in whole or in part at any time without penalty.

It is further understood that this Note is secured by personal guaranties from Aaron Bofenkamp and Miranda Nichols in substantially the form attached hereto as Exhibit B.

IN WITNESS WHEREOF, Property Owner has caused this Note to be executed effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Kamp Collective, LCC

By: \_\_\_\_\_, Authorized Member

By: \_\_\_\_\_, Authorized Member

STATE OF NORTH DAKOTA            )  
COUNTY OF WARD                    )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 20\_\_ by  
\_\_\_\_\_ on behalf of Kamp Collective, LLC.

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

**EXHIBIT B: PERSONAL GUARANTEE**  
**FAÇADE IMPROVEMENT PROGRAM**  
**PERSONAL GUARANTY**

**Guarantor:** Aaron Bofenkamp and Miranda Nichols

**Borrower:** Kamp Collective, LLC  
c/o Registered Agent  
14 Central Avenue W  
Minot, ND 58701

**Lender:** City of Minot  
c/o Finance Director  
PO Box 5006  
Minot ND 58702

**Note Amount:** [not to exceed \$00,000 amount disbursed]      **Date of Note:** [INSERT DISBURSEMENT DATE]

**CONTINUING GUARANTEE OF PAYMENT AND PERFORMANCE.** For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the Indebtedness of Borrower to Lender, and the performance and discharge of all Borrower's obligations under the Promissory Note (hereinafter "Note"), Façade Improvement Program Loan Agreement (hereinafter "Agreement"), and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note, Agreement, and Related Documents. Under this Guaranty, Guarantor's liability is unlimited and Guarantor's obligations are continuing.

**INDEBTEDNESS.** The word "Indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, reasonable attorneys' fees, arising from any and all debts, liabilities and obligations of every nature or form, now existing or hereafter arising or acquired, that Borrower individually or collectively or interchangeably with others, owes or will owe Lender. "Indebtedness" includes, without limitation, loans, advances, debts, overdraft indebtedness, credit card indebtedness, lease obligations, liabilities and obligations under any interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, other obligations, and liabilities of Borrower, and any present or future judgments against Borrower, future advances, loans or transactions that renew, extend, modify, refinance, consolidate or substitute these debts, liabilities and obligations whether: voluntarily or involuntarily incurred; due or to become due by their terms or acceleration; absolute or contingent; liquidated or unliquidated; determined or undetermined; direct or indirect; primary or secondary in nature or arising from a guaranty or surety; secured or unsecured; joint or several or joint and several; evidenced by a negotiable or non-negotiable instrument or writing; originated by Lender or another or others; barred or unenforceable against Borrower for any reason whatsoever; for any transactions that may be voidable for any reason (such as infancy, insanity, ultra vires or otherwise); and originated then reduced or extinguished and then afterwards increased or reinstated.

If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Guarantor, Lender's rights under all guaranties shall be cumulative. This Guaranty shall not (unless specifically provided below to the contrary) affect or invalidate any such other guaranties. Guarantor's liability will be Guarantor's aggregate liability under the terms of this Guaranty and any such other untermiated guaranties.

**CONTINUING GUARANTY.** THIS IS A "CONTINUING GUARANTY" UNDER WHICH GUARANTOR AGREE TO GUARANTEE THE FULL AND PUNCTUAL PAYMENT, PERFORMANCE AND SATISFACTION OF THE INDEBTEDNESS OF BORROWER TO LENDER, NOW EXISTING OR HEREAFTER ARISING OR ACQUIRED, ON AN OPEN AND CONTINUING BASIS. ACCORDINGLY, ANY PAYMENTS MADE ON THE INDEBTEDNESS WILL NOT DISCHARGE OR DIMINISH GUARANTOR'S OBLIGATIONS AND LIABILITY UNDER THIS GUARANTY FOR ANY REMAINING AND SUCCEEDING INDEBTEDNESS EVEN WHEN ALL OR PART OF THE OUTSTANDING INDEBTEDNESS MAY BE A ZERO BALANCE FROM TIME TO TIME.

**DURATION OF GUARANTY.** This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the Indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elect to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address listed above or such other place as Lender may designate in writing. Written revocation of this Guaranty will apply only to new Indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the term "new Indebtedness" does not include the Indebtedness which at the time of notice of revocation is contingent, unliquidated, undetermined or not due and which later becomes absolute, liquidated, determined or due. For this purpose and without limitation, "new Indebtedness" does not include all or part of the Indebtedness that is: incurred by Borrower prior to revocation; incurred under a commitment that became binding before revocation; any renewals, extensions, substitutions, and modifications of the Indebtedness. This Guaranty shall bind Guarantor's estate as to the Indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of Guarantor's death. Subject to the foregoing, Guarantor's executor or administrator or other legal representative may terminate this Guaranty in the same manner in which Guarantor might have terminated it and with the same effect. Release of any other guarantor or termination of any other guaranty of the Indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty. **It is anticipated that fluctuations may occur in the aggregate amount of the Indebtedness covered by this Guaranty, and Guarantor specifically acknowledge and agree that reductions in the amount of the Indebtedness, even to zero dollars (\$0.00), shall not constitute a termination of this Guaranty. This Guaranty is binding upon Guarantor and Guarantor's heirs, successors and assigns so long as any of the Indebtedness remains unpaid and even though the Indebtedness may from time to time be zero dollars (\$0.00).**

**GUARANTOR'S AUTHORIZATION TO LENDER.** Guarantor authorizes Lender, either before or after any revocation hereof, **without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time:** (A) prior to revocation as set forth above, to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment or other terms of the Indebtedness or any part of the Indebtedness, including increases and decreases of the rate of interest on the Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the Indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to release, substitute, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the Indebtedness; (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the Indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

**GUARANTOR'S REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants to Lender that (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the dates the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation,



administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agree that Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

**GUARANTOR'S WAIVERS.** Except as prohibited by applicable law, Guarantor waives any right to require Lender (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantors; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of (A) any "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the Indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the Indebtedness; (D) any right to claim discharge of the Indebtedness on the basis of unjustified impairment of any collateral for the Indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding Indebtedness which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the Indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the Indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the Indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

**GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS.** Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

**SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR.** Guarantor agrees that the Indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower become insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the Indebtedness. Guarantor does hereby assign to Lender all claims which they may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however,

that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the Indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Guaranty:

**Amendments.** This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**Attorneys' Fees; Expenses.** Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

**Caption Headings.** Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

**Governing Law.** This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of North Dakota without regard to its conflicts of law provisions.

