



Committee of the Whole
Tuesday, January 2, 2018 - 4:15 PM
City Council Chambers

1. APPROVE THE 2018 POLLING LOCATION

The June 2017 Municipal Election was conducted utilizing a central polling location at the Municipal Auditorium. Because of scheduling conflicts at the Auditorium, the polling location is proposed to be at the Armory.

It is recommended the City Council approve the Municipal Armory as the polling location for 2018 elections.

Documents:

[COW Jan22018.docx](#)

2. 31ST AVE SE RECONSTRURCTION BROADWAY TO 13TH ST SE REQUEST FOR QUALIFICATIONS (4331)

31st Ave SE from Broadway to 13th St has been slowly improved over the decades as development in southeast Minot has occurred. The roadway was constructed as a rural section roadway with a minimal pavement section and poor drainage. Over the past several years, the corridor has experienced a rapid deterioration of pavement condition as traffic volumes have increased. City staff recommended to council that the 31st Ave corridor be placed in the North Dakota Department of Transportation's (NDDOT) Urban Road Program (URP). The project was submitted in 2015 and is now in the program for a 2020 construction start.

Recommend Council authorize the engineering department to solicit Requests for Qualifications for engineering services for the 31st Ave SE Reconstruction Project

Documents:

[4331 - 31st Ave SE Reconstruction Request RFQ Memo.docx](#)
[31st Ave SE Reconstruction-LOCATION.pdf](#)

3. APPROVAL OF RENAISSANCE ZONE TAX ABATEMENT FOR 1 MAIN STREET NORTH

The Renaissance Zone which covers most of the downtown district is a state offered housing and business development tool to promote new investment and growth through partial property tax abatement based on investment in capital improvements to buildings and property within the zone. The building located a #1 Main Street N was originally known as the First National Bank. Capital Financial Services, Inc. occupies the 2nd and 4th floors.

Recommend the City Council approve an application for a Renaissance Zone Project filed by Corridor Investments, LLC for a five-year property tax exemption, including improvements and a five-year business investment income tax exemption on the property located at #1 Main St N (Original Minot Addition, Lot 15 Except North 8" & all of Lot 16, Block 20)

Documents:

[RenaissanceZone1MainNMemo to CC 12-2017.pdf](#)
[CityAssessormemoon1stMain.pdf](#)

4. APPROVAL OF SOURIS BASIN PLANNING COUNCIL SUB-RECIPIENT AGREEMENT

As a public agency, the Souris Basin Planning Council qualifies under HUD rules to be engaged by the city through a negotiated sub-recipient agreement. There is a critical need as the City continues to aggressively move forward with multiple projects in 2018 such as connected to both single and multi-family housing, and economic development strategies to be able to have access to timely data that reflects trends as well as strengths and weaknesses to assure the City is strategically positioned to invest in activities which support the private sector. The sub-recipient agreement outlines the tasks to be carried out by the Planning Council for 2018.

It is recommended the City Council approve a sub-recipient agreement with Souris Basin Planning Council in the amount of \$14,500 to provide support services for NDR project activities.

Documents:

[CouncilMemoSourisBasin12-20-17.pdf](#)
[Souris Basin sub-recipient agreement.pdf](#)

5. CDM SMITH CONTRACT EXTENSION FOR CDBG-DR ALLOCATION #2 PROJECT DELIVERY SERVICES

The current contract with CDM Smith for Allocation #2 expires December 31, 2017. It was originally entered as an agreement on May 6, 2013 and has been periodically extended. During the past several months the City has been focusing on completing projects and activities within Allocation #2 to be able to undertake grant closeouts and complete this one of the three Contracts with CDM Smith well in advance of the statutory deadline to spend all funds in this grant. Amendment No.8 extends the current agreement through June 30, 2018 with all terms and conditions remaining the same, and no new funds added to the agreement.

It is recommended the Committee and Council approve a contract extension through June 30, 2018 with CDM Smith for project delivery services for CDBG-DR Allocation #2 with all terms and conditions remaining the same including no additional allocation of funds to existing cap.

Documents:

[Council Memo CDM Smith Allocation 2.pdf](#)
[Minot CDM Smith CDBG Contract 2 Amendment 8-120517.pdf](#)

6. PERIMETER ROAD: FINAL PAYMENT (AIR049)

This project was approved by City Council in December 2016 and advertised in June 2017. \$370,000.00 was budgeted in 2017 for this project; the City share was \$18,500.00.

- 1. Recommend approval of Pay Estimate #2 – Final to Wagner Construction for work completed on the Perimeter Road Reconstruction project; and**
- 2. Authorize Rick Feltner, Airport Director, to sign applicable Final Payment documentation**

Documents:

7. LETTER OF AGREEMENT: MAGIC CITY TOWER, MOT, AVFLIGHT

The Airport, The FAA (through Magic City Tower), and AvFlight wish to alter the way vehicle and equipment traffic is controlled in the area of the FedEx ramp at Taxiways Delta and Echo. The FAA requires that local government give the Airport Director specific authorization to approve and execute this type of LOA. All parties are in agreement with this change.

- 1. Recommend approval of the letter of agreement between Magic City Tower, Minot International Airport, and AvFlight regarding Control of Vehicles and Equipment in Movement and Non-Movement Safety Areas; and**
- 2. Authorize the Airport Director to sign the agreements**

Documents:

8. ASSIGNMENT OF LEASE FROM BESSETTE AVIATION TO EXECUTIVE AIR TAXI

Bessette Aviation wishes to sell their aircraft hangar to Executive Air Taxi. As part of that transaction, they wish to assign their ground lease with the airport to the new owner as well. Executive Air Taxi would assume the lease with no changes to the current terms.

- 1. Recommend approval of the reassignment of the lease to Executive Air Taxi; and**
- 2. Authorize the Mayor to sign the agreement**

Documents:

9. DELTA AND UNITED OPERATING AGREEMENTS

Operating Agreements are put in place between the Airport and the Airlines in order to memorialize the legal relationship among the parties. They address issues such as rents, fees, obligations, indemnification, security, insurance, etc. A similar signatory agreement was executed with Allegiant Air in February 2017. United and Delta are now able to sign their respective agreements.

- 1. Recommend approval of the operating agreement between Delta Air Lines and City of Minot; and**
- 2. Recommend approval of the operating agreement between United Airlines and City of Minot; and**
- 3. Authorize the Mayor to sign the agreements**

Documents:

10. AIRPORT RAMP PARKING FEES

Resolution No. 3575 was passed and adopted on September 21, 2017. This resolution set the airport ramp parking rate at \$5.00 per day per aircraft. It is now recommended that

a maximum fee of \$60.00 per month be instituted for aircraft weighing less than 12,500 pounds and a fee of \$15.00 per day per aircraft weighing 12,500 pounds or more.

Recommend the City Council approve the Resolution to adjust the 2018 Rates, Fees, and Charges Pertaining the Minot International Airport Ramp Parking Fees.

Documents:

[MEMO Ramp Parking Rates.pdf](#)
[2018 Resolution Airport Rates Fees and Charges - Revised \(2\).pdf](#)

11. HIGHWAY SAFETY IMPROVEMENT PROGRAM GRANT APPLICATION INTERSECTION IMPROVEMENTS AT EVERGREEN AVENUE / HIGHWAY 2/52 (4329)

The NDDOT has requested applications for 2019 – 2022 Highway Safety Improvement Program (HSIP) grants. HSIP is a core federal-aid highway program with the purpose to achieve a significant reduction in fatalities and serious injuries on all public roads. The proposed project will restrict left-turn and crossover traffic from Evergreen Ave onto Hwy 2/52. This particular intersection has a history of severe crashes and currently ranks high among the NDDOT's urban high crash locations.

Recommend approval of cost participation with the North Dakota Department of Transportation (NDDOT) for intersection improvements at Evergreen Ave / Highway 2/52, contingent upon project selection from the NDDOT.

Documents:

[Memo - HSIP Application.pdf](#)

12. TRANSPORTATION ALTERNATIVES GRANT APPLICATION WASHINGTON ELEMENTARY SAFE ROUTES TO SCHOOL (4330)

The NDDOT has requested applications for Transportation Alternatives (TA) grants for federal fiscal year 2019. The maximum award for an urban project is \$290,000. In 2010, a comprehensive study was conducted to inventory existing safe routes to school for elementary students and to identify and prioritize infrastructure improvements necessary to expand Minot's safe route to school networks. The Washington Elementary project falls in line with necessary improvements as prioritized in the comprehensive study.

It is recommended the City Council approve the cost participation with the North Dakota Department of Transportation (NDDOT) for the Washington Elementary Safe Routes to School project, contingent upon project selection from the NDDOT.

Documents:

[Memo - TAP Grant Application.docx](#)
[2019 TAP Application - Washongton Application.pdf](#)

13. TECHNICAL REVIEW COMMITTEE SITES' RECOMMENDATION FOR DOWNTOWN GATHERING PLACE

It is recommended the City Council make final determination on site choice to authorize staff to commence due diligence work on Downtown Gathering Place with recommended action that Technical Review Committee's selection of Site #2 located at the NW corner of 1st Street SE and 1st Avenue (Block 11) as preferred site be affirmed as well as Site #1 located at the NW corner of 3rd Avenue SW and Broadway (Block 20) as first back up site and Site #3 located at the NW intersection of 3rd St. SE and the Canadian Pacific Rail line (Block 13) as second back up in event that due diligence discovers that Site #2 is not feasible based on HUD rules and requirements. Note: The City Council does have the

choice of accepting the Technical Review Committee recommendations or it can make its own decision taking into account the criteria established for site selection.

Documents:

[CouncilmemoGatheringPlacesiteselection12-21-17.pdf](#)
[Copy of Voting Tracker.pdf](#)
[NDRCPhase2ApplicationGatheringPlace.pdf](#)
[NDRDRGRActionPlanGatheringPlace.pdf](#)
[Downtown Gathering Place Slides for Public Meeting .pdf](#)
[Notes Technical Review Committee_sjw.pdf](#)

14. AUTHORIZATION TO AUCTION 338 WALDERS STREET

The City Council approved purchase of 338 Walders Street for \$245,000 at its November 2, 2015 meeting and, on second reading at its December 7, 2015 meeting approved amending the 2015 annual budget to increase the highway debt service expenditures for the \$245,000 for the City's flood control project NDRC application. In the past few months, we have been reviewing acquisitions based on current fund availability and known needs, and as result of this assessment, it has become evident that there is no funding stream or current known use for 338 Walders Street which warrants City continuing to retain it.

It is recommended the City Council grant authorization to auction the house at 338 Walders Street for relocation.

Documents:

[CouncilMemo338WaldersStreetb.pdf](#)
[Councilfundingfor338Walder12-7-15.pdf](#)
[Councilapprovalof338Walder11-2-15.pdf](#)
[memo 338 walders street 10.15.15.pdf](#)

15. INFORMATIONAL- DISCUSSION ON GARBAGE STANDARDIZATION

Jason Sorenson, Assistant Director of Public Works, will present information on standardizing garbage collection.

16. AIRPORT ACTIVITIES, REPORTS, AND PROJECT UPDATES

The Airport Director submitted a report and will be available for any questions.

Documents:

[Airport Presentation 010218.pdf](#)



TO: Mayor Chuck Barney
Members of the City Council

FROM: David Lakefield, Finance Director

DATE: January 2, 2018

SUBJECT: Polling Location

I. RECOMMENDED ACTION

1. Approve the Municipal Armory as the official Polling Location for 2018.

II. DEPARTMENT CONTACT PERSONS

David Lakefield, Finance Director 701-857-4784

III. DESCRIPTION

A. Background

The June 2017 Municipal Election was conducted utilizing a central polling location at the Municipal Auditorium. Because of scheduling conflicts at the Auditorium, the polling location is proposed to be at the Armory.

B. Proposed Project

Designate the Armory as the official polling location for 2018 elections.

C. Consultant Selection

N/A

IV. IMPACT:

A. Strategic Impact:

This strategy reduces that number of polling locations required to be staffed by election workers. Council and Mayor are elected at large since the change in government eliminating the need for polls in each Ward.

B. Service/Delivery Impact:

Would reduce the number of polling locations and may increase the distance to travel to the chosen polling location.

C. Fiscal Impact:

Potential cost savings as a result of the decreased number of locations.

V. ALTERNATIVES

Operate multiple polling locations.

VI. TIME CONSTRAINTS
ASAP

VII. LIST OF ATTACHMENTS



TO: Mayor Chuck Barney
Members of the City Council

FROM: Lance Meyer, P.E., City Engineer

DATE: 11/16/2017

**SUBJECT: 31ST AVE SE RECONSTRUCTION BROADWAY TO 13TH ST SE REQUEST FOR
QUALIFICATIONS (4331)**

I. RECOMMENDED ACTION

1. Recommend council authorize the engineering department to solicit Requests for Qualifications for engineering services for the 31st Ave SE Reconstruction Project

II. DEPARTMENT CONTACT PERSONS

Lance Meyer, City Engineer	857-4100
Jacqueline Melcher, Assistant City Engineer	857-4100

III. DESCRIPTION

A. Background

31st Ave SE from Broadway to 13th St has been slowly improved over the decades as development in southeast Minot has occurred. The roadway was constructed as a rural section roadway with a minimal pavement section and poor drainage. Over the past several years, the corridor has experienced a rapid deterioration of pavement condition as traffic volumes have increased. City staff recommended to council that the 31st Ave corridor be placed in the North Dakota Department of Transportation's (NDDOT) Urban Road Program (URP). The project was submitted in 2015 and is now in the program for a 2020 construction start.

The corridor is classified as a minor arterial and is listed in the city's urban road network. 2015 traffic counts vary between 2,625 on the east end to 6,740 on the west end at Broadway.

B. Proposed Project

Because the project is about two years away from construction, now is the time to start the necessary environmental clearance, preliminary, and design engineering for this project. Staff has programmed \$500,000 in the capital improvements plan to start this work if council approves the department to solicit requests for qualifications (RFQ).

At this time, staff is looking to urbanize this corridor to a 3 lane concrete urban arterial. A trunk storm sewer network will have to be designed and constructed along with the new pavement section. New LED street lighting and a new concrete shared use path will be constructed as well. The corridor will look very similar to the newly constructed 37th Ave SE, which was funded by the same NDDOT program.

In 2015, an estimated project construction cost was developed at \$8.62 million of which \$6.934 million will be covered with a federal cost share. We estimate the City's construction cost share to be \$1.685 million plus engineering and right of way costs.

A critical point for council consideration is that the City builds a balance in our URP account at the NDDOT each year. In 2020, our federal account balance is estimated to be \$6.444 million, which is about \$500,000 less than anticipated. At the end of 2020, the federal transportation program has a rescission built into the bill which rescinds all funding not obligated. Meaning, if we do not bid the project by end of federal fiscal year 2020, the City will lose over \$6 million for this project. We will then start over building up our account until the project can be programmed. The condition of 31st Ave SE is in such poor condition; we would have to build the project on our own at some point without federal funding. That will be too large of a burden on City resources if the federal funding is lost.

C. Consultant Selection

If council approves the department to seek qualification statements, this starts our RFQ process. Legal advertisements will be issued for RFQs, a selection committee made up of staff and an alderman will rank the written proposals and short list the number of firms for an interview. The short listed firms will be interviewed and the highest ranked firm from the interview will be recommended to council. The city engineer will then negotiate a scope and fee based on our engineering compensation policy, and the mayor will sign the contract.

IV. IMPACT:

A. Strategic Impact:

31st Ave is a strategic corridor for the City. It is classified as a minor arterial, which means the road is designated to carry a large volume of traffic to and from other arterials. 31st Ave is the last major roadway improvement planned in southeast Minot in developing areas.

B. Service/Delivery Impact:

During construction, access to several cul-de-sacs will be challenging and likely temporary access roads will have to be constructed to maintain access.

C. Fiscal Impact:

<u>Project Costs</u>	
Estimated Construction Cost	\$7,838,000
10% Contingency	\$ 783,000
Engineering	\$1,200,000
Right of Way/Easements	<u>\$ 200,000</u>
Total	\$10,021,000

The costs above are purely estimates at this time with only high-level engineering completed. With an estimated \$6.444 million available in federal funds, the City's cost share will be approximately \$3.58 million. The City has traditionally funded federal cost share on arterial roadways with general obligation bonds. That type of funding is currently programmed in future capital improvement plans. The numbers will be refined as engineering work completed on the project.

V. ALTERNATIVES

Alt 1. The Council could postpone the RFQ process. However, the environmental document, design, and right of way acquisition take a significant amount of time for a project of this size.

Engineering needs to start by late spring to ensure project delivery before the federal funding disappears.

Alt 2. Council could choose not to move forward with the project. By not moving forward, the federal funds would not be used and eventually go back to the federal government or other cities in the program. At some point, 31st Ave must be reconstructed. The cost will be there in the future, but without a federal share.

VI. TIME CONSTRAINTS

If council authorizes staff to seek RFQs, a consultant could be selected by the March council meeting, but likely the April council meeting.

VII. LIST OF ATTACHMENTS

A. Project Map



31st Ave SE Reconstruction
South Broadway to 13th St SE



SCALE: 1" = 600'

City of Minot
Engineering Department



TO: Mayor Chuck Barney
Members of the City Council

FROM: *John Zakian, DR Grant Program Director & Chief Resilience Officer*

DATE: *December 22, 2017*

SUBJECT: **RENAISSANCE ZONE PROJECT APPROVAL (PROJECT # M-91)**

I. RECOMMENDED ACTION

1. Recommend approval of an application for a Renaissance Zone Project filed by Corridor Investments, LLC for a five-year property tax exemption, including improvements and a five-year business investment income tax exemption on the property located at #1 Main St N (Original Minot Addition, Lot 15 Except North 8" & all of Lot 16, Block 20)

II. DEPARTMENT CONTACT PERSONS

John Zakian, NDR Program Director – 420-4528

III. DESCRIPTION

1. Background

The Renaissance Zone which covers most of the downtown district is a state offered housing and business development tool to promote new investment and growth through partial property tax abatement based on investment in capital improvements to buildings and property within the zone. The building located a #1 Main Street N was originally known as the First National Bank. Capital Financial Services, Inc. occupies the 2nd and 4th floors.

2. Proposed Project

The 3rd floor was converted from apartments into office space and the north exterior wall was reconditioned to maintain the look and integrity of the original wall consistently with promoting improved appearance within the downtown.

IV. IMPACT:

1. Strategic Impact:

This project met all the requirement as a State of ND Renaissance Zone project.

B. Service/Delivery Impact:

This project provided much needed office space for Capital Financial Services as well as beautifying the downtown area with the exterior restoration. The company currently houses 35 employees at the location with these improvements allowing it to address cramped conditions thus inducing the likelihood of their remaining in the downtown.

The company reports at the present time there are plans to increase employment at this location but that the improvements which have been made to add additional office space does create the potential in the future for added personnel at this site.

C. Fiscal Impact:

The applicant, Capital Financial Services, was required to spend 50% of the true and full value of the building on the renovation.

True and Full Value as of 8/31/2016	\$1,177,000.00
50% of True and Full Value	588,500.00
Project Costs	904,625.71

According to a memo provided by the Assessor's Office dated 9/7/2016, "If we estimate the new True and Full Value of the building to be 1.6 million after the conversion and remodeling of the 3rd floor, the annual estimate property tax would be about \$21,500 or about \$6,000 more per year than the current estimate. Based on this estimate, it would take about 13 years of increased assessment to recover the lost revenue (\$76,000) during the 5 year exemption period."

V. ALTERNATIVES

N/A

VI. TIME CONSTRAINTS

N/A

VII. LIST OF ATTACHMENTS

- 1. City Assessor Memo dated 9/7/2016*

City of Minot

Assessor's Office

DATE: 9/7/2016

TO: Nancy Simpson, City Planning Department

FROM: Kevin Ternes, City Assessor



REFERENCE: Renaissance Zone Prospective Project located at 1 Main St N, application by Corridor Investors, LLC

Regarding property tax information on the current and estimated future assessment of a 4 story office building in downtown Minot at #1 Main St N, I have the following estimate:

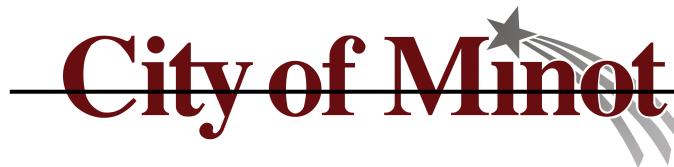
The 2016 True and Full Value assessment is \$48,000 for the land and \$1,129,000 for the building for a total of \$1,177,000. The owner is intending to remove the apartments on the 3rd floor and replace with office space for their business. The 3rd floor is about 6,400 square feet.

Because the project's cost is reported to be an estimated \$950,000, it would meet 50% of the building assessment which would satisfy the minimum investment to qualify for some level of property tax exemption under the Minot Renaissance Zone plan.

The building assessment of \$1,129,000 and the estimated taxes on this amount for 2016 will be approximately \$15,210. The description of the work is described as repairing the exterior of the north wall of the building and converting the 3rd floor apartments to office space. If the renaissance zone exemption is granted on the building's assessment, the property tax revenue for 5 years not collected would total approximately \$76,000. If we estimated the new True and Full Value of the building to be 1.6 million after the conversion and remodeling of the 3rd floor the annual estimated property tax would be about \$21,500 or about \$6,000 more per year then the current estimate. Based on this estimate it would take about 13 years of the increased assessment to recover the lost revenue during the 5 year exemption period.

Please remember it is difficult to project values and tax rates into the future.

We are available for further questions.



TO: Mayor Chuck Barney
Members of the City Council

FROM: John R. Zakian, DR Grant Program Manager

DATE: December 21, 2017

SUBJECT: City Council Approval NDR sub-recipient Agreement with Souris Basin Planning Council

I. RECOMMENDED ACTION

1. City Council Approval of sub-recipient agreement with Souris Basin Planning Council and

authorize Mayor to sign it

II. DEPARTMENT CONTACT PERSONS

John R. Zakian, DR Program Manager & Chief Resilience Officer, 423-4528

III. DESCRIPTION

A. Background

The Souris Basin Planning Council is the regional council for 7 counties including Ward County. The Board of the Planning Council has one representative from each of the 7 counties plus a representative from the City of Minot. The Council is the lead point contact for the region and state agencies including the federal Economic Development Agency and HUD's Community Development Block Grant state entitlement program for this seven county region. Each county annual contributes to the annual operating costs of the Council which primarily relies on such funding for its operations. While the city has an equal role and voice with a representative on the board, it has not historically contributed funds towards the operating cost. In the aftermath of the disaster, the critical role of the Council for Minot was elevated through serving as the conduit means to secure needed financing such as the \$18 million federal EDA grant that provided more than 50% of the cost of the downtown infrastructure project.

The city did begin to provide funds in 2016 in support of the Council with \$20,172 and in 2017 with \$14,259. The source of these funds was the Magic fund. As communicated to me by the Council's Executive Director, the city Finance Director at the time for both years initiated the contact with the Souris Basin Planning Council and took the lead in helping to make the application for the funding. With her departure this year, funding consideration for the 2018 fiscal year fell through the cracks and it was not until recently that the Souris Basin Planning Council realize the time had passed.

It happens in discussions I have been having recently with the Planning Council that because of its regional role and because of its structure resources, there are certain services it can provide to the city in 2018 in support of our NDR efforts.

It should be noted in terms of future ongoing support by the City for the general operations of the Council as was done in 2016 and 2017 that this agreement does not address such consideration.

It should be noted in terms of HUD guidance that this sub-recipient agreement is for work specific to NDR grant needs and is not presented in lieu of a 2018 budget amendment for funding for Souris Basin Planning Council

B. Project

As a public agency, the Souris Basin Planning Council qualifies under HUD rules to be engaged by the city through a negotiated sub-recipient agreement. There is a critical need as we continue to aggressively move forward with multiple projects in 2018 such as connected to both single and multi-family housing, and economic development strategies to be able to have access to timely data that reflects trends as well as strengths and weaknesses to assure that we are strategically positioned to invest in activities which support the private sector. The sub-recipient agreement which accompanies this memo outlines the tasks to be carried out by the Planning Council for 2018.

IV. IMPACT:

A. Strategic Impact:

Formal relationship with the Souris Basin Planning Council provides use access to the current regional data and trends we need for assuring the effectiveness of 2018 projects on a very cost efficient basis.

B. Service/Delivery Impact

NA

C. Fiscal Impact:

The \$14,500 will be charged to the Economic Planning Balance of \$209,000 still leaving \$194,500 for future use

V. ALTERNATIVES

NA

TIME CONSTRAINTS

NA

VI. LIST OF ATTACHMENTS

- 1. Sub-recipient Agreement*

CDBG-NDR AGREEMENT BETWEEN THE CITY OF MINOT AND SOURIS BASIN PLANNING COUNCIL

THIS AGREEMENT, entered this _____ day of _____, 20____ by and between the City of Minot (herein called the “Grantee”) and Souris Basin Planning Council (herein called the “Sub-recipient”).

WHEREAS, the Grantee has applied for and received funds from the United States Government under the Disaster Relief Appropriations Act, 2013, Public Law 113-2 (Appropriations Act);

and WHEREAS, the Grantee wishes to engage the Sub recipient to assist the Grantee in utilizing such funds;

NOW, THEREFORE, it is agreed between the parties hereto that;

I. SCOPE OF SERVICE

A. Activities

The Sub-recipient will be responsible for the following tasks under the CDBG-NDR Planning activity in a manner satisfactory to the Grantee and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program-NDR Planning Activity:

Task 1: Research to identify and establish means and methods for accessing data on a current basis needed for economic resilience planning and sustainable growth strategy

This task will use the foundation of the Council’s lead role in the region as the regional planning and resource focal point with its wealth of research resources and expertise. During the course of the development of Minot’s National Disaster Resilience Competition Phase 1 and Phase 2 applications, it became very evident that critically needed data sets were missing that any community needs and uses when preparing economic resilience growth strategies and assuring such strategies remain relevant and effective based on the underlying economic conditions in the city and region.

Data sets such as vacancy in commercial, retail, professional space in downtown and elsewhere in the city, businesses opening/closing, accessibility to financing, have been found to not be available. To accomplish one of the primary goals of the NDRC Action Plan to promote sustainable long term resilient growth all of these types of data sets are needed as building blocks.

The first task will involve the sub-recipient

- identifying all the data sets necessary for the city to establish and sustain a long term sustainable growth
- detailing the necessity of the identified data sets to support a growth plan
- determine which data sets are available from existing sources and which are not available
- formulate methodology and/or means city can utilize to develop and maintain data sets not currently available

Task 2: Planning and research support for the city in timely assessing changing market conditions and needs within the community in its ongoing efforts to deploy its HUD CDBG-DR funds through projects and activities in ways and methods not adversely affecting the private sector marketplaces

A primary goal of the city in carrying out projects and activities contained in the HUD NDRC Action Plan is to address direct and indirect impacts from the 2011 Souris River Flood while promoting sustainable, resilient growth throughout the city. To accomplish this goal, there is a pressing need to be strategic in the deployment of the funds to avoid adversely affect the economic, housing, consumer and related private market conditions within the city.

The sub-grantee as the regional planning council is best suited to provide the city in its management of the HUD CDBG-DR funds with the need planning and research on a regional basis to assure the city remains current on trends and shifts in the private sector. Such efforts by the sub-grantee will support the ongoing efforts by the city to adapt and adjust its projects and activities to timely respond to such trends and shifts.

Activities involved in this task will include:

- monthly meetings with the city's CDBG-NDR staff
- timely respond to inquiries from the city's CDBG-NDR staff on trends connected to specific projects and activities
- Keep the CDBG-NDR staff aware of regional initiatives, activities, and patterns which can affect CDBG-NDR projects and activities

B. National Objectives

CDBG funds expended for planning costs under [§ 570.205](#) and [§ 570.206](#) will be considered to address the national objectives.

C. Levels of Accomplishment – Goals and Performance Measures

The Sub recipient agrees to provide the following levels of program services:

Task 1 – Research to identify and establish means and methods for accessing data on a current basis

Task 2 – Planning and research support connected to maintaining relevance of CDBG-NDR projects and activities to unmet needs in Minot

D. Staffing

Under the direction and with the support of the Souris Basin Planning Council's Executive Director, staff of the Council will be made available to carry out the tasks.

E. Performance Monitoring

The Grantee will monitor the performance of the Sub recipient against goals and performance standards as stated above. Substandard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Sub recipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

II. TIME OF PERFORMANCE Services of the Sub recipient shall start on the 8th day of January, 2018 and end on the 31st day of December of 2018. The term of this Agreement and the provisions herein shall be

extended to cover any additional time period during which the Sub recipient remains in control of CDBG funds or other CDBG assets, including program income if applicable.

Sub-grantee will complete this project within 11 months 23 days for a total budget of \$14,500 which includes all costs incurred for the work set forth in the two tasks. Expense documentation as required will be maintained by the sub-grantee and will be available to the City of Minot as policy and procedures require. A breakdown of payments is set forth below:

- Monthly at a rate of \$1,208.33 except for December, 2018 which payment shall be \$1,208.37

F. BUDGET

Any indirect costs charged must be consistent with the conditions of Paragraph VIII (C)(2) of this Agreement. In addition, the Grantee may require a more detailed budget breakdown than the one contained herein, and the Sub recipient shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Sub recipient.

G. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement shall not exceed \$14,500. Drawdowns for the payment shall be on a monthly basis through a request for payment from the sub-grantee accompanied by a report of activities for the prior month consistent with Task 1 and Task 2.

Payments may be contingent upon certification of the Sub recipient's financial management system in accordance with the standards specified in 2 CFR 200.84.21.

H. NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this contract shall be directed to the following contract representatives:

- 1) Grantee: John Zakian, Program Manager National Disaster Resilience Project, City of Minot
John.Zakian@minotnd.org, 701-420-4528, _____

Sub recipient: _____

I. GENERAL CONDITIONS

A. General Compliance

The Sub recipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Sub recipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Sub recipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Sub recipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Sub recipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Sub recipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Sub recipient is an independent contractor.

C. Hold Harmless

The Sub recipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Sub recipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Sub recipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Sub recipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee. The Sub recipient shall comply with the bonding and insurance requirements of 2 CFR 200.304, Bonding and Insurance.

F. Grantee Recognition

The Sub recipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Sub recipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Sub recipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Sub recipient from its obligations under this Agreement. The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Sub recipient.

H. Suspension or Termination In accordance with 2 CFR 200.339, the Grantee may suspend or terminate this Agreement if the Sub recipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Sub recipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Sub recipient to the Grantee reports that are incorrect or incomplete in any material respect. In accordance with Appendix II to 2 CFR Part 200 (B), this Agreement may also be terminated for convenience by either the Grantee or the Sub recipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

J. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1) Accounting Standards The Sub recipient agrees to comply with 2 CFR 200.300 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2) Cost Principles - The Sub recipient shall administer its program in conformance with 2 CFR 200.400, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be maintained:

The Sub recipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National 2. 2.

2. Objectives of the CDBG program:

- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 2 CFR 200.302. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

3. Retention

The Sub recipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee's close-out report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the four-year period, whichever occurs later.

4. Client Data (not applicable)

5. Disclosure (not applicable)

6. Close-outs

The Sub recipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records.

7. Audits & Inspections

All Sub recipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of

their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Sub recipient within 30 days after receipt by the Sub recipient. Failure of the Sub recipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Sub recipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning sub recipient audits and 2 CFR 200.500.

C. Reporting and Payment Procedures

1. Program Income (not applicable)
2. Indirect Costs

If indirect costs are charged, the Sub-recipient will develop an indirect cost allocation plan for determining the appropriate Sub-recipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Sub-recipient funds available under this Agreement based upon information submitted by the Sub-recipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Sub-recipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Sub recipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Sub-recipient.

4. Progress Reports

The Sub-recipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

K. Procurement

1. Compliance

The Sub-recipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Sub-recipient shall procure all materials, property, or services in accordance with the requirements of 2 CFR 200.300.

3. Use and Reversion of Assets There shall be no use and therefore no disposition of real property and equipment under this agreement.

L. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

There shall be no Acquisition nor Relocation under this Agreement.

M. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Sub-recipient agrees to comply with [fill in local and state civil rights ordinances here] and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Sub-recipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Section 504

The Sub-recipient agrees to comply with all Federal regulations issued pursuant to compliance with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Sub-recipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B. Affirmative Action

1. Approved Plan

The Sub-recipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Sub-recipient to assist in the formulation of such program. The Sub-recipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Sub-recipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Sub-recipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Sub-recipient shall furnish and cause each of its own sub-recipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Sub-recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient, state that it is an Equal Opportunity or Affirmative Action employer.

5. Subcontract Provisions

The Sub-recipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own sub-recipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Sub-recipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards (not applicable)

D. Conduct

1. Assignability

The Sub-recipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Sub-recipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Sub-recipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Sub-recipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Sub-recipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this agreement

d. Selection Process

The Sub-recipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis Agreement in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Sub-recipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Conflict of Interest

The Sub-recipient agrees to abide by the provisions of 2 CFR 200.112 and 570.611, which include (but are not limited to) the following:

a. The Sub-recipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

- b. No employee, officer or agent of the Sub-recipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Sub-recipient, or any designated public agency.

5. Lobbying

The Sub-recipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, 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 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.

d. Lobbying Certification (not applicable)

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.C. 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.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Sub-recipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

N. ENVIRONMENTAL CONDITIONS

Planning is exempt under 24 CFR Part 58.

O. SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

P. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

Q. WAIVER

The Grantee's failure to act with respect to a breach by the Sub-recipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

R. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Sub-recipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Sub-recipient with respect to this Agreement.

Date: _____

IN WITNESS WHEREOF, the Parties have executed this contract as of the date first written above.

[Grantee]

By _____

[Sub-recipient]

By _____



TO: Mayor Chuck Barney
Members of the City Council

FROM: John R. Zakian, DR Grant Program Manager

DATE: December 5, 2017

SUBJECT: CITY COUNCIL APPROVAL OF AMENDMENT TO CDM SMITH ALLOCATION #2 CONTRACT

I. RECOMMENDED ACTION

1. It is recommended the Committee and Council approve a contract extension through June 30, 2018 with CDM Smith for project delivery services for CDBG-DR Allocation #2 with all terms and conditions remaining the same including no additional allocation of funds to existing cap.

II. DEPARTMENT CONTACT PERSONS

John R. Zakian, DR Program Manager, 423-4528

III. DESCRIPTION

A. Background

There are CDM Smith project delivery contracts for CDBG-DR Allocations #1 and #2, and for the CDBG-NDR grant. Separate contracts are the most effective means to track costs against the different grants as well as effectively manage project delivery costs. The current contract with CDM Smith for Allocation #2 expires December 31, 2017. It was originally entered as an agreement on May 6, 2013 and has been periodically extended. During the past several months we have been focusing on completing projects and activities within Allocation #2 to be able to undertake grant closeouts and complete this one of the three Contracts with CDM Smith well in advance of the statutory deadline to spend all funds in this grant. It should be noted that the Allocation #2 funds have the same expenditure deadline as the NDR grant of September 30, 2022.

B. Project

The Amendment No.8 extends the current agreement through June 30, 2018 with all terms and conditions remaining the same, and no new funds added to the agreement. It is planned that by June we will be able to know with certainty of being able to close out all activities in CDBG-DR Allocation # 2 but there can be unforeseen requirements that may extend the period for completing all activities necessitating additional work requirements with CDM Smith.

IV. IMPACT:

A. Strategic Impact:

N/A

B. Service/Delivery Impact:

Provides sufficient time to determine if any additional work or requirements will be needed to be able to complete closeout of activities in CDBG-DR Allocation well ahead of scheduled deadline of September 30, 2022 to have all funds spent.

C. Fiscal Impact:

None

V. ALTERNATIVES

N/A

VI. TIME CONSTRAINTS

VII. LIST OF ATTACHMENTS

A. CDM Smith CDBG Contract 2 Amendment No. 8

**AMENDMENT NO: 8
TO AGREEMENT
BETWEEN
CITY OF MINOT AND PROGRAM ADMINISTRATOR**

This Amendment No: 8 is made and entered into this 5th day of December, 2017 to the Agreement between CDM Smith Inc. (CDM Smith) ("Program Administrator") and City of Minot ("OWNER") dated May 6, 2013, ("the Agreement").

WHEREAS, PROGRAM ADMINISTRATOR and OWNER entered into the Agreement for Community Development Block Grant Disaster Recovery Management Services for Minot CDBG-DR Allocation #2, and

WHEREAS, the parties desire to amend the Agreement so as to amend the scope of work, time periods of performance and payment, and/or responsibilities of OWNER; and

WHEREAS, the Agreement provides that any amendments shall be valid only when expressed in writing and signed by the parties.

NOW THEREFORE, in consideration of the mutual understandings and Agreements contained herein, the parties agree to amend the Agreement as follows:

1. The Basic Services of PROGRAM ADMINISTRATOR as described in the Agreement are amended and supplemented as follows:

N/A

2. The responsibilities of OWNER as described in the Agreement are amended and supplemented as follows:

N/A

3. The time periods for the performance of PROGRAM ADMINISTRATOR's services as set forth in the Agreement are amended and supplemented as follows:

The contract end date is extended from December 31, 2017 to June 30, 2018.

4. The payment for services rendered by PROGRAM ADMINISTRATOR shall be as set forth below:

No change at this time.

5. Except as herein modified, all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the date indicated above for the purpose herein expressed.

Program Administrator
Steven L. Wolsfeld
Vice President
DATE: December 5, 2017

City of Minot
Chuck Barney
Mayor
DATE: December 5, 2017



TO: Mayor Chuck Barney
Members of the City Council

FROM: Rick Feltner, Airport Director

DATE: January 2, 2018

SUBJECT: PERIMETER ROAD: FINAL PAYMENT (AIR049)

I. RECOMMENDED ACTION

1. Recommend approval of Pay Estimate #2 – Final to Wagner Construction for work completed on the Perimeter Road Reconstruction project; and
2. Authorize Rick Feltner, Airport Director, to sign applicable Final Payment documentation

II. DEPARTMENT CONTACT PERSONS

Rick Feltner, Airport Director 857-4724

III. DESCRIPTION

A. Background

This project was approved by City Council in December 2016 and advertised for in June 2017. \$370,000.00 was budgeted in 2017 for this project; the City share was \$18,500.00.

B. Proposed Project

N/A

C. Consultant Selection

Ulteig Engineers was the consultant utilized on this project.

IV. IMPACT:

A. Strategic Impact:

N/A

B. Service/Delivery Impact:

N/A

C. Fiscal Impact:

This project is being funded between the FAA, State Aeronautics, and the City. Funding is covered as follows: FAA – 90%, State Aeronautics – 5%, City – 5%.

Project Costs

Consultant Agreement	\$33,598.71
Total	\$33,598.71

Project Funding

90% FAA

5% State

5% City

\$1,679.94

V. ALTERNATIVES

N/A

VI. TIME CONSTRAINTS

Council's approval of the recommendation will allow for final payment to be submitted in a timely manner, bringing the project one step closer to closeout.

