

January 3, 2024
City of Wilton
Agenda

1. Call Meeting to Order
2. Pledge of Allegiance
3. Roll Call
4. Approve Meeting Minutes
5. Finalize Agenda
6. City Maintenance Report

7. Old Business
 - A. Cenex
 - a. Surveying Proposal
 - B.

8. New Business
 - A. Employee Raises
 - a. Commission
 - b. Full Time Employees
 - B. ND Unclaimed Property
 - a. Un-cashed Checks
 - C. Depository of Public Funds
 - D. Municipal Judge

9. Reports
10. Bills
11. Adjournment

December 20, 2023

Unofficial Minutes – Subject to the review and revision of the Commission

A regular meeting of the Board of City Commissioners was held on December 20, 2023, at 7:00 p.m. at the City Meeting Room. Present Commissioners John Clausen, Lisa Hedstrom, Jim Schacher and President LeeAnn Domonoske-Kellar.

Motion made by Clausen and seconded by Schacher to approve the minutes from the December 6, 2023 meeting as presented. All present voted aye, motion carried.

Motion made by Schacher and seconded by Hedstrom to approve the agenda as presented. All present voted aye, motion carried.

Tanner IntVeld was present to discuss the frontage road along the west side of Cenexes property. Cenex is willing to deed the City a 66-foot-wide parcel of land along the east side of their property in exchange for the frontage road. The Commission was in favor of the exchange. A public hearing will be held later concerning the vacation of the frontage road.

Motion made by Hedstrom and seconded by Schacher to approve the Flex Fund Resolution as presented. All present voted aye, motion carried. The resolution will be used to apply for grant money for road improvements.

Motion made by Clausen and seconded by Schacher to pay bills as presented. Roll call vote. Aye: Comm. Clausen, Hedstrom, Schacher and Pres. Domonoske-Kellar. Absent: Comm. Kary. Motion carried.

With no other items for discussion, Pres. Domonoske-Kellar declared the meeting adjourned at 7:47 p.m.

-99629 Verizon Wireless 200.40
-99628 BCBS of ND 2,872.81
-99627 Visa 973.98
-89607 NDSPERS 26.00
-89606 NDPERS 137.50
1049 Void
1050 Tand Construction 315,756.28
1051 Moore Engineers 103,013.05
21629 Void
21630 Void
21631 Nordak Publications 204.72
21632 Nd Dept. of Health 25.00
21633 Farmers Union Oil 438.57
21634 Montana Dakota Utilities 622.05
21635 NABCO 81.52
21636 Circle Sanitation 8,357.00

21637 SCRWD 11,093.02
21638 ND One Call 1.30
21639 Deer Credit 16,539.63
21640 Kelsey Demchuk 150.00
21641 Kacey Schafer 150.00
21642 Nd Dept. of Health 166.83
21643 Black Mountain Software 8,940.00
21644 Kim's Appliance 945.84
21645 Office of the State Auditor 750.00
21646 Dennis Dockter 1,513.53
21647 Morgan Hedstrom 73.88
21648 Dean Larson 1,727.88
21649 Pattie Solberg 1,825.70
21650 Ottertail Power 1,775.84
21651 Brandon Domonoske 100.00
21652 Office Depot 96.81
21653 LeeAnn Domonoske-Kellar 89.00
21654 Catalis 699.60

Pattie Solberg, City Auditor

LeeAnn Domonoske-Kellar, Pres.



4503 Coleman Street
Suite 105
Bismarck, ND 58503
P: 701-751-8360
F: 701-751-2954

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December 21, 2023

City of Wilton, ND
Pattie Solberg, Auditor
PO Box 278
Wilton, ND 58579

Subject: Letter Agreement
Farmers Union Property Survey
City of Wilton, ND
Wilton, ND
Moore Project No. 23836

Dear Ms. Solberg,

In accordance with the discussion had at the 12-20-23 city commission meeting, Moore Engineering, Inc. ("Moore") is pleased to submit our proposal to City of Wilton, ND ("Owner") to provide professional land surveying services for the vacation and platting of Wilton City Right-of-Way (ROW).

Project Understanding

BACKGROUND:

Farmers Union Oil Company of Wilton (Cenex) petitioned the City of Wilton to vacate ROW west of Cenex, specifically, frontage road ROW which are in Spitzers 2nd Addition and Spitzers 3rd Addition, respectively.