**Choice of Venue.** If there is a lawsuit, Guarantor agrees upon Lender's request to submit to the jurisdiction of the courts of the State of North Dakota, in Ward County.

**Integration.** Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parol evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

**Interpretation.** In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

**Notices.** Any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by

telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. All revocation notices by Guarantor shall be in writing and shall be effective upon delivery to Lender as provided in the section of this Guaranty entitled "DURATION OF GUARANTY." Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Unless otherwise provided by applicable law, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

**No Waiver by Lender.** Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

**Successors and Assigns.** Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors as assigns.

**DEFINITIONS.** The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings attributed to such terms in the Uniform Commercial Code:

**Borrower.** The word "Borrower" means TBD and includes all co-signers and co-makers signing the Note and all their successors and assigns.

**Guarantor.** The word "Guarantor" means everyone signing this Guaranty, including without limitation TBD, and in each case, any signer's successors and assigns.

**Guaranty.** The word "Guaranty" means this guaranty from Guarantor to Lender.

**Indebtedness.** The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

**Lender.** The word "Lender" means City of Minot its successors and assigns.

**Related Documents.** The words "Related Documents" mean all promissory notes, development agreements, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

**EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREE TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED AS OF (INSERT DATE OF EXECUTION).**

**GUARANTOR:**

\_\_\_\_\_  
Aaron Bofenkamp (PRINCIPAL)

\_\_\_\_\_  
Miranda Nichols (PRINCIPAL)

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_ before me personally appeared  
\_\_\_\_\_  
known to be the person who is described in and who executed  
the within instrument, and acknowledgment to me that he executed the same.

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

**EXHIBIT C: APPLICATION AND DESIGN DRAWINGS**

**(Please Attach here)**

# City of Minot

## Economic Development Division

### Application for City of Minot Façade Improvement Program

Office Address: 1025 31<sup>st</sup> St SE

Mailing Address: PO Box 5006

Minot, ND 58702

Email: [jonathan.rosenthal@minotnd.org](mailto:jonathan.rosenthal@minotnd.org)

(701) 420-4524

#### APPLICANT INFORMATION

AARON BOFENKAMP

Building Owner

14 W CENTRAL AVE MINOT

Primary Contact?

Phone

Email

MIRANDA NICHOLS

Applicant (if different)

14 W CENTRAL AVE MINOT

Address

Primary Contact?

Phone

Email

Is the applicant a subsidiary or direct/indirect affiliate of any other organization?

Yes

No

#### GENERAL INFORMATION

11 E CENTAL AVE

Building Address

CBD

Property Zoning

Year building was built and (approximate) dates of any exterior changes?

1926 - UNSURE OF ANY CHANGES THEREAFTER

Is the property currently occupied?

Yes

No

If no, what is the current use of the property?

Please list each occupant of the facility in question, together with a description of the business use, their percentage of occupancy of the facility to be financed, and include a copy of their lease.

INSURANCE	33	6 mo.		
Occupant 1 Business Type	%Occupancy	Lease Term	Current Jobs	Proposed Jobs
THERAPY	25	6 mo.		
Occupant 2 Business Type	%Occupancy	Lease Term	Current Jobs	Proposed Jobs
HEALING	25	6 mo.		
Occupant 3 Business Type	%Occupancy	Lease Term	Current Jobs	Proposed Jobs

#### ADDITIONAL PROPERTY OWNER INFORMATION: list all additional property owners below

Additional Property Owner 1 Address

Phone % Ownership

Additional Property Owner 2 Address

Phone % Ownership

Does any individual person or organization not listed above hold any interest in the property, directly or indirectly? Yes No

#### REQUIRED SUBMISSION MATERIALS

Letter from licensed roofing contractor, architect, or engineer of 10-year roof life (with Photos)

Proof of ownership and legal description

Submit clear 5 X 7 inch photo(s) or digital images by email (preferred) of the entire façade, including separate photos of any details to be repaired, removed, etc.

Submit/attach a copy of Minot Assessors Property Card

Submit copies of any historic photos or blueprints of the property (electronic preferred or 5 X 7 or larger)

Drawings of existing façade, if available. Walk through examination with the staff

Drawings of proposed façade changes. (Conceptual Drawings or Plans of Proposed Work)

CUST# 3883

INV# 17529

# City of Minot

## Economic Development Division

Office Address: 1025 31<sup>st</sup> St SE

Mailing Address: PO Box 5006

Minot, ND 58702

Email: [jonathan.rosenthal@minotnd.org](mailto:jonathan.rosenthal@minotnd.org)

(701) 420-4524

### Application for City of Minot Façade Improvement Program

#### APPLICANT INFORMATION

Building Owner	Address	Primary Contact?
Phone	Email	
Applicant (if different)	Address	Primary Contact?
Phone	Email	
Is the applicant a subsidiary or direct/indirect affiliate of any other organization? Yes No		