VII. LIST OF ATTACHMENTS

A. Pay Request #2 – Final, Perimeter Road



Pay Request #2 - Final
Perimeter Road Reconstruction
Minot International Airport
Minot, North Dakota
UEI Project No. R16.02081

Date: September 30, 2017 through November 4, 2017

Spec. No.	No.	Item	Unit	Quantity	Contract Amount		Completed to Date	
					Unit Cost	Ext. Price	Quantity	Ext. Price
G-100	1	Contractor Quality Control Program	LS	1	\$ 5,300.00	\$5,300.00	1	\$ 5,300.00
G-101	2	Mobilization	LS	1	\$ 30,000.00	\$30,000.00	1	\$ 30,000.00
G-103	3	Airport Safety Control	LS	1	\$ 11,590.65	\$11,590.65	1	\$ 11,590.65
G-103	4	Low Profile Barricades	LS	1	\$ 8,500.00	\$8,500.00	1	\$ 8,500.00
G-103	5	4' Orange Safety Fence	LF	1,901	\$ 5.00	\$9,505.00	1,810	\$ 9,050.00
G-104	6	Field Laboratory	LS	1	\$ 1.00	\$1.00	0	\$ -
G-107	7	Haul Road and Staging Area	LS	1	\$ 9,000.00	\$9,000.00	1.00	\$ 9,000.00
R-103	8	Rotomill Asphalt Pavement	SY	3,796	\$ 1.25	\$4,745.00	3,796	\$ 4,745.00
P-152	9	Unclassified Excavation	CY	1,287	\$ 12.00	\$15,444.00	1,287	\$ 15,444.00
P-152	10	Unclassified Excavation - Subgrade Repairs (As Needed)	CY	250	\$ 6.00	\$1,500.00	39	\$ 234.00
02246	11	Geotextile Fabric	SY	4,395	\$ 2.65	\$11,646.75	4,391	\$ 11,636.15
P-156	12	Silt Fence	LF	570	\$ 2.60	\$1,482.00	0	\$ -
02513	13	Plant Mixed Bituminous Pavement	TON	1,460	\$ 92.30	\$134,758.00	1,450	\$ 133,835.00
P-603	14	Bituminous Tack Coat	GAL	410	\$ 4.25	\$1,742.50	410	\$ 1,742.50
T-901	15	Seeding	SY	491	\$ 8.00	\$3,928.00	491	\$ 3,928.00
T-905	16	Topsoil	CY	65	\$ 20.00	\$1,300.00	65	\$ 1,300.00
T-908	17	Bonded Fiber Matrix	SY	491	\$ 1.00	\$491.00	491	\$ 491.00
Total Base Bid						\$250,933.90		\$ 246,796.30

Spec. No.	No.	Item	Unit	Quantity	Contract Amount		Completed to Date	
					Unit Cost	Ext. Price	Quantity	Ext. Price
02235	1	13" Recycled Aggregate Base Course	SY	4,395	\$ 12.25	\$53,838.75	4,395	\$ 53,838.75
Total Alternate #2					\$ 53,838.75		\$ 53,838.75	

Analysis of Adjusted Contract Amount to Date

Original Contract Amount	\$ 304,772.65
Plus: Cost Added by Change Order	
Less: Cost Deducted by Change Order	
Adjusted Contract Amount to Date	\$ 304,772.65

Analysis of Work Performed

Original Contract Work Performed to Date	\$ 300,635.05
Change Order Work Completed	
Total Cost of Work Performed to Date	\$ 300,635.05
Net Amount Earned on Contract Work to Date	\$ 300,635.05
Less Retainage	\$ -
Subtotal	\$ 300,635.05
Less: Amount of Previous Payments	\$ 267,036.34
Balance Due This Payment	\$ 33,598.71

Contractor's Certification

By Mark J Title Project Manager, Wagner Construction, Inc.
Date 12/07/17

Engineer's Recommendation

Payment of the above amount due this application is recommended.
By Ulteig, Ulteig Engineers, Inc.
Date 12-13-17

Owner's Acceptance

Payment of the above amount due this application is accepted

By _____ Title _____
Date _____



TO: Mayor Chuck Barney
Members of the City Council

FROM: Rick Feltner, Airport Director

DATE: January 2, 2017

SUBJECT: LETTER OF AGREEMENT: MAGIC CITY TOWER, MINOT INTERNATIONAL AIRPORT, AND AVFLIGHT

I. RECOMMENDED ACTION

1. Recommend approval of the letter of agreement between Magic City Tower, Minot International Airport, and AvFlight regarding Control of Vehicles and Equipment in Movement and Non-Movement Safety Areas; and
2. Authorize the Airport Director to sign the agreements

II. DEPARTMENT CONTACT PERSONS

Rick Feltner, Airport Director	857-4724
--------------------------------	----------

III. DESCRIPTION

A. Background

The Airport, The FAA (through Magic City Tower), and AvFlight wish to alter the way vehicle and equipment traffic is controlled in the area of the FedEx ramp at Taxiways Delta and Echo. The FAA requires that local government give the Airport Director specific authorization to approve and execute this type of LOA. All parties are in agreement with this change.

B. Proposed Project

Execute the attached letter of agreement.

C. Consultant Selection

N/A

IV. IMPACT:

A. Strategic Impact:

N/A

B. Service/Delivery Impact:

Vehicle traffic and equipment will be able to more conveniently transition from the movement area to the non-movement area between taxiways Delta and Echo, without the requirement to contact Magic City Tower for authorization in certain instances.

C. Fiscal Impact:

N/A

V. ALTERNATIVES

Alt 1. If the Council elects not to give the Airport Director the authority to execute the LOA, procedures in this area of the airport will not change.

VI. TIME CONSTRAINTS

Timely execution of this LOA is beneficial to all parties.

VII. LIST OF ATTACHMENTS

- A. Letter of Agreement
- B. Aerial photograph of the affected area.

LETTER OF AGREEMENT

Effective:

MAGIC CITY TOWER MINOT INTERNATIONAL AIRPORT AND AVFLIGHT MINOT CORPORATION

SUBJECT: CONTROL OF VEHICLES AND EQUIPMENT IN MOVEMENT,
NON-MOVEMENT, AND SAFETY AREAS

- 1. PURPOSE:** To establish procedures and responsibilities for operation of vehicles and equipment with aircraft movement and safety areas.
- 2. SCOPE:** The procedures outlined herein apply to all areas where positive control of vehicles, personnel and equipment must be maintained by Magic City Tower.
- 3. CANCELLATION:** This cancels the Letter of Agreement, Movement/Non-movement Jurisdictional Responsibilities, dated June 19, 2013.

4. DEFINITIONS:

- a. Movement Areas: All runways, taxiways, and other areas of the airport which are utilized for taxiing, hover taxiing, air taxiing, takeoff and landing of aircraft exclusive of loading ramps and parking areas. Operations on movement areas require prior approval from Magic City Tower.
- b. Non-movement areas: All parking areas and cargo loading ramps, including the general aviation ramp, commercial ramp, all hangar areas, the FedEx ramp and the military cargo ramp. Operations on non-movement areas do not require approval from Magic City Tower.

NOTE: While the commercial ramp is considered a non-movement area, aircraft must call Magic City Ground for pushback and taxi to deicing pad due to limited ramp space, and the requirement to keep Bravo and Delta taxiways open. Wingtip separation is strictly the responsibility of the ground crew.

- c. Runway Safety Areas: A designated area abutting the edges of a runway or taxiway intended to reduce the risk of damage to an aircraft inadvertently leaving the runway or taxiway.
- d. Advisories: Advice and information provided by Magic City Tower to assist in the safe conduct of aircraft movement. These advisories do not imply control responsibilities.

5. RESPONSIBILITIES:

- a. The Minot International Airport Operations all ensure that:
 1. All vehicles operating within the movement area and runway safety areas are equipped with two-way radios capable of communicating and in continuous communication with Magic City Tower or,
 2. Be under escort by a vehicle with a two-way radio in continuous communication with Magic City Tower or,
 3. Be under the direction of an authorized person who is in communication with Magic City Tower who is coordinating ground vehicles without radios, as approved by Minot International Airport Operations.
- b. All vehicles and equipment operators and persons coordinating ground vehicle operations for non-radio control vehicles shall obtain clearance from Magic City Tower prior to entry into or crossing any movement area.
- c. *To the extent allowed by North Dakota law, the airport owner/operator covenants and expressly agrees that with regard to any liability which may arise from the operations within the movement and runway safety areas, each party shall be solely and exclusively liable for the negligence of its own agents, servants, and/or employees, in accordance with the applicable law, and that neither party looks to the other to save or hold harmless for the consequences of any negligence on the part of one of its own agents, servants, and/or employees.*

6. PROCEDURES:

- a. During the hours of Magic City Tower operation, all ground vehicles, equipment operators and personnel shall obtain clearance from the tower on 121.9 prior to entry into or crossing any movement area. When Magic City Tower is closed, vehicles shall monitor and transmit on the Common Traffic Advisory Frequency (CTAF) 118.2.
- b. Airport Operations vehicles and AvFlight Minot Corporation refuelers may proceed between the movement area hold short lines on Delta Taxiway at the east end of the commercial ramp and Echo Taxiway to the FedEx ramp without contacting the tower. The distance between the two movement area lines is 380 feet. This area is directly in front of and visible to the control tower. This will greatly increase the efficiency of both controllers and airport operations/refueler operators as numerous calls are required throughout the day. If, at any time, the control tower is not visible to the vehicle/equipment/refueler operator, the driver must contact the tower for permission to proceed. Vehicle operators shall give way to all aircraft and remain vigilant at all times.

- c. If only one vehicle of a group of vehicles is radio equipped, it shall be the responsibility of the operator of the radio-equipped vehicle to obtain and relay movement clearances to the other vehicles.
- d. Vehicles experiencing radio failure are to clear the runway immediately. When clear of the runway, the vehicle should be turned toward the tower and the headlights blinked to indicate a radio failure and the need for assistance.
- e. Light signals shall NOT be used to clear vehicles onto a movement or safety area where two-way radio and continuous contact with the tower is required. If assistance is required to move vehicles out of a movement or runway safety area, such as in the case of radio failure, the tower should notify Airport Operations who will dispatch a vehicle to escort the no-radio vehicle clear of the area. If Airport Operations is not available for escort due to other duties on the airfield, the vehicle operator experiencing radio failure may call Magic City Tower via cell phone for clearance out of the area. The vehicle operator must remain on the phone until they report clear of the area to the tower.
- f. All vehicles and equipment shall give way to all aircraft and remain vigilant at all times.
- f. Snow removal operations have priority over closed pattern traffic. Local pattern work during snow removal operations shall be limited to full stops or restricted low approaches.
- g. Magic City Tower will advise Minot International Airport Operations if personnel, vehicles or equipment are observed to operating in a manner contrary to this letter of agreement or any local, state or federal directive.
- h. Closed Movement Areas:
 - 1. When Minot International Airport Operations has closed a movement area, that surface is released to the Minot International Airport Operations for movement area access purposes. Airport authorized contractors do not require a clearance from Magic City Tower to operate on any portion of a closed runway or safety area that is designated as a construction work site.
 - 2. Any portion of a closed movement area that has been made available to ATC for aircraft ground movement (taxiing) purposes, i.e., crossing point, taxi route, shall be treated as a taxiway in that all vehicles must contact ground control to cross or access those portions of the closed runway.
 - 3. If a movement area is closed in its entirety, i.e., for snow removal, MOT shall coordinate with the Minot International Airport Operations for clearance to cross or taxi on that movement area.

Rick Feltner
Airport Director
Minot International Airport

Janice M. Hartle
Air Traffic Manager
Minot FCT, ND

Josh Hutchens
Line Manager
AvFlight Minot Corporation

17117

AIRPORT DIAGRAM

AL-635 (FAA)

ASOS
118.725
MAGIC CITY TOWER *
118.2 251.125
GND CON
121.9

D

-48°16'N

ELEV
1702

JANUARY 2015
ANNUAL RATE OF CHANGE

0.1°W

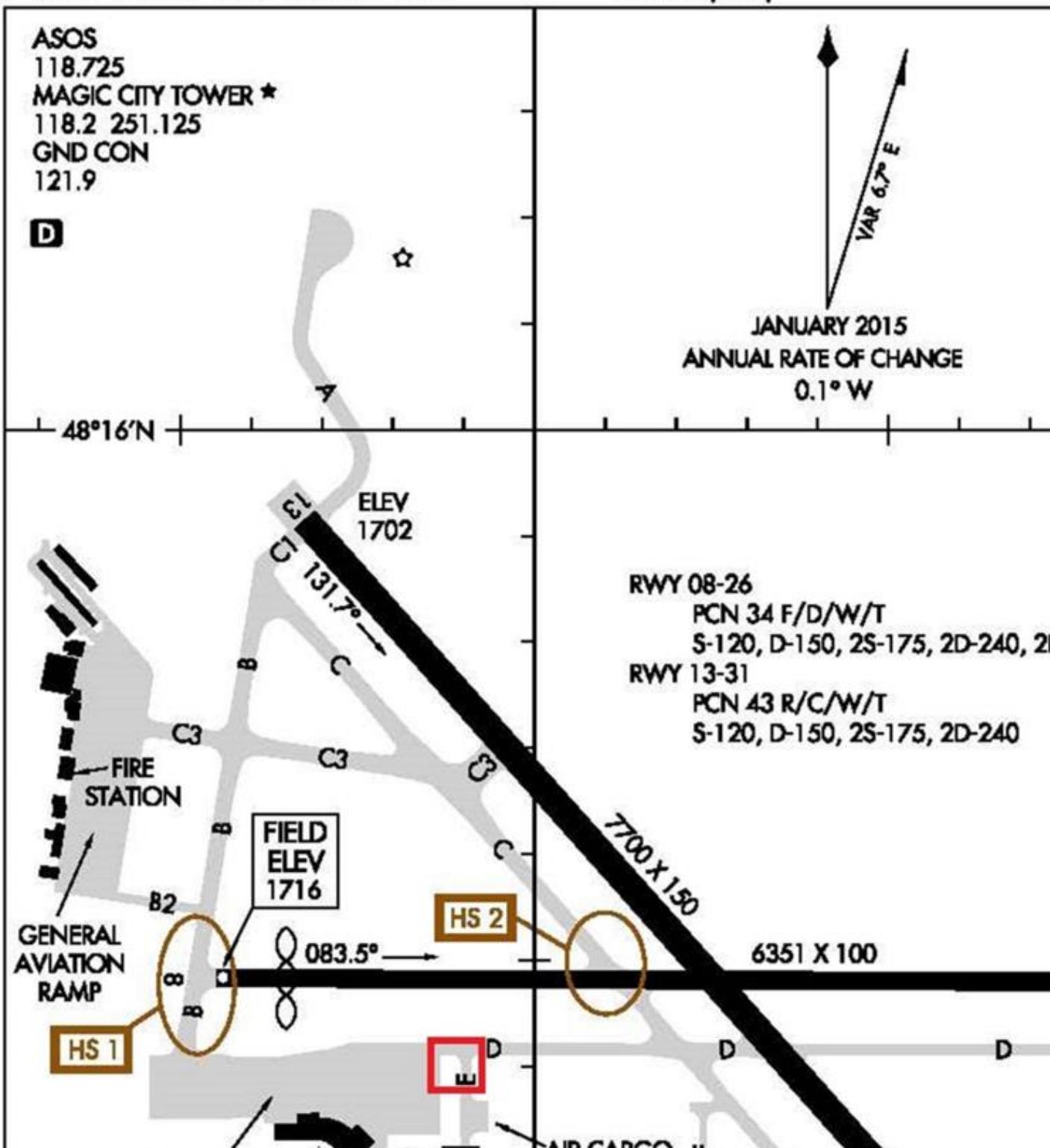
RWY 08-26

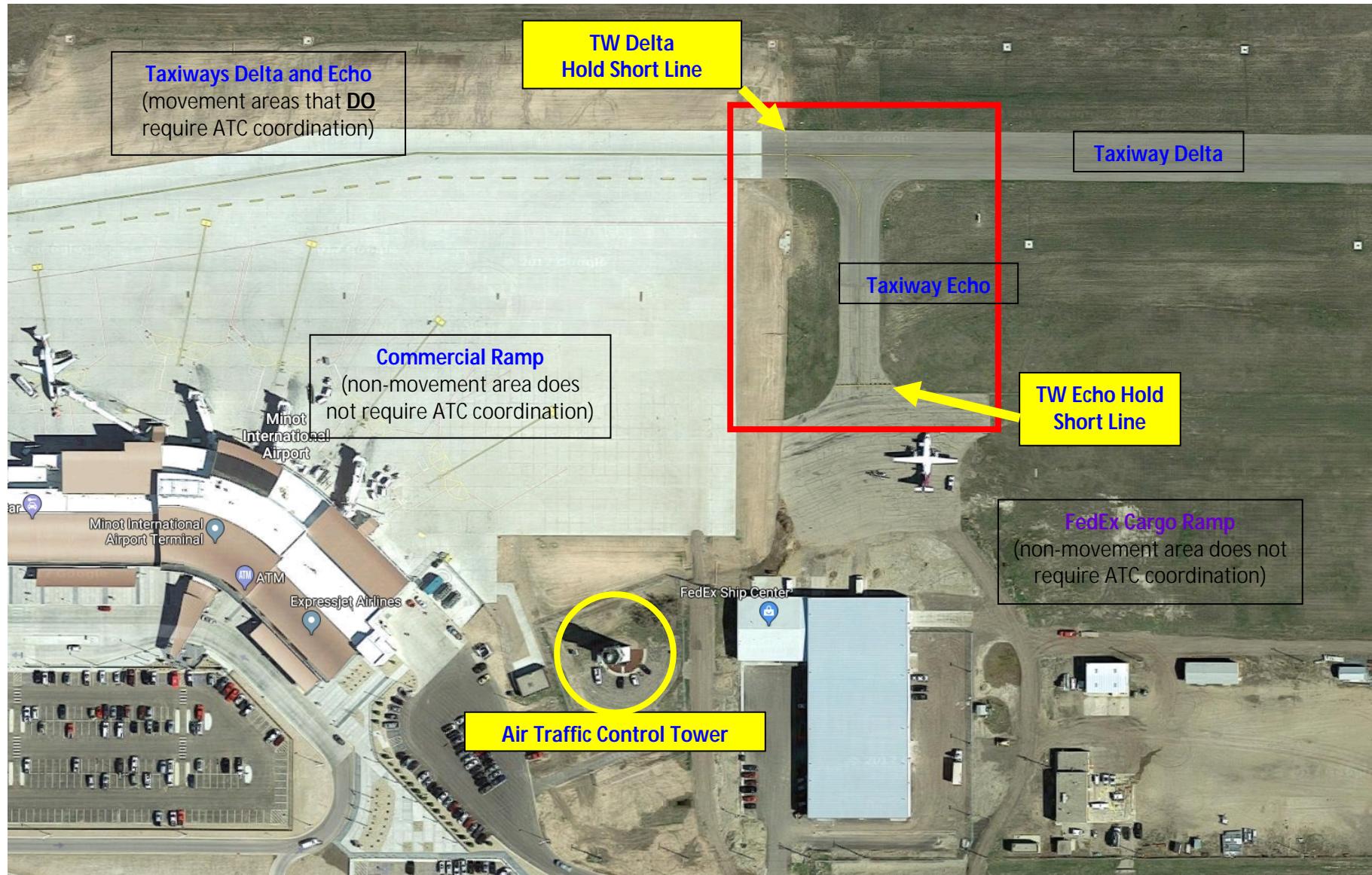
PCN 34 F/D/W/T
S-120, D-150, 2S-175, 2D-240, 2

RWY 13-31

PCN 43 R/C/W/T
S-120, D-150, 2S-175, 2D-240

NC-1, 25 MAY 2017 to 22 JU





Taxiways are movement areas that require coordination with ATC prior to entering and proceeding. Coordination must be made BEFORE crossing the hold short lines. Currently, all FBO refueling and Airport Operations vehicles/equipment coordinate with ATC multiple times an hour, and dozens of times each day, to cross between the commercial and cargo ramps via TW Delta and Echo.

The proposed LOA would allow ONLY FBO refuelers and Airport Operations vehicles/equipment to traverse between the TW Delta Hold Short Line and the TW Echo Hold Short Line without coordinating with ATC (see area in red box). All other activity must be approved and coordinated prior to movement. This LOA was developed with the support of Midwest ATC, the FBO, and Airport Management.

City of Minot

TO: Mayor Chuck Barney
Members of the City Council

FROM: Rick Feltner, Airport Director

DATE: January 2, 2017

SUBJECT: ASSIGNMENT OF LEASE FROM BESSETTE AVIATION TO EXECUTIVE AIR TAXI

I. RECOMMENDED ACTION

1. Recommend approval of the reassignment of the lease to Executive Air Taxi; and
2. Authorize the Mayor to sign the agreement

II. DEPARTMENT CONTACT PERSONS

Rick Feltner, Airport Director	857-4724
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III. DESCRIPTION

A. Background

Bessette Aviation wishes to sell their aircraft hangar to Executive Air Taxi. As part of that transaction, they wish to assign their ground lease with the airport to the new owner as well. Executive Air Taxi would assume the lease with no changes to the current terms.

B. Proposed Project

Assignment of the lease under existing terms to the new hangar owner.

C. Consultant Selection

N/A

IV. IMPACT:

A. Strategic Impact:

The Airport anticipates that Executive Air Taxi will be an active member of the local aviation community.

B. Service/Delivery Impact:

NA

C. Fiscal Impact:

As the terms of the current lease remain intact, there is no change in the fiscal impact to the Airport.

V. ALTERNATIVES

Alt 1. The Council could deny the request to assign the ground lease, but would be required to give sufficient cause for such action.

VI. TIME CONSTRAINTS

Expeditious approval will allow the parties to conclude their new business arrangement.

VII. LIST OF ATTACHMENTS

A. Bessette Aviation Lease

AIRPORT LEASE

FIXED BASE OPERATOR

THIS INDENTURE, made this 20th day of September, 2000, by and between the City of Minot, a municipal corporation of the State of North Dakota, party of the first part, hereinafter referred to as CITY, and Don Bessette Aviation, party of the second part, hereinafter referred to as LESSEE:

WITNESSETH, that the CITY for and in consideration of the covenants and agreements hereinafter mentioned to be kept and performed by the LESSEE, has demised and leased to the LESSEE the premises on the Minot International Airport in the County of Ward and State of North Dakota, known and described as follows:

10/00
Lot 55 (100 X 100 = 10,000 square feet)

TO HAVE AND TO HOLD the same unto the LESSEE from the 20th day of September 2000, until the 30th day of September 2020.

The LESSEE, in consideration of said demise, does covenant and agree with the CITY as follows:

1. To pay rent for said demised premises the sum of One Hundred Dollars (\$100.00) per month, in advance, upon the first day of each and every month of said term at the office of the Airport Director, Minot, North Dakota; if not paid by the 10th day of the month, this lease automatically becomes void. The CITY reserves the exclusive right to adjust or increase this rental payment on October 1, 2003, and thereafter at three (3) year intervals.

2. To use the said premises for the following purposes only: storage of aircraft, as a shop for all types of aircraft repair; and any other aircraft business.

3. LESSEE may erect structures upon his demised premises, except that a portion required for fire spacing which shall be kept absolutely clear and clean for fire purposes; however, the plans and construction are subject to the approval of the City Council. LESSEE shall maintain leased premises and structure erected thereon at all times in a safe, neat and attractive condition and shall repaint the buildings as necessary. LESSEE shall keep the leased premises and any hangar erected, or to be erected thereon, clean and orderly and free from all debris, and shall not:

- a. Accumulate aircraft parts, including fuselages, wings, floats, and engines outside of hangar; and
- b. Leave outside any trash, refuse, debris, waste materials or unusable items commonly called junk, old car bodies or empty barrels, except those barrels used for deposit trash as hereafter set forth;

4. To comply with any and all directions and orders given by the Airport Director concerning the use of the leased premises under the ordinances, regulations and rules adopted by the City Council of the City of Minot.

5. To make no use of, nor perform any acts on or about the leased premises which might endanger the life or property of any person whomsoever.

6. To erect no billboards, posters or signs on the premises except such as have been approved in advance in writing by the CITY'S Airport Director.

7. To be responsible for all snow removal on the leased premises and shall do so in a manner which does not interfere with airport operations or damage to property.

8. To assume and pay for all costs or charges for utilities services furnished to LESSEE during the term hereof; provided, however, that LESSEE shall have the privilege to connect to any and all storm and sanitary sewers and water and utility outlets at its own cost and expense, including any and all service charges incurred therefor, provided that LESSEE shall first obtain the written consent of the City, which shall not be unreasonably withheld.

9. To comply with all ordinances, laws and regulations of the City of Minot, State of North Dakota and the Federal Aviation Administration insofar as they apply to this lease and aircraft operations in connection therewith.

10. To recognize the CITY'S required compliance with Federal Air Regulations concerning airport security and agrees that in the event that the CITY is assessed a fine by the FAA under the FAR Part 107 for breach of security by an unauthorized employee of LESSEE or SUBLESSEE at Minot International Airport entering into a restricted area at Minot International Airport or fined for an unsecured gate, door, or access to a restricted area, LESSEE shall fully reimburse the CITY for the amount of such fine.

11. The LESSEE, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land, that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this lease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, LESSEE shall maintain and operate such

facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

12. That in the event of breach of any of the above nondiscrimination covenants, City of Minot shall have the right to terminate the lease and to re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.

13. Subject to the provisions of Paragraph 2 concerning the use of the premises, that the LESSEE shall have all rights and privileges to conduct all business operations authorized under the terms of this lease, provided, however, that this agreement shall not be construed in any manner to grant the LESSEE, or those claiming under him, the exclusive right to use the premises or facilities of the aforementioned airport other than those premises leased exclusively to the LESSEE hereunder.

IT IS HEREBY UNDERSTOOD AND AGREED that any hangar placed and erected by the LESSEE on the premises leased herein shall be and remain the property of the LESSEE and may be removed by him within sixty (60) days after the expiration or cancellation of this lease, provided all rentals under this lease or other charges due the City have been paid. If the building cannot be removed because a mover cannot be arranged for during the 60 day time frame or the LESSEE would suffer a severe economic impact attempting to meet that time frame, then the LESSEE will be permitted to submit plans to the Airport Director for approval of the removal of the building at the earliest practical time. In no instance will the time allowed to remove hangars from the Minot International Airport be extended beyond the 120 days.

IT IS HEREBY UNDERSTOOD AND AGREED that the LESSEE has, and is hereby given, an option to renew a ground lease at the Minot International Airport for an additional 20 years under the terms and conditions set by the City Council at the time of renewal.

IT IS HEREBY UNDERSTOOD AND AGREED that the LESSEE shall keep current all taxes levied against said demised premises.

IT IS HEREBY UNDERSTOOD AND AGREED that the LESSEE may not assign this lease unless permission is requested in writing and unless the CITY grants permission in writing.

IT IS HEREBY UNDERSTOOD AND AGREED that the LESSEE agrees to cover any loss, liability, damage, cost, or expense relative to this lease, to fully indemnify, and save forever harmless the CITY, his agents and employees, from and against all claims and actions and all reasonable expenses incidental to the investigation and defense

thereof, based on or arising out of claims for damages to property or injuries to persons, including wrongful death, or damages to the environment including but not limited to investigation, field study, and clean-up cost assessed by any federal or state agency against the Minot International Airport or any of its agents or employees, and arising out of LESSEE's use or occupancy of the leased premises; provided, however, that CITY shall give to LESSEE prompt and reasonable notice of any such claims or actions, and LESSEE shall have the right to investigate, compromise and defend the same; and provided, however, that LESSEE shall not be liable for any claims, actions, injuries, damage or loss occasioned solely by any negligence or intentional acts of CITY, its agents or employees. LESSEE agrees to cover any fees, liability, damage, cost or expense relative to this lease, shall indemnify and save and hold CITY harmless from and against any claims by carriers serving LESSEE, provided, however, LESSEE shall not be liable for any claims, actions, injuries, damages or loss occasioned solely by any negligence or intentional acts of CITY, its agents or employees.

IT IS HEREBY UNDERSTOOD AND AGREED that the CITY through its duly authorized agent, shall have the full and unrestricted right to enter the leased premises at any reasonable time for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with the terms of this Agreement.

CITY'S RESERVATIONS: CITY, at its sole discretion, reserves the right to further develop or improve the aircraft operating area and other portions of the Airport, including the right to remove or relocate any structure on the Airport, as it sees fit, and to take any action it considers necessary to protect the serial approaches of the Airport against obstructions, together with the right to prevent LESSEE from erecting or permitting to be erected, any buildings or other structure on the Airport which, in the opinion of CITY would limit the usefulness of the Airport or constitute a hazard to aircraft.

In the event the CITY requires the Leased Premises for expansion, improvements, development of the Airport, CITY reserves the right, on a six (6) month notice, to relocate or replace LESSEE's improvements, in substantially similar form at another generally comparable location on the Airport. In the event of such relocation or replacement, CITY agrees to suspend rental during period improvements are unused and to reimburse LESSEE for costs incurred in moving their equipment and operations to a new location or building. Lost profits and other incidental damages shall not be included in this sum. This lease may be terminated if the LESSEE's improvements cannot be relocated (for whatever reason) or if the CITY needs additional space for its own use.

TERMINATION CLAUSE: It is understood and agreed between the parties hereunto that in the event LESSEE fails to keep said premises clean as above set forth, or fails to remedy any condition existing upon said premises which in the opinion of the Airport Director is required to be done under the ordinances, rules and regulations adopted by the City Council of the City of Minot, and such violation continues for a period of five (5) days after written notice to the LESSEE shall have been given by the

Airport Director, or by the City Manager of the City of Minot, or for any breach by the LESSEE of any of the terms of this contract, then this contract may be terminated by the CITY, and the LESSEE agrees to peaceably surrender up and deliver said premises promptly to the CITY.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

CITY OF MINOT,
A municipal corporation

Attest:


Roberta Appel

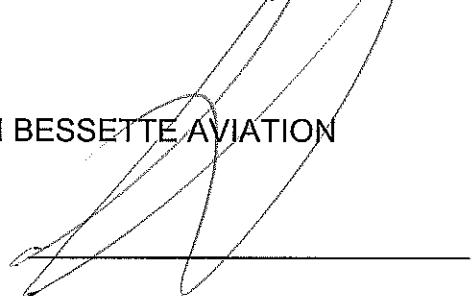
Witness


Carroll W. Erickson

Carroll W. Erickson, Mayor

DON BESSETTE AVIATION

BY:



Witness



TO: Mayor Chuck Barney
Members of the City Council

FROM: Rick Feltner, Airport Director

DATE: January 2, 2017

SUBJECT: OPERATING AGREEMENTS WITH DELTA AIR LINES AND UNITED AIRLINES AT MOT

I. RECOMMENDED ACTION

1. Recommend approval of the operating agreement between Delta Air Lines and City of Minot; and
2. Recommend approval of the operating agreement between United Airlines and City of Minot; and
3. Authorize the Mayor to sign the agreements

II. DEPARTMENT CONTACT PERSONS

Rick Feltner, Airport Director	857-4724
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III. DESCRIPTION

A. Background

Operating Agreements are put in place between the Airport and the Airlines in order to memorialize the legal relationship among the parties. They address issues such as rents, fees, obligations, indemnification, security, insurance, etc. A similar signatory agreement was executed with Allegiant Air in February 2017. United and Delta are now able to sign their respective agreements.

B. Proposed Project

Execution of two Airline Operating Agreements.

C. Consultant Selection

N/A

IV. IMPACT:

A. Strategic Impact:

With the execution of these two agreements, all three commercial service carriers will have agreed on terms of the relationship with the Minot International Airport.

B. Service/Delivery Impact:

N/A

C. Fiscal Impact:

The rates and charges for commercial airlines operating at MOT were approved by City Council as part of the budget process and are included in these agreements. The agreements provide the formula for the airlines to pay their individual portions of the shared operational costs to the Airport.

Project Costs
N/A

Project Funding
N/A

V. ALTERNATIVES

Alt 1. The Council could instruct the airport director to re-negotiate any/all components of the Operating Agreement. As all three commercial carriers would need to agree on any changes, this would most certainly be a lengthy process.

VI. TIME CONSTRAINTS

Timely execution of these two agreements is advantageous to all parties.

VII. LIST OF ATTACHMENTS

- A. Non-Signatory Use and Lease Agreement - Delta Air Lines
- B. Non-Signatory Use and Lease Agreement - United Airlines

NON-SIGNATORY
AIRLINE USE AND OPERATING PERMIT

AT

MINOT INTERNATIONAL AIRPORT
And

DELTA AIR LINES, INC.

EFFECTIVE DATE
January 1, 2016

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NON-SIGNATORY AIRLINE USE AND OPERATING PERMIT

THIS PERMIT, made and entered into by and between City of Minot, North Dakota, a municipal corporation, hereinafter, "City", and Delta Air Lines, Inc., a corporation organized and incorporated in the State of Delaware, hereinafter, "Airline."

WITNESSETH THAT:

WHEREAS, City is the operator of the Minot International Airport, "Airport", located in the County of Ward, State of North Dakota, and operates the same for the promotion, accommodation and development of air commerce and transportation; and

WHEREAS, the parties hereto desire to enter into a Non-Signatory Airline Use and Operating Permit, hereinafter the "Permit," granting Airline the use, together with others, of the Airport and its appurtenances;

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, and in replacement of any other previous leases or agreements between the parties, the parties agree as follows:

ARTICLE 1 **DEFINITIONS**

A. "Affiliate Airline" shall mean any (i) contract regional airline that operates flights under the designator code of the Non-Signatory Airline, as designated in writing by such Non-Signatory Airline from time to time; (ii) party that operates under essentially the same trade name, or uses essentially the same livery, as the Non-Signatory Airline at the Airport; or (iii) party controlling, controlled by, or under common control with the Non-Signatory Airline. Affiliate Airline shall have the rights afforded the Non-Signatory Airline provided the Non-Signatory Airline: (a) executes a Non-Signatory Permit with the City; and (b) agrees and shall be obligated to serve as a financial guarantor for all landing fees incurred for Non-Signatory Airline by any designated Affiliate Airline of the Non-Signatory Airline at the Airport. A Non-Signatory Airline and any designated Affiliate Airline shall be counted as one airline for the purposes of computing any Joint Use charges. Airline shall designate its Affiliate(s) in writing; however Airline may at any time give City sixty (60)

days prior written notice that such an air transportation company otherwise meeting the definition of an "Affiliate" hereunder shall no longer be considered an Affiliate of Airline for purposes of this Permit, and any guaranty by Airline of Affiliate's landing fees shall terminate upon the designated date of termination. The Non-Signatory Airline shall be responsible for any and all charges of (including the payment of any landing fees incurred by) any such designated Affiliate Airline while such designated Affiliate Airline operates at the Airport on behalf of Airline. Each designated Affiliate Airline must enter into an Operating Agreement-Airline with the City. If an Affiliate Airline operates at Airport incurred on behalf of Airline without an executed Operating Agreement-Airline, the Affiliate Airline will not be considered operating under the Signatory status of Airline for the purposes of payment of rates, fees, and charges and will be subject to payment of the applicable premium. No airline that offers for sale tickets for flying in and out of the Airport under its brand name shall be classified as an "Affiliate" for purposes of operating flights at the Airport under that brand name.

A. "Airline" shall mean any commercial passenger air transportation company who has executed a Non-Signatory Airline Use and Operating Permit with the City.

B. "Airline Leased Premises" shall mean the Airline's Preferential Use Space.

C. "Airport" shall mean the Minot International Airport (MOT).

D. "Airport Emergency Plan" shall mean the plan adopted by the City with input from Airline and other Airport tenants that defines roles and responsibilities of all users of the Airport in the event of an Emergency which may be amended from time to time. A current copy will be kept on file in the Airport Director's office.

E. "Airport Facilities" shall mean the Airport, together with the facilities essential in carrying out the terms of this Permit including without limitation the airfield; runways; aprons, taxiways; sewer, electrical, gas, and water utilities; lighting devices; signals; beacons; navigation aids; roadways and approaches; and all conveniences for flying, landing and take-off of aircraft.

F. "Airport Management" shall mean the Airport Director or other designated official of the Airport as appointed by the Mayor or City Manager and shall include such person or persons as may from time to time be authorized in writing by the City Council or by the Mayor to act for City with respect to any or all matters pertaining to this Permit.

G. "Cargo Operating Agreement- Signatory" shall mean an Agreement entered into between the City and a Signatory cargo operator that defines the requirements in order for the cargo operator to qualify for the adopted Signatory rates, fees, and charges. Cargo operators that do not execute a Cargo Operating Agreement- Signatory will be charged Non-Signatory Airline rates, fees, and charges.

H. "City" shall mean the City of Minot, North Dakota, or its authorized representative.

I. "Common Use Space" shall mean the space in the building used by the public for circulation, included but not limited to public restrooms, vestibules, lobbies, waiting areas, public concession space. In addition, for purposes of this Permit, Common Use Space shall also include all space in the building that is used to support building operations that is not under lease to any tenant.

J. "Fiscal Year" shall mean calendar year, such twelve (12) month period beginning on January 1 of any year and ending on December 31, of the same year.

K. "Force Majeure" shall mean factors or circumstances beyond the reasonable control of that party, whether or not foreseeable, including, but not limited to act of God; war, hostilities, act of foreign enemies, mobilization, requisition, or embargo, rebellion, revolution, insurrection, or military or usurped power, or civil war; contamination by radio-activity from any nuclear fuel, waste or the combination of radioactive or toxic explosives; riot, commotion, strikes, work stoppages, lock out or disorder, acts of government or government refusal to act; or acts or threats of terrorism.

L. "Ground Handler" shall mean any third party contractors, not employees of Airline or employees of a wholly owned subsidiary of Airline, who perform ground handling services on behalf of Airline and its designated Affiliate Airline(s) at the Airport. Services include, but are not limited to, the processing of passengers, mail, cargo, de-icing services and other servicing of the aircraft. All Ground Handlers must execute an Operating Agreement- Ground Handler with the City in order to be authorized to perform service at the Airport. Ground Handlers must remain in compliance with the terms and conditions of the Operating Agreement- Ground Handler in order to perform services on behalf of Airline at the Airport. Airline shall be responsible for all actions and obligations of any Ground Handler who continues to operate on behalf of Airline at the Airport following a cancellation or termination of an Operating Agreement- Ground Handler.

M. "Joint Use Space" shall mean the terminal space used by Airline for its use jointly with other airlines as delineated in **Exhibit 1**. Such Joint Use Space shall include but not be limited to the baggage make up area, baggage claim area, tug tunnels, hold rooms and passenger loading bridges, aircraft parking positions associated with each gate, and unenclosed ground service equipment storage space designated at each gate.

N. "Joint Use Formula" shall mean the formula used to allocate the cost of the space used for joint use purposes among airlines. The Joint Use Formula shall include all operations and enplanements for both Signatory and Non-Signatory Airlines.

O. "Landing Fees" shall mean those amounts payable by Airline which shall be calculated with respect to each one thousand (1,000) pounds of Gross Landing Weight by airline type as certified by the FAA, for landings of aircraft operated by Airline and/or Airline's designated Affiliated Airlines at the Airport.

P. "Leasehold Improvements" shall mean all items located on and within the Preferential Use Space provided or purchased by City or Airline, including items such as partitions, insulation, wiring, lighting and plumbing fixtures, piping, finished ceilings, ventilation duct work, grills, floor and wall coverings, heaters, installed cabinets, sinks, counters, and other related improvements.

Q. "New Terminal" shall mean the replacement terminal facility and aircraft parking apron that will be developed by the City completed and occupied on February 29, 2016 as shown on **Exhibit 1**. The New Terminal shall include Preferential Use Space, Joint Use Space, and Common Use Space available for use by airlines, employees, ground handling contractors, and the general public.