Wilton is requesting 66' ROW in exchange for vacating, on the east end of Cenex's property, which is Burleigh County Parcel ID SW-142-80-02-02-455, and west of the private residence of Burleigh County Parcel ID SW-142-80-02-02-456.

In return, Wilton will then give an easement back to Cenex to operate on the City ROW until property is developed to the south of Wilton.

GENERAL DESCRIPTION OF PROJECT:

Moore will be completing two separate surveying instruments. First, is a vacation plat of the above mentioned ROW. Second, is a re-plat of Cenex's parcel, and establishing a 66' wide ROW and dedicating it to the public. From this replat, Moore will develop a metes and bounds description of the ROW so Wilton's attorney can draft an easement, to be granted to Cenex for general use of the ROW until property is developed south of Wilton.

PROJECT OBJECTIVES:

Upon completion of Moore's work, the frontage road will be vacated, and new ROW will be established on the East side of Cenex's property.

MOORE'S OBJECTIVES WITH THIS AGREEMENT:

Moore will create vacation plats, and replat of Cenex's parcel.
Figure 1: Project Location

Scope of Work

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

1. Survey Services
 - a. Vacation Plat
 - i. Boundary Survey
 - 1) Consists of an in-field survey to locate existing property corners and other features as necessary for legal survey, and set new property corner monuments as needed.
 - ii. Platting and Office Survey Work
 - 1) Consists of drafting the appropriate vacation documents, as per Burleigh County standards, for the purpose of creating and combining lots, plat updates, and vacation plat
 - b. Establishing New City ROW
 - i. Create the appropriate instruments as per Burleigh County Recorder's requirements, dedicate new City ROW, and split parcel SW-142-80-02-02-455 into two separate parcels.
 - 1) Boundary Survey
 - a) Consists of in-field survey to locate existing property corners and other features as necessary for legal survey, and set new property corner monuments as needed.
 - 2) Platting and Office Survey Work
 - a) Consists of drafting the appropriate documents as per Burleigh County standards, for the purpose of dedicating ROW and splitting a single parcel into two parcels.
 - 3) Create Legal Description of ROW
 - a) Moore will create a legal description of the new City ROW and provide to Wilton's attorney for the creation of an easement.
 - i. Moore will route and submit all documents to the City of Wilton, and Burleigh County for review and approval.

Deliverable(s)

- Vacation Plat
- Irregular Plat/Auditors Lot (Yet to be determined, per Burleigh County)
- Legal Description of newly dedicated City ROW

Basis of Proposal

The following items form the basis of this Proposal:

- No ALTA survey will be completed.
- No civil engineering services will be provided.
- Moore will present documents to City of Wilton and Burleigh County for approval and recordation.
- No topographic survey will be completed.
- Wilton's attorney will draft easement documents.
- Moore will invoice the City of Wilton for this work, however it was agreed upon at the 12-20-23 City Commission meeting that Cenex and Wilton will divide the cost evenly. Wilton will be responsible for requesting reimbursement from Cenex.

Schedule

Task	Date
Field Survey Work	December 27-January 5, 2023/2024
Office Survey Work	January 9-12, 2024
Approval and Recording of Documents	January and February, 2024

Fee

Moore will perform the tasks specified in the Scope of Work above on a Category Billing Rate basis using the actual hours worked times the appropriate Category Billing Rate plus the actual direct expenses incurred, including subconsultant fees, times a multiplier of 1.15. Category Billing Rates are provided in Attachment 1 to this proposal. Category Billing Rates and expense costs listed in Attachment 1 are valid through the end of the current year. On January 1 in each subsequent year, Category Billing Rates and reimbursable expenses may be adjusted to meet market conditions.

Based on our current understanding of the work, we estimate the overall fee for this project to be \$9,700.00.

Fee breakdown:

Vacation Plat	\$5,500.00
Establishing New City ROW	\$3,500.00
Approval and Recording of Documents	\$700.00

The fee breakdown listed above is for information only. Moore may alter the distribution of compensation between individual phases listed above to be consistent with services actually rendered.

Standard Terms and Conditions

Our services will be provided in accordance with the Attachment 2 "Standard Terms and Conditions for Professional Services", which are integral to this proposal.