#### GENERAL INFORMATION

Building Address	Property Zoning
Year building was built and (approximate) dates of any exterior changes?	
Is the property currently occupied? Yes No	
If no, what is the current use of the property?	
Please list each occupant of the facility in question, together with a description of the business use, their percentage of occupancy of the facility to be financed, and include a copy of their lease.	
LAW	25% 6 mo.
Occupant 1 Business Type	%Occupancy Lease Term Current Jobs Proposed Jobs
LILY FOUNDATION	25% 6 mo
Occupant 2 Business Type	%Occupancy Lease Term Current Jobs Proposed Jobs
PHOTOGRAPHY	50% 6 mo
Occupant 3 Business Type	%Occupancy Lease Term Current Jobs Proposed Jobs
ART	50% 6 mo

#### ADDITIONAL PROPERTY OWNER INFORMATION: list all additional property owners below

Additional Property Owner 1	Address
Phone	% Ownership
Additional Property Owner 2	Address
Phone	% Ownership
Does any individual person or organization not listed above hold any interest in the property, directly or indirectly? Yes No	

#### REQUIRED SUBMISSION MATERIALS

Letter from licensed roofing contractor, architect, or engineer of 10-year roof life (with Photos)

Proof of ownership and legal description

Submit clear 5 X 7 inch photo(s) or digital images by email (preferred) of the entire façade, including separate photos of any details to be repaired, removed, etc.

Submit/attach a copy of Minot Assessors Property Card

Submit copies of any historic photos or blueprints of the property (electronic preferred or 5 X 7 or larger)

Drawings of existing façade, if available. Walk through examination with the staff

Drawings of proposed façade changes. (Conceptual Drawings or Plans of Proposed Work)

**PROVIDE DESCRIPTION OF THE ORIGINAL FAÇADE** (Materials, width and height, windows, year, style, design)

BRICK W/LIMESTONE DETAIL.  
 ALUMINUM WINDOWS - DOUBLE HUNG  
 STEEL AWNING

(Please ask your designer staff for some help if you need any advice)

**PROVIDE DESCRIPTION OF RENOVATED FAÇADE** (Materials, width and height, windows, year, design)

REMOVE AWNING  
 INSTALL SAME SIZE WINDOWS - ALUMINUM W/MUTTONS IN GLASS  
 INSTALL NEW STOREFRONT GLASS + DOORS. DOORS WILL BE 8'.

(Please ask your designer staff for some help if you need any advice) (You may wish to consult an architect or design professional)

**WORK TO BE PERFORMED** (May submit on a separate sheet)

## Estimated Cost

Design work

\$12,000

Removal of inappropriate materials and other demos

\$13,157

Repair or Replacement of display windows with

Repair or Replacement of 2<sup>nd</sup> Floor and above façade windows (please talk to staff about this in advance)

Installation of interior/exterior storm windows

Repair or Replacement of doors with

Cleaning of masonry (NO Sand or abrasive blasting)

Repoint, Tuck Point Masonry

Replacement of Masonry (if necessary)

Repair or replacement of cornices or other decorative elements)

Improvement of **INTERIOR** display windows (must include lighting, consider timer)

Installation/repair of retractable or fixed awnings

Building, planning, and encroachment fees (if required)

Installation of sign lighting

Installation of exterior lighting

Repair of ornamental elements

Other (list or attach)

Contingency for demolition/hidden changes not to exceed 7%

Total Cost 174,073

**AMOUNT AND SOURCE OF OTHER FUNDS INVOLVED IN PROJECT**

Applicant Amount 35,000

Bank Amount 140,000 TOWN AND COUNTRY CO

Equity/Investors Amount —

Other Amount —

Expected City Contribution 130,555



BID INFORMATION ON SEPARATE PAGES

DO NOT OBTAIN OR SUBMIT BID PAGES TO CITY STAFF WITHOUT A FINAL DESIGN APPROVED BY STAFF AND THE RENAISSANCE ZONE REVIEW BOARD

List of three contractors bids for complete bid (Attach bids or written requests for bids)

LOW	1	<u>174,073</u>	<u>FARGO GLASS</u>
MID	2	<u>182,272</u>	<u>MIDWEST DOOR + GLASS</u>
HIGH	3	_____	_____

PUBLIC INFORMATION DISCLOSURE

Written permission from the property owner to apply and perform work (Name) \_\_\_\_\_

Attach written permission to this application (corporate authorization if needed)

I attest that the information that I provide herein is true, complete and accurate and that I am authorized to submit an application as, or on behalf of, the owner. I have read, I understand, and I agree to comply with all requirements of the Façade Improvement Program and the Design Standards.

  
Signed

2/8/24  
Date

The applicant affirms that there are no taxes owed on the property or other properties in the City of Minot, and that there are no outstanding fees, judgments, or liens.

  
Signed

2/8/24  
Date

The undersigned understands and agrees that all information furnished in connection with their application for the Façade Improvement Grant involves the use of public funds and as such may be made public pursuant to the statutes of the United States of America and the State of North Dakota

  
Applicant's Signature

2/8/24  
Date

The undersigned attests that they have read and understood the Façade Program application, guidelines, policies, and all related materials and agrees that facing unknown structural and cosmetic repairs are inherent in the renovation process and that amendments for costs up to the maximum notwithstanding, that the applicant(s) will be responsible to complete work according to all guidelines and for overages that occur above that committed by contract to the project as estimated at the time of approval. Before work can begin, the applicant will schedule an on-site meeting with the general contractor and the Economic Development Administrator or the city's representative.