R. "Non-Signatory Airline" shall mean any passenger or cargo airline operating at the Airport not having executed an Airline Use and Lease Agreement or Signatory Cargo Operating Agreement with the City but executing this Permit or similar Agreement. For purposes of payment of rates and charges, Non-Signatory airlines will be charged all rentals, fees, and charges at a uniform Non-Signatory Airline premium as established in the rate ordinance adopted annually by the City. Such Non-Signatory Airline premium may be revised from time to time at City's sole discretion following consultation with the Signatory Airlines, provided however, that upon the effective date of this permit and for a period of five years following that date the premium shall remain set at zero percent (0%).

S. "Operating Agreement- Airline" shall mean an Agreement entered into by and between any designated Affiliate Airline operating at the Airport which has not executed an Airline Use and Lease Agreement or

similar document but has been designated by a Signatory Airline as an Affiliate Airline. The Operating Agreement- Airline shall define the operational and liability requirements of the executing airline.

T. “Operating Agreement- Ground Handler” shall mean an Agreement entered into by and between any third party ground handlers authorized to perform services at the Airport on behalf of Airline or a Signatory Airline. The Operating Agreement- Ground Handler shall define the operational and liability requirements of the Ground Handler and its rights and responsibilities at the Airport in order to perform services on behalf of Airline.

U. “Operation and Maintenance Costs” shall mean for the New Terminal shall include costs of providing and maintaining heating, ventilation, air conditioning, floor and ceiling coverings and finishes, doors, windows, landscaping adjacent to the passenger terminal building, lighting, snow and ice removal of the sidewalks adjacent to the passenger terminal building; garbage collection, janitorial services in Public Use Space, Joint Use Space, and public spaces, and Joint Use Space electricity, electrical systems, water and water systems, sewer; maintenance, allocated costs associated with communications systems; lighting; equipment, fixtures; and utility systems; amortization and/or depreciation of local funding of eligible City funded improvements, premiums for liability and property insurance; utilities furnished by the Airport; management expenses; personnel expenses; supplies; respecting Airline and Airport’s obligations therefore; and other services to which the Signatory Airlines and Airport Director shall reasonably agree. The Airport shall provide only such services and such maintenance as is indicated in **Exhibit 2**, attached and incorporated herein by reference, and shall bear the costs thereof in consideration for the payments to be made pursuant to the provisions of Article IV herein. The Airline will at all times maintain its Preferential Use Space in a neat, clean, safe and orderly condition, in keeping with the general decor of the area in which the space is situated, and that it will perform those maintenance or services shown on **Exhibit 2** as Airline’s responsibility at its own cost. Airline shall have primary responsibility to remove snow and ice from the Ramp Area immediately adjacent to its aircraft to create a safe condition for all operations. If aircraft is ground loaded, Airline shall have the responsibility to clear the pathway between the terminal door and aircraft door.

V. “Preferential Use Space” shall mean the terminal space leased to Airline for its preferential use as delineated in **Exhibit 1**. Preferential Use Space shall include airline ticket offices, operations offices, storage space, and ground services equipment parking space on the Ramp Area as identified in **Exhibit 1**.

W. “Project Costs” shall mean any and all costs of construction to be paid by the City with funds of the City for the passenger terminal building, related facilities, improvements and any and all incidental administrative, legal,

planning, design and construction management expenses including but not limited to architectural, engineering, project management, soil and foundations exploration, laboratory and field testing of materials and their placement, inspection, reproduction of project documents, insurance premiums and advertisement fees for construction bidding.

X. "Ramp Area" shall mean the surface immediately adjacent to the New Terminal, as designated by the City, that is used for the parking of aircraft and ground service equipment support vehicles, and the loading and unloading of aircraft as shown in **Exhibit 1** for the New Terminal.

Y. "Signatory Airline" shall mean a passenger Airline executing an Airline Use and Operating Agreement and in compliance with the terms contained therein.

Additional words and phrases used in this Permit but not defined herein shall have their usual and customary meaning.

ARTICLE II

TERM

The Term (herein after defined as "Term") of this Permit shall commence on January 1, 2016 and shall remain in effect, unless terminated in accordance with the terms hereof. Notwithstanding anything contained herein to the contrary, either party may terminate this Permit, for any reason, by providing ninety (90) days' prior written notice to the other party. The Anniversary Date of the Term for purposes of the Term of this Permit shall be January 1st of each year during the Term hereof. The terms and conditions contained herein shall apply to the New Terminal which became operational on February 29, 2016. Airline shall be responsible for all obligations required under this Permit until cancelled by either party as called for herein. Termination does not represent a waiver by the City of any obligations included in the Permit prior to the termination date.

ARTICLE III

PREMISES AND OPERATIONS

City hereby grants to Airline and its designated Affiliate Airline(s) and authorized Ground Handler the right to use and occupy the Airline Leased Premises and Joint Use Space in the New Terminal in accordance with the terms and conditions as follows:

A. Subject to and in accordance with all applicable laws and ordinances and such reasonable Minimum Standards/rules and regulations as may be adopted and amended from time to time by City for the regulation thereof and kept on file in the Airport Director's office at the Airport, Airline may, together with others, use the Airport and its appurtenances including the Preferential Use Space, Joint Use Space, and Common Use Space for the purpose of conducting its business as a commercial air carrier to engage in commercial air carrier operations at the Airport. The privileges granted hereby shall be non-exclusive, and include, without limiting the generality thereof.

1. The use of the Airport and its appurtenances by the Airline employees, agents, or contractors for the purpose of landing, take-off, loading and unloading, taxiing, and parking of its aircraft or ground service support equipment.
2. The sale of Airline's air transportation service for the transport of persons and property at the Airport. Airline promotional items will be limited to use in Airline Preferential Use Space. Information provided to customers in the processing of passengers will be allowed at the gate counters in non-permanent dispensers, upon the prior written approval of the Airport Director.
3. The sale, lease or other disposition of Airline's aircraft or other related property.
4. The training at the Airport of persons and testing of aircraft and other equipment as is incidental to Airline's air transportation business.
5. The ground training of personnel in the employ of, under the direction of, or under a service contract for Airline.
6. The right to install, operate, and maintain the necessary FAA and Department of Homeland Security approved security devices to carry out its obligations as specified by the Federal Aviation Administration, Department of Homeland Security, or other governmental rules and regulations.

B. Airline's equipment, including aircraft, used by Airline and designated Affiliate Airline(s) at the Airport shall be maintained at Airline's or designated Affiliate Airlines' sole expense, in good safe and operative order, and in a clean and neat condition.

C. Airline shall not knowingly permit its agents, contractors, or employees to conduct business in a manner that is disruptive to the operation of the Airport. Airline agrees to require its employees to wear uniforms as determined by Airline and to carry badges or other suitable means of identification,

which shall be subject to the prior and continuing approval of the City and in compliance with all FAA and Department of Homeland Security regulations.

- D. Airline agrees to obey and comply with all applicable federal, state, and municipal rules, regulations, and laws, and shall require its officers, agents, employees, contractors, and suppliers, to comply with the same
- E. Airline shall be responsible for all its expenses in connection with its operation at the Airport 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 Airline, and shall secure all such permits and licenses.
- F. To the extent of its capabilities, Airline agrees to cooperate with City and/or any other air carrier in dealing with aircraft or airline related emergencies at the Airport. Airline further agrees to provide City with its current emergency procedures and to fully cooperate with City and assist in implementation of the current Airport Emergency Plan, a copy of which is on file in the Airport Director's office.
- G. Airline or Airline's Ground Handler may provide support services for another air carrier, subject to all applicable conditions of this Permit.
- H. Airline shall comply with all applicable federal, state, and local environmental laws and regulations requirements and shall comply with the City's de-icing plan.
- I. Airline or its designated Ground Handler shall coordinate with City and the control tower and promptly remove any of its disabled aircraft from any part of the Airport, including without limitation, runways, taxiways, aprons and aircraft parking positions, and to place any such aircraft in such storage areas as may be designated by City. Such storage of disabled aircraft may be subject to a storage fee. Should Airline fail to remove any of its disabled aircraft promptly after authorization from the Federal Aviation Administration and/or the National Transportation Safety Board, City may, but shall not be obligated to, cause the removal and Airline shall reimburse City for all reasonable, out-of-pocket costs of such removal. Airline hereby releases City from any and all claims for damages occasioned by such removal, except to the extent damage is caused by the negligence or willful misconduct of the City.

ARTICLE IV

RATES, FEES AND CHARGES

The New Terminal opened for use on February 29, 2016; the total airline requirement has been established for the 2016 Fiscal Year. The City shall invoice the rates based on the square footage of the New Terminal effective January 1, 2016 for the space in the New Terminal, Airline shall pay all rates, fees and charges monthly. The rates, fees, and charges payable by Airline are as follows:

A. Airline Square Footage Rental Rate- New Terminal

The cost per square foot for rented Airline Leased Premises and Joint use Space as identified in **Exhibit 1** shall be determined by adding all Operation and Maintenance Costs, direct and indirect maintenance and operating costs net of federal or state grants; insurance; debt service net of Passenger Facility Charges (PFC's), federal and state grants; direct and indirect administration costs; utilities; refuse removal; window washing; carpet and floor maintenance; passenger loading bridge maintenance; and all other costs associated in connection with the operation of the Airline Leased Premises and Joint Use Space incurred by the City and dividing said sum by the rented square footage of the Airline Leased Premises and Joint Use Space used by Signatory Airlines and Non-Signatory Airlines.

1. Preferential Use Space Rent- New Terminal

Payment is due and payable on the first day of month of occupancy. Payment for the Preferential Use Space shall be invoiced monthly by taking the annual amount calculated For Airline Preferential Use Space, plus the Non-Signatory premium, if applicable, divided by twelve (12) months to arrive at the monthly amount due. Rent will be adjusted annually based on the budget approved by the City Council and the amount of rented space leased by Signatory Airline(s) and Non-Signatory Airlines. The approved rental rates will be provided to Airline a minimum of thirty (30) days prior to the start of the Fiscal year

2. Joint Use Space Rent- New Terminal

The total Joint Use Space airline requirement shall be calculated by multiplying the square footage rental rate as identified in Article IV (A) above by the number of square feet contained in the Joint Use Space as identified in **Exhibit 1**. Non-Signatory Airlines (including designated Affiliate Airline(s)) will be considered as one airline for purposes of this calculation. The total annual Joint Use

Space airline requirement shall be divided by twelve (12) months to determine the total airline requirement each month. Each month, the amount due will be determined by taking the total monthly requirement and allocating thirty percent (30%) of the Joint Use Space requirement to the Signatory Airlines and Non-Signatory Airlines based on the number of scheduled flights by Signatory Airlines and Non-Signatory Airlines and seventy percent (70%) based on the total number of enplaned passengers reported by Non-Signatory and Signatory Airlines and their designated Affiliate Airlines(s). For Non-Signatory Airlines, the applicable Non-Signatory premium will be applied to the activity for total enplanements of Airline and designated Affiliate Airline(s). Any ground handled airlines handled by Airline Ground Handler shall be reported to City monthly by Airline's Ground Handler on or before the tenth (10th) day following the end of the month to which the activity is experienced. Airline shall not be responsible for payment of any rates, fees, and charges for Non-Signatory Airlines handled by Airline Ground Handler. It is expressly understood and agreed that Airline's agreement to this Permit or the payment by Airline of rates and charges pursuant to this Permit, including, without limitation, charges for Joint Use Space, in no way, shall be construed as agreement or concurrence by the Airline (a) that the rates and charges methodology as outlined in this Permit or in the Agreement executed by the Signatory Airlines is reasonable, acceptable, or in compliance with federal law and (b) that all payments made by Airline under this Permit are made under protest and only so the Airline is able to provide continued service at the Airport. In addition, notwithstanding anything else in this Permit to the contrary, Airline expressly reserves its right to challenge or protest the rate and charges methodology in this Permit and in the Signatory Airline Agreement, and Airline's executing this Permit shall, in no way, be deemed a waiver of such right.

Payment for the Joint Use Space shall be made by the tenth (10th) of the month following the month for which the charges are calculated and invoiced.

B. Landing Fees

Airline agrees to pay the City a landing fee for each one thousand pound (1,000 lb.) units of certified maximum gross landed weight by aircraft type for all scheduled revenue flight arrivals of Airline and its designated Affiliate Airline(s) during each month. The Landing Fee shall be calculated by adding all Operation and Maintenance Costs; all other costs associated with maintaining the airfield; and security charges, and dividing said sum by the total certified maximum gross landed weight by aircraft type for all scheduled and estimated Signatory, designated Affiliate Airline(s) and Non-Signatory landings.

The Landing Fees shall not apply to courtesy, medical emergency, special military, and other non-revenue ferry flights landing at the Airport by Airline and designated Affiliate Airline(s). The term "certified maximum gross landed weight" shall mean, for the purposes of this Permit, the maximum gross landed weight approved by the Federal Aviation Administration for landing such aircraft type by Airline at the Airport. The Landing Fee will be adjusted in accordance with the terms and conditions of this Permit following written notice and a reasonable comment period as determined by the City.

Airline shall report on a monthly basis all arrivals of Non-Signatory Airline aircraft handled by Airline's Ground Handler and/or using Airline Leased Premises with the landing fee report for the purpose of the City assessing Landing Fees. The Non-Signatory Airline Landing Fees will be credited to the total Landing Fee requirement.

Airline shall submit a report on a form provided by the City no later than the tenth (10th) of the month following service to include a complete listing of all scheduled and unscheduled arrivals for Airline, designated Affiliate Airline(s), and any Non-Signatory Airline handled by Airline's Ground Handler. Payment for all landing fees for Airline and designated Affiliate Airline(s) will be due and payable by the end of month in which the Landing Fees are invoiced. The City will invoice handled Non-Signatory Airlines directly based on the report submitted.

Following the end of each Fiscal Year and upon completion of the annual audit, The City will summarize the total scheduled flights by Airline(s) compared to the projected operations used in the calculation of the Landing Fee and the actual expenses incurred versus budgeted expenses projected in the setting of the Landing Fee rate and determine the actual Landing Fee due for the completed Fiscal Year. If the amount charged is less than the actual amount required for the adjusted Landing Fee calculation for Airline and its designated Affiliated Airline(s), an invoice will be issued for the difference and the amount will be due and payable within thirty (30) days of the invoice date. In the event the amount charged is greater than the amount required from Airline, City will refund one twelfth (1/12th) of the amount due on a monthly basis to Airline over the twelve (12) month period following the completion of the reconciliation. If Airline cancels the Permit in accordance with the terms and conditions of Article II, any remaining credits due following the date of termination will be cancelled.

In the event the Landing Fee reconciliation results in the Airline owing an additional amount above the budgeted Landing Fee rate adopted in the Fiscal Year budget, the maximum adjustment for the

year end reconciliation shall not exceed one hundred fifty percent (150%) of the budgeted Landing Fee.

The Landing Fee will be established annually based on the projected airfield expenses in the Fiscal Year budget and the projected landed weight by all Signatory and Non-Signatory Airlines. The Landing Fee is payable for each scheduled landing at the Airport of aircraft operated by Airline and its designated Affiliate Airline(s). Airline's failure to provide information monthly or to pay the Landing Fees as set forth herein shall be considered a material breach of this Permit.

C. Aircraft Rescue and Fire Fighting Charges

The City shall collect the budgeted annual costs associated with providing Aircraft Rescue and Fire Fighting services (hereinafter referred to as "ARFF") at the Airport. City will establish ARFF costs at the beginning of each Fiscal Year and divide the total cost by the projected Landed Weight used in the calculation of the Projected Landing Fee. The ARFF charge will be adjusted each Fiscal Year through the Base Term, Option Term, and any holdover period. The City will charge ARFF charges on a monthly basis and they are due and payable by the tenth (10th) of the month following the invoice date.

Following the end of each Fiscal Year and upon completion of the annual audit, The City will summarize the total scheduled flights by Airlines compared to the projected operations used in the calculation of the ARFF charges and determine the actual ARFF charges due for the completed Fiscal Year. If the amount charged is less than the actual amount required for the adjusted ARFF calculation for Airline, an invoice will be issued for the difference and the amount will be due and payable within thirty (30) days of the invoice date. In the event the amount charged is greater than the amount required from Airline, City will refund one twelfth (1/12th) of the amount due on a monthly basis to Airline over the twelve (12) month period following the completion of the reconciliation. If Airline cancels the Permit in accordance with the terms and conditions of Article II, any remaining credits due following the date of termination will be cancelled.

In the event the ARFF charge reconciliation results in Airline owing an additional amount above the budgeted ARFF charge rate adopted in the Fiscal Year budget, the maximum adjustment for the year end reconciliation shall not exceed one hundred fifty percent (150%) of the budgeted ARFF charge.

D. Other Fees

1. **Badging Fees:** The City will establish a fee for the issuance of security and access control badges. The fee will be set annually and will be based on the recovery of cost for background checks and the issuance and administration of the badging program. Payment of fees will be due and payable within thirty (30) calendar days of the invoice date.
2. **Conference Room Rental Fees:** For all use of terminal conference room space other than for City uses, there will be a rental fee assessed unless waived by the Airport Director. The rental fees will be established annually. Payment of fees will be due and payable within thirty (30) calendar days of the invoice date.
3. **Glycol Storage Fees:** City shall establish fees for glycol storage pads that shall be used by Airline for the storage of Airline glycol storage tanks. The City will establish an annual for any locations designated for such use. The fee will be paid on an annual basis and will be due and payable in full for the year within thirty (30) calendar days of the invoice date.
4. **De-icing Truck Parking Fees:** City will charge Airline for the use of paved areas for the parking of de-icing vehicles under the control of the Airline or Airline's ground handler. An annual fee will be established annually and assessed based on the location of the parking area. Payment will be due and payable in full within thirty (30) calendar days of the invoice date.
5. **Gate Electrification Charges:** The City will provide electricity to the gates for aircraft to plug in while at the gate. The electricity will not be separately metered; however, Airline and City will agree on an estimated usage which will be charged back to the Airlines in the Joint Use Space calculation.
6. **Employee Parking Fee:** The City reserves the right to charge a parking fee for all vehicles parked in the employee parking lot. Such fee will be determined annually.
7. **Non-Based Airline Employee Parking Fee:** The City will provide parking for airline employees who are not based in Minot. The number and location of the parking spaces will be at the sole discretion of the Airport Director. The non-based employee parking fee will be determined annually.

8. **Miscellaneous Fees:** The City reserves the right to establish additional fees for the use of facilities, resources, or costs incurred by the City for the administration of the Airport during the term of this Permit. Additional fees would be limited to any newly assessed charges assessed by any Governmental agency and the fee will be established so that the total cost of the service is recovered by the fee.

E. Annual Adjustment

All rates, fees, and charges are subject to adjustment based upon the costs incurred by City and the level of activity in the applicable Fiscal Year. Prior to adoption of rates, fees, and charges, the City will provide Airline thirty (30) days written notice and arrange for a conference call, if requested, to discuss the proposed changes.

ARTICLE V

AIRLINE RECORDS, REPORTS, AND AUDITS

Airline shall, at all times, maintain and keep books, ledgers, accounts or other records, and provide records within ten (10) days upon written request by the City, wherein are accurately kept all entries reflecting the number of revenue and non-revenue enplaning and deplaning passengers, total weight of inbound and outbound freight and mail (stated separately), the total number of scheduled and actual revenue aircraft trips of Airline and its designated Affiliate Airline(s), and Non-Signatory aircraft handled by Airline's Ground Handler actually arriving at the Airport, and the Certificated Maximum Gross Landed Weight of each such aircraft type. Such books, ledgers, accounts and records shall be available for examination by City or its duly authorized representative at all reasonable business hours within five (5) calendar days following written request. Airline shall provide, upon request from City, projected schedules and landed weight forecasts for its operation at the Airport. City reserves the right to audit all activity reported by Airline at the Airport throughout the Term of this Permit and the Option Term if executed and for a period of three (3) years following the termination of this Permit as called for herein. In the event that the audit produces variances from the activity reported, City reserves the right to charge the Airline for all differences. If the variance exceeds three percent (3%) of the amount paid, the City reserves the right to charge Airline for the cost of the audit.

ARTICLE VI

AIRLINE'S OBLIGATIONS

- A. Airline agrees that it shall be diligent in the prosecution of its business in the Airline Leased Premises and Joint Use Space and do all things reasonably necessary and advisable consistent with the then current Minimum Standards/rules and regulations of the City to serve the traveling public in all fields of aviation activities engaged in by Airline. Airline shall conduct its business in such a manner as will not knowingly cause City loss or damages.
- B. Airline agrees to keep Preferential Use Space and Joint Use Space in a clean, neat and orderly condition and in compliance with all laws and codes applicable to the Airline Leased Premises including the Minot International Airport Minimum Standards/rules regulations and all State and Federal environmental laws and regulations. Airline agrees to perform all services in the Preferential Use Space according to the attached Maintenance Matrix (**Exhibit 2**) and shall use its best efforts to keep the tug tunnel in a neat and orderly condition. In the event that Airline shall fail to maintain any portion of the Airline Leased Premises for which Airline is responsible in accordance with **Exhibit 2**, City shall have the right, but not the obligation, to itself perform or have performed said maintenance after twenty one (21) calendar days advance written notice of such intent to perform such maintenance whereupon City may collect the entire charge therefor, and Airline shall pay such amount plus a fifteen percent (15%) administrative fee to the City immediately upon demand therefor.
- C. Airline covenants that it will not do or permit to be done any act which:
 - 1. Will invalidate or be in conflict with any fire insurance policies covering the Airport or any part thereof or upon the contents of any building thereof; or
 - 2. Will increase the rate of any fire insurance premium on the Airport or any part thereof or upon the contents of any building thereof; or
 - 3. In the reasonable opinion of the City, will constitute a hazardous condition so as to increase the risks normally attendant upon the operations contemplated by this Permit.

If, by any reason of the Airline's failing to comply with the provisions of this Article, any fire insurance premium on the Airport or any part thereof or upon the contents of any building thereof, at any time, be higher than it otherwise would be absent the failure to comply, then the Airline shall, upon demand, directly reimburse the City for that part of all fire insurance premiums paid or payable by the City which shall have been charged because of such identified risks taken by the Airline.

D. Airline shall not create or permit any mortgage, encumbrance or lien or allow any mechanics' or material men's liens to be filed or established or to remain against the Airline Leased Premises, or any part thereof, provided that if Airline shall first notify City of its intention to do so and post such security as City reasonably deems necessary, Airline may, in good faith, contest any such mechanics' or other liens filed or established as long as the City does not deem its interest or rights in this Permit to be subject to foreclosure by reason of such contest.

ARTICLE VII

CITY'S OBLIGATIONS

Except as provided herein, City shall, in accordance with acceptable Federal Aviation Administration standards, other applicable statutes, rules and regulations, and in a safe manner consistent with the generally accepted good practices in the State of North Dakota for airports of similar size and character, properly maintain, operate and manage the Airport including all Preferential Use, Joint Use, and Common Use Space in the Terminal and all areas described as public space and adjacent vehicle parking space as set forth in **Exhibit 1**. If for any reason beyond the control of the City the City shall fail to properly maintain, operate, and manage said Airport, such failure shall not operate as a breach of this Permit nor render the City liable for damages if such failure is a result of Force Majeure conditions.

ARTICLE VIII

INDEMNIFICATION

A. **General:** Airline shall indemnify, save, hold harmless, and defend the City, their officials, agents, contractors, and employees, successors and assigns, individually or collectively, from and against any action, loss, damage, injury, liability, and the reasonable cost and expense (including, but not limited to, reasonable attorneys' fees, disbursements, court costs, and expert fees) based upon injury to persons, including death, or damage to property arising out of, resulting from, in conjunction with or incident to Airline's operation of its business and/or performance of its obligations under this Permit and of the Leased Premises or of the Airport, except in each case to the extent

caused by the negligence or willful misconduct of City, or its officers, directors, agents, contractors, or employees. The City shall provide Airline with prompt written notice after receiving a claim covered by this indemnity.

B. **Violations of Regulations and Laws:** Airline shall indemnify, save, hold harmless, and defend the City, its officials, agents, contractors, and employees, successors and assigns, from any claim, action, loss, damage, injury, liability, and the reasonable cost and expense (including, but not limited to, reasonable attorneys' fees, disbursements, court costs, and expert fees) and any fines in any way arising from or based upon the violation of applicable federal, state, or municipal laws, statutes, or regulations, including rules or regulations of the City now in effect or hereafter promulgated, by Airline, its agents, employees, contractors, or successors and assigns in conjunction with or incident to Airline's operation of its business and/or performance of its obligations under this Permit or use and/or occupancy of the Leased Premises or of the Airport, except in each case to the extent caused by the negligence or willful misconduct of City or its officers, directors, agents, contractors, or employees. The City shall provide Airline with prompt written notice after receiving a claim covered by this indemnity.

C. **Survival:** The provisions of this Section shall survive the expiration, termination or early cancellation of this Permit.

ARTICLE IX **ENVIRONMENTAL LIABILITY AND INDEMNIFICATION**

It is specifically agreed between the parties that Airline shall be responsible for Airline's use of, or Airline's generation of, or release or threatened release of any petroleum based substance or product, or any volatile organic compound, or any substance classified as a pollutant, contaminant, toxic or dangerous substance, solid waste or a "hazardous waste" under all applicable federal and state environmental laws or regulations. Airline shall specifically be responsible for the disposition of all such waste or substances and for the environmental response activities and response costs, monitoring, or cleanup required under applicable environmental laws associated with any environmental condition which arose directly out of Airline's use of, or generation of, such substances in its operations at the leased premises of the Airport. Airline shall not be responsible for any preexisting environmental conditions that were present at the time Airline first occupied the Leased Premises. Claims for environmental matters are limited to indemnification under this Environmental Indemnification

provision and are not subject to the General Indemnity of Article VIII. The provisions of this Section shall survive the expiration, termination or early cancellation of this Permit.

ARTICLE X **INSURANCE**

A. Insurance Requirements: Airline shall, at its expense, maintain insurance in full force and effect during the term of this Permit in such amounts as to meet the minimum limits of liability specified below.

1. Comprehensive General Liability and Airline Liability with limits no less than \$250,000,000 combined single limit per occurrence and in the annual aggregate with respect to products/completed operations liability, including but not limited to, aircraft liability, bodily injury and property damage, passenger legal liability, airport premises and products/completed operations liability, baggage and cargo liability, contractual liability, independent contractors liability, and mobile equipment liability. Personal injury and advertising liability can be limited to \$25,000,000 each offense/aggregate.
2. Hull Insurance, including owned and non-owned aircraft, at agreed values.
3. Business Automobile Liability with limits no less than \$10,000,000 each occurrence including owned and/or leased automobile liability and non-owned and hired automobile liability.
4. Fire Legal Liability with limits no less than \$1,000,000 each occurrence.
5. Workers' Compensation Coverage in statutory amounts with "all states" endorsement including Employer's Liability Insurance in limits of \$1,000,000 per employee.

B. Requirements for All Insurance: All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of North Dakota or with companies or underwriters satisfactory to the City Attorney.

- C. **Additional Insureds:** City shall be named as additional insureds on each of the policies above except the Workers' Compensation policy and fire legal liability.
- D. **Insurance Primary:** All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by Authority and/or the City.
- E. **Insurance Certificate:** Certificates showing that Airline is carrying the above-described insurance in the specified amounts shall be furnished to City prior to the execution of this Permit, and a certificate showing continuation of such insurance shall be filed with City during the term of this Permit. Failure of Airline to provide the required certificates of insurance does not invalidate or eliminate any of the insurance requirements contained herein or relieve Airline from any responsibility to carry the required types and amounts of insurance.
- F. **Notice of Change or Cancellation:** The certificates shall provide that the policies shall not be canceled during the life of this Permit without at least thirty (30) calendar days advanced notice being given to Authority. Failure to give such notice to Authority will render any such cancellation in said policy or coverages ineffective as against Authority and City.
- G. **ACORD Form:** The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) - or equivalent forms, as approved by the City Attorney's Office.
- H. **Disclaimer:** City does not represent or guarantee that these types or limits of coverage are adequate to protect the Airline's interests and liabilities. It shall be the obligation and responsibility of Airline to insure, as it deems prudent, its own personal property, against damage. Authority does not have insurance coverage for Airline's property and City expressly disclaims any and all liability for any and all losses, damage and/or claims to aircraft and/or vehicles and/or personal possessions of Airline, except to the extent such damage is caused by the negligence or willful misconduct of City, or its officers, directors, agents, contractors, or employees.
- I. **Waiver of Subrogation:** City and Airline hereby mutually waive any and all rights of recovery against the other party arising out of damage or destruction of the buildings, Airline's Leased Premises, or any other property from causes included under any property insurance policies to the extent such damage or destruction is covered by the proceeds of such policies and whether or not

such damage or destruction shall have been caused by the parties, their officers, employees, contractors, or agents, but only to the extent that the insurance policies then in force permit such waiver. All property policies of insurance shall contain, to the extent available, this waiver of subrogation provision and the cost of such provision shall be borne by the primary insured.

ARTICLE XI **LAWS, ORDINANCES, RULES, AND CIVIL RIGHTS**

- A. The Airline shall comply with all laws, ordinances, rules, regulations, policies, and orders now in effect or hereinafter adopted of the United States, the State of North Dakota, the City, Subject to Paragraph B below, and any agency, department or governmental subdivision thereof, including but not limited to the Department of Homeland Security and the Federal Aviation Administration applicable to Airline's activities at the Airport, including but not limited to the Airport Certification Manual and the Airport Security Plan, a current copy of which is on file in the office of the Airport Director located at the Airport.
- B. From time to time, City may adopt and enforce reasonable and not unjustly discriminatory rules and regulations pursuant to FAA Advisory Circular 150/51900-7, "Minimum Standards for Commercial Aeronautical Activities" with respect to the occupancy and use of the Airport; provided, however, that such Minimum Standards are reasonable, non-discriminatory, and neither impair, limit, or extinguish any rights of Airline under this Permit, nor increase Airline's obligations, and further provided that the Airport shall provide Airline reasonable notice prior to the enactment of any rules and regulations, and shall duly consider Airline's input. Airline agrees to observe and obey any and all such rules and regulations and all other applicable Federal, State and municipal rules, regulations and laws and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same. City shall provide Airline with notification of any proposed rules and regulations, which shall allow Airline with a meaningful opportunity to review and comment on such proposed rules and regulations and for City to incorporate such comments, at its discretion, prior to becoming effective.
- C. The Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that it shall comply with all applicable requirements of Federal and State civil rights, unlawful discrimination, and rehabilitation statutes, rules and regulations now in effect or hereinafter adopted, including but not limited to Title 49, Code of Federal Regulations, Department of Transportation of the Department of Transportation-

Effectuation of Title VI of the Civil Rights Act of 1964, the North Dakota Human Rights Act, and with the Americans Disabilities Act.

- D. This Permit is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 CFR Part 23. The Airline agrees that it will not discriminate against any business customer 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.
- E. The Airline agrees to include the statement, or the substance of such statement, set forth in paragraph D 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.
- F. Airline makes an irrevocable election (binding on the Airline and all successors in interest under the Permit) not to claim depreciation or an investment tax credit with respect to the Airline Leased Premises and covenants not to sublease its interest in the Airline Leased Premises to an entity which is not considered a common carrier for purposes of the Internal Revenue Code of 1986, as amended, without obtaining an opinion of bond counsel that such arrangement will not interfere with the tax exemption of the City's bonds.

ARTICLE XII

CITY'S RIGHTS UPON DEFAULT

- A. If at any time Airline shall be in default, as defined in this Article, with regard to the requirements of this Permit, it shall be lawful for the City, and the City may at any time thereafter:
 - 1. Immediately, or at any time thereafter without further notice to Airline, re-enter into or upon the Airline Leased Premises under this Permit or any part thereof and take possession of the same fully and absolutely without such re-entry working a forfeiture of the rentals, fees, and charges to be paid and of the covenants, terms and conditions to be performed by Airline for the full term of this Permit, and in the event of such re-entry, the City may proceed with the collection of rentals, fees, and charges to be paid under this Permit or to recover properly measured damages;

2. City may at its election terminate this Permit upon written notice in the manner hereinafter provided and re-enter upon said Airline Leased Premises as of its former estate therein, and the Airline covenants in case of such termination to indemnify the City against all loss of rentals, fees, and charges which the City has suffered or paid by reason of such termination, during the remainder of the Term of this Permit;
3. The City shall further have all other rights and remedies at law or in equity including injunctive relief, or summary proceedings for unlawful detainer, and any or all legal remedies, actions and proceedings and all such remedies shall be cumulative.

B. "Default" shall be defined when any of the following circumstances exist:

1. If the Airline has failed to pay rentals, fees, and charges or taxes when due hereunder and such failure to pay shall continue for ten (10) calendar days after written notice in the manner hereinafter provided.
2. Failure to provide and/or maintain the insurance coverages required herein.
3. If the Airline fails in the observance or performance of any of the other terms, covenants and conditions of this Permit and such failure shall continue for thirty (30) calendar days after City has given Airline written notice, or the Airline shall have failed to commence the corrective action of such failure within thirty (30) calendar days after such notice and to diligently prosecute the same where the same cannot be completed within thirty (30) calendar days, or
4. If a petition to reorganize the Airline or for its arrangement of its unsecured debts shall be filed, or
5. If the Airline shall be adjudicated bankrupt, or
6. If a receiver or trustee of the Airline's property shall be appointed by any court, or
7. If the Airline shall make a general assignment for the benefit of creditors, or

8. If all of the interest of the Airline in its property shall be taken by garnishment, attachment, execution or other process of law, or

C. In the event City shall prevail in any action or suit or proceeding brought by the City to collect the rentals, fees, charges, or taxes due or to become due hereunder or any portion thereof, or to take possession of the Airline Leased Premises and Joint Use Space, or to enforce compliance with this Permit or for failure to observe any of the covenants of this Permit, Airline agrees to pay City such sums as the court may adjudge reasonable as attorneys' fees and costs to be allowed in such action, suit or proceeding.

ARTICLE XIII

TERMINATION BY AIRLINE

Airline may terminate this Permit without cause following ninety (90) days written notice. If the permit is terminated by Airline, and the Airline ceases service at the Airport, Airline shall remove all personal property within thirty (30) working days following the termination effective date. All obligations of Airline prior to the effective date of termination shall remain until satisfied by Airline

ARTICLE XIV

USE OF PREMISES

- A. The parties hereto agree that the design and configuration of the New Terminal associates specific functions with specific locations. Airline's and its designated Ground Handler's use of the Airline Leased Premises and the Joint Use Space for the conduct of its air transportation business shall be limited to the use required for conduct of such business and for no other purpose without the prior written consent of City. Airline shall not permit the use of the Joint Use or Preferential Use Space for the offering or sale to the public of any other services, including but not limited to the sale of food, beverages, insurance, or offering of other merchandise or services separate from Airline's operation of its air transportation business. Airline shall be allowed to advertise its frequent flier program and related services in its Preferential Use Space.
- B. Airline shall have preferential use of its "Preferential Use Space" shown on **Exhibit 1** for use in its air transportation business.

C. Airline shall use, together with other airlines, that space listed as “Joint Use Space” as shown on **Exhibit 1**. All holdrooms and adjacent Aircraft Parking Apron shall be considered Joint Use Space. In order to provide operational stability for the Airline, the City will preferentially assign the holdrooms and adjacent Aircraft Parking Apron space to Airline so that it best meets the needs of Airline while allowing the City to maximize the use and efficiency of the terminal. Factors included in the assignment of space include but are not limited to (in no particular order):

- a) Fleet size
- b) Holdroom capacity and congestion
- c) Ground handling synergies
- d) Aircraft parking limitations

The City will make the initial assignment and adjust when such reallocation is in the best interest of the City. If the City is proposing a long term gate reassignment, the City will provide a thirty (30) calendar day notice to Airline. Airline shall provide response within ten (10) calendar days and the City will make its final decision within seven calendar days. If being relocated, the City and will provide thirty (30) calendar days' notice. Temporary reassessments to accommodate short term needs will be coordinated between the Airport Director and Airline. Both parties will use best efforts to try to accommodate short term needs based on the nature of the request.

D. All repair, maintenance and overhaul work, testing, washing, de-icing, or storage of aircraft or other Airline equipment shall be performed only upon those areas designated by City for such use. Airline may, while its aircraft are parked on the apron or at the aircraft parking position(s), perform customary fueling, deicing, and servicing of aircraft preparatory to loading and take-off, or immediately following loading and unloading. All active ground service equipment will be parked in Joint Use Space identified by the City.

E. Airline, its, employees, contractors, agents, suppliers, passengers, guests and others doing business with Airline shall have the right of ingress and egress to and from the Joint Use Space and the used in connection therewith, over the Airport property and roadways, subject to the Minimum Standards/rules and regulations governing the use of the Airport as same may be promulgated by City from time to time.

F. Airline will not perform any acts or carry on any practices which would result in the necessity to repair or replace Airport property, or which would disrupt the operations of other users of the Airport. In the event Airlines employees, contractors, or agents damage Airport property, if Airline fails to perform such repairs or replacements in a reasonable time after having received written notice from the City, Airline shall be solely liable for the repair or replacement of any such damage and shall pay upon demand for all repairs and associated costs plus a fifteen percent (15%) administrative fee.

G. City covenants that upon paying the rates, fees, and charges identified herein and performing the covenants and conditions herein contained, Airline shall peacefully and quietly have, hold and enjoy the Airline Leased Premises.

H. City covenants and agrees that it is in lawful possession of the Airline Premises and has good and lawful authority to execute this Permit.

ARTICLE XV

UTILITIES AND MAINTENANCE

A. City shall provide all utilities in the terminal space of the Airport, with the exception of electricity outside the terminal space, including but not limited to Airline's heater(s) and deicer(s). Any electricity use in the Airline Leased Premises by Airline required for such exceptions shall be the responsibility of Airline. If separate meters are not installed to measure such activity, the City reserves the right to estimate the amount of electricity to be consumed and charged based on an estimate. Any such agreements must be agreed to between the parties prior to installation.

B. Janitorial services shall be provided in accordance with the schedule continued in **Exhibit 2**. In the event maintenance and/or repairs of the New Terminal, its components, and ramp area are necessitated by misuse, abuse or negligence by Airline, its agents, contractors, or employees, Airline shall be responsible for, and pay directly to the City, the cost of such repairs and/or maintenance. In the event Airline fails to perform such maintenance and/or repairs or contract for service in a reasonable

time considering the nature of the repair required after having received written notice from the City, City may perform such maintenance and/or repairs and charge Airline the cost of such maintenance and/or repairs plus a fifteen percent (15%) administrative fee. Payment will be due and payable upon receipt of invoice.

C. City shall have the right, upon reasonable notice depending on the nature of the request, to enter the Airline Premises at all reasonable times to carry out its responsibilities under this Article. City shall have the right to access Preferential Use Space without notice in the event of an emergency. City will use its best efforts not to disrupt Airline's operations during any such inspection.