Closing

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

We appreciate the opportunity to submit this Proposal to City of Wilton, ND, and we look forward to working with you on this Project. Should you have any questions or need additional information, please contact me by phone at (701)751-8360 or by e-mail at aj.tuck@mooreengineeringinc.com.

Sincerely,



AJ Tuck, PE
Project Manager

Enclosure: As noted

Acceptance for City of Wilton, ND:

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

Signature	_____	_____
Name	_____	_____
Title	Mayor	Auditor
Date	_____	_____

Address for giving notices: _____

Effective January 1, 2024

NOTE: Rates contained in this Billing Schedule are valid until December 31, 2024. After December 31, 2024, Hourly Billing Rates will be escalated annually and direct expenses may be adjusted to meet market conditions.

Description		Billing Rate Per Hour
1	Principal - SR Project Manager	\$225.00
2	Project Manager - SR PE - SR Technical Advisor	\$215 - \$220
3	Professional Engineer I, II	\$195 - \$205
4	Graduate - Project Engineer	\$165 - \$180
5	Engineering Designer I,II, SR	\$155 - \$180
6	Engineering Technician I, II, III	\$120 - \$145
7	Environmental Scientist I, II, II, SR	\$135 - \$210
8	Environmental Technician Intern, I, II	\$80 - \$120
9	Landscape Architect I, II, SR	\$155 - \$180
10	Project Manager Assistant I, II, III, SR	\$135 - \$155
11	Office Administrator I, II, III, SR	\$115 - \$165
12	CADD Technician I, II, III	\$140 - \$150
13	Senior GIS Coordinator - GIS Manager	\$195 - \$200
14	GIS Analyst - GIS Developer	\$165 - \$180
15	GIS Programmer I,II,III	\$150 - \$170
16	GIS Technician I, II, III	\$140- \$150
17	GIS Specialist I, II, III	\$145 - \$165
18	Land Surveyor - Senior Land Surveyor	\$180 - \$215
19	Survey Manager	\$170.00
20	Survey Crew Chief I, II - Survey Data Analyst	\$150 - \$165
21	Project Coordinator - CADD Standards Coordinator	\$180 - \$200
22	Funding Specialist	\$165.00
23	Survey Technician I,II, III	\$105 - \$120
24	Construction Engineer/Specialist, I, II, SR	\$165 - \$185
25	Administrative Assistant I, II, III	\$95 - \$105

Travel Expenses	Project Mileage	Per current IRS rate per mile	
	Lodging	Cost * 1.15	
	Meals	Cost * 1.15	
	Per Diem	\$60.00	per day
Survey Supplies	Iron Pins	\$1.25	each
	Fence Posts	\$5.00	each
	Motorized Offroad Vehicles	\$75.00	per day
Miscellaneous	Project Expenses	Cost * 1.15	
	Sub Consultants	Cost * 1.15	

ATTACHMENT 2
STANDARD TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES (April 2016)

1. General

1.1 The following Standard Terms and Conditions, together with the attached Proposal, constitutes the Agreement between Moore Engineering, Inc. (hereinafter referred to as "ENGINEER") and the person or entity to whom the Proposal is addressed (hereinafter referred to as "OWNER") for the performance of professional and related services. If OWNER requests that ENGINEER begin work prior to OWNER's execution of this Agreement and ENGINEER performs work in accordance with this Agreement, then this Agreement shall constitute the agreement between OWNER and ENGINEER even if OWNER fails to return an executed counterpart of this Agreement to ENGINEER.

1.2 No provision of this Agreement, including without limitation these Standard Terms and Conditions, may be waived, altered, or modified in any manner, unless the same shall be set forth in writing and signed by a duly authorized agent of ENGINEER. OWNER may use its standard business forms (such as purchase orders) to administer any agreement between ENGINEER and OWNER, but use of such forms shall be for convenience purposes only, and any typed provision in conflict with the terms of these Standard Terms and Conditions or ENGINEER's Proposal and all pre-printed terms and conditions contained in or on such forms shall be deemed stricken and null and void.