  
Applicant's Signature

2/8/24  
Date

Review/Approval by Renaissance Zone Review Committee	Yes	No	Date:
On-Site: ALL Floors	Date:		
Design Review	Date:		
On-Site: Upper Story Evaluation	Date:		



# Fargo Glass & Paint Co.

## MINOT BRANCH

GLASS, STORE FRONTS, ALUMINUM ENTRANCES, ALUMINUM WINDOWS, SUSPENDED CEILINGS,  
SUNROOMS, AUTOMATIC DOORS, STEEL DOORS AND ARCHITECTURAL HARDWARE, FOLDING PARTITIONS

P.O. BOX 1287 – PHONE (701) 852-3576 – FAX (701) 852-0209

1811 20<sup>TH</sup> AVE SE

MINOT, NORTH DAKOTA 58701

GENERAL OFFICE:  
FARGO, NORTH DAKOTA

2/2/23

WAREHOUSES:  
MINOT, NORTH DAKOTA  
BISMARCK, NORTH DAKOTA  
SIOUX FALLS, SOUTH DAKOTA

ATTN: Aaron Bofenkamp

All agreements Are Contingent Upon Strikes, Accidents, Delays of Carriers and Other Delays Unavoidable or Beyond Our Control.  
All Orders and Contracts are subject to the approval of our office in Fargo.

We propose to furnish and install the following described material for

Union Annex Façade Improvements building to be erected or  
remodeled at Minot, North Dakota according to plans and  
specifications by Craftwell architect  
For Seventy-Eight Thousand One Hundred & Eighteen DOLLARS, \$78,118.00

### Includes:

08 4113 Aluminum Framed Storefront – Thermal Exterior Storefront Framing with 8' Standard Medium Stile Aluminum Entrances with continuous geared hinges. 48" Pulls with Panic Devices, MS Lock with Thumbturn, LCN 4040 XP Closer, Weatherstripping, Threshold, Sweep. 10" Bottom Rail. Dark Bronze Finish.  
08 8000 Glazing - 1" High Performance Clear Tempered Glazing with Low E.

Add: Aluminum Wood Clad Windows – Awning Style

For Eighty-Two Thousand Seven Hundred & Ninety-Eight DOLLARS, \$82,798.00

22 thus Awning Style Sierra Pacific Aluminum Wood Clad Windows with grids – Sized per plan. Bronze Finish with Natural Pine Interior, with screens.

FURNISHED AND INSTALLED, USE TAX INCLUDED.

DEMO INCLUDED

PREPARATION OF OPENINGS, WOOD BLOCKING AND FLASHING EXCLUDED.

FINAL CLEANING BY OTHERS.

Spring/Summer 2023 Install

Based on Approved Shop Drawings per plans and takeoffs

\*\*\* QUOTE VALID FOR 45 DAYS, SUBJECT TO 5% INCREASE PER QUARTER. \*\*\*

TERMS: 50% of value of quote due at material order. Balance in full within 30 days after completion of our contract. Where a sales tax is levied, said tax will be added to the amount of contract when final invoice is sent.  
Should you accept this estimate yet use your own contract form, it is understood that we will incorporate and make a part thereof a true copy of this estimate and all of its conditions.  
REPLACEMENT of all breakage resulting from causes beyond our control shall be charged as extra.  
All estimates are tendered subject to prompt acceptance and are subject to change without notice.

Respectfully Submitted,

Accepted \_\_\_\_\_ 20\_\_\_\_

FARGO GLASS AND PAINT COMPANY

*Ryan Whitted*

Owner-Contractor-Authorized Agent

Ryan Whitted – ryanw@fargoglass.com

**Mailing Address:**  
PO Box 458  
Minot, ND 58702  
Fax: (701)839-1094

**ND Office:**  
21 2<sup>nd</sup> St NE  
Minot, ND 58703  
Ph: (701)839-5819

**AZ Office:**  
2929 N Power Road  
Mesa, AZ 85215  
Ph: (480)640-2310

**Tax ID:** 45-0460658  
**ND Contractor's License:** 28529 Class A  
**AZCC Entity ID:** 23317392  
**AZ ROC License:** 339135

February 8, 2024

Aaron Bofenkamp  
11 E. Central Ave  
Minot, ND 58701

## **RE: Remove canopy on East Central Ave.**

Thank you very much for allowing us to submit a proposal for this project. We do appreciate the opportunity. The proposal includes all labor, equipment, and supervision necessary to complete the removal of the 60-foot x 9-foot canopy on front of building side of E. Central Ave and demo interior soffit for store front removal.

Please read this proposal carefully to determine whether it agrees with your understanding of the project requirements. All work will be completed according to all applicable State of North Dakota and City of Minot codes and regulations. Hight Construction LLC is an equal-opportunity employer.

Project Documents:  
Addendum - None

### **Scope of work included in this Proposal:**

- All general requirements commonly associated with construction including worksite supervision, office administration, vehicles/transportation/maintenance, construction tools/equipment, fuel, insurances, layout, scaffolding/staging, daily cleanup, one final cleaning, jobsite safety requirements including MSDS documentation/OSHA compliance. A performance/payment bond is not included. Builders Risk Insurance is not included.

### **SCOPE OF WORK:**

- Demo/remove (D/R) red canopy suspended from E. Central Ave side of 11 E. Central Ave.
- D/R two old sign suspension rods on the 2nd and 3<sup>rd</sup> floor.
- D/R interior soffit on backside of store front windows (3 units).
- Furnish/install (F/I) caulking to weather seal the anchors points for canopy.
- F/I caulking to weather seal the upper holes from sign supports.

**Base Bid: Time and material not to exceed \$ 13,157.00 – Valid for 15 Calendar Days**

Included standard insurance package which is:

▪ Employers' liability (per accident)	\$1,000,000
▪ Bodily injury by disease (policy limit)	\$1,000,000
▪ Bodily injury by disease (each employee)	\$1,000,000
▪ Business automobile liability (per accident)	\$1,000,000
▪ Commercial general liability (per occurrence)	\$1,000,000
▪ Commercial general liability (general aggregate)	\$5,000,000
▪ Commercial general liability (products/completed op's)	\$2,000,000
▪ Commercial general liability (personal/advertising injury)	\$1,000,000

### **Change Order Rates:**

(Overhead and profit is included in the hourly rates)

- Project Management, Design services and Estimating hours required for change orders are a direct billable expense to the change order and not part of Original Contract Overhead expense.
- Labor only change orders are not subject to retainage.