ARTICLE XVI
CONSTRUCTION, MAINTENANCE, AND REPAIR
OF AIRLINE'S LEASEHOLD IMPROVEMENTS/TRADE FIXTURES

A. Airline may construct or install, at its own expense, any equipment, improvements, and facilities, including communication, meteorological and navigational equipment, and any additions thereto, on all or any part of Airline's Preferential Space upon prior written approval of the Airport Director, under the conditions as hereinafter set forth. Airline shall keep and maintain all such improvements and facilities and additions thereto constructed or installed by it in good condition, reasonable wear and tear excepted.

a. No improvements, structures, alterations, or additions shall be made in, to, or upon Airline's Preferential Use Space without the prior written consent of City and all such improvements, structures, alterations, additions and work shall be in accordance with any reasonable conditions relating thereto then stated in writing by City.

b. At the time of requesting approval by City, Airline shall submit the preliminary plans for such improvements which shall conform to the general architectural scheme and overall plans adopted by City for the Airport to the Airport Director. Upon written approval of said preliminary plans, Airline shall prepare and obtain City's written approval of working drawings and specifications which shall be true and correct developments of the preliminary plans so approved. Airline shall be responsible for obtaining, at its sole expense, all permits required in connection with the improvements prior to the commencement of

any work. All construction shall conform to the approved working drawings and specifications and when such work is commenced, it shall be completed with reasonable dispatch. No substantial change, addition, or alteration shall be made in said working plans or specifications or in the construction called therefore without first obtaining City's written approval. Upon completion of said improvements, Airline shall furnish City, at its sole expense, an electronic set of "as built" drawings on CAD and one (1) complete set of standard size drawings of the improvements as constructed within sixty (60) calendar days of completion.

- c. All improvements constructed by Airline pursuant to this Article shall conform in all respects to the applicable federal, state, and local statutes, ordinances, building codes, rules and regulations of all applicable governmental agencies as may have jurisdiction. All improvements shall revert to the City at the termination of this Permit. The City reserves the right to have Airline remove the improvements at the termination of the Permit as called for herein and restore the space to its original condition, normal wear and tear excepted, consistent with Article XXXVI hereof.

- B. No trade fixtures shall be installed without the prior written consent of City and all such installations shall be in accordance with any reasonable conditions relating thereto then stated in writing by City. Within ten (10) calendar days upon termination of this Permit as called for herein, trade fixtures must be removed by Airline at Airline's sole expense and the space restored to its original condition, normal wear and tear excepted.

ARTICLE XVII

DAMAGE OR DESTRUCTION

- A. If the Airline Leased Premises, excluding Airline's leasehold improvements or trade fixtures, are partially damaged by fire or other casualty, but not rendered untenantable, the same shall be repaired with due diligence by City. The Airline Leased Premises shall be repaired or restored at City's expense to essentially the same condition as that which existed prior to such damage. If such damage is caused by the negligence of Airline, its officials, agents, contractors, or employees, Airline shall be responsible for all loss, damage, and costs not covered by Airline's insurance proceeds.
- B. If the Airline Leased Premises, excluding Airline's leasehold improvements or trade fixtures, are completely destroyed by fire or other casualty or so damaged as to remain untenantable for more than

thirty (30) consecutive days, City shall be under no obligation to repair or reconstruct such premises. Should City elect not to repair or reconstruct the Airline Leased Premises, then this Permit shall terminate on the date of notification by City as specified in this Article

- C. There shall be no obligation on the part of City or the contractor to reimburse Airline from the insurance proceeds for the loss or damage to fixtures, equipment or other personal property of Airline unless otherwise agreed by the parties in writing. Airline, for its own protection, may separately insure such fixtures, equipment, or other personal property as its interests may appear.
- D. In the event of damage or destruction of Airport property caused by the negligence of Airline, its agents, contractors, employees, aircraft or other equipment, Airline agrees to repair, reconstruct, or replace the affected property to the condition which existed prior to such damage or destruction, to the extent that same is not covered by insurance required under this Permit. Airline further agrees to cause such repair, reconstruction or replacement of affected property to be accomplished with due diligence.

ARTICLE XVIII

PURCHASE OF SUPPLIES AND SERVICES

- A. Any food or beverage items provided in the terminal to customers on regularly scheduled flights must be procured from the designated Airport concessionaire. In the event of a delay involving providing food or beverages to distressed passengers, Airline shall consult with the City's concessionaire in order to determine if the concessionaire has the staffing and capacity to accommodate the level of demand anticipated. If it does, the City's concessionaire should be utilized. In the event that the City's concessionaire does not have the capacity, in the reasonable assessment of Airline, Airline may purchase such products from outside vendors and advise the Airport Director of such action. Provided the process identified is followed, there will be no concession fee due the City. If purchased from outside sources without following the process identified above, the provider must pay to the City a concession fee similar to the fee paid by the Airport concessionaire for the applicable product. Except as herein otherwise specifically provided, no charges or fees shall be charged to Airline by the City in excess of those charges paid by other Airport tenants providing the same services, nor shall

any discriminatory limitations or restrictions be imposed by the City against Airline or its suppliers for the privilege of purchasing, loading, unloading or delivering any such personal property by Airline or its suppliers, or for the privilege of transporting the same to, from or on the Airport.

- B. Should Airline contract with a third party (other than a wholly-owned subsidiary of Airline) to provide maintenance and service upon its aircraft or to furnish ground services which might otherwise be performed by Airline under this Permit, such third party shall be deemed to be conducting a business at the Airport. Airline shall be responsible to City for any third party performing for or contracted by Airline, and Airline shall assume all responsibility and liability in connection with such contracting. Airline will not contract with any Ground Handler who does not have an executed Operating Agreement- Ground Handler in place with the City.
- C. Subject to the above, Airline may select suppliers, purveyors, and furnishers of materials, supplies, equipment, and services of its own choosing.

ARTICLE XIX

SECURITY

- A. Airline recognizes its obligations for security on the Airline Leased Premises as prescribed by the Federal Aviation Administration Regulations and the Department of Homeland Security, and agrees to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles on the Airline Leased Premises and the Aircraft Operations Area, ("AOA").
- B. Airline further agrees to abide by the Minimum Standards/rules and regulations adopted by City in carrying out City's obligations under the Federal Aviation Administration Regulations, the Department of Homeland Security, and any other security measures, as the City may deem necessary from time to time, for the proper identification of persons and vehicles entering the aircraft operations area. A copy of the current security directives is on file in the Airport Director's office.

C. Airline shall reimburse City in full for any fines or penalties levied against City for security violations as a result of any actions or omissions on the part of Airline, its agents, contractors, suppliers, or employees, which violations relate to an airfield or terminal access point utilized by Airline. If Airline contracts ground handling with a third party provider, the City reserves the right to refuse access to the Ground Handler if repeated violations are experienced. City will provide Airline written notice of all violations. Payment of any fines are due and payable upon demand.

ARTICLE XX

CITY'S RIGHT TO ENTER THE AIRLINE PREMISES

City reserves the right to inspect the Airline Leased Premises and improvements at any reasonable time with prior notification and coordination with the Ground Handler or local Airline manager. Throughout the Term of this Permit, City will use best efforts to coordinate such access so as to not disrupt Airline operations. When, for any reason, an entry is deemed necessary, and Airline is not present to permit such entry, City, its agents, contractors, or employees, shall be permitted to enter the Airline Leased Premises. City's agents or employees shall not be liable for any civil or criminal claim or cause of action for damage because of entering the Airline Leased Premises or improvements at reasonable times and in a reasonable manner, unless damages are caused by the City's negligence or willful acts (or those of its agents, contractors, or employees).

ARTICLE XXI

ADVERTISING AND SIGNS

Airline shall have the right, at its own expense, to install and maintain signs for the purpose of identification in its Preferential Use Space except the ticket counter backwall and gate podium backwall where electronic signs will be provided by the City. Prior to installation of such signage, Airline shall submit plans and obtain the approval of the Airport Director as to location, construction, appearance, and reasonable necessity therefore. In the event the signs are removed and not replaced, Airline shall repair the area to its original condition, normal wear and tear excepted, consistent with the existing décor of the Terminal. Airline will be allowed to offer information in non-permanent countertop dispensers at the gate podium upon the prior written approval of the Airport Director.

ARTICLE XXII

TAXES

Airline agrees to pay all lawful taxes and assessments which, during the Term hereof and may become a lien or which may be levied or charged by the state, county, city or other tax-levying body upon the Airline Leased Premises or upon any taxable interest acquired by Airline in this Permit, or any taxable possessory right which Airline may have in or to the Airline Leased Premises or the improvements thereon, by reason of its occupancy thereof, or otherwise, as well as all taxes on taxable property, real or personal, owned by Airline in or about the Airline Leased Premises. This obligation shall be applicable following the expiration of the Permit as called for herein for any obligation that is incurred during the Term of the Permit. Nothing herein shall prevent Airline from protesting through due process, any taxes levied. Upon termination of this Permit as called for herein, all taxes then levied or a lien upon any of said property, or taxable interest therein, shall be paid in full without proration by Airline forthwith, or as soon as a statement thereof has been issued by the tax collector, if termination occurs during the interval between the attachment of the lien and issuance of statement.

ARTICLE XXIII

GOVERNMENT RESERVATIONS AND RESTRICTIONS

The Airline Leased Premises and Joint Use Space being leased and used and the rights granted by this Permit shall be subject to reservations and restrictions, including but not limited to, the following:

- A. Nothing herein shall be construed to grant or authorize the granting of an exclusive right forbidden by Section 308 of the Federal Aviation Act of 1958 and as amended.
- B. During the time of war or national emergency, City shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and the provisions of this Permit, insofar as they are inconsistent with the provisions of that lease, shall be suspended.
- C. This Permit shall be subject to the terms of any City's grant assurances and agreements now required or imposed in the future, between City and the Federal Aviation Administration or any successor Federal agency (FAA Agreement) as long as for any future FAA Agreement, City ensures that if such requirements could have a material impact on Airline costs or operations that Airline is afforded a meaningful opportunity to engage in consultation of applicable portions of the FAA Agreement.

- D. This Permit shall be subordinate to the provisions of existing or future agreements between the United States Government and City relative to the Airport. Failure of Airline to comply with the requirements of any existing or future agreement between City and the United States Government, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Airline's rights hereunder, subject to Airline's right of appeal and condemnation rights.
- E. This Permit shall be subordinate to the provisions of agreements between the City and any bond holders relative to bond covenants. In the event there is a dispute between this Permit and provisions in any bond covenants, this Permit shall be modified by the City in order to ensure compliance with the bond covenant. City will consult with Airline prior to making any such amendments.

ARTICLE XXIV
RESERVED

ARTICLE XXV
NEW TERMINAL SPACE ASSIGNMENT

For the New Terminal, the City will cooperate with the Signatory Airlines for the allocation of Preferential Use Space in the New Terminal. The City will use its best efforts to provide the space requested to Airline when considering the needs of other Signatory Airlines and projected future Airline needs.

ARTICLE XXVI
ADVANCES BY THE CITY

In lieu of terminating this Permit pursuant to Article XII, City may, at its sole option and after giving fifteen (15) calendar days prior written notice to Airline, perform reasonable and necessary actions on behalf of Airline to cure the conditions of Airline's continuing default. Upon receipt by Airline of the reasonable and documented cost thereof by City to cure the conditions of such default, Airline shall promptly pay City the

amount due as additional rent plus a fifteen percent (15%) administrative fee. This Article shall in no way limit Airline's ability to legitimately challenge the existence of a default condition.

ARTICLE XXVII
LEGAL CLAIMS, CHOICE OF LAW, VENUE

- A. Each party hereto shall promptly report to the other any claim or suit against it arising out of, or in connection with, the operation of Airline at the Airport. City and Airline shall each have the right to compromise and defend the same to the extent of its own interest; provided, the defense of the same has not been tendered and accepted by the other party. Airline is an independent contractor in every respect, and not the agent of City.
- B. This document shall be interpreted in accordance with the laws of the State of North Dakota.

Any legal action in connection with this Permit shall be commenced and maintained in a state or federal court located in North Dakota.

ARTICLE XXVIII
LIENS AND ENCUMBRANCES

Airline shall pay all costs and expenses for work done and materials delivered to the Airline Leased Premises at Airline's request, during the term of this Permit as defined herein, for improvement to the premises. Airline shall keep the Airline Leased Premises free and clear of all mechanics' or material men's liens or any other liens on account of any work done on the Airline Leased Premises at Airline's request. Airline shall indemnify and hold City harmless against all liability, loss, damage, cost, attorney's fees and all other expenses on account of claims or liens of laborers or material men, or others, for work performed or materials or supplies furnished to Airline for use on the premises.

ARTICLE XXIX
CONTRACTING ON MORE FAVORABLE TERMS

- A. If City enters into any lease, contract, or any other Agreement with any other commercial passenger airline containing more favorable terms than this Agreement, or grants to any certificated airline rights, privileges, or concessions with respect to the Airport for comparable space or services, which

are not accorded Airline hereunder, it shall grant Airline equal terms, rights, privileges, or concessions. This provision does not apply to temporary air service incentives granted as part of an adopted air service incentive program.

- B. If any airline shall undertake any operations at the Airport for the carriage of passengers, cargo or mail by air, City shall require, to the extent legally permissible and in compliance with the Minimum Standards/rules and regulations, such Airline to execute and deliver an agreement, lease or contract with City providing for:
 - 1. The payment of landing fees at rates not less than those in effect for Airline and its designated Affiliate Airline(s) and such other terms and conditions that are not more favorable than those terms and conditions then in effect for Airline;
 - 2. The payment of rentals for any space leased or utilized from City in the New Terminal at rates not less than those rates then payable by Airline for similar space; and
 - 3. The payment for use by such airline of the Joint Use Space and operating costs of all baggage handling or passenger, holdrooms and passenger leading bridges, or passenger processing systems, calculated and billed to such airline as in the case of Airline.
- C. If said commercial airline is not a Signatory Airline or a designated Affiliate Airline(s), such airline shall pay all applicable City rates and charges at a Non-Signatory rate for all applicable rates, fees, and charges identified in this Agreement. Upon the commencement of this Agreement, the Non-Signatory premium is set at zero percent (0%). The City reserves the right to adjust the Non-Signatory premium at any time during the Base term or the Option Term if exercised. City will advise Airline of its intent a minimum of thirty (30) days prior to the proposed implementation date.

ARTICLE XXX **QUIET ENJOYMENT**

City agrees that, on payment of the fees and performance of the covenants and agreements on the part of the Airline to be performed hereunder, Airline shall peaceably hold and enjoy the Airline Leased Premises and all the rights and privileges of the Airport, its appurtenances and facilities, granted herein.

ARTICLE XXXI **NONDISCRIMINATION**

- A. Airline, for it, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated in the Airline Leased Premises, for a purpose for which a United States Government program or activity is extended, Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- B. Airline, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Airline Leased Premises; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Airline shall use the Airline Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- C. Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, sex, age, disability or marital status be excluded from participation in any employment activities covered in 14 CFR Part 152, Subpart E. Airline assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by such Subpart E. Airline assures that it will require that its covered sub organizations provide assurances to Airline that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, to the extent required by 14 CFR Part 152, Subpart E, to the same effect.
- D. Airline agrees to comply with all other State and Federal statutory and constitutional non-discrimination provisions. In addition, Airline agrees to comply with all pertinent provisions of the

American's with Disabilities Act of 1990, P.L. 101-336, July 26, 1990, 42 USC 12101, et seq.; and all pertinent regulations pursuant thereto. Airline shall not discriminate in the use of the premises or any access thereto if such premises are used as a public accommodation or in connection with a public service. Airline will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

- E. In this connection, City reserves the right to take whatever action it might be entitled by law to take in order to enforce this provision. This provision is to be considered as a covenant on the part of Airline, a breach of which, continuing after notice by City to cease and desist and after a determination that a violation exists made in accordance with the procedures and appeals provided by law, will constitute a material breach of this Permit and will entitle City, at its option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.
- F. Airline shall include the foregoing provisions, or the substance of the foregoing provisions, in every agreement or concession pursuant to which any person or persons, other than Airline, operates any facility on the Airline Leased Premises providing service to the public and shall include thereon a provision granting City a right to take such action as the United States may direct to enforce such covenant.
- G. Airline shall indemnify and hold harmless City from any claims and demands of third persons including the United States of America resulting solely from Airline's noncompliance with any of the provisions of this Article and Airline shall reimburse City for any loss or expense incurred by reason of such noncompliance.

ARTICLE XXXII

PRIOR AND COLLATERAL AGREEMENTS

This Permit shall constitute the entire Permit between the parties and no other stipulation, agreement or understanding, written or oral, expressed or implied, relating to the lease and use of the Airline Leased Premises, shall limit or modify its terms. This Permit shall, as of the commencement date hereof, cancel and supersede all prior agreements, written or oral, expressed or implied, between the parties for the rights granted herein. This Permit shall not be subject to modification or change except by written instrument duly signed.

ARTICLE XXXIII

SEVERABILITY

If any term or provision of this Permit shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this remit shall not be affected thereby.

ARTICLE XXXIV

NON-WAIVER OF BREACH

The waiving of any of the covenants of this Permit by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenants. The consent by City to any act by Airline requiring City's consent shall not be deemed to waive consent to any subsequent similar act by Airline.

ARTICLE XXXV

TIME OF ESSENCE

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Permit.

ARTICLE XXXVI

SURRENDER OF POSSESSION

During the term of this Permit, title to all improvements, structures, alterations or additions erected or installed in or on the Airline Leased Premises by Airline pursuant to this Article shall remain in Airline. Upon the cancellation or termination of this Permit, renewal or successor Agreement, said structures, improvements, alterations or additions shall become a part of the realty upon which they are erected and title thereto shall vest in City at no cost to City. City may at its option direct Airline in writing, within thirty (30) calendar days of such cancellation or termination, to remove any or all such structures, improvements, alterations or additions from the Airline Leased Premises. City may extend said thirty (30) calendar day requirement if, in its sole discretion, due diligence is shown by Airline. All City property damaged by or as a result of the removal of Airline's property shall be restored by Airline at its expense to its original condition, normal wear and tear excepted. Should Airline fail to remove such items as directed by City within thirty (30) calendar days of City's notification to do so, City may proceed to effect such removal at the expense of Airline, and Airline agrees to pay City for such expense plus a fifteen percent (15%) administrative fee upon receipt of an invoice therefore.

ARTICLE XXXVII
APPROVAL OR DIRECTION BY CITY

Wherever consent, approval or direction by City is required under this Permit, such consent, approval or direction by City shall be effective if given by the Airport Director in the manner set forth in this Permit. Nothing requiring consent, approval or direction from City shall be unreasonably requested by Airline nor shall such consent, approval or direction be unreasonably withheld by City.

ARTICLE XXXVIII
NOTICES

All payments, demands and notices required herein shall be deemed to be properly served if hand delivered, or if sent by certified or registered mail, postage prepaid, or sent by a nationally recognized courier service with proof of receipt to the last address previously furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

CITY: City Manager City of Minot 515 2 nd Ave. SW Minot, North Dakota, 58701	AIRLINE: Delta Air Lines Attn: Vice President Corporate Real Estate P.O. Box 20706 Atlanta, GA 30320
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The date of service of such notice shall be three (3) days after the date such notice is deposited in a Post Office of the U.S. Post Office Department or the date of delivery with a courier service.

ARTICLE XXXIX
PARAGRAPH HEADINGS

Paragraph headings contained herein are for convenience in reference only, and are not intended to define or limit the scope of any provisions of this Permit.

ARTICLE XXX
ENTIRE PERMIT

This Permit consists of Articles 1 to 40, inclusive, **Exhibit 1** and **Exhibit 2**

IN TESTIMONY WHEREOF, witness the signature of the parties hereto the day and year first above written.

ATTEST:

Kelly Matalka, City Clerk

CITY OF MINOT:

Chuck Barney, Mayor

Date: _____

ATTEST:

DELTA AIR LINES INC.

Title: _____

Date: _____

SCHEDULE 1
LEASED PREMISES AND 2016 RATES
(To be Replaced Each Fiscal Year With Updated Schedule)

Part 1 – Preferential Use Space

<u>Room Number</u>	<u>Description</u>	<u>Square Footage</u>	<u>Rate</u>	<u>Total</u>
1317	Ops & Breakroom	436	\$8.83	\$3,850.00
1319	Ops	237	\$8.83	\$2,093.00
1703	ATO	713	\$8.83	\$6,296.00
1704	Storage	66	\$8.83	\$593.00
1803	Ticket Counter	310	\$8.83	\$2,737.00
1802	Ticket Counter Queue	685	\$8.83	\$6,049.00
	Total- Preferential	2,447		\$21,607.00
	Monthly Amount			\$1,800.58

Part 2 – Joint Use Space

<u>Room Number</u>	<u>Description</u>	<u>Square Footage</u>	<u>Rate</u>	<u>Total</u>
1100	Bag Claim	10,268	\$8.83	\$90,666.00
1105	Tug Tunnel	6,795	\$8.83	\$59,991.00
1107	Comm Room	108	\$8.83	\$954.00
1109	Triturator	275	\$8.83	\$2,428.00
1301	BSO A	349	\$8.83	\$3,082.00
1302	Info	133	\$8.83	\$1,174.00
1307	Tug Parking	370	\$8.83	\$3,267.00
1308	Restroom	67	\$8.83	\$592.00
1310	Glycol storage	579	\$8.83	\$5,113.00
1321	Restroom	68	\$8.83	\$600.00
1508	Comm Room	198	\$8.83	\$1,748.00
1509	Bag Make Up	11,643	\$8.83	\$102,808.00
1709	Oversize Baggage	114	\$8.83	\$1,007.00
1710	Main Comm	273	\$8.83	\$2,411.00
2110	Waiting Gate 5	1,562	\$8.83	\$13,792.00
2111	Gate 6	297	\$8.83	\$2,623.00
2112	Holdroom Gate 6	1,098	\$8.83	\$9,695.00
2113	Vestibule	64	\$8.83	\$565.00
2303	Holdroom 4	1,405	\$8.83	\$12,406.00
2304	Gate 4	276	\$8.83	\$2,437.00
2310	Holdroom 5	1,061	\$8.83	\$9,369.00
2311	Gate 5	553	\$8.83	\$4,883.00
2506	Holdroom 3	1,361	\$8.83	\$12,018.00
2507	CIRC	5,754	\$8.83	\$50,808.00
2511	Gate 3	481	\$8.83	\$4,247.00

2712	Gate 1	408	\$8.83	\$3,603.00
2713	Holdroom 1	1,835	\$8.83	\$16,203.00
2715	Holdroom 2	1,835	\$8.83	\$16,203.00
2716	Gate 2	433	\$8.83	\$3,823.00
	Loading Bridges	2,000	\$8.83	\$17,660.00
	Total- Joint Use	51,662		\$456,175.00
	Monthly Amount			\$38,014.58

NON-SIGNATORY
AIRLINE USE AND OPERATING PERMIT

AT

MINOT INTERNATIONAL AIRPORT

And

UNITED AIRLINES, INC.

EFFECTIVE DATE

January 1, 2016

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NON-SIGNATORY AIRLINE USE AND OPERATING PERMIT

THIS PERMIT, made and entered into by and between City of Minot, North Dakota, a municipal corporation, hereinafter, "City", and United Airlines, Inc., a corporation organized and incorporated in the State of Delaware, hereinafter, "Airline."

WITNESSETH THAT:

WHEREAS, City is the operator of the Minot International Airport, "Airport", located in the County of Ward, State of North Dakota, and operates the same for the promotion, accommodation and development of air commerce and transportation; and

WHEREAS, the parties hereto desire to enter into a Non-Signatory Airline Use and Operating Permit, hereinafter the "Permit," granting Airline the use, together with others, of the Airport and its appurtenances;

NOW, THEREFORE, for and in consideration of the premises and of the mutual covenants and agreements herein contained, and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, and in replacement of any other previous leases or agreements between the parties, the parties agree as follows:

ARTICLE 1 **DEFINITIONS**

A. "Affiliate Airline" shall mean any (i) contract regional airline that operates flights under the designator code of the Non-Signatory Airline, as designated in writing by such Non-Signatory Airline from time to time; (ii) party that operates under essentially the same trade name, or uses essentially the same livery, as the Non-Signatory Airline at the Airport; or (iii) party controlling, controlled by, or under common control with the Non-Signatory Airline. Affiliate Airline shall have the rights afforded the Non-Signatory Airline provided the Non-Signatory Airline: (a) executes a Non-Signatory Permit with the City; and (b) agrees and shall be obligated to serve as a financial guarantor for all landing fees incurred for Non-Signatory Airline by any designated Affiliate Airline of the Non-Signatory Airline at the Airport. A Non-Signatory Airline and any designated Affiliate Airline shall be counted as one airline for the purposes of computing any Joint Use charges. Airline shall designate its Affiliate(s) in writing; however Airline may at any time give City sixty (60)

days prior written notice that such an air transportation company otherwise meeting the definition of an "Affiliate" hereunder shall no longer be considered an Affiliate of Airline for purposes of this Permit, and any guaranty by Airline of Affiliate's landing fees shall terminate upon the designated date of termination. The Non-Signatory Airline shall be responsible for any and all charges of (including the payment of any landing fees incurred by) any such designated Affiliate Airline while such designated Affiliate Airline operates at the Airport on behalf of Airline. Each designated Affiliate Airline must enter into an Operating Agreement-Airline with the City. If an Affiliate Airline operates at Airport incurred on behalf of Airline without an executed Operating Agreement-Airline, the Affiliate Airline will not be considered operating under the Signatory status of Airline for the purposes of payment of rates, fees, and charges and will be subject to payment of the applicable premium. No airline that offers for sale tickets for flying in and out of the Airport under its brand name shall be classified as an "Affiliate" for purposes of operating flights at the Airport under that brand name.

A. "Airline" shall mean any commercial passenger air transportation company who has executed a Non-Signatory Airline Use and Operating Permit with the City.

B. "Airline Leased Premises" shall mean the Airline's Preferential Use Space.

C. "Airport" shall mean the Minot International Airport (MOT).

D. "Airport Emergency Plan" shall mean the plan adopted by the City with input from Airline and other Airport tenants that defines roles and responsibilities of all users of the Airport in the event of an Emergency which may be amended from time to time. A current copy will be kept on file in the Airport Director's office.

E. "Airport Facilities" shall mean the Airport, together with the facilities essential in carrying out the terms of this Permit including without limitation the airfield; runways; aprons, taxiways; sewer, electrical, gas, and water utilities; lighting devices; signals; beacons; navigation aids; roadways and approaches; and all conveniences for flying, landing and take-off of aircraft.

F. "Airport Management" shall mean the Airport Director or other designated official of the Airport as appointed by the Mayor or City Manager and shall include such person or persons as may from time to time be authorized in writing by the City Council or by the Mayor to act for City with respect to any or all matters pertaining to this Permit.

G. "Cargo Operating Agreement- Signatory" shall mean an Agreement entered into between the City and a Signatory cargo operator that defines the requirements in order for the cargo operator to qualify for the adopted Signatory rates, fees, and charges. Cargo operators that do not execute a Cargo Operating Agreement- Signatory will be charged Non-Signatory Airline rates, fees, and charges.

H. "City" shall mean the City of Minot, North Dakota, or its authorized representative.

I. "Common Use Space" shall mean the space in the building used by the public for circulation, included but not limited to public restrooms, vestibules, lobbies, waiting areas, public concession space. In addition, for purposes of this Permit, Common Use Space shall also include all space in the building that is used to support building operations that is not under lease to any tenant.

J. "Fiscal Year" shall mean calendar year, such twelve (12) month period beginning on January 1 of any year and ending on December 31, of the same year.

K. "Force Majeure" shall mean factors or circumstances beyond the reasonable control of that party, whether or not foreseeable, including, but not limited to act of God; war, hostilities, act of foreign enemies, mobilization, requisition, or embargo, rebellion, revolution, insurrection, or military or usurped power, or civil war; contamination by radio-activity from any nuclear fuel, waste or the combination of radioactive or toxic explosives; riot, commotion, strikes, work stoppages, lock out or disorder, acts of government or government refusal to act; or acts or threats of terrorism.

L. "Ground Handler" shall mean any third party contractors, not employees of Airline or employees of a wholly owned subsidiary of Airline, who perform ground handling services on behalf of Airline and its designated Affiliate Airline(s) at the Airport. Services include, but are not limited to, the processing of passengers, mail, cargo, de-icing services and other servicing of the aircraft. All Ground Handlers must execute an Operating Agreement- Ground Handler with the City in order to be authorized to perform service at the Airport. Ground Handlers must remain in compliance with the terms and conditions of the Operating Agreement- Ground Handler in order to perform services on behalf of Airline at the Airport. Airline shall be responsible for all actions and obligations of any Ground Handler who continues to operate on behalf of Airline at the Airport following a cancellation or termination of an Operating Agreement- Ground Handler.

M. "Joint Use Space" shall mean the terminal space used by Airline for its use jointly with other airlines as delineated in **Exhibit 1**. Such Joint Use Space shall include but not be limited to the baggage make up area, baggage claim area, tug tunnels, hold rooms and passenger loading bridges, aircraft parking positions associated with each gate, and unenclosed ground service equipment storage space designated at each gate.

N. "Joint Use Formula" shall mean the formula used to allocate the cost of the space used for joint use purposes among airlines. The Joint Use Formula shall include all operations and enplanements for both Signatory and Non-Signatory Airlines.

O. "Landing Fees" shall mean those amounts payable by Airline which shall be calculated with respect to each one thousand (1,000) pounds of Gross Landing Weight by airline type as certified by the FAA, for landings of aircraft operated by Airline and/or Airline's designated Affiliated Airlines at the Airport.

P. "Leasehold Improvements" shall mean all items located on and within the Preferential Use Space provided or purchased by City or Airline, including items such as partitions, insulation, wiring, lighting and plumbing fixtures, piping, finished ceilings, ventilation duct work, grills, floor and wall coverings, heaters, installed cabinets, sinks, counters, and other related improvements.

Q. "New Terminal" shall mean the replacement terminal facility and aircraft parking apron that will be developed by the City completed and occupied on February 29, 2016 as shown on **Exhibit 1**. The New Terminal shall include Preferential Use Space, Joint Use Space, and Common Use Space available for use by airlines, employees, ground handling contractors, and the general public.

R. "Non-Signatory Airline" shall mean any passenger or cargo airline operating at the Airport not having executed an Airline Use and Lease Agreement or Signatory Cargo Operating Agreement with the City but executing this Permit or similar Agreement. For purposes of payment of rates and charges, Non-Signatory airlines will be charged all rentals, fees, and charges at a uniform Non-Signatory Airline premium as established in the rate ordinance adopted annually by the City. Such Non-Signatory Airline premium may be revised from time to time at City's sole discretion following consultation with the Signatory Airlines, provided however, that upon the effective date of this permit and for a period of five years following that date the premium shall remain set at zero percent (0%).

S. "Operating Agreement- Airline" shall mean an Agreement entered into by and between any designated Affiliate Airline operating at the Airport which has not executed an Airline Use and Lease Agreement or

similar document but has been designated by a Signatory Airline as an Affiliate Airline. The Operating Agreement- Airline shall define the operational and liability requirements of the executing airline.

T. “Operating Agreement- Ground Handler” shall mean an Agreement entered into by and between any third party ground handlers authorized to perform services at the Airport on behalf of Airline or a Signatory Airline. The Operating Agreement- Ground Handler shall define the operational and liability requirements of the Ground Handler and its rights and responsibilities at the Airport in order to perform services on behalf of Airline.

U. “Operation and Maintenance Costs” shall mean for the New Terminal shall include costs of providing and maintaining heating, ventilation, air conditioning, floor and ceiling coverings and finishes, doors, windows, landscaping adjacent to the passenger terminal building, lighting, snow and ice removal of the sidewalks adjacent to the passenger terminal building; garbage collection, janitorial services in Public Use Space, Joint Use Space, and public spaces, and Joint Use Space electricity, electrical systems, water and water systems, sewer; maintenance, allocated costs associated with communications systems; lighting; equipment, fixtures; and utility systems; amortization and/or depreciation of local funding of eligible City funded improvements, premiums for liability and property insurance; utilities furnished by the Airport; management expenses; personnel expenses; supplies; respecting Airline and Airport’s obligations therefore; and other services to which the Signatory Airlines and Airport Director shall reasonably agree. The Airport shall provide only such services and such maintenance as is indicated in **Exhibit 2**, attached and incorporated herein by reference, and shall bear the costs thereof in consideration for the payments to be made pursuant to the provisions of Article IV herein. The Airline will at all times maintain its Preferential Use Space in a neat, clean, safe and orderly condition, in keeping with the general decor of the area in which the space is situated, and that it will perform those maintenance or services shown on **Exhibit 2** as Airline’s responsibility at its own cost. Airline shall have primary responsibility to remove snow and ice from the Ramp Area immediately adjacent to its aircraft to create a safe condition for all operations. If aircraft is ground loaded, Airline shall have the responsibility to clear the pathway between the terminal door and aircraft door.

V. “Preferential Use Space” shall mean the terminal space leased to Airline for its preferential use as delineated in **Exhibit 1**. Preferential Use Space shall include airline ticket offices, operations offices, storage space, and ground services equipment parking space on the Ramp Area as identified in **Exhibit 1**.

W. “Project Costs” shall mean any and all costs of construction to be paid by the City with funds of the City for the passenger terminal building, related facilities, improvements and any and all incidental administrative, legal,

planning, design and construction management expenses including but not limited to architectural, engineering, project management, soil and foundations exploration, laboratory and field testing of materials and their placement, inspection, reproduction of project documents, insurance premiums and advertisement fees for construction bidding.

X. "Ramp Area" shall mean the surface immediately adjacent to the New Terminal, as designated by the City, that is used for the parking of aircraft and ground service equipment support vehicles, and the loading and unloading of aircraft as shown in **Exhibit 1** for the New Terminal.

Y. "Signatory Airline" shall mean a passenger Airline executing an Airline Use and Operating Agreement and in compliance with the terms contained therein.

Additional words and phrases used in this Permit but not defined herein shall have their usual and customary meaning.

ARTICLE II

TERM

The Term (herein after defined as "Term") of this Permit shall commence on January 1, 2016 and shall remain in effect, unless terminated in accordance with the terms hereof. Notwithstanding anything contained herein to the contrary, either party may terminate this Permit, for any reason, by providing ninety (90) days' prior written notice to the other party. The Anniversary Date of the Term for purposes of the Term of this Permit shall be January 1st of each year during the Term hereof. The terms and conditions contained herein shall apply to the New Terminal which became operational on February 29, 2016. Airline shall be responsible for all obligations required under this Permit until cancelled by either party as called for herein. Termination does not represent a waiver by the City of any obligations included in the Permit prior to the termination date.

ARTICLE III

PREMISES AND OPERATIONS

City hereby grants to Airline and its designated Affiliate Airline(s) and authorized Ground Handler the right to use and occupy the Airline Leased Premises and Joint Use Space in the New Terminal in accordance with the terms and conditions as follows:

A. Subject to and in accordance with all applicable laws and ordinances and such reasonable Minimum Standards/rules and regulations as may be adopted and amended from time to time by City for the regulation thereof and kept on file in the Airport Director's office at the Airport, Airline may, together with others, use the Airport and its appurtenances including the Preferential Use Space, Joint Use Space, and Common Use Space for the purpose of conducting its business as a commercial air carrier to engage in commercial air carrier operations at the Airport. The privileges granted hereby shall be non-exclusive, and include, without limiting the generality thereof.

1. The use of the Airport and its appurtenances by the Airline employees, agents, or contractors for the purpose of landing, take-off, loading and unloading, taxiing, and parking of its aircraft or ground service support equipment.
2. The sale of Airline's air transportation service for the transport of persons and property at the Airport. Airline promotional items will be limited to use in Airline Preferential Use Space. Information provided to customers in the processing of passengers will be allowed at the gate counters in non-permanent dispensers, upon the prior written approval of the Airport Director.
3. The sale, lease or other disposition of Airline's aircraft or other related property.
4. The training at the Airport of persons and testing of aircraft and other equipment as is incidental to Airline's air transportation business.
5. The ground training of personnel in the employ of, under the direction of, or under a service contract for Airline.
6. The right to install, operate, and maintain the necessary FAA and Department of Homeland Security approved security devices to carry out its obligations as specified by the Federal Aviation Administration, Department of Homeland Security, or other governmental rules and regulations.

B. Airline's equipment, including aircraft, used by Airline and designated Affiliate Airline(s) at the Airport shall be maintained at Airline's or designated Affiliate Airlines' sole expense, in good safe and operative order, and in a clean and neat condition.

C. Airline shall not knowingly permit its agents, contractors, or employees to conduct business in a manner that is disruptive to the operation of the Airport. Airline agrees to require its employees to wear uniforms as determined by Airline and to carry badges or other suitable means of identification,

which shall be subject to the prior and continuing approval of the City and in compliance with all FAA and Department of Homeland Security regulations.

- D. Airline agrees to obey and comply with all applicable federal, state, and municipal rules, regulations, and laws, and shall require its officers, agents, employees, contractors, and suppliers, to comply with the same
- E. Airline shall be responsible for all its expenses in connection with its operation at the Airport 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 Airline, and shall secure all such permits and licenses.
- F. To the extent of its capabilities, Airline agrees to cooperate with City and/or any other air carrier in dealing with aircraft or airline related emergencies at the Airport. Airline further agrees to provide City with its current emergency procedures and to fully cooperate with City and assist in implementation of the current Airport Emergency Plan, a copy of which is on file in the Airport Director's office.
- G. Airline or Airline's Ground Handler may provide support services for another air carrier, subject to all applicable conditions of this Permit.
- H. Airline shall comply with all applicable federal, state, and local environmental laws and regulations requirements and shall comply with the City's de-icing plan.
- I. Airline or its designated Ground Handler shall coordinate with City and the control tower and promptly remove any of its disabled aircraft from any part of the Airport, including without limitation, runways, taxiways, aprons and aircraft parking positions, and to place any such aircraft in such storage areas as may be designated by City. Such storage of disabled aircraft may be subject to a storage fee. Should Airline fail to remove any of its disabled aircraft promptly after authorization from the Federal Aviation Administration and/or the National Transportation Safety Board, City may, but shall not be obligated to, cause the removal and Airline shall reimburse City for all reasonable, out-of-pocket costs of such removal. Airline hereby releases City from any and all claims for damages occasioned by such removal, except to the extent damage is caused by the negligence or willful misconduct of the City.

ARTICLE IV

RATES, FEES AND CHARGES

The New Terminal opened for use on February 29, 2016; the total airline requirement has been established for the 2016 Fiscal Year. The City shall invoice the rates based on the square footage of the New Terminal effective January 1, 2016 for the space in the New Terminal, Airline shall pay all rates, fees and charges monthly. The rates, fees, and charges payable by Airline are as follows:

A. Airline Square Footage Rental Rate- New Terminal

The cost per square foot for rented Airline Leased Premises and Joint use Space as identified in **Exhibit 1** shall be determined by adding all Operation and Maintenance Costs, direct and indirect maintenance and operating costs net of federal or state grants; insurance; debt service net of Passenger Facility Charges (PFC's), federal and state grants; direct and indirect administration costs; utilities; refuse removal; window washing; carpet and floor maintenance; passenger loading bridge maintenance; and all other costs associated in connection with the operation of the Airline Leased Premises and Joint Use Space incurred by the City and dividing said sum by the rented square footage of the Airline Leased Premises and Joint Use Space used by Signatory Airlines and Non-Signatory Airlines.