1.3 OWNER acknowledges and agrees that ENGINEER's services are on behalf of and for the exclusive use of OWNER and shall consist solely of those services described in ENGINEER's scope of services and shall not be based upon scientific or technical tests or procedures beyond the scope described therein, or the time and budgetary constraints imposed by OWNER. OWNER further acknowledges and agrees that ENGINEER's services require decisions that are not always based upon pure science, but also include judgmental considerations.

2. Standards of Performance

2.1 The standard of care for all professional engineering and related services under this Agreement shall be the care and skill ordinarily used by members of the same profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, expressed or implied, under this Agreement or otherwise, in connection with any services performed or furnished by the ENGINEER.

2.2 ENGINEER shall perform the professional engineering and related services under this Agreement as expeditiously as is consistent with such professional skill and care and the orderly progress of the project.

2.3 Subject to the standard of care set forth in Paragraph 2.1, ENGINEER and its Consultants may use or rely upon design elements in information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers and publishers of technical standards.

2.4 ENGINEER shall review laws, rules, regulations, ordinances, codes, and OWNER-mandated standards policies, procedures and instructions provided to the ENGINEER in writing and that are in effect as of the date of this Agreement

applicable to the ENGINEER's performance services under this Agreement subject to the standard of care set forth in Paragraph 2.1 and to the extent compliance is consistent with professional practice requirements. ENGINEER shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. Changes to any laws, rules, regulations, ordinances, codes, OWNER-mandated standards, policies procedures and instructions or requirements of governmental authorities after the effective date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, and/or compensation. If, during ENGINEER's review of applicable laws, rules, regulations, ordinances and codes, and OWNER-mandated standards, ENGINEER identifies any conflict between such laws, rules, regulations, ordinances and codes, and OWNER-mandated standards, ENGINEER shall notify OWNER of the nature and impact of such conflict. OWNER agrees to cooperate and work with ENGINEER in an effort to resolve any such conflict.

2.5 ENGINEER shall not be required to sign any document or certification, no matter by whom requested, that would result in ENGINEER having to certify, guarantee or warrant the existence of conditions whose existence ENGINEER cannot ascertain, or that extends ENGINEER's duties, responsibilities or liability beyond that contemplated by this Agreement. In the event that ENGINEER executes any such document or certificate, OWNER acknowledges that such execution by ENGINEER shall not operate as a waiver of this provision, but shall be considered a mistake of fact or law. OWNER agrees not to make resolution of any dispute with ENGINEER or payment of any amount due to ENGINEER in any way contingent upon ENGINEER's signing any such certification.

3. Contingency

3.1 OWNER and ENGINEER acknowledge and agree that certain increased costs and changes may be required as a result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities or inconsistencies in the drawings, specifications and other documents furnished by ENGINEER or contained within other professional services performed or furnished by ENGINEER under this Agreement and, therefore, the final construction cost of the Project may exceed the OWNER's estimated construction cost. Accordingly, OWNER agrees to set aside a reserve in the amount of 3 percent of the estimated construction cost as a contingency to be used as required to pay for such increased costs and changes resulting from the imprecision, incompleteness, errors, omissions, ambiguities or inconsistencies in the drawings, specifications and other documents furnished by ENGINEER or contained within other professional services performed or furnished by ENGINEER. The contingency percentage listed above should be included as a portion of the OWNER's overall construction contingency established to address unforeseen events or circumstances that arise during construction.

3.2 Any responsibility of ENGINEER for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that OWNER would have incurred if the Covered Change Order work had been included originally without any imprecision,

incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents or in the Opinion of Probable Construction Cost and without any other error or omission of ENGINEER related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, ENGINEER is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term ENGINEER includes Engineer's officers, directors, members, partners, agents, employees, and Consultants.

3.3 OWNER further agrees not to sue or make any claim by way of direct or third-party action against ENGINEER for the increased costs within the contingency because of such changes or because of any claims made by the Contractor relating to such changes.

4. Owner's Responsibilities

4.1 OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to unreasonably delay or interfere with the services of ENGINEER.

4.2 OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing or furnishing services under this Agreement. Nothing in this paragraph shall be construed to require ENGINEER to affirmatively determine the accuracy of information that is prepared for OWNER by other licensed professionals (including, but not limited to, land surveyors, geotechnical engineers, accountants, insurance and surety professionals, and attorneys) who are not engaged directly by ENGINEER.

4.3 OWNER shall provide for ENGINEER's right to enter the property owned by OWNER and/or others in order for ENGINEER to fulfill its services.