Estimator	\$ 75.00/hr.
Superintendent/Lead Carpenter	\$ 69.00/hr.
Carpenter	\$ 60.00/hr.
Laborer	\$ 39.00/hr.

For overtime hours a multiplier rate of 1.34 will be calculated.

### **Equipment**

1. No overhead expenses or contractor fees are charged for equipment.
2. All fuel for the project will be a direct charge to the project.
3. A small tools charge of 4% of labor for change orders will be charged to the project.

### **Materials:**

1. Cost of materials plus 10% markup. All material tickets will be furnished.

### **Subcontractors:**

1. Subcontractor Markup 5%.

Respectfully Submitted,  
Hight Construction LLC.

*Titus Clouse*

Titus Clouse  
Project Manager



7401 County Road 19 South  
Minot, ND 58701  
(701) 818-9336  
midwest.glass.door@gmail.com

# PROPOSAL

DATE: 1/3/2024

BID TO: Aaron Bofenkamp

BID FOR: Union Annex

## AMOUNT

We purpose to furnish and install;

3 exterior storefronts with single doors  
1 exterior door with transom (alley)  
1 exterior storefront (alley)  
3 aluminum windows (alley)  
(38 Desco windows inset to storefront openings)

18 W1 aluminum windows  
4 W2 aluminum windows

We include demo of all openings and awning.

We include labor, exterior caulking, and tax.

Add on for Stanley Automatic Operator \$ 4000 per door

**\$ 182272**

## PAYMENT TERMS

**PAYMENT DUE WITHIN 30 DAYS OF INVOICE DATE.**

**INVOICES NOT PAID WITHIN 30 DAYS ARE SUBJECT TO A 2.5% FEE**

AUTHORIZED SIGNATURE, MIDWEST GLASS & DOOR, INC

## ACCEPTANCE

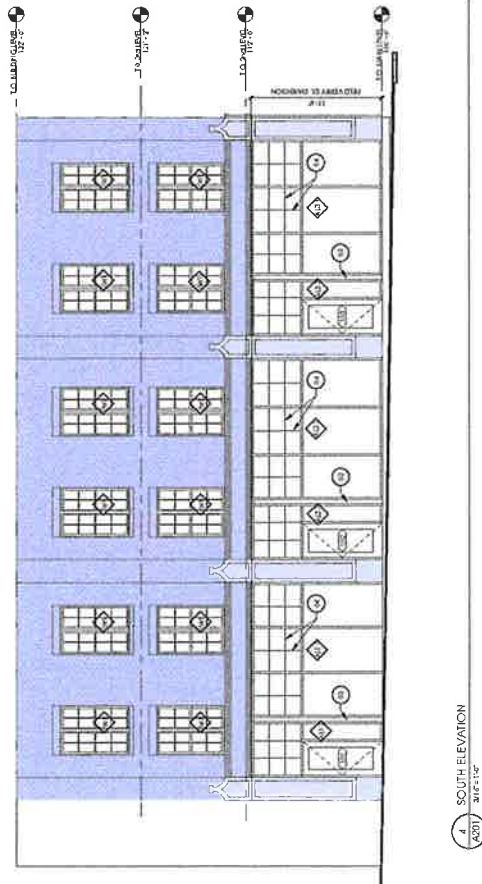
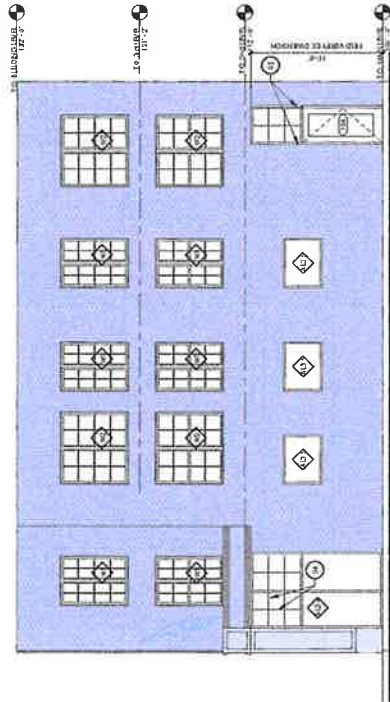
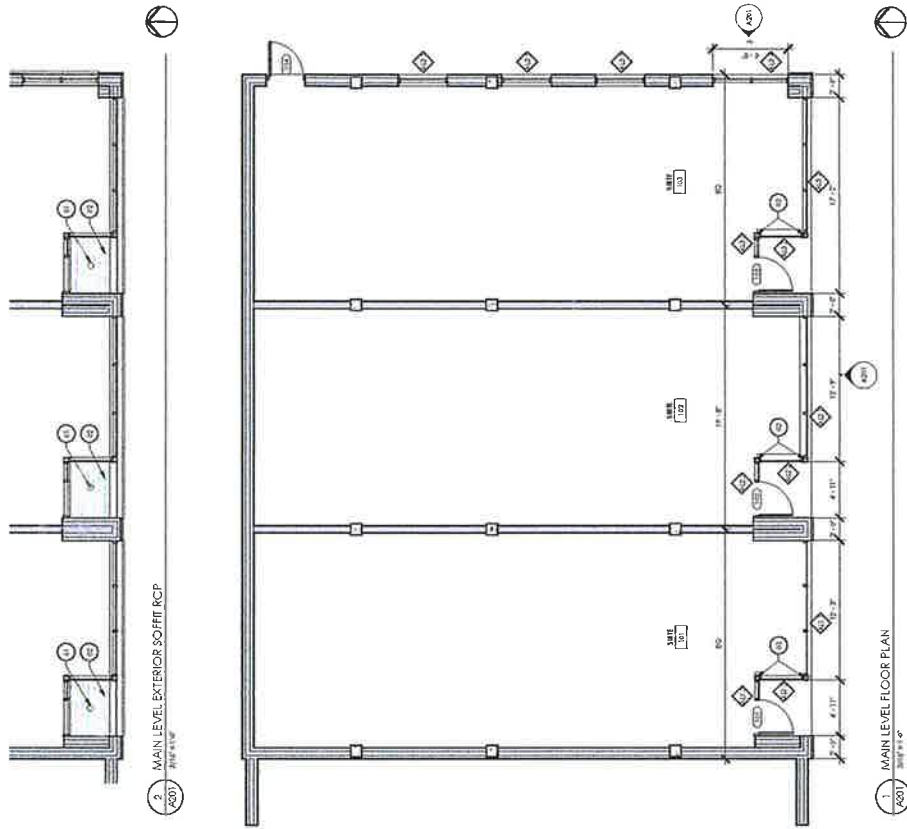
SIGNATURE OF  
ACCEPTANCE