1. Preferential Use Space Rent- New Terminal

Payment is due and payable on the first day of month of occupancy. Payment for the Preferential Use Space shall be invoiced monthly by taking the annual amount calculated For Airline Preferential Use Space, plus the Non-Signatory premium, if applicable, divided by twelve (12) months to arrive at the monthly amount due. Rent will be adjusted annually based on the budget approved by the City Council and the amount of rented space leased by Signatory Airline(s) and Non-Signatory Airlines. The approved rental rates will be provided to Airline a minimum of thirty (30) days prior to the start of the Fiscal year

2. Joint Use Space Rent- New Terminal

The total Joint Use Space airline requirement shall be calculated by multiplying the square footage rental rate as identified in Article IV (A) above by the number of square feet contained in the Joint Use Space as identified in **Exhibit 1**. Non-Signatory Airlines (including designated Affiliate Airline(s)) will be considered as one airline for purposes of this calculation. The total annual Joint Use

Space airline requirement shall be divided by twelve (12) months to determine the total airline requirement each month. Each month, the amount due will be determined by taking the total monthly requirement and allocating thirty percent (30%) of the Joint Use Space requirement to the Signatory Airlines and Non-Signatory Airlines based on the number of scheduled flights by Signatory Airlines and Non-Signatory Airlines and seventy percent (70%) based on the total number of enplaned passengers reported by Non-Signatory and Signatory Airlines and their designated Affiliate Airlines(s). For Non-Signatory Airlines, the applicable Non-Signatory premium will be applied to the activity for total enplanements of Airline and designated Affiliate Airline(s). Any ground handled airlines handled by Airline Ground Handler shall be reported to City monthly by Airline's Ground Handler on or before the tenth (10th) day following the end of the month to which the activity is experienced. Airline shall not be responsible for payment of any rates, fees, and charges for Non-Signatory Airlines handled by Airline Ground Handler. It is expressly understood and agreed that Airline's agreement to this Permit or the payment by Airline of rates and charges pursuant to this Permit, including, without limitation, charges for Joint Use Space, in no way, shall be construed as agreement or concurrence by the Airline (a) that the rates and charges methodology as outlined in this Permit or in the Agreement executed by the Signatory Airlines is reasonable, acceptable, or in compliance with federal law and (b) that all payments made by Airline under this Permit are made under protest and only so the Airline is able to provide continued service at the Airport. In addition, notwithstanding anything else in this Permit to the contrary, Airline expressly reserves its right to challenge or protest the rate and charges methodology in this Permit and in the Signatory Airline Agreement, and Airline's executing this Permit shall, in no way, be deemed a waiver of such right.

Payment for the Joint Use Space shall be made by the tenth (10th) of the month following the month for which the charges are calculated and invoiced.

B. Landing Fees

Airline agrees to pay the City a landing fee for each one thousand pound (1,000 lb.) units of certified maximum gross landed weight by aircraft type for all scheduled revenue flight arrivals of Airline and its designated Affiliate Airline(s) during each month. The Landing Fee shall be calculated by adding all Operation and Maintenance Costs; all other costs associated with maintaining the airfield; and security charges, and dividing said sum by the total certified maximum gross landed weight by aircraft type for all scheduled and estimated Signatory, designated Affiliate Airline(s) and Non-Signatory landings.

The Landing Fees shall not apply to courtesy, medical emergency, special military, and other non-revenue ferry flights landing at the Airport by Airline and designated Affiliate Airline(s). The term "certified maximum gross landed weight" shall mean, for the purposes of this Permit, the maximum gross landed weight approved by the Federal Aviation Administration for landing such aircraft type by Airline at the Airport. The Landing Fee will be adjusted in accordance with the terms and conditions of this Permit following written notice and a reasonable comment period as determined by the City.

Airline shall report on a monthly basis all arrivals of Non-Signatory Airline aircraft handled by Airline's Ground Handler and/or using Airline Leased Premises with the landing fee report for the purpose of the City assessing Landing Fees. The Non-Signatory Airline Landing Fees will be credited to the total Landing Fee requirement.

Airline shall submit a report on a form provided by the City no later than the tenth (10th) of the month following service to include a complete listing of all scheduled and unscheduled arrivals for Airline, designated Affiliate Airline(s), and any Non-Signatory Airline handled by Airline's Ground Handler. Payment for all landing fees for Airline and designated Affiliate Airline(s) will be due and payable by the end of month in which the Landing Fees are invoiced. The City will invoice handled Non-Signatory Airlines directly based on the report submitted.

Following the end of each Fiscal Year and upon completion of the annual audit, The City will summarize the total scheduled flights by Airline(s) compared to the projected operations used in the calculation of the Landing Fee and the actual expenses incurred versus budgeted expenses projected in the setting of the Landing Fee rate and determine the actual Landing Fee due for the completed Fiscal Year. If the amount charged is less than the actual amount required for the adjusted Landing Fee calculation for Airline and its designated Affiliated Airline(s), an invoice will be issued for the difference and the amount will be due and payable within thirty (30) days of the invoice date. In the event the amount charged is greater than the amount required from Airline, City will refund one twelfth (1/12th) of the amount due on a monthly basis to Airline over the twelve (12) month period following the completion of the reconciliation. If Airline cancels the Permit in accordance with the terms and conditions of Article II, any remaining credits due following the date of termination will be cancelled.

In the event the Landing Fee reconciliation results in the Airline owing an additional amount above the budgeted Landing Fee rate adopted in the Fiscal Year budget, the maximum adjustment for the

year end reconciliation shall not exceed one hundred fifty percent (150%) of the budgeted Landing Fee.

The Landing Fee will be established annually based on the projected airfield expenses in the Fiscal Year budget and the projected landed weight by all Signatory and Non-Signatory Airlines. The Landing Fee is payable for each scheduled landing at the Airport of aircraft operated by Airline and its designated Affiliate Airline(s). Airline's failure to provide information monthly or to pay the Landing Fees as set forth herein shall be considered a material breach of this Permit.

C. Aircraft Rescue and Fire Fighting Charges

The City shall collect the budgeted annual costs associated with providing Aircraft Rescue and Fire Fighting services (hereinafter referred to as "ARFF") at the Airport. City will establish ARFF costs at the beginning of each Fiscal Year and divide the total cost by the projected Landed Weight used in the calculation of the Projected Landing Fee. The ARFF charge will be adjusted each Fiscal Year through the Base Term, Option Term, and any holdover period. The City will charge ARFF charges on a monthly basis and they are due and payable by the tenth (10th) of the month following the invoice date.

Following the end of each Fiscal Year and upon completion of the annual audit, The City will summarize the total scheduled flights by Airlines compared to the projected operations used in the calculation of the ARFF charges and determine the actual ARFF charges due for the completed Fiscal Year. If the amount charged is less than the actual amount required for the adjusted ARFF calculation for Airline, an invoice will be issued for the difference and the amount will be due and payable within thirty (30) days of the invoice date. In the event the amount charged is greater than the amount required from Airline, City will refund one twelfth (1/12th) of the amount due on a monthly basis to Airline over the twelve (12) month period following the completion of the reconciliation. If Airline cancels the Permit in accordance with the terms and conditions of Article II, any remaining credits due following the date of termination will be cancelled.

In the event the ARFF charge reconciliation results in Airline owing an additional amount above the budgeted ARFF charge rate adopted in the Fiscal Year budget, the maximum adjustment for the year end reconciliation shall not exceed one hundred fifty percent (150%) of the budgeted ARFF charge.

D. Other Fees

1. **Badging Fees:** The City will establish a fee for the issuance of security and access control badges. The fee will be set annually and will be based on the recovery of cost for background checks and the issuance and administration of the badging program. Payment of fees will be due and payable within thirty (30) calendar days of the invoice date.
2. **Conference Room Rental Fees:** For all use of terminal conference room space other than for City uses, there will be a rental fee assessed unless waived by the Airport Director. The rental fees will be established annually. Payment of fees will be due and payable within thirty (30) calendar days of the invoice date.
3. **Glycol Storage Fees:** City shall establish fees for glycol storage pads that shall be used by Airline for the storage of Airline glycol storage tanks. The City will establish an annual for any locations designated for such use. The fee will be paid on an annual basis and will be due and payable in full for the year within thirty (30) calendar days of the invoice date.
4. **De-icing Truck Parking Fees:** City will charge Airline for the use of paved areas for the parking of de-icing vehicles under the control of the Airline or Airline's ground handler. An annual fee will be established annually and assessed based on the location of the parking area. Payment will be due and payable in full within thirty (30) calendar days of the invoice date.
5. **Gate Electrification Charges:** The City will provide electricity to the gates for aircraft to plug in while at the gate. The electricity will not be separately metered; however, Airline and City will agree on an estimated usage which will be charged back to the Airlines in the Joint Use Space calculation.
6. **Employee Parking Fee:** The City reserves the right to charge a parking fee for all vehicles parked in the employee parking lot. Such fee will be determined annually.
7. **Non-Based Airline Employee Parking Fee:** The City will provide parking for airline employees who are not based in Minot. The number and location of the parking spaces will be at the sole discretion of the Airport Director. The non-based employee parking fee will be determined annually.

8. **Miscellaneous Fees:** The City reserves the right to establish additional fees for the use of facilities, resources, or costs incurred by the City for the administration of the Airport during the term of this Permit. Additional fees would be limited to any newly assessed charges assessed by any Governmental agency and the fee will be established so that the total cost of the service is recovered by the fee.

E. Annual Adjustment

All rates, fees, and charges are subject to adjustment based upon the costs incurred by City and the level of activity in the applicable Fiscal Year. Prior to adoption of rates, fees, and charges, the City will provide Airline thirty (30) days written notice and arrange for a conference call, if requested, to discuss the proposed changes.

ARTICLE V

AIRLINE RECORDS, REPORTS, AND AUDITS

Airline shall, at all times, maintain and keep books, ledgers, accounts or other records, and provide records within ten (10) days upon written request by the City, wherein are accurately kept all entries reflecting the number of revenue and non-revenue enplaning and deplaning passengers, total weight of inbound and outbound freight and mail (stated separately), the total number of scheduled and actual revenue aircraft trips of Airline and its designated Affiliate Airline(s), and Non-Signatory aircraft handled by Airline's Ground Handler actually arriving at the Airport, and the Certificated Maximum Gross Landed Weight of each such aircraft type. Such books, ledgers, accounts and records shall be available for examination by City or its duly authorized representative at all reasonable business hours within five (5) calendar days following written request. Airline shall provide, upon request from City, projected schedules and landed weight forecasts for its operation at the Airport. City reserves the right to audit all activity reported by Airline at the Airport throughout the Term of this Permit and the Option Term if executed and for a period of three (3) years following the termination of this Permit as called for herein. In the event that the audit produces variances from the activity reported, City reserves the right to charge the Airline for all differences. If the variance exceeds three percent (3%) of the amount paid, the City reserves the right to charge Airline for the cost of the audit.

ARTICLE VI

AIRLINE'S OBLIGATIONS

- A. Airline agrees that it shall be diligent in the prosecution of its business in the Airline Leased Premises and Joint Use Space and do all things reasonably necessary and advisable consistent with the then current Minimum Standards/rules and regulations of the City to serve the traveling public in all fields of aviation activities engaged in by Airline. Airline shall conduct its business in such a manner as will not knowingly cause City loss or damages.
- B. Airline agrees to keep Preferential Use Space and Joint Use Space in a clean, neat and orderly condition and in compliance with all laws and codes applicable to the Airline Leased Premises including the Minot International Airport Minimum Standards/rules regulations and all State and Federal environmental laws and regulations. Airline agrees to perform all services in the Preferential Use Space according to the attached Maintenance Matrix (**Exhibit 2**) and shall use its best efforts to keep the tug tunnel in a neat and orderly condition. In the event that Airline shall fail to maintain any portion of the Airline Leased Premises for which Airline is responsible in accordance with **Exhibit 2**, City shall have the right, but not the obligation, to itself perform or have performed said maintenance after twenty one (21) calendar days advance written notice of such intent to perform such maintenance whereupon City may collect the entire charge therefor, and Airline shall pay such amount plus a fifteen percent (15%) administrative fee to the City immediately upon demand therefor.
- C. Airline covenants that it will not do or permit to be done any act which:
 - 1. Will invalidate or be in conflict with any fire insurance policies covering the Airport or any part thereof or upon the contents of any building thereof; or
 - 2. Will increase the rate of any fire insurance premium on the Airport or any part thereof or upon the contents of any building thereof; or
 - 3. In the reasonable opinion of the City, will constitute a hazardous condition so as to increase the risks normally attendant upon the operations contemplated by this Permit.

If, by any reason of the Airline's failing to comply with the provisions of this Article, any fire insurance premium on the Airport or any part thereof or upon the contents of any building thereof, at any time, be higher than it otherwise would be absent the failure to comply, then the Airline shall, upon demand, directly reimburse the City for that part of all fire insurance premiums paid or payable by the City which shall have been charged because of such identified risks taken by the Airline.

D. Airline shall not create or permit any mortgage, encumbrance or lien or allow any mechanics' or material men's liens to be filed or established or to remain against the Airline Leased Premises, or any part thereof, provided that if Airline shall first notify City of its intention to do so and post such security as City reasonably deems necessary, Airline may, in good faith, contest any such mechanics' or other liens filed or established as long as the City does not deem its interest or rights in this Permit to be subject to foreclosure by reason of such contest.

ARTICLE VII

CITY'S OBLIGATIONS

Except as provided herein, City shall, in accordance with acceptable Federal Aviation Administration standards, other applicable statutes, rules and regulations, and in a safe manner consistent with the generally accepted good practices in the State of North Dakota for airports of similar size and character, properly maintain, operate and manage the Airport including all Preferential Use, Joint Use, and Common Use Space in the Terminal and all areas described as public space and adjacent vehicle parking space as set forth in **Exhibit 1**. If for any reason beyond the control of the City the City shall fail to properly maintain, operate, and manage said Airport, such failure shall not operate as a breach of this Permit nor render the City liable for damages if such failure is a result of Force Majeure conditions.

ARTICLE VIII

INDEMNIFICATION

A. **General:** Airline shall indemnify, save, hold harmless, and defend the City, their officials, agents, contractors, and employees, successors and assigns, individually or collectively, from and against any action, loss, damage, injury, liability, and the reasonable cost and expense (including, but not limited to, reasonable attorneys' fees, disbursements, court costs, and expert fees) based upon injury to persons, including death, or damage to property arising out of, resulting from, in conjunction with or incident to Airline's operation of its business and/or performance of its obligations under this Permit and of the Leased Premises or of the Airport, except in each case to the extent

caused by the negligence or willful misconduct of City, or its officers, directors, agents, contractors, or employees. The City shall provide Airline with prompt written notice after receiving a claim covered by this indemnity.

B. **Violations of Regulations and Laws:** Airline shall indemnify, save, hold harmless, and defend the City, its officials, agents, contractors, and employees, successors and assigns, from any claim, action, loss, damage, injury, liability, and the reasonable cost and expense (including, but not limited to, reasonable attorneys' fees, disbursements, court costs, and expert fees) and any fines in any way arising from or based upon the violation of applicable federal, state, or municipal laws, statutes, or regulations, including rules or regulations of the City now in effect or hereafter promulgated, by Airline, its agents, employees, contractors, or successors and assigns in conjunction with or incident to Airline's operation of its business and/or performance of its obligations under this Permit or use and/or occupancy of the Leased Premises or of the Airport, except in each case to the extent caused by the negligence or willful misconduct of City or its officers, directors, agents, contractors, or employees. The City shall provide Airline with prompt written notice after receiving a claim covered by this indemnity.

C. **Survival:** The provisions of this Section shall survive the expiration, termination or early cancellation of this Permit.

ARTICLE IX **ENVIRONMENTAL LIABILITY AND INDEMNIFICATION**

It is specifically agreed between the parties that Airline shall be responsible for Airline's use of, or Airline's generation of, or release or threatened release of any petroleum based substance or product, or any volatile organic compound, or any substance classified as a pollutant, contaminant, toxic or dangerous substance, solid waste or a "hazardous waste" under all applicable federal and state environmental laws or regulations. Airline shall specifically be responsible for the disposition of all such waste or substances and for the environmental response activities and response costs, monitoring, or cleanup required under applicable environmental laws associated with any environmental condition which arose directly out of Airline's use of, or generation of, such substances in its operations at the leased premises of the Airport. Airline shall not be responsible for any pre-existing environmental conditions that were present at the time Airline first occupied the Leased Premises. Claims for environmental matters are limited to indemnification under this Environmental Indemnification

provision and are not subject to the General Indemnity of Article VIII. The provisions of this Section shall survive the expiration, termination or early cancellation of this Permit.

ARTICLE X **INSURANCE**

A. Insurance Requirements: Airline shall, at its expense, maintain insurance in full force and effect during the term of this Permit in such amounts as to meet the minimum limits of liability specified below.

1. Comprehensive General Liability and Airline Liability with limits no less than \$250,000,000 combined single limit per occurrence and in the annual aggregate with respect to products/completed operations liability, including but not limited to, aircraft liability, bodily injury and property damage, passenger legal liability, airport premises and products/completed operations liability, baggage and cargo liability, contractual liability, independent contractors liability and mobile equipment liability. Personal injury and advertising liability can be limited to \$25,000,000 each offense/aggregate.
2. Hull Insurance, including owned and non-owned aircraft, at agreed values.
3. Business Automobile Liability with limits no less than \$10,000,000 each occurrence including owned and/or leased automobile liability and non-owned and hired automobile liability.
4. Fire Legal Liability with limits no less than \$1,000,000 each occurrence.
5. Workers' Compensation Coverage in statutory amounts with "all states" endorsement including Employer's Liability Insurance in limits of \$1,000,000 per employee.

B. Requirements for All Insurance: All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of North Dakota or with companies or underwriters satisfactory to the City Attorney.

- C. **Additional Insureds:** City shall be named as additional insureds on each of the policies above except the Workers' Compensation policy and fire legal liability.
- D. **Insurance Primary:** All insurance policies required above shall be primary and shall not require contribution from any coverage maintained by Authority and/or the City.
- E. **Insurance Certificate:** Certificates showing that Airline is carrying the above-described insurance in the specified amounts shall be furnished to City prior to the execution of this Permit, and a certificate showing continuation of such insurance shall be filed with City during the term of this Permit. Failure of Airline to provide the required certificates of insurance does not invalidate or eliminate any of the insurance requirements contained herein or relieve Airline from any responsibility to carry the required types and amounts of insurance.
- F. **Notice of Change or Cancellation:** The certificates shall provide that the policies shall not be canceled during the life of this Permit without at least thirty (30) calendar days advanced notice being given to Authority. Failure to give such notice to Authority will render any such cancellation in said policy or coverages ineffective as against Authority and City.
- G. **ACORD Form:** The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) - or equivalent forms, as approved by the City Attorney's Office.
- H. **Disclaimer:** City does not represent or guarantee that these types or limits of coverage are adequate to protect the Airline's interests and liabilities. It shall be the obligation and responsibility of Airline to insure, as it deems prudent, its own personal property, against damage. Authority does not have insurance coverage for Airline's property and City expressly disclaims any and all liability for any and all losses, damage and/or claims to aircraft and/or vehicles and/or personal possessions of Airline, except to the extent such damage is caused by the negligence or willful misconduct of City, or its officers, directors, agents, contractors, or employees.
- I. **Waiver of Subrogation:** City and Airline hereby mutually waive any and all rights of recovery against the other party arising out of damage or destruction of the buildings, Airline's Leased Premises, or any other property from causes included under any property insurance policies to the extent such damage or destruction is covered by the proceeds of such policies and whether or not

such damage or destruction shall have been caused by the parties, their officers, employees, contractors, or agents, but only to the extent that the insurance policies then in force permit such waiver. All property policies of insurance shall contain, to the extent available, this waiver of subrogation provision and the cost of such provision shall be borne by the primary insured.

ARTICLE XI **LAWS, ORDINANCES, RULES, AND CIVIL RIGHTS**

- A. The Airline shall comply with all laws, ordinances, rules, regulations, policies, and orders now in effect or hereinafter adopted of the United States, the State of North Dakota, the City, Subject to Paragraph B below, and any agency, department or governmental subdivision thereof, including but not limited to the Department of Homeland Security and the Federal Aviation Administration applicable to Airline's activities at the Airport, including but not limited to the Airport Certification Manual and the Airport Security Plan, a current copy of which is on file in the office of the Airport Director located at the Airport.
- B. From time to time, City may adopt and enforce reasonable and not unjustly discriminatory rules and regulations pursuant to FAA Advisory Circular 150/51900-7, "Minimum Standards for Commercial Aeronautical Activities" with respect to the occupancy and use of the Airport; provided, however, that such Minimum Standards are reasonable, non-discriminatory, and neither impair, limit, or extinguish any rights of Airline under this Permit, nor increase Airline's obligations, and further provided that the Airport shall provide Airline reasonable notice prior to the enactment of any rules and regulations, and shall duly consider Airline's input. Airline agrees to observe and obey any and all such rules and regulations and all other applicable Federal, State and municipal rules, regulations and laws and to require its officers, agents, employees, contractors, and suppliers, to observe and obey the same. City shall provide Airline with notification of any proposed rules and regulations, which shall allow Airline with a meaningful opportunity to review and comment on such proposed rules and regulations and for City to incorporate such comments, at its discretion, prior to becoming effective.
- C. The Airline for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that it shall comply with all applicable requirements of Federal and State civil rights, unlawful discrimination, and rehabilitation statutes, rules and regulations now in effect or hereinafter adopted, including but not limited to Title 49, Code of Federal Regulations, Department of Transportation of the Department of Transportation-

Effectuation of Title VI of the Civil Rights Act of 1964, the North Dakota Human Rights Act, and with the Americans Disabilities Act.

- D. This Permit is subject to the requirements of the U.S. Department of Transportation's regulations, Title 49 CFR Part 23. The Airline agrees that it will not discriminate against any business customer 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.
- E. The Airline agrees to include the statement, or the substance of such statement, set forth in paragraph D 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.
- F. Airline makes an irrevocable election (binding on the Airline and all successors in interest under the Permit) not to claim depreciation or an investment tax credit with respect to the Airline Leased Premises and covenants not to sublease its interest in the Airline Leased Premises to an entity which is not considered a common carrier for purposes of the Internal Revenue Code of 1986, as amended, without obtaining an opinion of bond counsel that such arrangement will not interfere with the tax exemption of the City's bonds.

ARTICLE XII

CITY'S RIGHTS UPON DEFAULT

- A. If at any time Airline shall be in default, as defined in this Article, with regard to the requirements of this Permit, it shall be lawful for the City, and the City may at any time thereafter:
 - 1. Immediately, or at any time thereafter without further notice to Airline, re-enter into or upon the Airline Leased Premises under this Permit or any part thereof and take possession of the same fully and absolutely without such re-entry working a forfeiture of the rentals, fees, and charges to be paid and of the covenants, terms and conditions to be performed by Airline for the full term of this Permit, and in the event of such re-entry, the City may proceed with the collection of rentals, fees, and charges to be paid under this Permit or to recover properly measured damages;

2. City may at its election terminate this Permit upon written notice in the manner hereinafter provided and re-enter upon said Airline Leased Premises as of its former estate therein, and the Airline covenants in case of such termination to indemnify the City against all loss of rentals, fees, and charges which the City has suffered or paid by reason of such termination, during the remainder of the Term of this Permit;
3. The City shall further have all other rights and remedies at law or in equity including injunctive relief, or summary proceedings for unlawful detainer, and any or all legal remedies, actions and proceedings and all such remedies shall be cumulative.

B. "Default" shall be defined when any of the following circumstances exist:

1. If the Airline has failed to pay rentals, fees, and charges or taxes when due hereunder and such failure to pay shall continue for ten (10) calendar days after written notice in the manner hereinafter provided.
2. Failure to provide and/or maintain the insurance coverages required herein.
3. If the Airline fails in the observance or performance of any of the other terms, covenants and conditions of this Permit and such failure shall continue for thirty (30) calendar days after City has given Airline written notice, or the Airline shall have failed to commence the corrective action of such failure within thirty (30) calendar days after such notice and to diligently prosecute the same where the same cannot be completed within thirty (30) calendar days, or
4. If a petition to reorganize the Airline or for its arrangement of its unsecured debts shall be filed, or
5. If the Airline shall be adjudicated bankrupt, or
6. If a receiver or trustee of the Airline's property shall be appointed by any court, or
7. If the Airline shall make a general assignment for the benefit of creditors, or

8. If all of the interest of the Airline in its property shall be taken by garnishment, attachment, execution or other process of law, or

C. In the event City shall prevail in any action or suit or proceeding brought by the City to collect the rentals, fees, charges, or taxes due or to become due hereunder or any portion thereof, or to take possession of the Airline Leased Premises and Joint Use Space, or to enforce compliance with this Permit or for failure to observe any of the covenants of this Permit, Airline agrees to pay City such sums as the court may adjudge reasonable as attorneys' fees and costs to be allowed in such action, suit or proceeding.

ARTICLE XIII

TERMINATION BY AIRLINE

Airline may terminate this Permit without cause following ninety (90) days written notice. If the permit is terminated by Airline, and the Airline ceases service at the Airport, Airline shall remove all personal property within thirty (30) working days following the termination effective date. All obligations of Airline prior to the effective date of termination shall remain until satisfied by Airline

ARTICLE XIV

USE OF PREMISES

- A. The parties hereto agree that the design and configuration of the New Terminal associates specific functions with specific locations. Airline's and its designated Ground Handler's use of the Airline Leased Premises and the Joint Use Space for the conduct of its air transportation business shall be limited to the use required for conduct of such business and for no other purpose without the prior written consent of City. Airline shall not permit the use of the Joint Use or Preferential Use Space for the offering or sale to the public of any other services, including but not limited to the sale of food, beverages, insurance, or offering of other merchandise or services separate from Airline's operation of its air transportation business. Airline shall be allowed to advertise its frequent flier program and related services in its Preferential Use Space.
- B. Airline shall have preferential use of its "Preferential Use Space" shown on **Exhibit 1** for use in its air transportation business.

C. Airline shall use, together with other airlines, that space listed as “Joint Use Space” as shown on **Exhibit 1**. All holdrooms and adjacent Aircraft Parking Apron shall be considered Joint Use Space. In order to provide operational stability for the Airline, the City will preferentially assign the holdrooms and adjacent Aircraft Parking Apron space to Airline so that it best meets the needs of Airline while allowing the City to maximize the use and efficiency of the terminal. Factors included in the assignment of space include but are not limited to (in no particular order):

- a) Fleet size
- b) Holdroom capacity and congestion
- c) Ground handling synergies
- d) Aircraft parking limitations

The City will make the initial assignment and adjust when such reallocation is in the best interest of the City. If the City is proposing a long term gate reassignment, the City will provide a thirty (30) calendar day notice to Airline. Airline shall provide response within ten (10) calendar days and the City will make its final decision within seven calendar days. If being relocated, the City and will provide thirty (30) calendar days' notice. Temporary reassessments to accommodate short term needs will be coordinated between the Airport Director and Airline. Both parties will use best efforts to try to accommodate short term needs based on the nature of the request.

D. All repair, maintenance and overhaul work, testing, washing, de-icing, or storage of aircraft or other Airline equipment shall be performed only upon those areas designated by City for such use. Airline may, while its aircraft are parked on the apron or at the aircraft parking position(s), perform customary fueling, deicing, and servicing of aircraft preparatory to loading and take-off, or immediately following loading and unloading. All active ground service equipment will be parked in Joint Use Space identified by the City.

E. Airline, its, employees, contractors, agents, suppliers, passengers, guests and others doing business with Airline shall have the right of ingress and egress to and from the Joint Use Space and the used in connection therewith, over the Airport property and roadways, subject to the Minimum Standards/rules and regulations governing the use of the Airport as same may be promulgated by City from time to time.

F. Airline will not perform any acts or carry on any practices which would result in the necessity to repair or replace Airport property, or which would disrupt the operations of other users of the Airport. In the event Airlines employees, contractors, or agents damage Airport property, if Airline fails to perform such repairs or replacements in a reasonable time after having received written notice from the City, Airline shall be solely liable for the repair or replacement of any such damage and shall pay upon demand for all repairs and associated costs plus a fifteen percent (15%) administrative fee.

G. City covenants that upon paying the rates, fees, and charges identified herein and performing the covenants and conditions herein contained, Airline shall peacefully and quietly have, hold and enjoy the Airline Leased Premises.

H. City covenants and agrees that it is in lawful possession of the Airline Premises and has good and lawful authority to execute this Permit.

ARTICLE XV

UTILITIES AND MAINTENANCE

A. City shall provide all utilities in the terminal space of the Airport, with the exception of electricity outside the terminal space, including but not limited to Airline's heater(s) and deicer(s). Any electricity use in the Airline Leased Premises by Airline required for such exceptions shall be the responsibility of Airline. If separate meters are not installed to measure such activity, the City reserves the right to estimate the amount of electricity to be consumed and charged based on an estimate. Any such agreements must be agreed to between the parties prior to installation.

B. Janitorial services shall be provided in accordance with the schedule continued in **Exhibit 2**. In the event maintenance and/or repairs of the New Terminal, its components, and ramp area are necessitated by misuse, abuse or negligence by Airline, its agents, contractors, or employees, Airline shall be responsible for, and pay directly to the City, the cost of such repairs and/or maintenance. In the event Airline fails to perform such maintenance and/or repairs or contract for service in a reasonable

time considering the nature of the repair required after having received written notice from the City, City may perform such maintenance and/or repairs and charge Airline the cost of such maintenance and/or repairs plus a fifteen percent (15%) administrative fee. Payment will be due and payable upon receipt of invoice.

C. City shall have the right, upon reasonable notice depending on the nature of the request, to enter the Airline Premises at all reasonable times to carry out its responsibilities under this Article. City shall have the right to access Preferential Use Space without notice in the event of an emergency. City will use its best efforts not to disrupt Airline's operations during any such inspection.

ARTICLE XVI
CONSTRUCTION, MAINTENANCE, AND REPAIR
OF AIRLINE'S LEASEHOLD IMPROVEMENTS/TRADE FIXTURES

A. Airline may construct or install, at its own expense, any equipment, improvements, and facilities, including communication, meteorological and navigational equipment, and any additions thereto, on all or any part of Airline's Preferential Space upon prior written approval of the Airport Director, under the conditions as hereinafter set forth. Airline shall keep and maintain all such improvements and facilities and additions thereto constructed or installed by it in good condition, reasonable wear and tear excepted.

a. No improvements, structures, alterations, or additions shall be made in, to, or upon Airline's Preferential Use Space without the prior written consent of City and all such improvements, structures, alterations, additions and work shall be in accordance with any reasonable conditions relating thereto then stated in writing by City.

b. At the time of requesting approval by City, Airline shall submit the preliminary plans for such improvements which shall conform to the general architectural scheme and overall plans adopted by City for the Airport to the Airport Director. Upon written approval of said preliminary plans, Airline shall prepare and obtain City's written approval of working drawings and specifications which shall be true and correct developments of the preliminary plans so approved. Airline shall be responsible for obtaining, at its sole expense, all permits required in connection with the improvements prior to the commencement of

any work. All construction shall conform to the approved working drawings and specifications and when such work is commenced, it shall be completed with reasonable dispatch. No substantial change, addition, or alteration shall be made in said working plans or specifications or in the construction called therefore without first obtaining City's written approval. Upon completion of said improvements, Airline shall furnish City, at its sole expense, an electronic set of "as built" drawings on CAD and one (1) complete set of standard size drawings of the improvements as constructed within sixty (60) calendar days of completion.

- c. All improvements constructed by Airline pursuant to this Article shall conform in all respects to the applicable federal, state, and local statutes, ordinances, building codes, rules and regulations of all applicable governmental agencies as may have jurisdiction. All improvements shall revert to the City at the termination of this Permit. The City reserves the right to have Airline remove the improvements at the termination of the Permit as called for herein and restore the space to its original condition, normal wear and tear excepted, consistent with Article XXXVI hereof.

- B. No trade fixtures shall be installed without the prior written consent of City and all such installations shall be in accordance with any reasonable conditions relating thereto then stated in writing by City. Within ten (10) calendar days upon termination of this Permit as called for herein, trade fixtures must be removed by Airline at Airline's sole expense and the space restored to its original condition, normal wear and tear excepted.

ARTICLE XVII

DAMAGE OR DESTRUCTION

- A. If the Airline Leased Premises, excluding Airline's leasehold improvements or trade fixtures, are partially damaged by fire or other casualty, but not rendered untenantable, the same shall be repaired with due diligence by City. The Airline Leased Premises shall be repaired or restored at City's expense to essentially the same condition as that which existed prior to such damage. If such damage is caused by the negligence of Airline, its officials, agents, contractors, or employees, Airline shall be responsible for all loss, damage, and costs not covered by Airline's insurance proceeds.
- B. If the Airline Leased Premises, excluding Airline's leasehold improvements or trade fixtures, are completely destroyed by fire or other casualty or so damaged as to remain untenantable for more than

thirty (30) consecutive days, City shall be under no obligation to repair or reconstruct such premises. Should City elect not to repair or reconstruct the Airline Leased Premises, then this Permit shall terminate on the date of notification by City as specified in this Article

- C. There shall be no obligation on the part of City or the contractor to reimburse Airline from the insurance proceeds for the loss or damage to fixtures, equipment or other personal property of Airline unless otherwise agreed by the parties in writing. Airline, for its own protection, may separately insure such fixtures, equipment, or other personal property as its interests may appear.
- D. In the event of damage or destruction of Airport property caused by the negligence of Airline, its agents, contractors, employees, aircraft or other equipment, Airline agrees to repair, reconstruct, or replace the affected property to the condition which existed prior to such damage or destruction, to the extent that same is not covered by insurance required under this Permit. Airline further agrees to cause such repair, reconstruction or replacement of affected property to be accomplished with due diligence.

ARTICLE XVIII

PURCHASE OF SUPPLIES AND SERVICES

- A. Any food or beverage items provided in the terminal to customers on regularly scheduled flights must be procured from the designated Airport concessionaire. In the event of a delay involving providing food or beverages to distressed passengers, Airline shall consult with the City's concessionaire in order to determine if the concessionaire has the staffing and capacity to accommodate the level of demand anticipated. If it does, the City's concessionaire should be utilized. In the event that the City's concessionaire does not have the capacity, in the reasonable assessment of Airline, Airline may purchase such products from outside vendors and advise the Airport Director of such action. Provided the process identified is followed, there will be no concession fee due the City. If purchased from outside sources without following the process identified above, the provider must pay to the City a concession fee similar to the fee paid by the Airport concessionaire for the applicable product. Except as herein otherwise specifically provided, no charges or fees shall be charged to Airline by the City in excess of those charges paid by other Airport tenants providing the same services, nor shall

any discriminatory limitations or restrictions be imposed by the City against Airline or its suppliers for the privilege of purchasing, loading, unloading or delivering any such personal property by Airline or its suppliers, or for the privilege of transporting the same to, from or on the Airport.

- B. Should Airline contract with a third party (other than a wholly-owned subsidiary of Airline) to provide maintenance and service upon its aircraft or to furnish ground services which might otherwise be performed by Airline under this Permit, such third party shall be deemed to be conducting a business at the Airport. Airline shall be responsible to City for any third party performing for or contracted by Airline, and Airline shall assume all responsibility and liability in connection with such contracting. Airline will not contract with any Ground Handler who does not have an executed Operating Agreement- Ground Handler in place with the City.
- C. Subject to the above, Airline may select suppliers, purveyors, and furnishers of materials, supplies, equipment, and services of its own choosing.

ARTICLE XIX

SECURITY

- A. Airline recognizes its obligations for security on the Airline Leased Premises as prescribed by the Federal Aviation Administration Regulations and the Department of Homeland Security, and agrees to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles on the Airline Leased Premises and the Aircraft Operations Area, ("AOA").
- B. Airline further agrees to abide by the Minimum Standards/rules and regulations adopted by City in carrying out City's obligations under the Federal Aviation Administration Regulations, the Department of Homeland Security, and any other security measures, as the City may deem necessary from time to time, for the proper identification of persons and vehicles entering the aircraft operations area. A copy of the current security directives is on file in the Airport Director's office.

C. Airline shall reimburse City in full for any fines or penalties levied against City for security violations as a result of any actions or omissions on the part of Airline, its agents, contractors, suppliers, or employees, which violations relate to an airfield or terminal access point utilized by Airline. If Airline contracts ground handling with a third party provider, the City reserves the right to refuse access to the Ground Handler if repeated violations are experienced. City will provide Airline written notice of all violations. Payment of any fines are due and payable upon demand.

ARTICLE XX

CITY'S RIGHT TO ENTER THE AIRLINE PREMISES

City reserves the right to inspect the Airline Leased Premises and improvements at any reasonable time with prior notification and coordination with the Ground Handler or local Airline manager. Throughout the Term of this Permit, City will use best efforts to coordinate such access so as to not disrupt Airline operations. When, for any reason, an entry is deemed necessary, and Airline is not present to permit such entry, City, its agents, contractors, or employees, shall be permitted to enter the Airline Leased Premises. City's agents or employees shall not be liable for any civil or criminal claim or cause of action for damage because of entering the Airline Leased Premises or improvements at reasonable times and in a reasonable manner, unless damages are caused by the City's negligence or willful acts (or those of its agents, contractors, or employees).

ARTICLE XXI

ADVERTISING AND SIGNS

Airline shall have the right, at its own expense, to install and maintain signs for the purpose of identification in its Preferential Use Space except the ticket counter backwall and gate podium backwall where electronic signs will be provided by the City. Prior to installation of such signage, Airline shall submit plans and obtain the approval of the Airport Director as to location, construction, appearance, and reasonable necessity therefore. In the event the signs are removed and not replaced, Airline shall repair the area to its original condition, normal wear and tear excepted, consistent with the existing décor of the Terminal. Airline will be allowed to offer information in non-permanent countertop dispensers at the gate podium upon the prior written approval of the Airport Director.

ARTICLE XXII

TAXES

Airline agrees to pay all lawful taxes and assessments which, during the Term hereof and may become a lien or which may be levied or charged by the state, county, city or other tax-levying body upon the Airline Leased Premises or upon any taxable interest acquired by Airline in this Permit, or any taxable possessory right which Airline may have in or to the Airline Leased Premises or the improvements thereon, by reason of its occupancy thereof, or otherwise, as well as all taxes on taxable property, real or personal, owned by Airline in or about the Airline Leased Premises. This obligation shall be applicable following the expiration of the Permit as called for herein for any obligation that is incurred during the Term of the Permit. Nothing herein shall prevent Airline from protesting through due process, any taxes levied. Upon termination of this Permit as called for herein, all taxes then levied or a lien upon any of said property, or taxable interest therein, shall be paid in full without proration by Airline forthwith, or as soon as a statement thereof has been issued by the tax collector, if termination occurs during the interval between the attachment of the lien and issuance of statement.

ARTICLE XXIII

GOVERNMENT RESERVATIONS AND RESTRICTIONS

The Airline Leased Premises and Joint Use Space being leased and used and the rights granted by this Permit shall be subject to reservations and restrictions, including but not limited to, the following:

- A. Nothing herein shall be construed to grant or authorize the granting of an exclusive right forbidden by Section 308 of the Federal Aviation Act of 1958 and as amended.
- B. During the time of war or national emergency, City shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and the provisions of this Permit, insofar as they are inconsistent with the provisions of that lease, shall be suspended.
- C. This Permit shall be subject to the terms of any City's grant assurances and agreements now required or imposed in the future, between City and the Federal Aviation Administration or any successor Federal agency (FAA Agreement) as long as for any future FAA Agreement, City ensures that if such requirements could have a material impact on Airline costs or operations that Airline is afforded a meaningful opportunity to engage in consultation of applicable portions of the FAA Agreement.

- D. This Permit shall be subordinate to the provisions of existing or future agreements between the United States Government and City relative to the Airport. Failure of Airline to comply with the requirements of any existing or future agreement between City and the United States Government, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Airline's rights hereunder, subject to Airline's right of appeal and condemnation rights.
- E. This Permit shall be subordinate to the provisions of agreements between the City and any bond holders relative to bond covenants. In the event there is a dispute between this Permit and provisions in any bond covenants, this Permit shall be modified by the City in order to ensure compliance with the bond covenant. City will consult with Airline prior to making any such amendments.

ARTICLE XXIV
RESERVED

ARTICLE XXV
NEW TERMINAL SPACE ASSIGNMENT

For the New Terminal, the City will cooperate with the Signatory Airlines for the allocation of Preferential Use Space in the New Terminal. The City will use its best efforts to provide the space requested to Airline when considering the needs of other Signatory Airlines and projected future Airline needs.

ARTICLE XXVI
ADVANCES BY THE CITY

In lieu of terminating this Permit pursuant to Article XII, City may, at its sole option and after giving fifteen (15) calendar days prior written notice to Airline, perform reasonable and necessary actions on behalf of Airline to cure the conditions of Airline's continuing default. Upon receipt by Airline of the reasonable and documented cost thereof by City to cure the conditions of such default, Airline shall promptly pay City the

amount due as additional rent plus a fifteen percent (15%) administrative fee. This Article shall in no way limit Airline's ability to legitimately challenge the existence of a default condition.

ARTICLE XXVII
LEGAL CLAIMS, CHOICE OF LAW, VENUE

- A. Each party hereto shall promptly report to the other any claim or suit against it arising out of, or in connection with, the operation of Airline at the Airport. City and Airline shall each have the right to compromise and defend the same to the extent of its own interest; provided, the defense of the same has not been tendered and accepted by the other party. Airline is an independent contractor in every respect, and not the agent of City.
- B. This document shall be interpreted in accordance with the laws of the State of North Dakota.

Any legal action in connection with this Permit shall be commenced and maintained in a state or federal court located in North Dakota.

ARTICLE XXVIII
LIENS AND ENCUMBRANCES

Airline shall pay all costs and expenses for work done and materials delivered to the Airline Leased Premises at Airline's request, during the term of this Permit as defined herein, for improvement to the premises. Airline shall keep the Airline Leased Premises free and clear of all mechanics' or material men's liens or any other liens on account of any work done on the Airline Leased Premises at Airline's request. Airline shall indemnify and hold City harmless against all liability, loss, damage, cost, attorney's fees and all other expenses on account of claims or liens of laborers or material men, or others, for work performed or materials or supplies furnished to Airline for use on the premises.

ARTICLE XXIX
CONTRACTING ON MORE FAVORABLE TERMS

- A. If City enters into any lease, contract, or any other Agreement with any other commercial passenger airline containing more favorable terms than this Agreement, or grants to any certificated airline rights, privileges, or concessions with respect to the Airport for comparable space or services, which

are not accorded Airline hereunder, it shall grant Airline equal terms, rights, privileges, or concessions. This provision does not apply to temporary air service incentives granted as part of an adopted air service incentive program.

- B. If any airline shall undertake any operations at the Airport for the carriage of passengers, cargo or mail by air, City shall require, to the extent legally permissible and in compliance with the Minimum Standards/rules and regulations, such Airline to execute and deliver an agreement, lease or contract with City providing for:
 - 1. The payment of landing fees at rates not less than those in effect for Airline and its designated Affiliate Airline(s) and such other terms and conditions that are not more favorable than those terms and conditions then in effect for Airline;
 - 2. The payment of rentals for any space leased or utilized from City in the New Terminal at rates not less than those rates then payable by Airline for similar space; and
 - 3. The payment for use by such airline of the Joint Use Space and operating costs of all baggage handling or passenger, holdrooms and passenger leading bridges, or passenger processing systems, calculated and billed to such airline as in the case of Airline.
- C. If said commercial airline is not a Signatory Airline or a designated Affiliate Airline(s), such airline shall pay all applicable City rates and charges at a Non-Signatory rate for all applicable rates, fees, and charges identified in this Agreement. Upon the commencement of this Agreement, the Non-Signatory premium is set at zero percent (0%). The City reserves the right to adjust the Non-Signatory premium at any time during the Base term or the Option Term if exercised. City will advise Airline of its intent a minimum of thirty (30) days prior to the proposed implementation date.

ARTICLE XXX **QUIET ENJOYMENT**

City agrees that, on payment of the fees and performance of the covenants and agreements on the part of the Airline to be performed hereunder, Airline shall peaceably hold and enjoy the Airline Leased Premises and all the rights and privileges of the Airport, its appurtenances and facilities, granted herein.

ARTICLE XXXI **NONDISCRIMINATION**

- A. Airline, for it, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained, or otherwise operated in the Airline Leased Premises, for a purpose for which a United States Government program or activity is extended, Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- B. Airline, for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Airline Leased Premises; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, creed, color, sex, national origin, age, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Airline shall use the Airline Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- C. Airline assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, sex, age, disability or marital status be excluded from participation in any employment activities covered in 14 CFR Part 152, Subpart E. Airline assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by such Subpart E. Airline assures that it will require that its covered sub organizations provide assurances to Airline that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, to the extent required by 14 CFR Part 152, Subpart E, to the same effect.
- D. Airline agrees to comply with all other State and Federal statutory and constitutional non-discrimination provisions. In addition, Airline agrees to comply with all pertinent provisions of the

American's with Disabilities Act of 1990, P.L. 101-336, July 26, 1990, 42 USC 12101, et seq.; and all pertinent regulations pursuant thereto. Airline shall not discriminate in the use of the premises or any access thereto if such premises are used as a public accommodation or in connection with a public service. Airline will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status.

- E. In this connection, City reserves the right to take whatever action it might be entitled by law to take in order to enforce this provision. This provision is to be considered as a covenant on the part of Airline, a breach of which, continuing after notice by City to cease and desist and after a determination that a violation exists made in accordance with the procedures and appeals provided by law, will constitute a material breach of this Permit and will entitle City, at its option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.
- F. Airline shall include the foregoing provisions, or the substance of the foregoing provisions, in every agreement or concession pursuant to which any person or persons, other than Airline, operates any facility on the Airline Leased Premises providing service to the public and shall include thereon a provision granting City a right to take such action as the United States may direct to enforce such covenant.
- G. Airline shall indemnify and hold harmless City from any claims and demands of third persons including the United States of America resulting solely from Airline's noncompliance with any of the provisions of this Article and Airline shall reimburse City for any loss or expense incurred by reason of such noncompliance.

ARTICLE XXXII

PRIOR AND COLLATERAL AGREEMENTS

This Permit shall constitute the entire Permit between the parties and no other stipulation, agreement or understanding, written or oral, expressed or implied, relating to the lease and use of the Airline Leased Premises, shall limit or modify its terms. This Permit shall, as of the commencement date hereof, cancel and supersede all prior agreements, written or oral, expressed or implied, between the parties for the rights granted herein. This Permit shall not be subject to modification or change except by written instrument duly signed.

ARTICLE XXXIII
SEVERABILITY

If any term or provision of this Permit shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this remit shall not be affected thereby.

ARTICLE XXXIV
NON-WAIVER OF BREACH

The waiving of any of the covenants of this Permit by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenants. The consent by City to any act by Airline requiring City's consent shall not be deemed to waive consent to any subsequent similar act by Airline.

ARTICLE XXXV
TIME OF ESSENCE

It is mutually agreed that time is of the essence in the performance of all covenants and conditions to be kept and performed under the terms of this Permit.

ARTICLE XXXVI
SURRENDER OF POSSESSION

During the term of this Permit, title to all improvements, structures, alterations or additions erected or installed in or on the Airline Leased Premises by Airline pursuant to this Article shall remain in Airline. Upon the cancellation or termination of this Permit, renewal or successor Agreement, said structures, improvements, alterations or additions shall become a part of the realty upon which they are erected and title thereto shall vest in City at no cost to City. City may at its option direct Airline in writing, within thirty (30) calendar days of such cancellation or termination, to remove any or all such structures, improvements, alterations or additions from the Airline Leased Premises. City may extend said thirty (30) calendar day requirement if, in its sole discretion, due diligence is shown by Airline. All City property damaged by or as a result of the removal of Airline's property shall be restored by Airline at its expense to its original condition, normal wear and tear excepted. Should Airline fail to remove such items as directed by City within thirty (30) calendar days of City's notification to do so, City may proceed to effect such removal at the expense of Airline, and Airline agrees to pay City for such expense plus a fifteen percent (15%) administrative fee upon receipt of an invoice therefore.

ARTICLE XXXVII
APPROVAL OR DIRECTION BY CITY

Wherever consent, approval or direction by City is required under this Permit, such consent, approval or direction by City shall be effective if given by the Airport Director in the manner set forth in this Permit. Nothing requiring consent, approval or direction from City shall be unreasonably requested by Airline nor shall such consent, approval or direction be unreasonably withheld by City.

ARTICLE XXXVIII
NOTICES

All payments, demands and notices required herein shall be deemed to be properly served if hand delivered, or if sent by certified or registered mail, postage prepaid, or sent by a nationally recognized courier service with proof of receipt to the last address previously furnished by the parties hereto. Until hereafter changed by the parties, in writing, notices shall be addressed as follows:

CITY: City Manager City of Minot 515 2 nd Ave. SW Minot, North Dakota, 58701	AIRLINE: United Airlines, Inc. Attn: Vice President Corporate Real Estate 233 S Wacker Drive Chicago, Illinois 60606
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The date of service of such notice shall be three (3) days after the date such notice is deposited in a Post Office of the U.S. Post Office Department or the date of delivery with a courier service.

ARTICLE XXXIX
PARAGRAPH HEADINGS

Paragraph headings contained herein are for convenience in reference only, and are not intended to define or limit the scope of any provisions of this Permit.

ARTICLE XXX
ENTIRE PERMIT

This Permit consists of Articles 1 to 40, inclusive, **Exhibit 1** and **Exhibit 2**

IN TESTIMONY WHEREOF, witness the signature of the parties hereto the day and year first above written.

ATTEST:

Kelly Matalka, City Clerk

CITY OF MINOT:

Chuck Barney, Mayor

Date: _____

ATTEST:

UNITED AIRLINES, INC.

Title: _____

Date: _____

SCHEDULE 1
LEASED PREMISES AND 2016 RATES
(To be Replaced Each Fiscal Year With Updated Schedule)

Part 1 – Preferential Use Space

<u>Room Number</u>	<u>Description</u>	<u>Square Footage</u>	<u>Rate</u>	<u>Total</u>
1317	Ops & Breakroom	436	\$8.83	\$3,850.00
1319	Ops	237	\$8.83	\$2,093.00
1703	ATO	713	\$8.83	\$6,296.00
1704	Storage	66	\$8.83	\$593.00
1803	Ticket Counter	310	\$8.83	\$2,737.00
1802	Ticket Counter Queue	685	\$8.83	\$6,049.00
	Total- Preferential	2,447		\$21,607.00
	Monthly Amount			\$1,800.58

Part 2 –Joint Use Space

<u>Room Number</u>	<u>Description</u>	<u>Square Footage</u>	<u>Rate</u>	<u>Total</u>
1100	Bag Claim	10,268	\$8.83	\$90,666.00
1105	Tug Tunnel	6,795	\$8.83	\$59,991.00
1107	Comm Room	108	\$8.83	\$954.00
1109	Triturator	275	\$8.83	\$2,428.00
1301	BSO A	349	\$8.83	\$3,082.00
1302	Info	133	\$8.83	\$1,174.00
1307	Tug Parking	370	\$8.83	\$3,267.00
1308	Restroom	67	\$8.83	\$592.00
1310	Glycol storage	579	\$8.83	\$5,113.00
1321	Restroom	68	\$8.83	\$600.00
1508	Comm Room	198	\$8.83	\$1,748.00
1509	Bag Make Up	11,643	\$8.83	\$102,808.00
1709	Oversize Baggage	114	\$8.83	\$1,007.00
1710	Main Comm	273	\$8.83	\$2,411.00
2110	Waiting Gate 5	1,562	\$8.83	\$13,792.00
2111	Gate 6	297	\$8.83	\$2,623.00
2112	Holdroom Gate 6	1,098	\$8.83	\$9,695.00
2113	Vestibule	64	\$8.83	\$565.00
2303	Holdroom 4	1,405	\$8.83	\$12,406.00
2304	Gate 4	276	\$8.83	\$2,437.00
2310	Holdroom 5	1,061	\$8.83	\$9,369.00

2311	Gate 5	553	\$8.83	\$4,883.00
2506	Holdroom 3	1,361	\$8.83	\$12,018.00
2507	CIRC	5,754	\$8.83	\$50,808.00
2511	Gate 3	481	\$8.83	\$4,247.00
2712	Gate 1	408	\$8.83	\$3,603.00
2713	Holdroom 1	1,835	\$8.83	\$16,203.00
2715	Holdroom 2	1,835	\$8.83	\$16,203.00
2716	Gate 2	433	\$8.83	\$3,823.00
	Loading Bridges	2,000	\$8.83	\$17,660.00
	Total- Joint Use	51,662		\$456,175.00
	Monthly Amount			\$38,014.58

City of Minot

TO: Mayor Chuck Barney
Members of the City Council

FROM: Rick Feltner, Airport Director

DATE: January 2, 2018

SUBJECT: **ADJUST 2018 RAMP PARKING FEES AT MINOT INTERNATIONAL AIRPORT**

I. RECOMMENDED ACTION

1. Recommend approval of the Resolution to adjust the 2018 Rates, Fees, and Charges Pertaining the Minot International Airport Ramp Parking Fees; and
2. Authorize the Mayor to sign the agreement

II. DEPARTMENT CONTACT PERSONS

Rick Feltner, Airport Director 857-4724

III. DESCRIPTION

A. Background

Resolution No. 3575 was passed and adopted on September 21, 2017. This resolution set the airport ramp parking rate at \$5.00 per day per aircraft. It is now recommended that a maximum fee of \$60.00 per month be instituted for aircraft weighing less than 12,500 pounds and a fee of \$15.00 per day per aircraft weighing 12,500 pounds or more.

B. Proposed Project

N/A

C. Consultant Selection

N/A

IV. IMPACT:

A. Strategic Impact:

N/A

B. Service/Delivery Impact:

N/A

C. Fiscal Impact:

The adoption of this rate change will increase ramp parking fees over the 2017 rate, however, it will be less dramatic than the initially proposed rate of \$5.00 per day per aircraft with no monthly cap.

Project Costs

13j
N/A

Project Funding

Proj.
N/A

V. ALTERNATIVES

Alt 1. The Council could deny the adjustment of the Airport Ramp Parking Fees.

VI. TIME CONSTRAINTS

Timely execution of the Ramp Parking Rate adjustment will allow for accurate rates to be charged throughout all of 2018.

VII. LIST OF ATTACHMENTS

A. 2018 Resolution Airport Rates Fees and Charges

RESOLUTION NO.

RESOLUTION ADJUSTING THE 2018 RATES, FEES, AND CHARGES PERTAINING TO MINOT INTERNATIONAL AIRPORT RAMP PARKING FEES

Whereas, the City of Minot seeks to establish uniform rates, fees and charges at the Minot International Airport

Therefore, now be it resolved, that the following rates, fees and charges are established at the Minot International Airport **EFFECTIVE JANUARY 1, 2018**

SECTION 1: AIRPORT RAMP PARKING FEES

Airport Ramp Parking Fees shall be as follows:

January 1, 2018 – December 31, 2018

Cost per aircraft per day parked on the ramp:

- \$5.00 / aircraft / day up to a maximum of \$60.00 / aircraft / month for aircraft under 12,500 pounds.
- \$15.00 / aircraft / day for aircrafts weighting 12,500 pounds and higher

***CHANGED FROM \$25.00 / MONTH (15 DAYS OR MORE) to \$5.00 OR \$15.00 / DAY DEPENDING
ON AIRCRAFT SIZE AND EXERCISE A MAXIMUM MONTHLY FEE FOR AIRCRAFT UNDER
12,500 POUNDS***

This resolution shall become effective JANUARY 1, 2018.

Passed and adopted this _____ day of _____, 2018

ATTEST:

APPROVED:

Kelly Matalka, City Clerk

Chuck Barney, Mayor

City of Minot

TO: Mayor Chuck Barney
Members of the City Council

FROM: *Sunil Jeboo*

DATE: *December 12, 2017*

SUBJECT: **HIGHWAY SAFETY IMPROVEMENT PROGRAM GRANT APPLICATION**
INTERSECTION IMPROVEMENTS AT EVERGREEN AVENUE / HIGHWAY 2/52
(4329)

I. RECOMMENDED ACTION

1. Recommend approval of cost participation with the North Dakota Department of Transportation (NDDOT) for intersection improvements at Evergreen Ave / Highway 2/52, contingent upon project selection from the NDDOT.

II. DEPARTMENT CONTACT PERSONS

Lance Meyer, City Engineer	857-4100
Sunil Jeboo, Traffic Engineer	857-4111

III. DESCRIPTION

A. Background

The NDDOT has requested applications for 2019 – 2022 Highway Safety Improvement Program (HSIP) grants. HSIP is a core federal-aid highway program with the purpose to achieve a significant reduction in fatalities and serious injuries on all public roads.

Safety and operational improvements at urban high crash locations are prime candidates for project selection.

B. Proposed Project

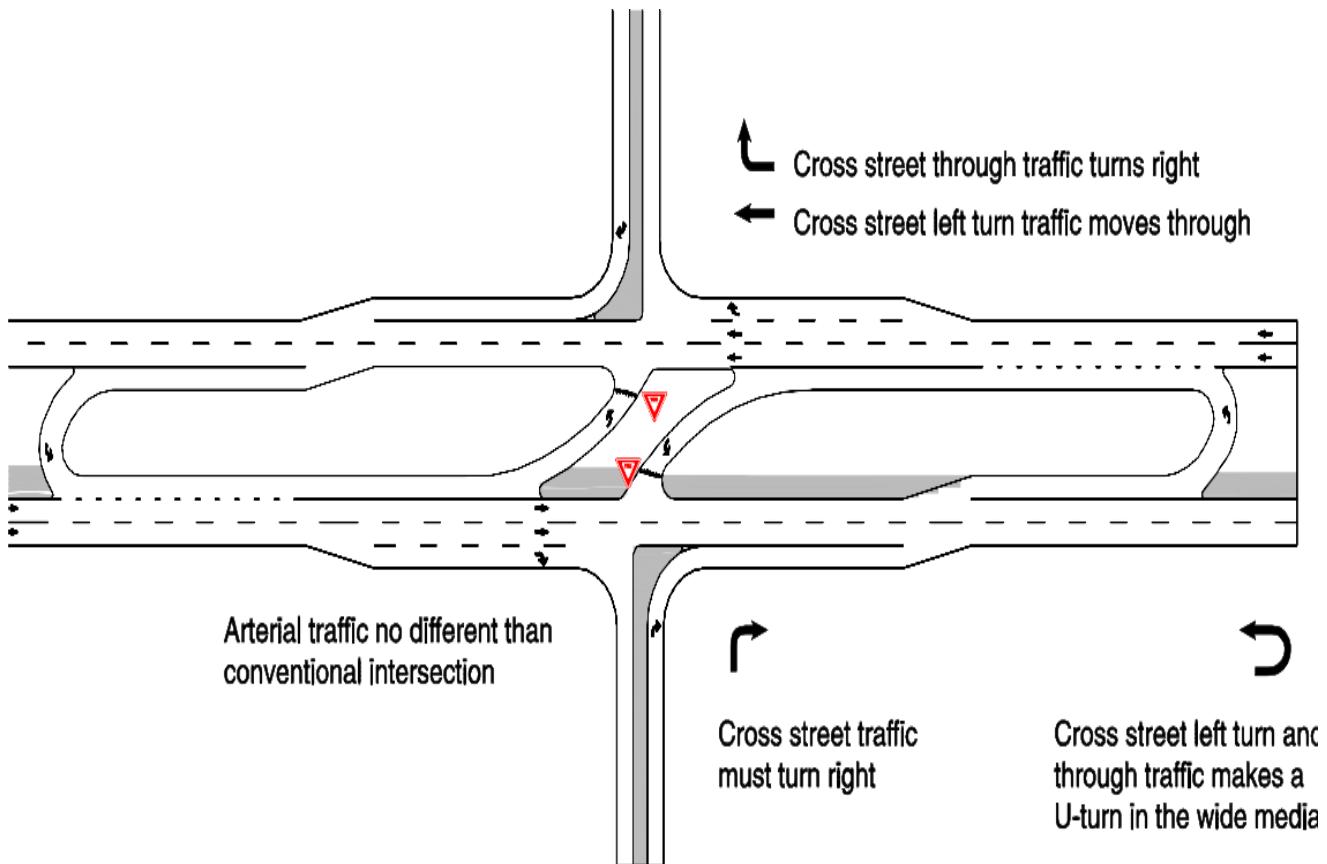
Due to the frequency and severity of accidents experienced at the Evergreen Ave / Hwy 2/52 intersection, the Traffic Division strongly recommends modifications to side street access onto the highway.

The proposed project will restrict left-turn and crossover traffic from Evergreen Ave onto Hwy 2/52. This particular intersection has a history of severe crashes and currently ranks high among the NDDOT's urban high crash locations.

Recent crash data indicates that finding a gap to cross multiple lanes, where vehicles are moving at high speeds is intimidating and will likely result in severe right angle collisions.

Driver safety is at risk when side street traffic attempts to turn left or cross multiple lanes while also using the center median as refuge. This practice conflicts with motorists also using the center median to exit the highway because the center median is not big enough to serve both movements.

63% of accidents occurring from 2014 to 2016 were angle crashes (T-bone or side impact). Occupant injury and vehicle damage are more likely to be severe with angle crashes, due to the highway's speed limit. Figure 1 below depicts the proposed intersection layout and function.



Source: *FHWA RESTRICTED CROSSING U-TURN INTERSECTION Informational Guide*

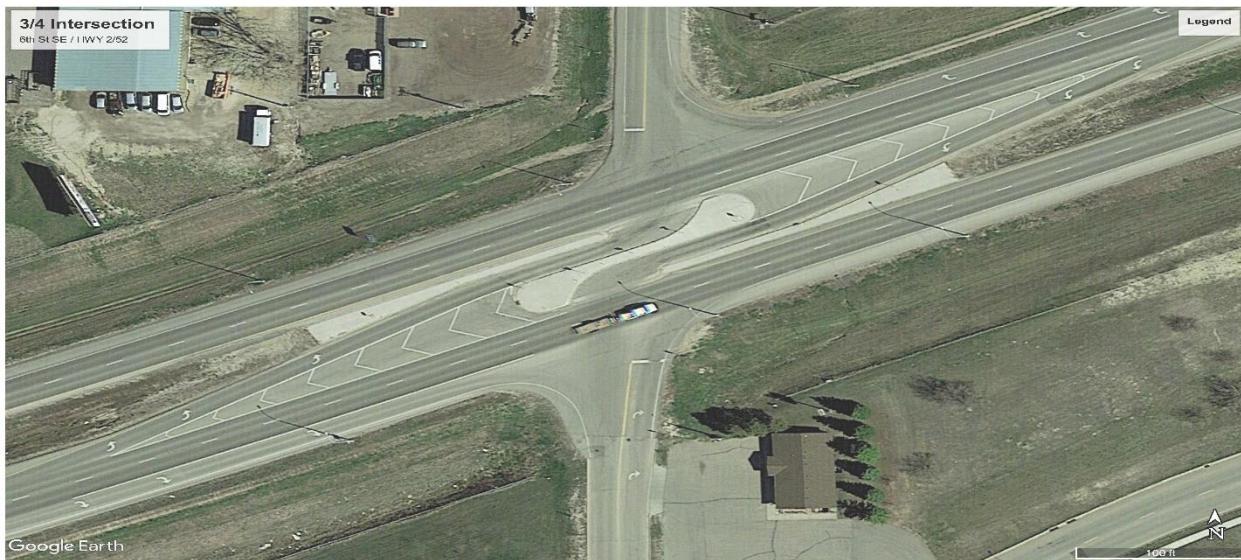
Figure 1. Example of a Restricted Crossing U-Turn (RCUT) intersection

An RCUT intersection is ideal for rural high-speed divided four-lane highways with low pedestrian traffic and is the traffic engineer's suggested intersection type.

The U-turn bays improve the way traffic makes certain movements by accommodating for the side street traffic demand, thus reducing crash migration.

The Missouri Department of Transportation reports a 35% total crash reduction and 54% reduction in fatal and injury crashes when these modifications are implemented.

A $\frac{3}{4}$ access intersection is an alternative to the RCUT, as it will also restrict left-turn and crossover maneuvers. It has a similar function and layout, minus the U-turn bays. This type of intersection was placed at 6th Street SE / Hwy 2/52 in 2009. See Figure 2 for reference.



Source: Google Earth

Figure 2. $\frac{3}{4}$ Intersection at 6th Street SE / Hwy 2/52

C. Consultant Selection

An engineering consultant will be solicited to complete project design, conduct construction engineering and perform contract administration. The consultant will be selected based upon their qualifications, through an interview process.

IV. IMPACT

A. Strategic Impact

The proposed improvement addresses highway safety concerns identified in Minot's **2014 – 2016 Urban High Crash Listing**. This proposal also falls in line with recommendations following the NDDOT's annual road safety audit.

B. Service/Delivery Impact

This project will eliminate crossing maneuvers and reduces conflict points. The proposed access modifications are expected to reduce angle crashes, a crash type that is generally more severe than other types.

C. Fiscal Impact

HSIP funds require matching monies. The ratio is 90% federal and 10% local. General Obligation bonds is the planned funding source for the City's 10% cost share and 15% engineering consultant design and construction oversight.

Project Costs

Construction Cost	\$ 1,200,000
90% Federal Share	\$ 1,080,000
10% Local Share (City of Minot)	\$ 120,000
15% Engineering (City of Minot)	\$ 180,000
Total	\$ 300,000

V. ALTERNATIVES

Alt 1. City Council may deny the cost participation and the improvement to the intersections.

VI. TIME CONSTRAINTS

If this project is selected by the NDDOT and the Council approves the cost participation agreement, Request for Qualifications (RFQ) will be solicited by advertisement for Engineering consultant selection in 2018. Plans, specifications and estimates will be prepared for construction in 2020.

VII. LIST OF ATTACHMENTS – N/A



TO: Mayor Chuck Barney
Members of the City Council

FROM: Sunil Jeboo, Traffic Engineer

DATE: 12/21/17

SUBJECT: **TRANSPORTATION ALTERNATIVES GRANT APPLICATION**
WASHINGTON ELEMENTARY SAFE ROUTES TO SCHOOL
(4330)

I. RECOMMENDED ACTION

1. Recommend approval of the cost participation with the North Dakota Department of Transportation (NDDOT) for the Washington Elementary Safe Routes to School project, contingent upon project selection from the NDDOT.

II. DEPARTMENT CONTACT PERSONS

Lance Meyer, City Engineer	857-4100
Sunil Jeboo, Traffic Engineer	857-4111

III. DESCRIPTION

A. Background

The NDDOT has requested applications for Transportation Alternatives (TA) grants for federal fiscal year 2019. The maximum award for an urban project is \$290,000

TA provides funding for programs and projects defined as transportation alternatives; which include: pedestrian and bicycle facilities; safe routes to school projects; safe routes for non-drivers; community improvement activities; and environmental mitigation projects.

TA funds are awarded through a statewide competitive process that is reviewed by the TA Project Selection Committee.

Ineligible costs include: all planning, preliminary engineering, construction engineering, environmental impact mitigation, right of way acquisition, utilities, and those construction items that are not eligible for federal aid.

B. Proposed Project

The proposed safe route to school improvements include the following items:

- A designated school crossing placed on 6th St SE at 18th Ave SE and a 5' sidewalk placed on the north side of 18th Ave SE beginning at 6th St SE, extending approximately 375' to the east.
- A 5' sidewalk placed on both sides of 17th Ave SE from 3rd St SE to 6th St SE.
- A 5' sidewalk placed on the north side of 19th Ave SE beginning at 6th St SE, extending approximately 800' to the east

- 5' sidewalk placed on the east side of 6th St SE from 19th Ave SE to approximately 220' north of 18th Ave SE.

Please find attached, Figures 1-3 for proposed locations.

C. Consultant Selection

No consultant necessary. The traffic engineer will complete project design, conduct construction engineering and perform contract administration.

IV. IMPACT:

A. Strategic Impact:

In 2010, a comprehensive study titled ***Minot Safe Routes to School Study*** was conducted for the City of Minot. The purpose of the study was to inventory existing safe routes to school for elementary students and to identify and prioritize infrastructure improvements necessary to expand Minot's safe route to school networks.

The referenced project falls in line with necessary improvements as prioritized in the comprehensive study. To date, 6 of 24 major improvements, identified in study, have been completed. If selected, this project will increase completion to 9 of 24.

B. Service/Delivery Impact:

The proposed locations will improve the ability for students to walk and bicycle to school and provide safe routes for non-drivers and individuals with disabilities.

C. Fiscal Impact:

TA funds require matching monies. The ratio is 80% federal and 20% local. General Obligation bonds will be the City's source for project funding.

Project Costs

Construction Cost	\$289,995
80% Federal Share	\$231,996
20% City of Minot	<u>\$ 57,999</u>
Total	\$ 57,999

V. ALTERNATIVES

Alt 1. City Council could approve additional safe route improvements, at other locations. However, the TA grant is not applicable to costs above the \$290,000 maximum award.

Alt 2. City Council could deny the cost participation.

VI. TIME CONSTRAINTS

Staff expects to complete plans and specifications in 2018, advertise for bids in early 2019, followed by construction in the spring of 2019.

VII. LIST OF ATTACHMENTS

A. TA Application

B. Figures 1-3, Proposed Locations

City of Minot

Traffic Department

Letter of Transmittal

To: Pam Wenger, TA Program Manager

Local Government Division

These are transmitted as checked below:

North Dakota Department of Transportation

For approval

Address: 608 East Boulevard Avenue

For your use

Bismarck, North Dakota 58505-0700

As requested

Date: December 18, 2017

For review and comment

City of Minot Project Number: 4330 Washington / ORCS Safe Routes to School 2019

Copies	Description
1	City of Minot's TA Application for Fiscal Year 2019

Remarks:

Please contact me at 701-857-4111 or sunil.jeboo@minotnd.org should you have any questions. Thank you for your consideration.

cc: File

Signed:



City of Minot

Traffic Department

Fiscal Year 2019 Transportation Alternatives Program Application

1. Project Name

Washington Elementary School Safe Routes to School

2. Project Location

Within the vicinity of Washington Elementary School. For your reference, please find attached Figures 1, 2 & 3 for the proposed locations.

3. Project Contact

City of Minot
PO Box 5006
Minot, North Dakota 58702

4. Contact Person

Sunil Jeboo – Traffic Engineer
sunil.jeboo@minotnd.org
PO Box 5006
Minot, North Dakota 58702
Office Phone: 701-857-4111

5. Project Sponsor

City of Minot
PO Box 5006
Minot, North Dakota 58702

6. Sponsoring Official

Lance Meyer – City Engineer
Lance.meyer@minotnd.org
PO Box 5006
Minot, North Dakota 58702
Office Phone: 701-857-4100

7. Project Description

The proposed safe route to school improvements include the following items:

- A designated school crossing placed on 6th St SE at 18th Ave SE and a 5' sidewalk placed on the north side of 18th Ave SE beginning at 6th St SE, extending approximately 375' to the east.
- A 5' sidewalk placed on both sides of 17th Ave SE from 3rd St SE to 6th St SE.
- A 5' sidewalk placed on the north side of 19th Ave SE beginning at 6th St SE, extending approximately 800' to the east
- 5' sidewalk placed on the east side of 6th St SE from 19th Ave SE to approximately 220' north of 18th Ave SE.

The proposed locations will improve the ability for students to walk and bicycle to school and provide safe routes for non-drivers and individuals with disabilities. To date, sidewalks are not located at the above-mentioned areas.

8. Project Cost

Construction is estimated at \$289,995.00. The 80% federal share will be \$231,996.00, and the 20% local share will be \$57,999.00. Please refer to the enclosed Engineer's Estimate.

9. TAP Eligibility Categories

The proposed project fits under the following categories identified as eligible under the Transportation Alternatives Program:

“A. Construction of on-road and off-road trail facilities for pedestrians bicyclists and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990.”

“B. Construction of infrastructure related projects that will substantially improve the ability of students to walk and bicycle to school.”

“C. Construction of infrastructure related projects and systems that will provide safe routes for non-drivers and individuals with disabilities to access daily needs.”

“H. Safe Routes to School projects including sidewalk improvements, traffic calming and speed reduction improvements, and pedestrian and bicycle crossing improvements.”

The project, in its entirety, fits under the activity listed above.

10. Supporting Data

In 2010, a comprehensive study titled “*Minot Safe Routes to School Study*” was conducted for the City of Minot. The purpose of the study was to inventory existing safe routes to school for Minot elementary student and to identify and prioritize infrastructure improvements necessary to expand Minot’s safe route to school networks.

The referenced project falls in line with necessary improvements as prioritized in the comprehensive study. To date, improvement priorities 1, 2, 3, 6, 11 and 12 identified in the *Minot Safe Routes to School Study* have been completed.

The proposed project for 2019 follows the recommended safe route improvements listed as priorities 4, 5 and 14 in the *Minot Safe Routes to School Study*. Please see the attached maps for exact project locations.

The City of Minot is in support of the project. The City Council previously approved the development and implementation of the *Minot Safe Routes to School Study*.

11. Public Accessibility

Upon project completion, The City of Minot will be the owner. The sidewalks will be located within existing right-of-way and will be accessible to the public.

12. Matching Funds Provided By

The City of Minot will provide matching funds for the project. The anticipated cost share will be included in the 2019 Capital Improvements Plan Budget and paid with General Obligation Bonds.

13. Will Right of Way for This Project Be Needed?

No, the project will be constructed within existing public right-of-way.

14. Maintenance of This Project Will Be Provided By

The sidewalk will be maintained by adjacent property owners.

15. Environmental Impacts

Land Use: No impact to current land use is anticipated.

Farmland: This project will not use farmland.

Social:

- The project is expected to increase safety and promote walking and bicycling to and from school, as well as, general pedestrian traffic in the area.

- An increase in pedestrian traffic should result in a decrease in motor vehicle traffic and an overall decrease in traffic congestion, air pollution, and noise pollution.
- Increasing pedestrian traffic is expected to have a positive effect on public health due to the benefits of exercise and a decrease in emissions and greenhouse gases produced from motor vehicles.
- The impacts upon walking/bicycling students will be positive, as the proposed project will provide and encourage a safe and convenient transportation corridor for walking/bicycling students.
- The proposed project is expected to increase student safety via connecting to existing sidewalk networks located within close proximity to Washington Elementary School.

Economic: This project is expected to boost economic growth due to allowing alternative modes of transportation.

Relocation: People or businesses will not be displaced due to this project.

Wetlands: This project will not result in fill material being placed in any wetlands.

Floodplain: This project is not within a floodplain.

Cultural Resources: The project will not affect adjacent properties.

Hazardous Waste: Hazardous waste sites are not located in the area of the project.