DATE:



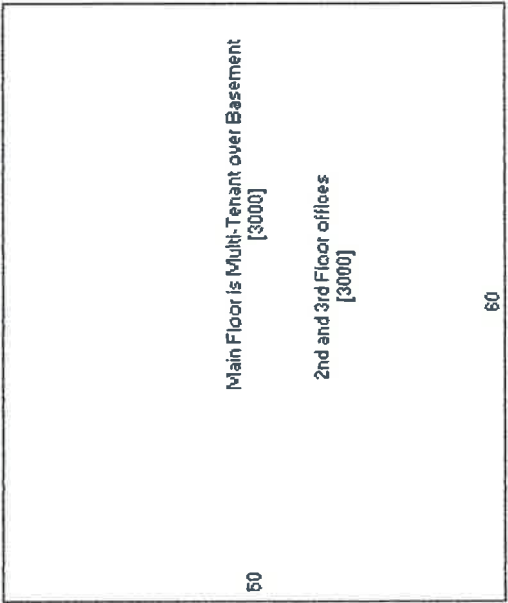
[illegible]

DOOR SCHEDULE												
DOOR NO.	WE	DOOR	TYPE	REMARKS	DATE	BY	REMARKS					
101	W	101	101	101	101	101	101					
102	W	102	102	102	102	102	102					
103	W	103	103	103	103	103	103					
104	W	104	104	104	104	104	104					
105	W	105	105	105	105	105	105					
106	W	106	106	106	106	106	106					
107	W	107	107	107	107	107	107					
108	W	108	108	108	108	108	108					
109	W	109	109	109	109	109	109					
110	W	110	110	110	110	110	110					
111	W	111	111	111	111	111	111					
112	W	112	112	112	112	112	112					
113	W	113	113	113	113	113	113					
114	W	114	114	114	114	114	114					
115	W	115	115	115	115	115	115					
116	W	116	116	116	116	116	116					
117	W	117	117	117	117	117	117					
118	W	118	118	118	118	118	118					
119	W	119	119	119	119	119	119					
120	W	120	120	120	120	120	120					
121	W	121	121	121	121	121	121					
122	W	122	122	122	122	122	122					
123	W	123	123	123	123	123	123					
124	W	124	124	124	124	124	124					
125	W	125	125	125	125	125	125					
126	W	126	126	126	126	126	126					
127	W	127	127	127	127	127	127					
128	W	128	128	128	128	128	128					
129	W	129	129	129	129	129	129					
130	W	130	130	130	130	130	130					
131	W	131	131	131	131	131	131					
132	W	132	132	132	132	132	132					
1												





Prior Year	Comments	Value	Loc	Class	Land Value	Dwelling Value	Improvement Value	M & E Value	Total Value
2014		Appr	Urban	Comm	\$21,000	\$0	\$106,000	\$0	\$127,000



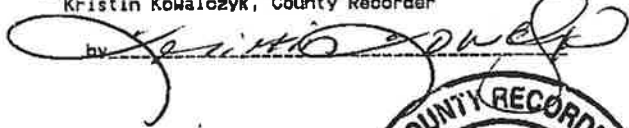
Sketch 1 of 1



3075892

08/04/2023 09:55:56 AM Page: 1 of 4 \$20.00  
DEED MINOT GUARANTY & ESCROW COMPANY  
Kristin Kowalczyk, County Recorder Ward, ND

Recorder's Office, Ward, ND 08/04/2023 09:55:56 AM  
I certify that this instrument was filed for record this date.  
Kristin Kowalczyk, County Recorder

by 

3075892



## WARRANTY DEED

<sup>U223-1373</sup>  
**THIS INDENTURE** Made this 2nd day of August, 2023,  
between **Aksal Group, LLC, a North Dakota limited liability company,**  
Grantor, whether one or more, to **Kamp Collective LLC, a North Dakota**  
**limited liability company,** Grantee, whose post office address is  
14 Central Ave W Minot ND 58703.

**WITNESSETH** for and in consideration of the sum of \$10.00 and more  
consideration, Grantor does hereby GRANT to the Grantee all of the  
following real property lying and being in the County of Ward, State of  
North Dakota, and described as follows, to-wit:

✓ **East 60 feet of Lots 21 and 22, Block 19, Original Townsite of the City  
of Minot, Ward County, North Dakota**

Subject to easements, rights of way, restrictions and mineral severances  
and reservations of record.

I certify that the full consideration paid for the property described in this  
deed is \$395,000.00.

Date: 8-2-23 (Sgd.)  \_\_\_\_\_  
Grantee or Agent

**IN TESTIMONY WHEREOF**, the said Grantor has caused these presents to be executed in its name by its Managing Members.

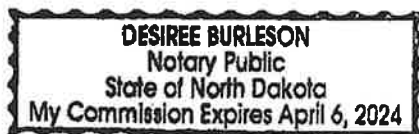
Aksal Group, LLC

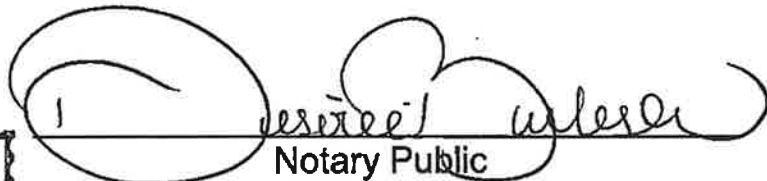
BY:   
Jessica Ackerman  
Managing Member

State of North Dakota )  
County of Ward ) ss

On this 18<sup>th</sup> day of August, 2023 before me, personally appeared Jessica Ackerman, known to me to be the Managing Member of Aksal Group, LLC, a North Dakota limited liability company, that is described in, and that executed the foregoing instrument, and acknowledged to me that it executed the same.

My Commission expires:



  
Notary Public



PO Box 2279  
Minot, ND 58702-2279  
701-838-2687

January 10, 2023

RE: 11 E. Central Ave.  
Minot, ND 58701

To Whom it May Concern

In our professional opinion, this roof system has approximately 10 to 12 years of life expectancy.

If you have any further questions or concerns, please call Doni at 701-833-4758.

Sincerely,

Donald S. Jessen

cc: Aaron Bofenkamp



**TO:** Mayor  
Members of the City Council

**FROM:** Harold Stewart, City Manager

**DATE:** March 18, 2024

**SUBJECT:** **First Reading of Ordinance Amending Chapter 2 (Administration), Article II (City Officers), Division 2 (City Manager) of the Code of Ordinances, City of Minot, North Dakota.**

**I. RECOMMENDED ACTION**

Approve first reading of the ordinance.

**II. DEPARTMENT CONTACT PERSONS**

Harold Stewart, City Manager 857-4750

**III. DESCRIPTION**

Background

A couple of recent changes have necessitated the need to update this ordinance. First, with the creation and hiring of the position of Assistant City Manager it is recommended this ordinance be amended to have the Assistant City Manager serve as Acting City Manager in circumstances the City Manager is unavailable. Second, with the recent changes of vacation and sick leave to the PTO model it is recommended this language be updated to reflect the change. An amendment to the City Manager Contract is recommended also and will be presented to the Council at a future meeting. Finally, while reviewing the ordinance it is also recommended to update the language regarding notification to the Mayor by the City Manager for any absence longer than 48 hours.

**IMPACT:**

Strategic Impact:

No significant strategic impact is anticipated by this action.

Service/Delivery Impact:

No direct impact to City services or service delivery.

Fiscal Impact:

No immediate cost to the City over and above the previous actions of the Council approving the Assistant City Manager position and the transition to PTO.

**V. CITY COUNCIL ASPIRATIONS**

Having the Assistant City Manager serving as the Acting City Manager in the absence of the City Manager further enhances the aspiration of Resilient and Prepared.

**VI. ALTERNATIVES**

Council could choose to not change the ordinance. This would mean the Finance Director would continue to serve as the Acting City Manager in the absence of the City Manager. It would also

result in the City Manager still accruing vacation leave and sick leave, which is not recommended as it create administration inefficiencies for HR.

Council could choose a different combination of approval/not changing any of the proposed recommendations.

**VII. TIME CONSTRAINTS**

No time constraints.

**VIII. LIST OF ATTACHMENTS**

- A. Clean copy of the proposed ordinance amendments
- B. A redline copy of the proposed ordinance amendments



ORDINANCE NO. \_\_\_\_

**AN ORDINANCE AMENDING SECTION 2-48, 2-51, AND 2-53 AND ENACTING SECTION 2-54 OF CHAPTER 2 (ADMINISTRATION), ARTICLE III (CITY OFFICERS), DIVISION 2 (CITY MANAGER), CODE OF ORDINANCES, CITY OF MINOT, NORTH DAKOTA TO REFLECT POLICY AND PRACTICE CHANGES AND CODIFY THE ASSISTANT CITY MANAGER'S GENERAL DUTIES AND RESPONSIBILITIES.**

WHEREAS, the City of Minot is a political subdivision lawfully recognized in the state of North Dakota as a home rule city and possessing municipal powers and authority pursuant to its home rule charter and provisions of North Dakota Century Code (NDCC) § 40-05.1, as well as statutory provisions codified in NDCC 40-05-01; and

WHEREAS, the City of Minot has the authority, through its home rule charter, to adopt, amend, and repeal ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof; and

WHEREAS, the Minot City Council has transitioned its vacation and sick leave policies to a paid time off policy, and desires to amend city ordinance 2-48 to reflect this transition; and

WHEREAS, the Minot City Council desires to amend city ordinance 2-51 to reflect present practices; and

WHEREAS, the Minot City Council has elected to employ an assistant city manager, and desires to codify the position's general duties and responsibilities in city ordinance by amending city ordinance 2-53, and enacting city ordinance 2-54; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINOT:**

**§ 1. That Sec. 2-48, 2-51, and 2-53 of Chapter 2 (Administration), Article III (City Officers), Division 2 (City Manager) of the Code of Ordinances, City of Minot, North Dakota, are hereby amended as follows:**

**Sec. 2-48. Paid Time Off.**

The city manager's paid time off accrual shall be determined by employment contract and at the discretion of the city council.

**Sec. 2-51. Notification before leaving the city.**

The city manager shall not leave the city for more than forty-eight (48) hours without notifying the mayor or, in the absence of the mayor, the president of the city council or, in the absence of the mayor and president of the city council, the vice-president of the city council.