16. Signatures

Contact Person



Sunil Jeboo
City of Minot, Traffic Engineer

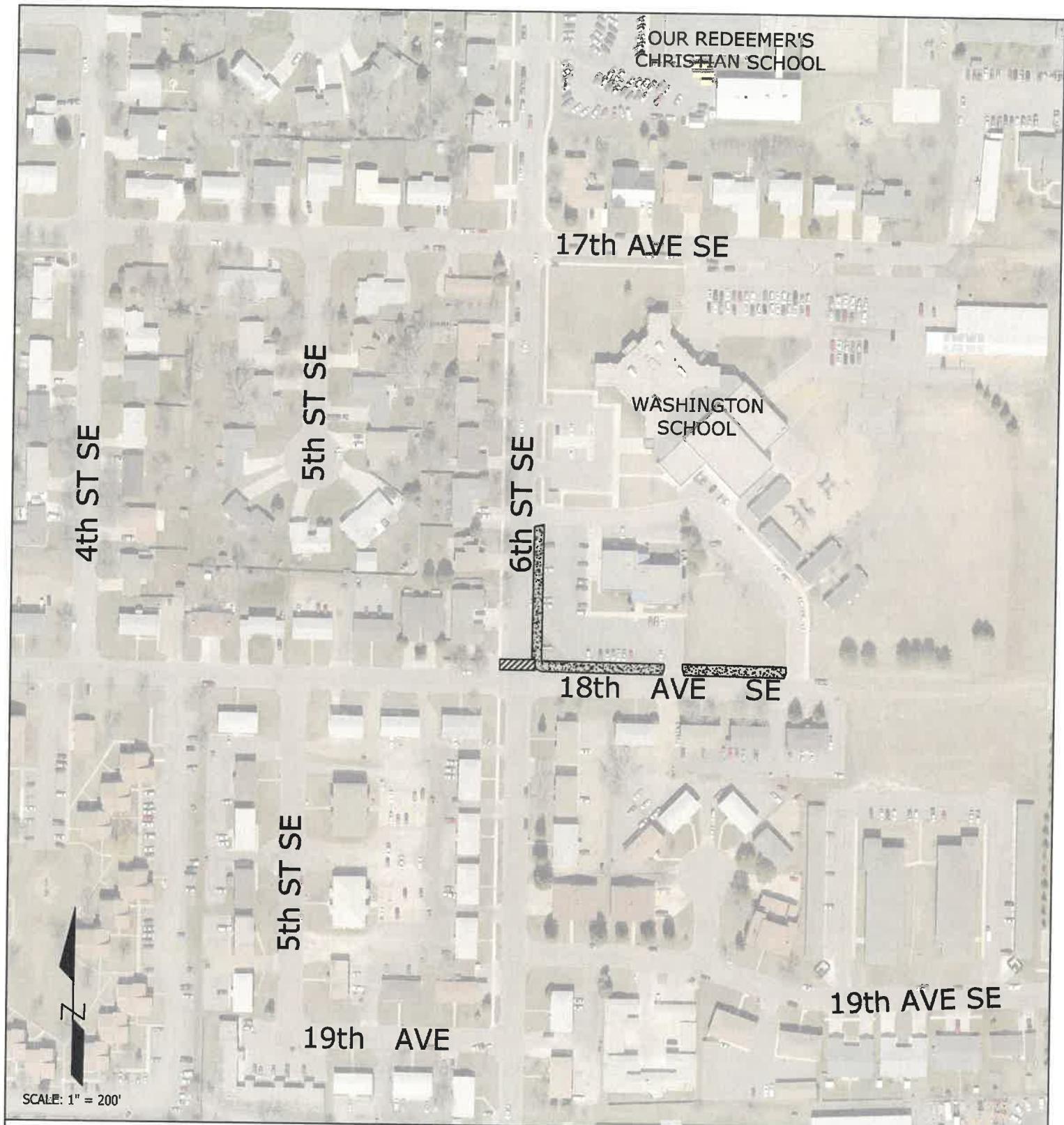
Responsible City Official



Lance Meyer
City of Minot, City Engineer

17. Attachments

- Figure 1 - Priority # 4
- Figure 2 - Priority # 5
- Figure 3 - Priority # 14
- Engineer's Construction Cost Estimate



Washington/ORCS SRTS Project Figure 1 - Priority #4

PHOTO: APRIL 2015

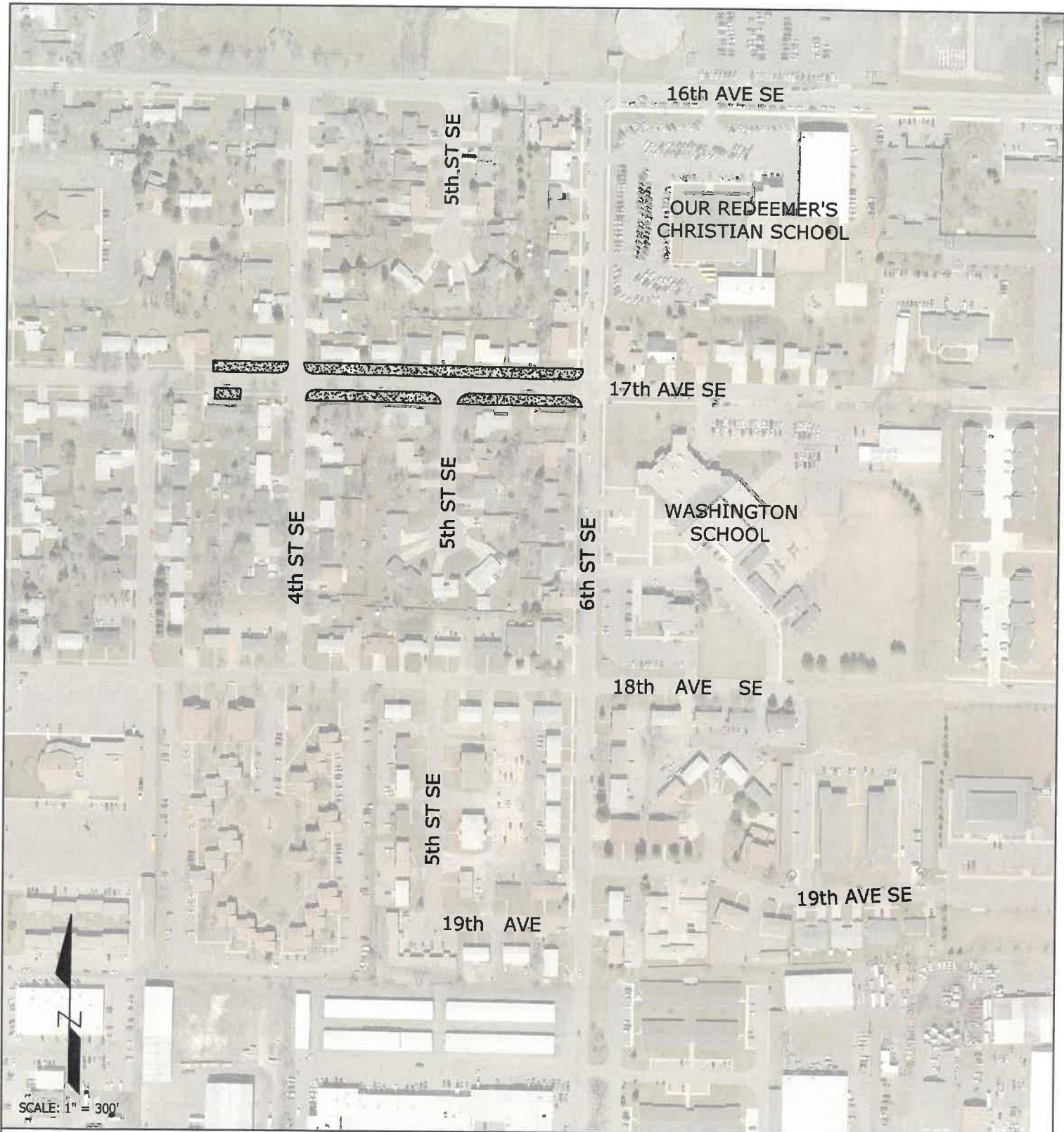
MAP CREATED: DECEMBER 2017

CITY OF MINOT PROJECT #: 4330

LOCATION: SECTION 25-155-83

 CROSSWALK
 SIDEWALK

City of Minot
Engineering Department



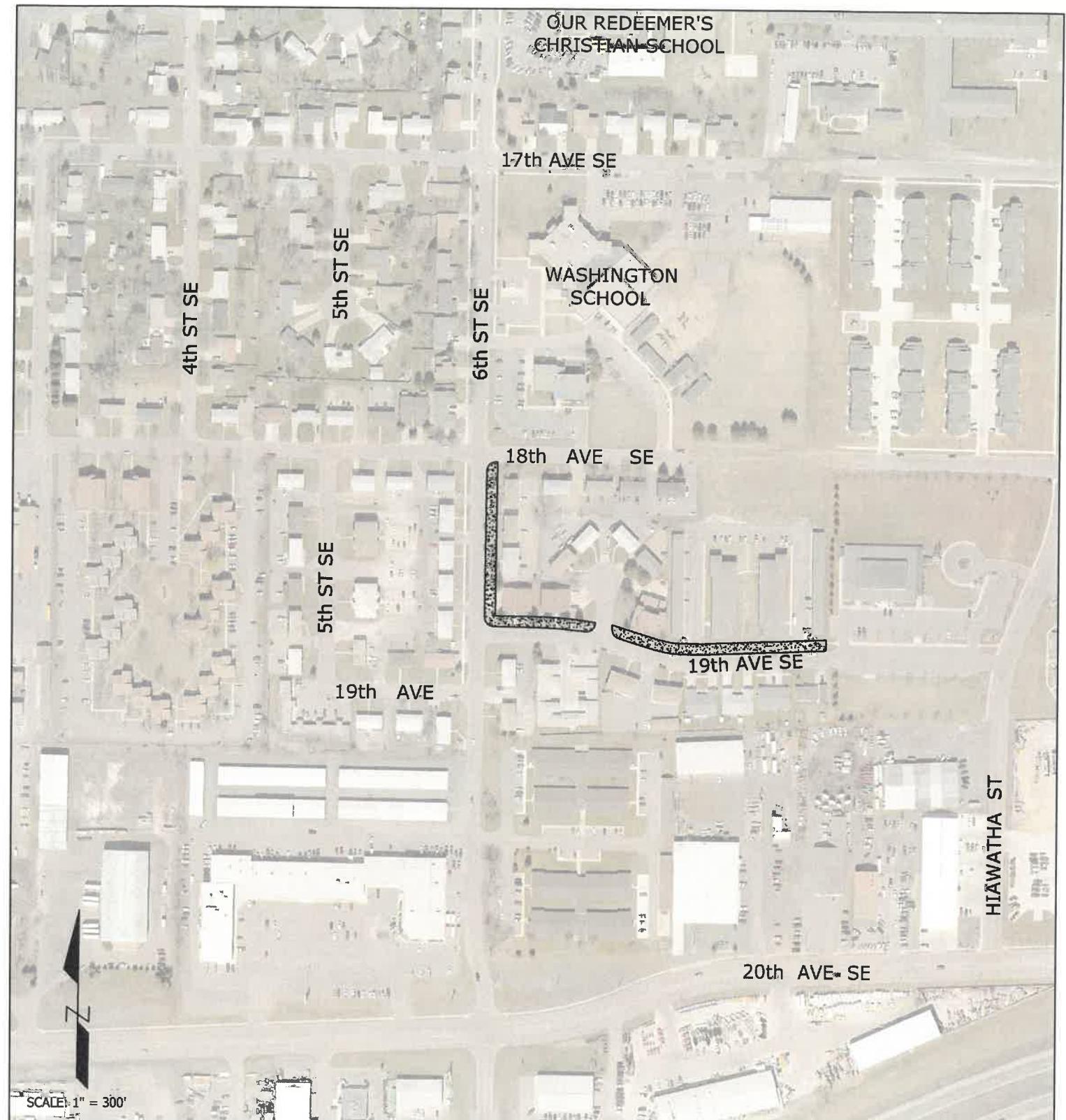
Washington/ORCS SRTS Project
Figure 2 - Priority #5

PHOTO: APRIL 2015

MAP CREATED: DECEMBER 2017

CITY OF MINOT PROJECT #: 4330

LOCATION: SECTION 25-155-83



Washington/ORCS SRTS Project Figure 3 - Priority #14

PHOTO: APRIL 2015

MAP CREATED: DECEMBER 2017

CITY OF MINOT PROJECT #: 4330

LOCATION: SECTION 25-155-83

 CROSSWALK
 SIDEWALK

City of Minot
Engineering Department

City of Minot

Traffic Department

Engineer's Estimate

Washington Elementary Safe Routes to School (Priorities 4, 5 & 14)

11-Dec-17

Item	Spec	Code	Description	Unit	Quantity	Unit Price	Amount
1	103	0100	CONTRACT BOND	LS	1	\$ 5,000.00	\$ 5,000.00
2	201	0330	CLEARING AND GRUBBING	LS	1	\$ 5,000.00	\$ 5,000.00
3	202	0112	REMOVAL OF CONCRETE	SY	260	\$ 30.00	\$ 7,800.00
4	202	0119	SAW CONCRETE	LF	400	\$ 30.00	\$ 12,000.00
5	202	0130	REMOVAL OF CURB & GUTTER	LF	500	\$ 20.00	\$ 10,000.00
6	202	0132	REMOVAL OF BITUMINOUS SURFACING	SY	100	\$ 20.00	\$ 2,000.00
7	203	0103	COMMON EXCAVATION - TYPE C	CY	389	\$ 25.00	\$ 9,725.00
8	302	0120	AGGREGATE BASE COURSE CL 5	TN	450	\$ 35.00	\$ 15,750.00
10	408	1255	SAWING BITUMINOUS PAVEMENT-FULL DEPTH	LF	475	\$ 20.00	\$ 9,500.00
11	430	2000	HOT MIX ASPHALT PATCHING	TN	15	\$ 170.00	\$ 2,550.00
12	702	0100	MOBILIZATION	LS	1	\$ 15,000.00	\$ 15,000.00
13	704	1100	TRAFFIC CONTROL	LS	1	\$ 8,000.00	\$ 8,000.00
14	708	2240	SEEDING - TYPE B - CL II	ACRE	0.4	\$ 5,000.00	\$ 2,000.00
15	708	3020	TOPSOIL IMPORTED	CY	90	\$ 28.00	\$ 2,520.00
16	748	0140	CURB & GUTTER - TYPE I	LF	500	\$ 40.00	\$ 20,000.00
17	750	0115	SIDEWALK CONCRETE 4 IN	SY	1700	\$ 75.00	\$ 127,500.00
18	750	2115	DETECTABLE WARNING PANELS	SF	200	\$ 65.00	\$ 13,000.00
19	754	0117	FLAT SHEET FOR SIGNS - TYPE 3 A - REFLECTIVE SHEETING	SF	50	\$ 30.00	\$ 1,500.00
20	754	0206	STEEL GALVANIZED POSTS - TELESCOPING PERFORATED	LF	120	\$ 25.00	\$ 3,000.00
21	754	0593	RESET SIGN SUPPORT	EACH	5	\$ 100.00	\$ 500.00
22	762	1307	PREFORMED PATTERNED PVMT MK 6IN LINE-GROOVED	LF	130	\$ 25.00	\$ 3,250.00
23	762	1325	PREFORMED PATTERNED PVMT MK 24IN LINE-GROOVED	LF	288	\$ 50.00	\$ 14,400.00

Subtotal \$ 289,995.00

Total \$ 289,995.00



TO: Mayor Chuck Barney
Members of the City Council

FROM: John R. Zakian, DR Grant Program Manager & Chief Resilience Officer

DATE: December 21, 2017

SUBJECT: City Council Determination on Site Choice to Commence Due Diligence on Gathering Place

I. RECOMMENDED ACTION

1. City Council make final determination on site choice to authorize staff to commence due

diligence work on Downtown Gathering Place with recommended action that Technical Review Committee's selection of Site #2 located at the NW corner of 1st Street SE and 1st Avenue (Block 11) as preferred site be affirmed as well as Site #1 located at the NW corner of 3rd Avenue SW and Broadway (Block 20) as first back up site and Site #3 located at the NW intersection of 3rd St. SE and the Canadian Pacific Rail line (Block 13) as second back up in event that due diligence discovers that Site #2 is not feasible based on HUD rules and requirements. Note: The City Council does have the choice of accepting the Technical Review Committee recommendations or it can make its own decision taking into account the criteria established for site selection.

II. DEPARTMENT CONTACT PERSONS

John R. Zakian, DR Program Manager, 423-4528

III. DESCRIPTION

A. Background

The City of Minot Phase 2 National Disaster Resilience (NDR) Competition Application which upon award of the \$74.3 million to Minot became the NDR Action Plan which included \$6 million of a Downtown Gathering Place with the stipulation "We propose to design and build this new public space using NDRC funds; the City of Minot will provide the 2-acre site where this facility will be located." As has been described, this commitment of the city providing the site was based on the then city officials leading the NDRC application process contemplating that the two-acre grass covered site owned by the School District would be the Gathering Place site. Hence, none of the costs of the project contemplated including acquisition, demolition, or relocation (if necessary under the Uniform Relocation Act). It was discovered after approval of the NDR Action Plan in June, 2016 that the potential access and ability of use of this School District site would not meet HUD standards. Therefore, we have had to commence an alternate process to make this project a reality. As was noted several months ago as we began the alternative process, this means though, it is imperative that costs related to acquisition, demolition, relocation, site preparation be as minimal as possible to be able to make the case should HUD review this project in the future that these unforeseen capital expenditures are not a substantial part of the costs charged to the \$6 million.

To implement the alternative action the Planning Department established a clear definition of what constitutes the downtown, undertook a review and assessment of all blocks within the boundary to determine as an initial review which sites meet minimum requirements potentially conducive to being a Gathering Place site, vetted this process through a Technical Review Committee established as a combination staff level/stakeholder initial review process, worked with the Technical Review Committee to establish a set of criteria with weighting to be used by the Committee in making a site recommendation to the City Council, presented and received authorization from the City Council to proceed with the three sites using the recommended weighted criteria to make a final site recommendation to the City Council.

Public meetings were held on December 5th where 63 votes were cast (7 for site #1, 50 for site #2, 6 for site #3) and December 18th where 74 votes were cast (8 for site #1, 63 for site #2, 3 for site #3). In both meetings, there was a question and answer period all of which a scribe recorded and are being posted on the city's website. There was also a website opportunity for citizens to vote on the three sites which was open between December 6th and 19th with the outcome 276 for site #1, 10,891 for site #2, and 249 for site #3. The public input constitutes 30 of the 100 points in the weighted criteria which was the highest with cost weighted at 20 and all the remaining at 10, connectivity/accessibility, environmental, historical, economic impact, and visibility.

For the Technical Review Committees vote, the public input criteria were pre-populated on the score card by the outcome of the public input with sites #1 and #3 receiving 1 point and site #2 receiving 28 points. After discussion by the Technical Review Committee, each participant voted with the outcome being site #2 56.79 points, site #1 25.67 points and site #3 17.54 points.

B. Project

HUD rules abide by the National Environmental Protection Act (NEPA) and requires that prior to any action being taken which can affect a site or alternate options for the site based on the proposed project there must be completion of an environmental assessment.

Therefore, upon decision by the City Council on a site, the first step will be to have an environmental assessment undertaken for the site by CDM Smith which is part of their service delivery contract. Since it is not a potential adverse action, we will also initiate securing appraisals of all property and structure necessary to be acquired to have available under city control as a two-acre site as promised in the NDR Action Plan. This, too, is also part of the CDM Smith service delivery contract. These costs will be charged against the \$6 million for the Gathering Place as allocated in the approved Action Plan. Offers cannot be made or a process initiated for acquisition of property or properties until the environmental review is completed. The environmental review will also include consideration of all potential historical impacts which means the State Historic Preservation Officer will also be consulted. It is difficult to estimate time frame because of uncertainty of what the environmental and historic review will entail but a range of 4 to 6 months is the norm. It should also be noted that no work or discussion can occur regarding possible design of the Gathering Place per HUD rules until the environmental review is completed.

Once the environmental review is completed and there are no adverse findings and actions needed to be taken to address findings from the review, we can then proceed with next steps which are commencing the acquisition process by making initial offers, assessing costs for any required demolition, site preparation, and, if potentially required, payment of relocation costs to businesses and/or tenants displaced by acquisitions. We will also commence assessment of steps required for acquisition of right-of-ways, street closures, etc. if necessary.

As hard costs related to all of the above become apparent, we will pause and assess the viability of proceeding. While there is no precedent benchmark to measure against since this is a unique situation (Action Plan did not contemplate acquisition, demolition, etc.), if hard costs appear likely to exceed 25% of the available \$6 million, then we will come back to the City Council for further consultation because of concern that HUD will view such level of acquisition costs as being excessive since the plan the city presented called for the entire \$6 million to be spent on design and construction.

It is also important to point out that we will be following the voluntary acquisition HUD rules which means negotiations with property owner(s) does not carry the weight of the option for the city to exercise Eminent Domain. In these types of projects, Eminent Domain is not permitted by the HUD rules. Therefore, a factor to consider is whether we will be able to secure agreement on a purchase price for one or more properties that will meet HUD standards of being necessary and reasonable cost.

IV. IMPACT:

A. Strategic Impact:

The NDR Action Plan envisions the Gathering Place "...will be a public space where people can enjoy what makes this region special. It will help rebuild social connections among all of the people who now live here... this space will provide connections and wayfinding to the riverfront greenway, and will be a gateway to downtown for those traveling by bicycle or on foot." The Action Plan also cites the Gathering Place as a project that is part of an exciting downtown revitalization strategy,

Once we have commenced acquisition and have a firm boundary determined (part of the environmental review process) which comprises the 2 acres, we will come back to the City Council for approval of a competitive RFP to engage a design firm for the Gathering Place. Once a design firm is selected, we will commence hosting a series of public meetings to elicit citizens' and stakeholders' input and ideas and wishes for possible inclusion in the Gathering Place bearing in mind we are obligated to remain with the framework set forth in the approved Action Plan and the remaining funds available from the \$6 million NDR budget.

B. Service/Delivery Impact

Upon commencing the design process, we will also commence the process for identifying the means, methodology and resources for management and operation of the Gathering Place bearing in mind that HUD CDBG-DR and CDBG-NDR funds cannot be used for operating expenses. Options will be presented to the City Council for consideration and direction such as a partnership with the Parks District, remaining within the City's recreation unit, creating a public/private non-profit partnership, etc. It should be noted that regardless of the process chosen to be pursued, city will always retain ownership and ultimate decision making control over the 2 acres for the Gathering Place and its uses must be open to the general public.

C. Fiscal Impact:

Allocation of \$6 million for Downtown Gathering Place in the approved NDR Action Plan.

V. ALTERNATIVES

Not applicable

VI. TIME CONSTRAINTS

All funds for this project must be spent and project itself must be completed before September 30, 2022

VII. LIST OF ATTACHMENTS

1. *Vote Tracker for public input and for Technical Committee votes*
2. *NDR Action Plan excerpt for Downtown Gathering Place*
3. *DRGR Action Plan excerpt for Downtown Gathering Place*
4. *Slides describing options as part of the public meetings*
5. *Summary of 12/2017 Technical Review Committee Meeting*

<u>Event</u>	<u>Site 1</u>	<u>Site 2</u>	<u>Site 3</u>
12/5/2017	7	50	6
12/18/2017	8	63	3
Online Surveys	276	10,891	249
<hr/>			
Total	291	11,004	258
			11,553

Committee Member	Site 1	Site 2	Site 3	
1	30	49	21	100
2	8	81	11	100
3	44	40	16	100
4	26	58	16	100
5	27	51	22	100
6	37	40	23	100
7	6	83	11	100
8	27.33	52.33	20.33	99.99
Total	25.66625	56.79125	17.54125	99.99875

averaging the totals

NDRC PHASE II APPLICATION

building. The "Y" will offer low-cost memberships to LMI and vulnerable people, including seniors living nearby at the Parker Senior Center. The student housing will be near the ArtSpace Lofts, which opened in 2014 to provide 34 affordable apartments and studios for working artists, a gallery operated by the Turtle Mountain Tribal Arts Association, and the Children's Music Academy. Minot has a growing arts and culture cluster downtown; arts businesses on Main Street draw residents and visitors to cultural events, benefiting existing small businesses.

The Downtown Gathering Place will be a public space where people can enjoy what makes this region special. It will help rebuild social connections among all of the people who now live here. We propose to design and build this new public space using NDRC funds; the City of Minot will provide the 2-acre site where this facility will be located. The space will feature design elements that depict the heritage and culture of Minot and the region; a fountain dedicated to the heroism of Minot's volunteers and public servants who worked tirelessly before, during, and after the flood; a walking path; and a space for morning yoga, storytelling time, a Saturday morning farmer's market, the city's Arts Festival, and other activities and events. This space will provide connections and wayfinding to the riverfront greenway, and will be a gateway to downtown for those traveling by bicycle or on foot.

These two NDRC projects are part of an exciting downtown revitalization strategy. Two new parking garages will provide the foundation for 250 apartments on upper floors; 50 of these will be affordable to LMI residents. The city is improving downtown utilities and streets, and adding new streetscape enhancements. Business leaders are planning a new Children's Museum featuring the river and our economic heritage. These and other activities proposed in this application will make the heart of the city more resilient by creating a place where people come together, young people build

Grantee Activity Number: NDR009
Activity Title: Downtown Public Gathering Space

Activity Type: Acquisition, construction, reconstruction of public facilities
Project Number: NDR - Project 2
Projected Start Date: 09/21/2016
Project Draw Block by HUD: Not Blocked
Activity Draw Block by HUD: Not Blocked
Block Drawdown By Grantee: Not Blocked
National Objective: Urgent Need: A community development need having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community
Environmental Assessment: UNDERWAY
Benefit Report Type: Area Benefit (Census)

Activity Status: Under Way
Project Title: Build Affordable, Resilient Neighborhoods
Projected End Date: 09/20/2020
Project Draw Block Date by HUD:
Activity Draw Block Date by HUD:

Total Budget: \$ 6,000,000.00
Most Impacted and Distressed Budget: \$ 0.00
Other Funds: \$ 0.00
Total Funds: \$ 6,000,000.00

Proposed Beneficiaries	Total	Low	Mod	Low/Mod%
# of Persons	39025		16145	41.37

Proposed Accomplishments	Total
# of public facilities	1
# of Properties	1

LMI%:	41.37
-------	-------

Activity is being carried out by Grantee: Yes
Activity is being carried out through: Grantee Employees and Contractors

Organization carrying out Activity: City of Minot

Proposed budgets for organizations carrying out Activity:

Responsible Organization	Organization Type	Proposed Budget
City of Minot	Local Government	\$ 6,000,000.00



Location Description:

City of Minot Downtown

Activity Description:

The Downtown Community Gathering Space will be a public space where residents can enjoy special attributes of Minot and the surrounding region. Design and build-out of the space will be done through NDRC funds with City of Minot providing a site where the facility will be located. Design elements of the gathering space may include historical and cultural features of Minot and surrounding region; a fountain dedicated to heroism of Minot's citizens, volunteers, and public servants who worked tirelessly before, during, and after the flood; walking paths and exercise areas; and may stage a regional farmers' market, local festivals, and other applicable events.

Connected by a river way and strategically located downtown, it will be accessible via car, bicycle or on foot. By creating a place where people can come together, this gathering space promotes a more vibrant and resilient downtown and will have a collective impact on various economic backgrounds which comprise the Minot community. Even through something as simple as a farmers' market, the space not only celebrates regional food varieties of North Dakota's growing season, it becomes more than just a shopping trip, the gathering space becomes an integral part of a regional food system, a stimulus to the local Minot economy, and fosters social networks. The gathering space offers a place to connect with neighbors, meet local farmers, support local small businesses, and provide nutritious food to the community.



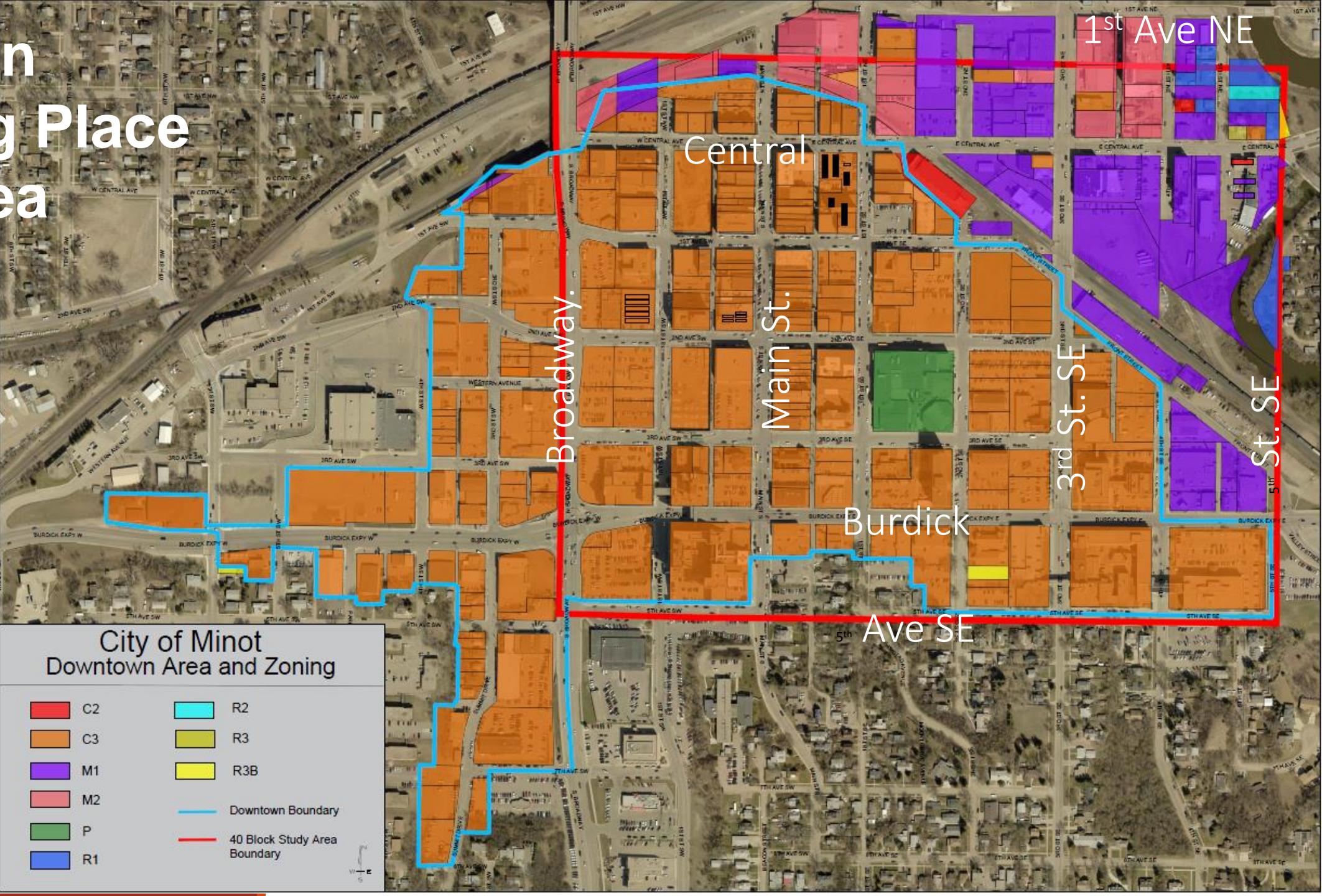
Downtown Gathering Place

December 18th 2017

City of Minot

NATIONAL DISASTER
RESILIENCE

Downtown Gathering Place Study Area



Selected Block Analysis

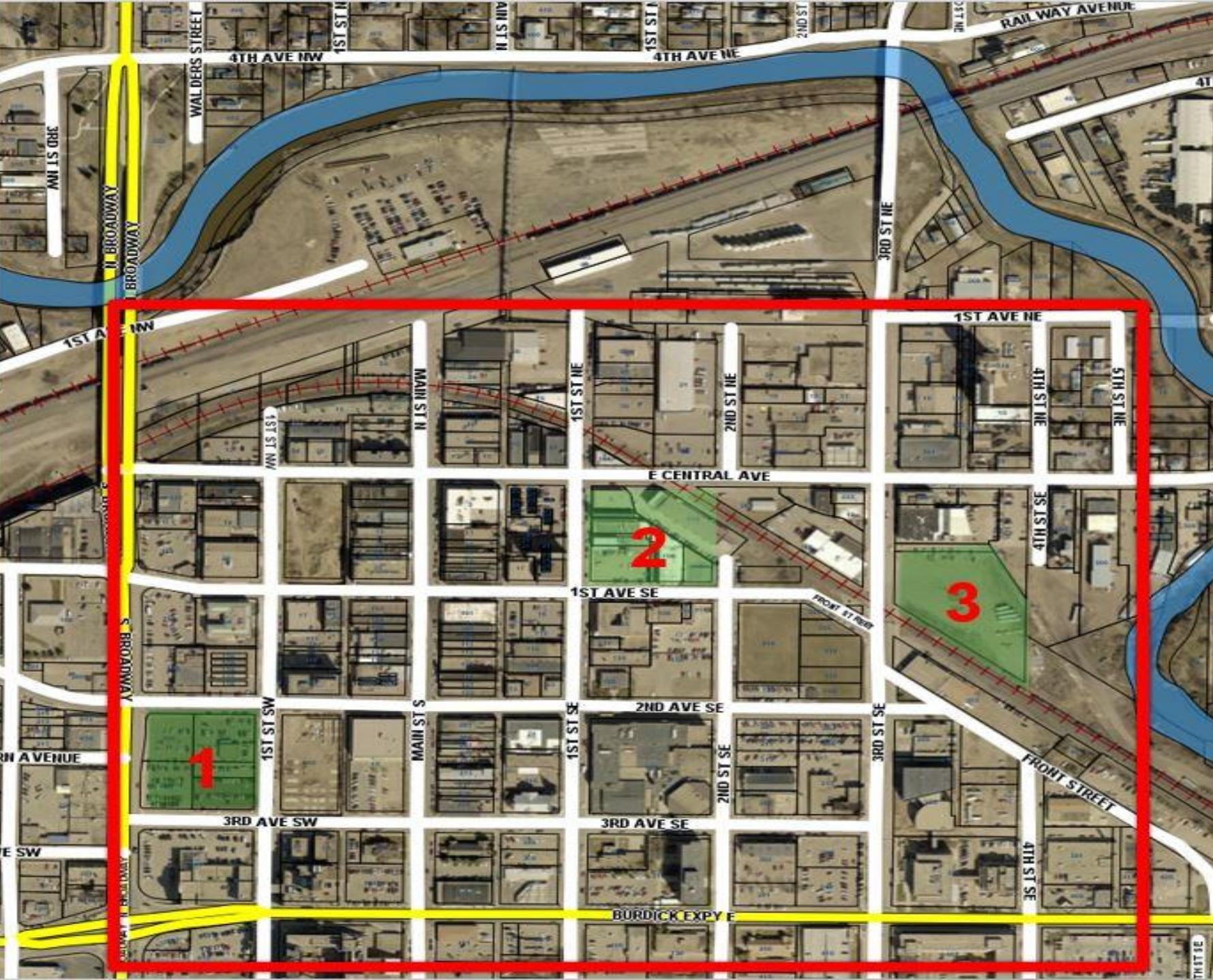
- Properties 2 acres or more meeting at least 4 location criteria

blocks	size	Low Assessed value	Relocation demolition	centrality	connection	owners	Non- historic	Total
11	•	•		•	•			4
13	•	•	•			•	•	5
20	•	•	•		•	•		5



Sites

- Site 1 is located at the NW corner of 3rd Ave SW and Broadway (Block 20)
- Site 2 is located at the NW corner of 1st St. SE and 1st Ave SE. (Block 11)
- Site 3 is located at the NW intersection of 3rd St. SE and the Canadian Pacific Rail line. (Block 13)



Score Card Criteria



- Public Input 30%
- Costs 20%
- Connectivity/ Accessibility 10%
- Environmental Consideration 10%
- Historical Consideration 10%
- Economic Impact 10%
- Visibility 10%

Public Input Criterion



PUBLIC INPUT 30%

- The public will be able to vote on one of the three sites during one of the two public meetings held on December 5th and December 18th at 6:30 p.m. in Room 301 of the Auditorium.
- In addition, there will be a survey available on the City's website on December 6th to the 19th.



Costs Criterion



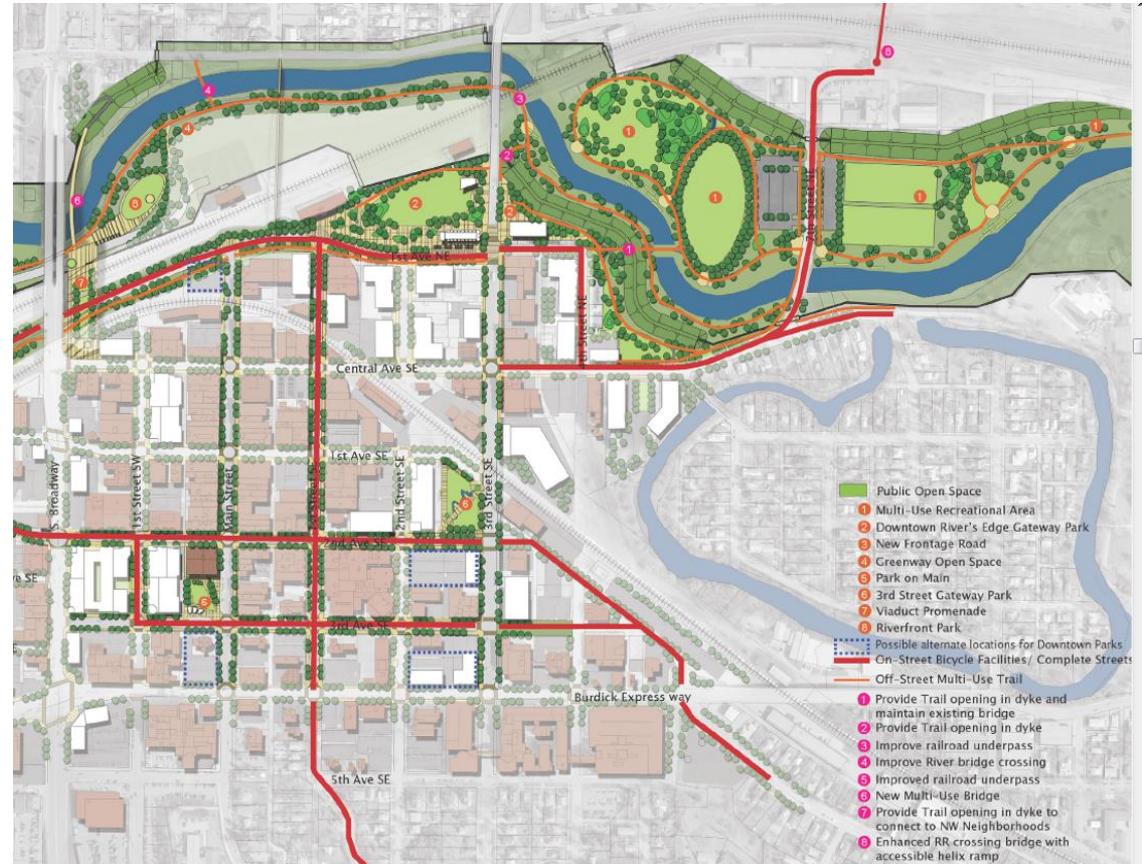
COSTS 20%

- Costs Criteria is weighted more than #3-7 to satisfy HUD's cost justification requirement.
- There will be a cost estimate for each site that is all inclusive of acquisition, relocation, and demolition.
- Available development budget

Connectivity/ Accessibility Criterion

CONNECTIVITY/ ACCESSIBILITY 10%

- This includes accessibility by foot, bike, bus and vehicle and proximity to retail/public places.



Environmental and Historical Consideration Criterion



ENVIRONMENTAL CONSIDERATION 10%

- Sites that contain environmental issues such as lead, asbestos and other hazardous materials will have to be abated in accordance with regulations.
- Potential impact on costs, schedule, and scope.

HISTORICAL CONSIDERATION 10%

- Sites that are considered by the State Historic Preservation Office (SHPO) as having historical significance will have to comply with SHPO requirements.
- Potential impact on costs, schedules, and scope.



Economic Impact and Visibility Criterion



ECONOMIC IMPACT 10%

- Positive financial impact to existing downtown businesses
- Potential for redevelopment near the site
- To consider cost and the suitability of a site for private developers.

VISIBILITY 10%

- This criterion will consider sight obstructions, sights seen from each site and viewpoints of the site from the street.

Score Card



Gathering Place Score Card				
Criteria		Site 1	Site 2	Site 3
1. Public Input	30 pts			
2. Costs	20 pts			
3. Connectivity/ Accessibility	10pts			
4. Environmental Consideration	10pts			
5. Historical Consideration	10pts			
6. Economic Impact	10 pts			
7. Visibility	10pts			
Total:	100pts			

Score Card Directions



- Each member of the Downtown Gathering Technical Review Committee will complete the score card.
- For the first criteria, the total vote will be divide by votes for each site and the % will be applied to 30-point total.
- For criteria 2-7, the reviewer will spread the total number of points among the 3 sites.
- For example, Environmental Consideration is 10 points, so each member of the technical review committee will score across the three sites such as 5 points for site 1, 2 points for site 2 and 3 points for site 3.
- Scoring this way ensures that public input and costs have more weight than the other 5 criteria.
- The site that has the most points will be the one recommended to council.

**Technical Review Committee Meeting
Downtown Gathering Place Site Recommendation
December 20, 2017**

Review Committee Members

Tom Barry (City Manager)
Shannon Straight (Alderman)
John Zakian (NDR Program Manager)
Leslie Bean (CDM Smith)
Chris Owen (Federal Compliance Officer)
Roger Reich (Downtown Business Association)
Lance Meyer (City Engineer)
Ron Merritt (Park District)

Questions and Discussion

John Zakian started out the meeting by discussing the input we want from the review committee members. He informed the public is free to listen but there is no need for engagement since there were 2 public meetings. He discussed the key elements, then scoring, and the basis of the scoring. The site that has the highest score will be the one that is recommended to council. On the score card, it already has the criteria from the public input (site 2 gets 28 points, and site 1 and site 3 gets 1 point each.)

John Zakian then went over the handouts. He stated we can't drill down on costs until we know which site we are going to pick. Such as we don't know how much demolition or acquisition will cost. Each site has possibilities of added miscellaneous cost besides acquisition. He stated this will be a voluntary buyout program and is not eligible for involuntary. He then explained the steps of acquisition (appraisal, review appraisal, and possibly URA).

Q: For clarification, the high score is better than low score?

A: John Zakian confirmed, yes and we cannot have more points than allowed for that column. He then explained the scoring criteria directions that were in the hand out.

Q: Will today's meeting result in a recommendation?

A: John Zakian said yes, that is the goal. Once the recommendation goes to city council, they will have the information they need to make a decision. They can send it back to the committee or approve it.

Q: How will scoring go? Do we all agree on a score for each criteria or does each member complete their own score card?

A: John Zakian said each member does their own scores and then the site among the group with highest score is the one recommended. We will have discussion, then we score, whichever site with highest score will be recommended. The group agrees to this process.

Q: How long will it take to build this site?

A: One construction season is ideal, and Tom Barry said with construction site prep it may take two construction seasons. John Zakian confirmed we do have time for two seasons since all the money must be spent by 9/20/2022.

Q: How long will the process take to know which site has the most votes?

A: Leslie Bean said we have a spreadsheet ready to input the scores once everyone votes.

Q: A question was asked to Roger Reich with Downtown Business Association what his thoughts on economic impact criteria were for the three sites?

A: Roger Reich stated what he envisions for the three sites. Site 1 could be the gateway to downtown, where it starts, it could flow traffic to the downtown area. Site 2 is in the middle of downtown so you can say people that are already downtown could gather there on a continuous basis to have activities, walk around at lunch, it also depends on if 1st Ave remains a street. Site 3 has a different direction input to work your way to the center of the community, has never been real productive area so it could change that. He believes each site will be safe and could work.

Q: Are these 3 sites available for purchase?

A: John Zakian confirmed the planning department has sent letters to each site and advised them of the potential purchase and none have indicated that they wouldn't sell.

John Zakian stated we cannot spend any money on a site until the site has passed an environmental review. All of the 6 million will have to be spent. In the handout it states the assessed value, and this can be very different from an appraised value. Leslie Bean said that an environmental and historical review will have to be completed on each site and they need to be cleared by SHIPO. If site 2 were to be chosen, it may require URA. She also stated none are in known brownfield areas.

Tom Barry suggested ranking them so we would not have to re do this meeting. John Zakian said he is comfortable with this ranking. He said these 3 sites within the 40 blocks in downtown are the only ones that are available for what we are looking for. He also said if the council chooses a different site we can still default to our next recommendation. Tom Barry stated to the public that the rules will not change in this process.

The results were given (average of all the score cards) and team recommendation. The total was as follows: Site 1 at 25.6%, Site 2 at 56.8% and Site 3 at 17.5%. Site 2 will be the recommendation that will go to the city council meeting on January 2nd.

Committee				
Member		Site 1	Site 2	Site 3
1		30	49	21
2		8	81	11
3		44	40	16
4		26	58	16
5		27	51	22
6		37	40	23
7		6	83	11
8		27.33	52.33	20.33
Average		25.67	56.79	17.54



TO: Mayor Chuck Barney
Members of the City Council

FROM: John R. Zakian, DR Grant Program Manager

DATE: December 21, 2017

SUBJECT: City Council Authorization to Auction 338 Walders Street

I. RECOMMENDED ACTION

1. City Council Approval of disposing of house at 338 Walders Street

II. DEPARTMENT CONTACT PERSONS

John R. Zakian, DR Program Manager & Chief Resilience Officer, 423-4528

III. DESCRIPTION

A. Background

The City Council approved purchase of 338 Walders Street for \$245,000 at its November 2, 2015 meeting and, on second reading at its December 7, 2015 meeting approved amending 2015 annual budget to increase the highway debt service expenditures for the \$245,000 for the city's flood control project NDRC application.

The memo from Cindy K. Hemphill as Finance Director to the Finance and Improvements Committee dated October 14, 2015 stated that, working with the City Manager, staff has identified 338 Walders Street as an optimal location for the entrance to the city's greenway which was outlined in the city's NDRC Phase 1 application. The idea was to create some form of visitor's center at this point with parking as a starting point for bikeways, trails, natural habitats and related eligible work all along the greenway which would be created as part of the flood control construction projects.

Funding had been included in the NDRC Phase 1 application for improvements consistent with ecological restoration along the greenway including the paths and bike trails. However, it was after the city acquired the house at 338 Walders Street, that the city was advised by HUD that while it was one of the 13 award recipients of NDR funds it had to reduce its projected budget from \$180 million to \$74.3 million. As a result of this reduction, funding contemplated for greenway improvements was removed and confirmed in the grant agreement executed with HUD in June, 2016. As a result, the intended use was put on hold because there were no funding options for planned greenway "eco" trails and natural habitats. During the remainder of 2016 consideration was given to the use of the property as the location of the Home Sweet Home relocation but by early 2017 with the estimated costs of the move becoming known, and the property across the street from Home Sweet Home more ideally suited and cost effective, this option for the Walders site became moot as well. During this period, the house has been used to house the Vista volunteers and that program is coming to an end.

In terms of use of the Walders House as a gateway, as a public facility there would have to be improvement costs related to ADA access requirements and a suitable parking lot would have to be constructed with an estimate of \$150,000. Although not clearly contemplated in the NRDC Phase 1 Application, such costs could have been included had funds been approved in the final grant agreement for greenway improvements.

In the past few months, we have been reviewing acquisitions based on current fund availability and known needs, and as result of this assessment, it has become evident that there is no funding stream or current known use for 338 Walders Street which warrants city continuing to retain it.

It should be noted that at the time in 2015 when this house became available and what the city was contemplating with its Phase 1 NDRC application, it made perfect sense to seize the opportunity to acquire it at a reasonable price. It was reported in the communication to Finance and Improvement Committee by Finance Director Hemphill that the listed price was \$269,000 and city staff had negotiated a purchase price of \$245,000.

It should also be noted that forced to reduce the NDR budget to \$74.3 million, there is an allocation of \$356,000 to undertake an ecological restoration study and plan. I have asked CDM Smith to prepare a scope of work, budget, and timeline for this study with the plan to begin the work in early 2018 subject to Council input. The original CDM Smith project delivery contract includes this study in its scope. The language contained in the NDR approved Action Plan for the focus and use of this study does not reference a gateway or a visitor center.

While this house was acquired in support of the NDR Phase 1 application, it is not in the buyout area and except for a small corner section of unimproved property that came with the house, it is not within the footprint of the Flood wall plans. Also, it was acquired using the Highway Debt Service fund which is used for highway projects and at the time was deemed eligible for use to acquire the property.

Because there are no restrictions on the house, and because there is no foreseeable funding source for greenway improvements which would make the house potentially viable as a visitor center, and because continued ownership will require costs related to maintenance and upkeep, the most prudent course of action is to auction the house for relocation.

B. Project

The plan is to auction the house with the buyer to relocate it while the city retains the land. By retaining the land, the city retains the option of a future use of the site as an entrance to a greenway should funds be identified for eligible eco related improvements.

IV. IMPACT:

A. Strategic Impact:

Disposition of this house reflects an ongoing continued effort to effectively align the NDR approved funding by addressing impacts resulting from the HUD required reduction of the proposed grant from \$180 million to \$74.3 million

B. Service/Delivery Impact

Sale of the house would result in the city not having to absorb costs related to maintenance and upkeep, as well as potential liability.

C. Fiscal Impact:

None

V. ALTERNATIVES

The option is to continue to own the house and to seek funding sources for both greenway improvements and for needed improvements and operating costs for the house as a visitor center. It should be noted that the NDR approved action plan does not allow for use of the funds for either such a visitor center or greenway improvements. The ecological restoration study and plan will likely require a minimum of nine months which means likely through the end of 2018. There are no current apparent grant opportunities related to the contemplated greenway improvements. Realistically, if the house ownership is retained by the city then it is likely multiple years before there is a possibility of a use related to the food control and greenway efforts.

VI. TIME CONSTRAINTS

NA

VII. LIST OF ATTACHMENTS

1. *12/7/15 Council second reading approval of funding for acquisition of the 338 Walders Street*
2. *11/2/15 Council approval of acquisition of 338 Walders Street*
3. *10/14/15 memorandum from Finance Director Cindy Hemphill to Finance and Improvement Committee*

Excerpts from December 7, 2015 Regular City Council Meeting

ORDINANCE NO. 5022- AMEND THE 2015 ANNUAL BUDGET- PURCHASE OF 338 WALDERS STREET - SECOND READING – APPROVED

Alderman Hatlelid moved the City Council place ordinance no. 5022 on second reading, amending the 2015 annual budget to increase the highway debt service expenditures to purchase the property for the City's flood control project NDRC application. Motion seconded by Alderman Lehner and carried unanimously.

Alderman Hatlelid moved the City Council pass ordinance no. 5022 on second reading. Motion seconded by Alderman Lehner and carried by the following roll call vote: ayes: Berg, Frantsvog, Frey, Hatlelid, Hedberg, Jantzer, Lehner, Miller, Olson, Pankow, Schuler, Seymour, Shomento. nays: none.

Cc: File
Finance Dept.
Comptroller

Excerpts from November 2, 2015 Regular City Council Meeting

ORDINANCE NO. 5022- AMEND THE 2015 ANNUAL BUDGET- PURCHASE OF 338 WALDERS STREET - FIRST READING – APPROVED

Alderman Frey moved the City Council place ordinance no. 5022 on first reading, amending the 2015 annual budget to increase the highway debt service expenditures to purchase the property for the City's flood control project NDRC application. Motion seconded by Alderman Olson and carried unanimously.

Alderman Frey moved the City Council pass ordinance no. 5022 on first reading. Motion seconded by Alderman Olson and carried by the following roll call vote: ayes: Berg, Connole, Frantsvog, Frey, Hatlelid, Hedberg, Jantzer, Lehner, Miller, Olson, Pankow, Schuler, Seymour, Shomento. nays: none.

Cc: Finance Director
 Accountant

J15-238

Group # 8186

ORDINANCE NO: 5022

AN ORDINANCE AMENDING THE 2015 ANNUAL BUDGET TO INCREASE THE HIGHWAY DEBT SERVICE EXPENDITURES FOR THE PURCHASE OF A HOME LOCATED IN THE CITY'S FLOOD CONTROL PROJECT.

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

§1: Amend the 2015 annual budget to increase the highway debt service expenditures to purchase the the property for the City's flood control project NDRC application.

12		
311-0000-491.34-02		\$245,000

§2: Approve the transfer of revenues from highway debt service:

311-0000-491.34-12	HWYDEL	245,000
423-0000-391.33-01	CAP022	245,000

J15-238

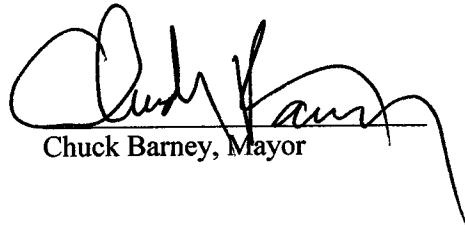
Group # 8187

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

PASSED FIRST READING: November 2, 2015

PASSED SECOND READING: December 7, 2015

APPROVED:



Chuck Barney, Mayor

ATTEST:



Lisa Jundt, City Clerk

Excerpts from November 2, 2015 Regular City Council Meeting

PURCHASE OF 338 WALDERS STREET – APPROVED

Alderman Frey moved the City Council approve the purchase of 338 Walders Street for \$245,000 and further authorize the Mayor to sign the necessary documents.

Motion seconded by Alderman Olson and carried by the following roll call vote: ayes: Berg, Connole, Frantsvog, Frey, Hatlelid, Hedberg, Jantzer, Lehner, Miller, Olson, Pankow, Schuler, Seymour, Shomento. nays: none.

Cc: File
 Accountant

FINANCE AND IMPROVEMENTS COMMITTEE

October 27, 2015

Page 1

Members Present:

Frey, Hedberg, Miller, Olson, Seymour

Members Absent:

Frantsvog, Pankow

Others Present:

City Clerk, Clerk Admin, City Attorney, Airport Director, Assistant City Assessor, Finance Director, City Comptroller, City Treasurer, City Engineer, Assistant City Engineer, City Planner, Building Official, Fire Chief, Captain Klug, Library Director, Public Works Director, Assistant Public Works Director, Auditorium/ Recreation Director, Public Information Officer, Alderman Connole, Alderman Hatlelid, Alderman Jantzer, Alderman Lehner, Alderman Schuler, Jill Schramm

To the Honorable Mayor and All Aldermen:

Following are the recommendations of the **Finance and Improvements Committee** meeting called to order at 4:15 p.m. on October 27, 2015:

1. The City Council approve the following requests for final payment:

- a. **Rolac Construction for \$3,000 for the construction portion of the Municipal Courtroom Remodel (REC022)**
- b. **Post Construction for \$50,872.32 for the 2015 Watermain replacement (4006)**

The above motion by Alderman Miller, seconded by Alderman Olson and was carried unanimously.

2. The City Council pass an ordinance amending the 2015 annual budget to increase library expenditures and decrease the capital equipment purchases for the library server migration and approve the transfer of funds. (LIB018)

The above motion by Alderman Miller, seconded by Alderman Olson and was carried unanimously.

3. The City Council approve the purchase of 338 Walders Street for \$245,000, further authorize the Mayor to sign the necessary documents and pass on first reading the necessary budget amendment.

The above motion by Alderman Miller, seconded by Alderman Olson and was carried unanimously.

4. The City Council adopt the Resolution Establishing Fire Department Permit and Construction Permit Fees and further authorize the Mayor to sign the Resolution.

The above motion by Alderman Miller, seconded by Alderman Olson and was carried unanimously.

FINANCE AND IMPROVEMENTS COMMITTEE

October 27, 2015

Page 1

MEMO TO: Finance and Improvements Committee
FROM: City Clerk's Office
RE: Agenda for Tuesday, October 27, 2015 - 4:15 p.m.

1. Final Payments

It is recommended the Committee and Council approve the following requests for final payment:

- a. Rolac Construction for \$3,000 for the construction portion of the Municipal Courtroom Remodel (REC022)
- b. Post Construction for \$50,872.32 for the 2015 Watermain replacement (4006)

2. Library Server Migration (LIB018)

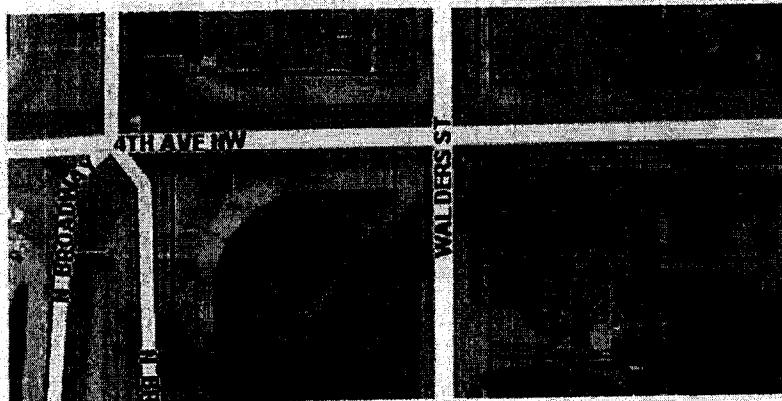
In an effort to increase efficiency and support, the Minot Public Library will be migrating our current computer servers to the City of Minot's virtual management system. Consolidating with the City of Minot's virtual management system removes the need for the Library to host and maintain any physical servers. The Library's physical servers will be converted to virtual servers and will be housed at City Hall and backed up to the server at the Ward County Courthouse.

Spelbo
Fiscal Impact: The initial costs to complete this migration is estimated to be \$2,447.76 for 64GB of RAM on each of three hosts (a total of 192GB) to accommodate the addition of the Library's storage needs. Since this migration will remove the need to purchase a physical server the Library would like to request that \$2,447.76 be transferred from the planned Capital Equipment Purchase of a server (LIB018) to the Library's Operational Supplies account (210-67-00-456-06-50).

It is recommended the Committee and Council pass an ordinance amending the 2015 annual budget to increase library expenditures and decrease the capital equipment purchases for the library server migration and approve the transfer of funds.

3. Purchase of 338 Walders St.

Working with the City Manager, staff has identified 338 Walders Street as an optimal location for the entrance to the city's greenway. The following provides a snapshot of the location of 338 Walders Street.



All of the properties to the south and east of this property are required for the flood control project. This property would remain as the only property left on the south side of the street.

City Clerk

FINANCE AND IMPROVEMENTS COMMITTEE

October 27, 2015

Page 2

As stated above, this location will be an optimal location for the entrance to the greenway as proposed in the NDRC application.



After considerable discussion, the availability of the property, a decision was made to negotiate a price for the subject property. The property was listed for \$269,000 and the staff has negotiated a price of \$245,000 contingent upon Council approval.

Fiscal Impact: Funds for this purchase are available in the highway debt fund. This fund has been used in the past to purchase property required by the city.

It is recommended the Committee and Council approve the purchase of 338 Walders Street, further authorize the Mayor to sign the necessary documents and pass on first reading the necessary budget amendment.

4. Resolution to Establish Fire Department Permit and Construction Permit Fees

Fire Chief CJ Craven and Fire Marshall Andersen have discussed with the Finance Department establishing Fire Department and Construction Permit fees.

The International Fire Code, which the City of Minot has adopted, provides authority to require permits and charge fees. Any property owner or authorized agent who intends to conduct an operation or business, or install or modify systems and equipment which is regulated by the International Fire Code, or to cause any such work to be done, shall first make application to the fire code official and obtain the required permit. Permit fees will be \$50 and paid prior to the issuance of the permit. Failure to pay the required permit fee may result in cancellation of the permit.

The Fire Code is reviewed every three years, additional fee increases will be reviewed at that time to determine if increases are necessary.

The permit fee would be handled by the established payment system located in the Public Works building.

The revenue generated by the fees will go into the General Fund to offset General Fund expenses. It is not estimated this will be a significant revenue generator but will offset and help eliminate issues with application reviews.

It is recommended the Committee and Council adopt the Resolution Establishing Fire Department Permit and Construction Permit Fees and further authorize the Mayor to sign the Resolution.

City Clerk

Excerpts from November 2, 2015 Regular City Council Meeting

PURCHASE OF 338 WALDERS STREET – APPROVED

Alderman Frey moved the City Council approve the purchase of 338 Walders Street for \$245,000 and further authorize the Mayor to sign the necessary documents.

Motion seconded by Alderman Olson and carried by the following roll call vote: ayes: Berg, Connole, Frantsvog, Frey, Hatlelid, Hedberg, Jantzer, Lehner, Miller, Olson, Pankow, Schuler, Seymour, Shomento. nays: none.

Cc: File
 Accountant

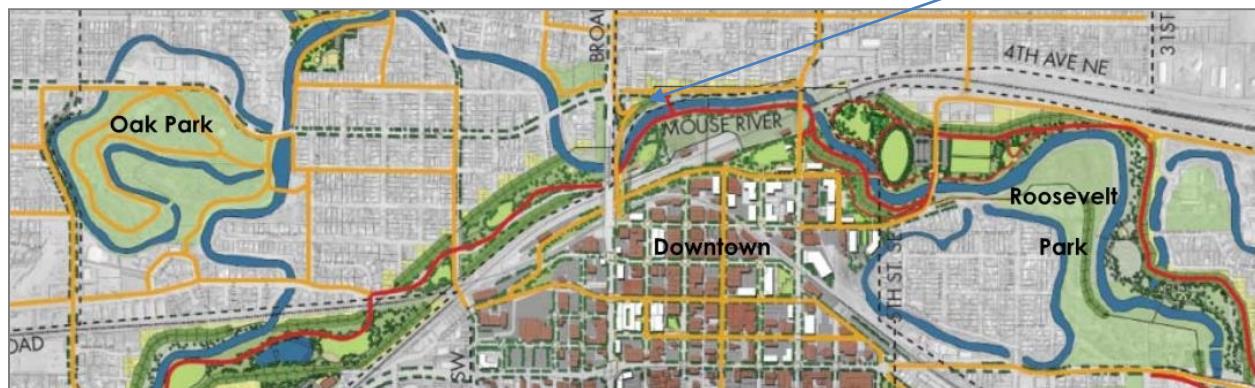
Date: October 14, 2015
To: Finance and Improvements Committee
From: Cindy K. Hemphill, Finance Director
Re: Purchase of 338 Walders Street, Minot North Dakota

Working with the City Manager, staff has identified 338 Walders Street as an optimal location for the entrance to the city's greenway. The following provides a snapshot of the location of 338 Walders Street.



All of the properties to the south and east of this property are required for the flood control project. This property would remain as the only property left on the south side of the street.

As stated above, this location will be an optimal location for the entrance to the greenway as proposed in the NDRC application.



After considerable discussion, the availability of the property, a decision was made to negotiate a price for the subject property. The property was listed for \$269,000 and the staff has negotiated a price of \$245,000 contingent upon Council approval.

Funds for this purchase are available in the highway debt fund. This fund has been used in the past to purchase property required by the city.

It is recommended the Committee and Council approve the purchase of 338 Walders Street, further authorize the Mayor to sign the necessary documents and pass on first reading the necessary budget amendment.

MINOT (MOT) AIRPORT COMMITTEE

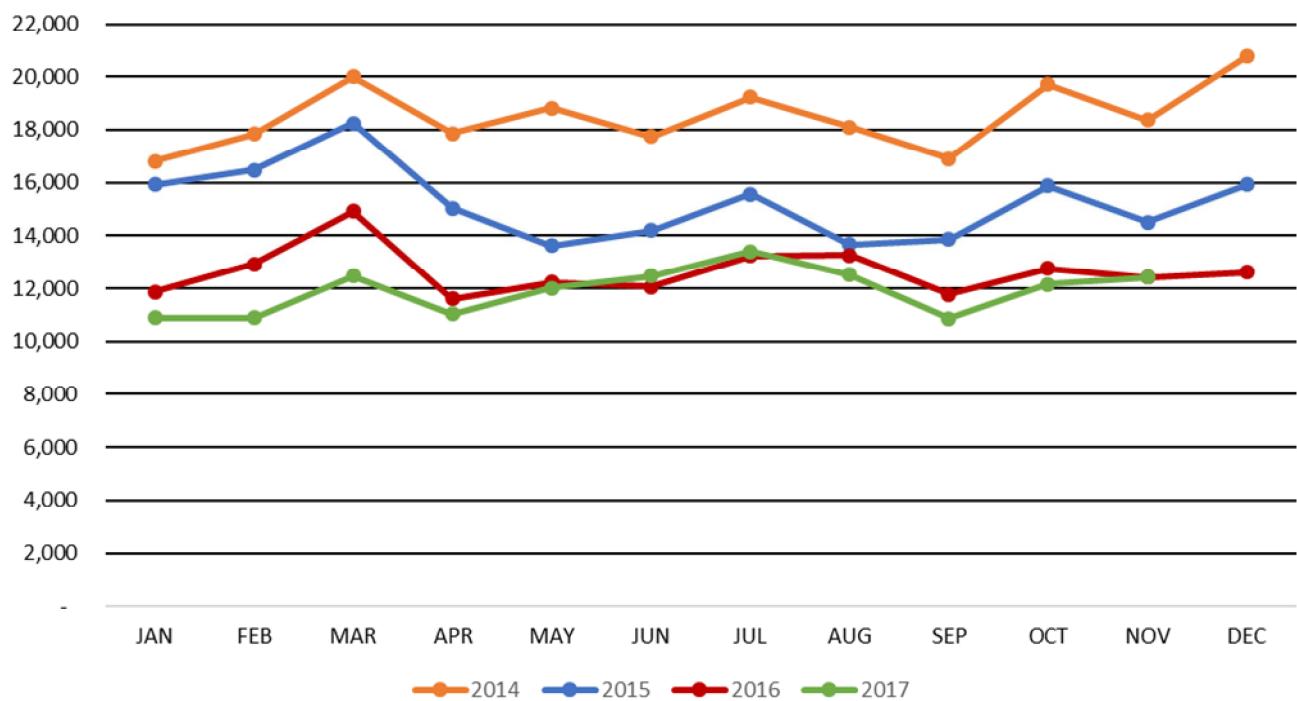
Airport Director's Report

02 January 2018



ENPLANEMENTS

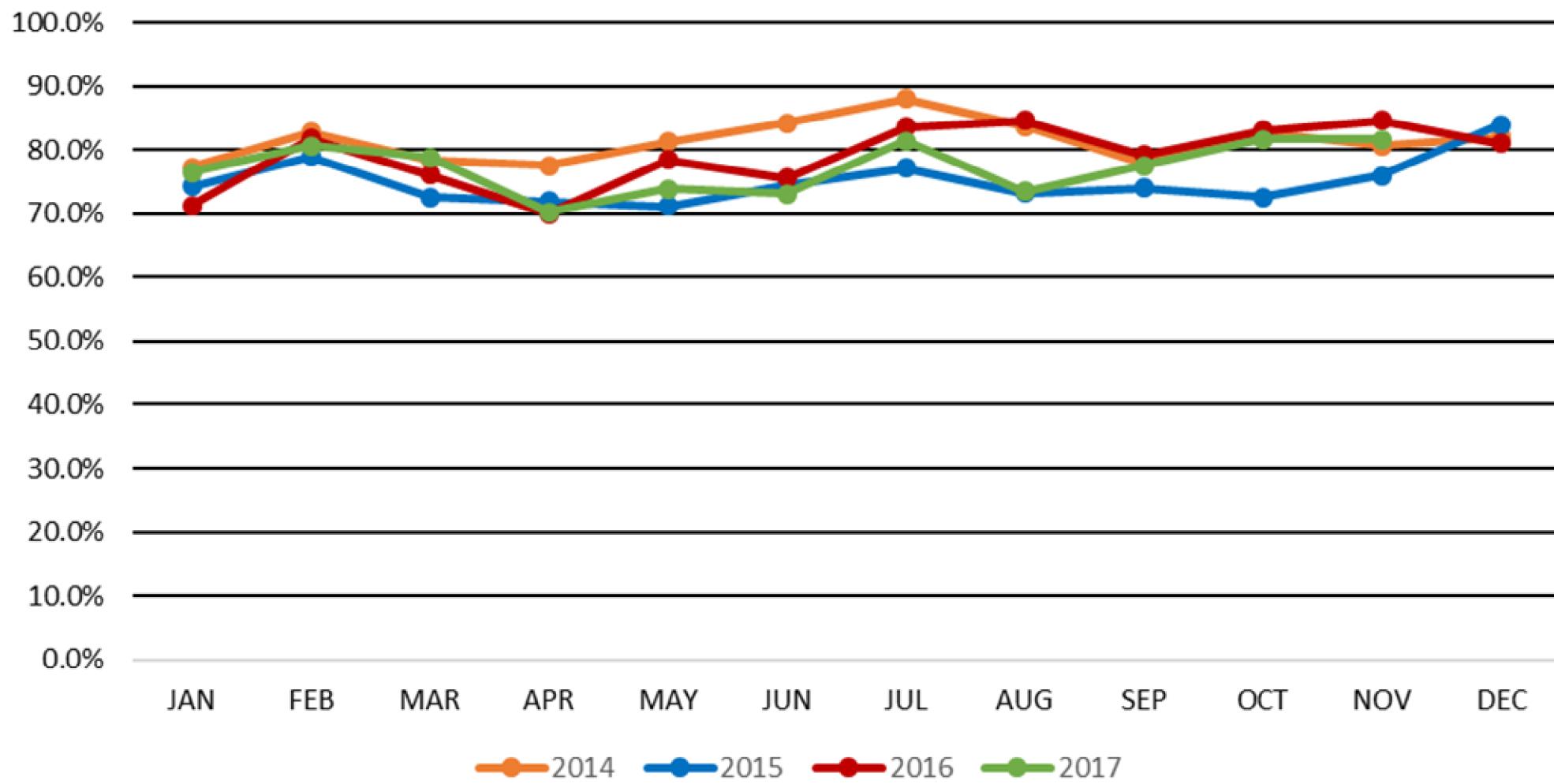
Revenue Enplaned Passengers



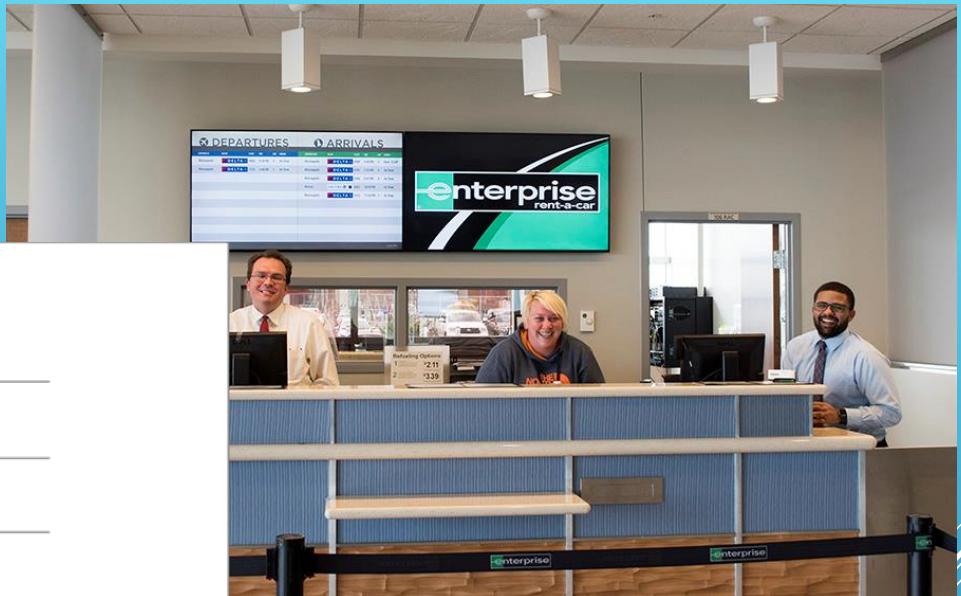
DEPARTURES

DEPARTING TO	AIRLINE	FLT	TIME	GATE	REMARK
Minneapolis	DELTA	3889	11:01 AM	5	On Time
Houston	UNITED	2301	12:00 PM	3	On Time
Phoenix-Mesa	allegiant	181	1:00 PM	2	On Time
Denver	UNITED	5185	1:20 PM	3	On Time
Minneapolis	DELTA	4440	1:21 PM	5	On Time
Minneapolis	DELTA	4439	5:15 PM	5	On Time
Minneapolis	DELTA	3551	7:35 PM	5	On Time
Las Vegas	allegiant	447	7:50 PM	2	On Time

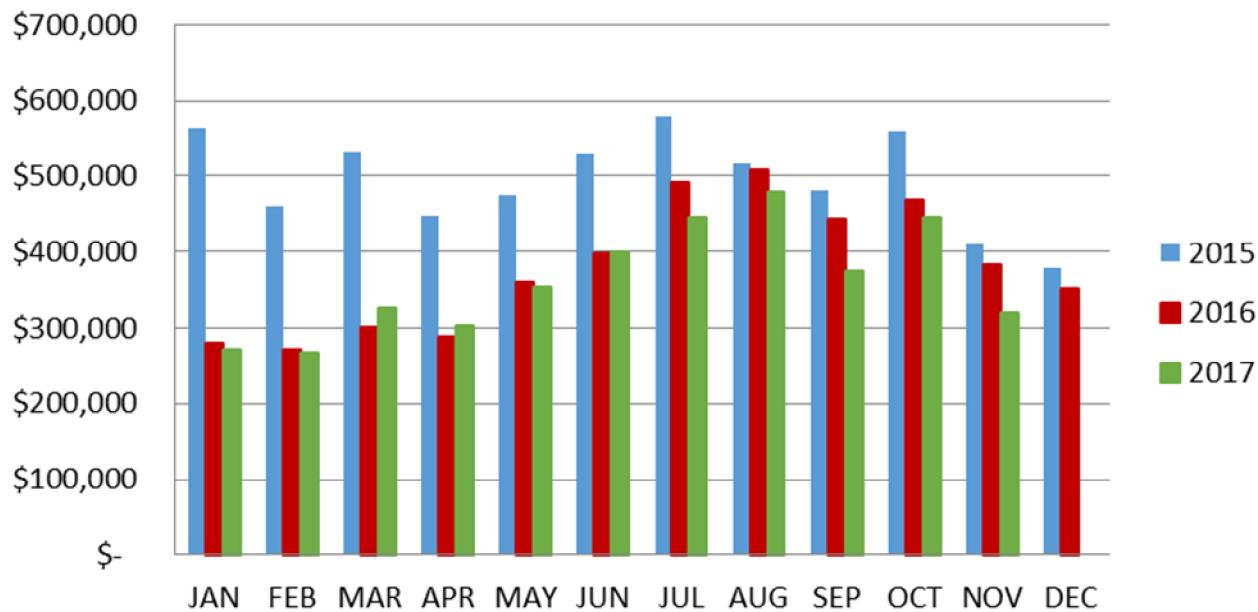
Monthly Load Factor (%)



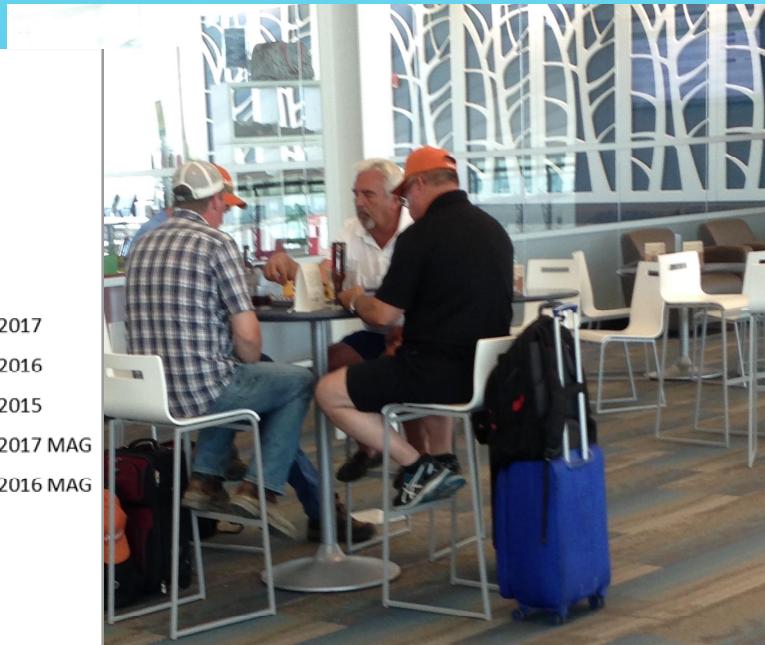
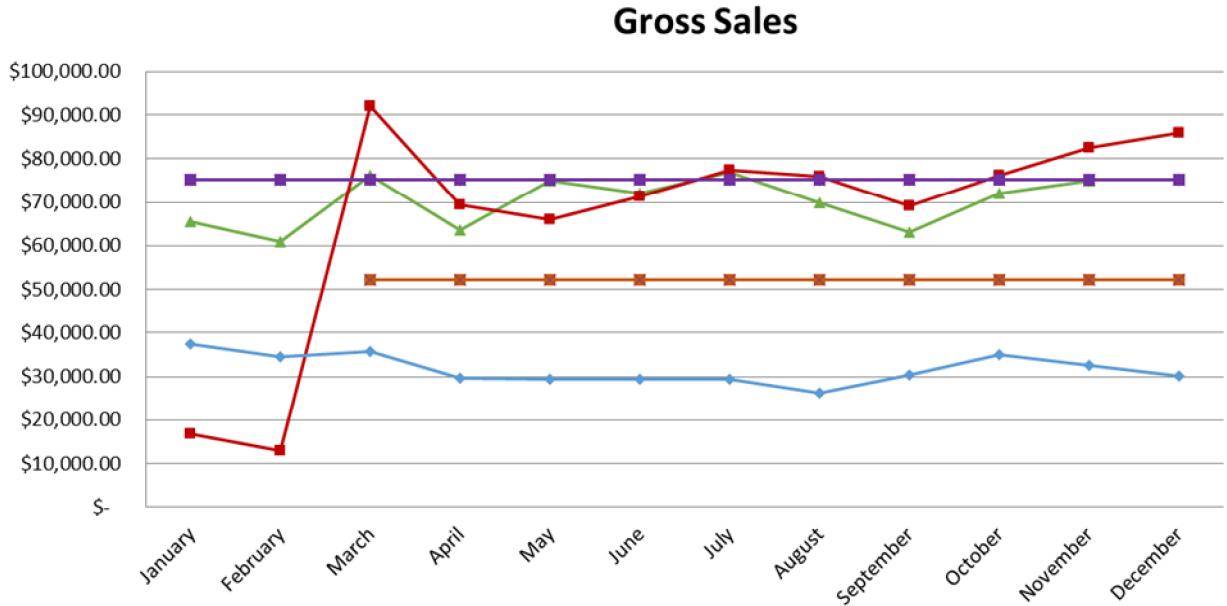
RENTAL CAR ACTIVITY



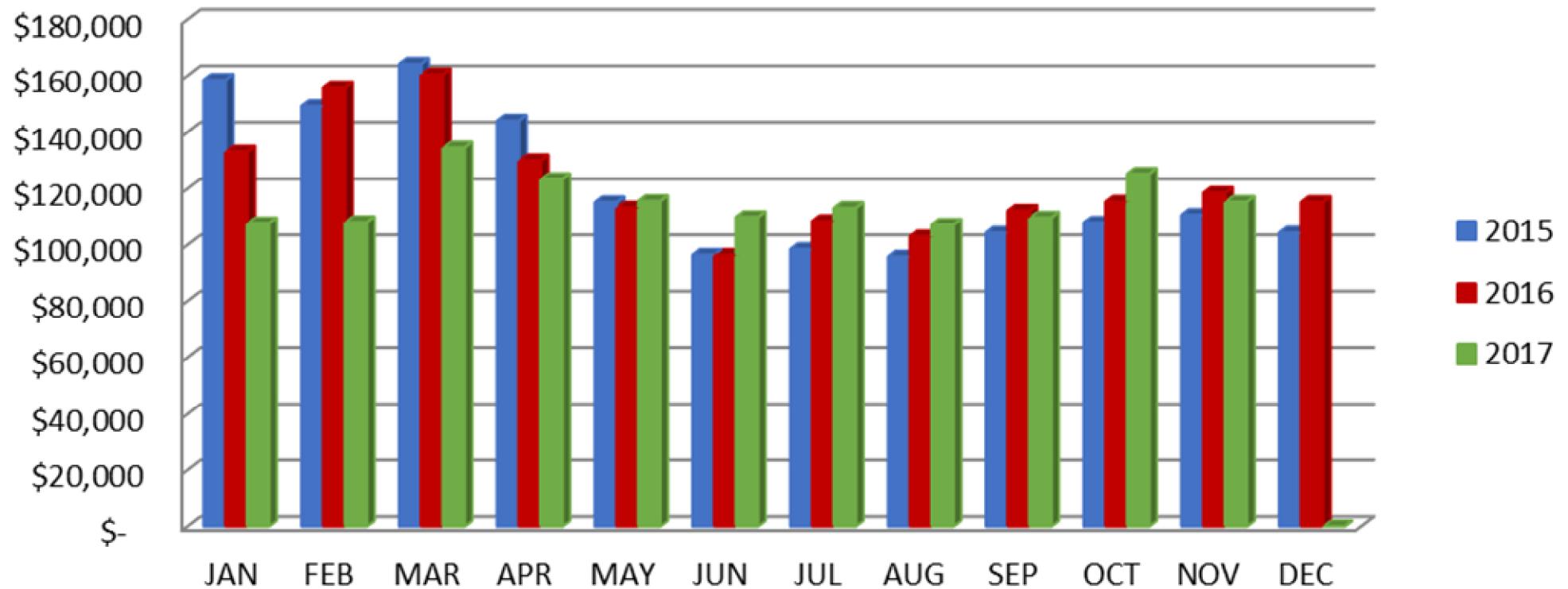
Car Rental



CONCESSION ACTIVITY



Parking Revenue



QUESTIONS?