**Sec. 2-53. Duties in case of absence, disability, or vacancy.**

- (a) Whenever the position of city manager is vacant, or whenever the city manager is unable to perform his or her duties thereof by reason of absence or disability, the assistant city manager shall perform the duties thereof in an acting capacity.
- (b) If the assistant city manager is unable to perform the duties of city manager pursuant to subsection (a), the line of succession to perform the duties of city manager in an acting capacity shall be as follows: finance director; police chief; fire chief; city engineer.
- (c) As an alternative to subsections (a) or (b), by a majority vote, the city council may direct or designate another individual to perform the duties of city manager in an acting capacity.

**§ 2. That Sec. 2-54 of Chapter 2 (Administration), Article III (City Officers), Division 2 (City Manager) of the Code of Ordinances, City of Minot, North Dakota, is hereby enacted as follows:**

**Secs. 2-54— Assistant City Manager - Generally.**

- (a) Generally. The position of assistant city manager is hereby created to assist the city manager in coordinating the operations and proper administration of the affairs of the city. The assistant city manager shall be directly responsible to and under the supervision of the city manager and may be assigned direct supervision of city departments as assigned by the city manager.
- (b) Duties. The assistant city manager shall function as the city manager in the absence of the city manager from the city and/or illness of the city manager. In the event the city manager resigns from office, is removed from office, or dies, the assistant city manager shall act as the city manager until a city manager is formally appointed and assumes the position as city manager, unless the city council directs or designates another individual to perform the duties of city manager in an acting capacity.
- (c) Appointment. The assistant city manager shall be recommended by the city manager and appointed by a majority vote of the city council for an indefinite term to serve at the pleasure of the city council.

Secs. 2-55 — 2-59. Reserved.

**§3. This Ordinance shall become effective upon final passage and approval.**

PASSED FIRST READING: \_\_\_\_\_

PASSED SECOND READING: \_\_\_\_\_

ATTEST:

APPROVED:

\_\_\_\_\_  
Mikayla McWilliams, City Clerk

\_\_\_\_\_  
Thomas Ross, Mayor



ORDINANCE NO. \_\_\_\_

**AN ORDINANCE AMENDING SECTION 2-48, 2-51, AND 2-53 AND ENACTING SECTION 2-54 OF CHAPTER 2 (ADMINISTRATION), ARTICLE III (CITY OFFICERS), DIVISION 2 (CITY MANAGER), CODE OF ORDINANCES, CITY OF MINOT, NORTH DAKOTA TO REFLECT POLICY AND PRACTICE CHANGES AND CODIFY THE ASSISTANT CITY MANAGER'S GENERAL DUTIES AND RESPONSIBILITIES.**

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WHEREAS, the City of Minot has the authority, through its home rule charter, to adopt, amend, and repeal ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare, and penalties for a violation thereof; and

WHEREAS, the Minot City Council has transitioned its vacation and sick leave policies to a paid time off policy, and desires to amend city ordinance 2-48 to reflect this transition; and

WHEREAS, the Minot City Council desires to amend city ordinance 2-51 to reflect present practices; and

WHEREAS, the Minot City Council has elected to employ an assistant city manager, and desires to codify the position's general duties and responsibilities in city ordinance by amending city ordinance 2-53, and enacting city ordinance 2-54; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MINOT:**

**§ 1. That Sec. 2-48, 2-51, and 2-53 of Chapter 2 (Administration), Article III (City Officers), Division 2 (City Manager) of the Code of Ordinances, City of Minot, North Dakota, are hereby amended as follows:**

**Sec. 2-48. ~~Vacation and sick leave~~ Paid Time Off.**

~~(a) The city manager's vacation paid time off~~ accrual shall be determined by employment contract and at the discretion of the city council. ~~Vacation accrual accumulation shall not exceed three hundred (300) hours maximum at the end of the calendar year.~~

~~(b) The city manager shall accumulate sick leave at the rate of one (1) day per month~~

**Sec. 2-51. ~~When permission is required to leave~~ Notification before leaving the city.**



The city manager shall not leave the city for more than forty-eight (48) hours without ~~permission therefor from~~ notifying the mayor or, in the absence of the mayor, the president of the city council or, in the absence of the mayor and president of the city council, the vice-president of the city council.

**Sec. 2-53. Duties in case of absence, disability, or vacancy.**

- (a) Whenever the position of city manager is vacant, or whenever the city manager is unable to perform his or her duties thereof by reason of absence or disability, the assistant city auditor manager shall perform the duties thereof in an acting capacity.
- (b) If the assistant city auditor manager is unable to perform the duties of city manager pursuant to subsection (a), the line of succession to perform the duties of city manager in an acting capacity shall be as follows: finance director; police chief; ~~public works director~~; fire chief; city engineer.
- (c) As an alternative to subsections (a) or (b), by a majority vote, the city council may direct or designate another individual to perform the duties of city manager in an acting capacity.

**§ 2. That Sec. 2-54 of Chapter 2 (Administration), Article III (City Officers), Division 2 (City Manager) of the Code of Ordinances, City of Minot, North Dakota, is hereby enacted as follows:**

**Secs. 2-54— Assistant City Manager - Generally.**

Generally. The position of assistant city manager is hereby created to assist the city manager in coordinating the operations and proper administration of the affairs of the city. The assistant city manager shall be directly responsible to and under the supervision of the city manager and may be assigned direct supervision of city departments as assigned by the city manager.

- (a) Duties. The assistant city manager shall function as the city manager in the absence of the city manager from the city and/or illness of the city manager. In the event the city manager resigns from office, is removed from office, or dies, the assistant city manager shall act as the city manager until a city manager is formally appointed and assumes the position as city manager, unless the city council directs or designates another individual to perform the duties of city manager in an acting capacity.
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Secs. 2-55 — 2-59. Reserved.

**§3. This Ordinance shall become effective upon final passage and approval.**

PASSED FIRST READING: \_\_\_\_\_

PASSED SECOND READING: \_\_\_\_\_

ATTEST:

APPROVED:

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Mikayla McWilliams, City Clerk

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Thomas Ross, Mayor

DRAFT