4.4 OWNER shall promptly report to ENGINEER any deficiencies or suspected deficiencies in ENGINEER's work or services of which OWNER becomes aware so that ENGINEER may take measures to minimize the consequences of such deficiencies. Upon notice to ENGINEER and by mutual agreement between the parties, ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is attributable to deficiencies in OWNER-furnished information.

5. Environmental Conditions.

5.1 OWNER shall provide (or cause the Site owner to provide) ENGINEER with the identity and location of all subsurface facilities and obstructions on the Site. OWNER agrees to waive any claims against ENGINEER and to indemnify, defend and hold ENGINEER harmless from any claims, demands or causes of action for damages to subsurface facilities or obstructions that are not accurately identified or located by OWNER or others. OWNER assumes responsibility for air, subsurface and/or ground pollution and environmental impairment from toxic substances or hazardous materials existing at the Site and shall indemnify and defend ENGINEER from any claims, demands and causes of action of third parties related thereto, except where such claims, demands and causes of action are caused by the sole negligence or willful misconduct

of ENGINEER; it being the intention of the OWNER to assume any liability alleged to have resulted from ENGINEER's joint or concurrent negligence. COPY

6. Ownership and Use of Documents

6.1 All original reports, plans, specifications, field data and other documents, whether in written or electronic format, prepared by ENGINEER or ENGINEER's consultants are instruments of professional service (hereinafter collectively referred to as "Documents") and ENGINEER shall retain the ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

6.2 Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed and/or sealed by ENGINEER or ENGINEER's consultants. Files in electronic media format of text, data, graphics or of other types that are furnished by ENGINEER or ENGINEER's consultants to OWNER are only for the convenience of OWNER. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

6.3 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, OWNER agrees that it will perform acceptance tests or procedures within 60 days after receipt of such data, after which OWNER shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by ENGINEER at no cost to OWNER. However, ENGINEER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

6.4 When transmitting documents in electronic media or digital format, ENGINEER makes no representations as to long term compatibility, usability or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those used by ENGINEER for this Project.

6.5 OWNER may make and retain copies of Documents for information and reference in connection with use of the Documents on the Project by OWNER. ENGINEER grant OWNER a limited license to use the Document on the Project subject to receipt by ENGINEER of full payment due and owing for all services relating to preparation of the Documents. Such limited license shall not create any rights in third parties. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER will be at the user's sole risk. OWNER shall, to the fullest extent permitted by law, indemnify, defend, and hold ENGINEER, its officers, directors, employees, partners, agents and Consultants, harmless from and against any and all claims, suits, judgments, liabilities, damages, costs, and expenses (including, but not limited to, reasonable attorneys' fees and defense costs) arising or allegedly arising from out of any unauthorized reuse or modification of said Documents by OWNER or any person or entity for whom OWNER is legally liable without the written authorization of ENGINEER.

6.6 In the event OWNER subsequently reproduces or otherwise uses ENGINEER's Documents or creates a derivative

COPY
work based upon the Documents, OWNER shall, where permitted or required by law, remove or completely obliterate the original professional seals, trademarks, logos, and other indications on said Documents of the identity of ENGINEER, its employees and consultants.

6.7 Under no circumstances shall delivery of the electronic files for use by OWNER be deemed a sale by ENGINEER, and ENGINEER makes no warranties, either expressed or implied, of merchantability and fitness for any particular purpose. In no event shall ENGINEER be liable for any loss of profit or any consequential damages as a result of OWNER's use or reuse of the electronic files.

7. Confidentiality

7.1 "Confidential Information" means all technical, economic, financial, pricing, marketing or other information that has not been published and/or is not otherwise available to members of the public and includes, without limitation, trade secrets, proprietary information, customer lists, scientific, technical and business studies, analyses, processes, methods, procedures, policies and information.

7.2 In the event that either party discloses Confidential Information to the other party in connection with this contract (excluding ENGINEER's Work Product that is delivered to OWNER or others hereunder), the party receiving such Confidential Information agrees to hold as confidential and to not disclose to others the Confidential Information for a period of ten (10) years from the date of disclosure. These restrictions shall not apply to information that (i) the parties had in their possession prior to disclosure; (ii) becomes public knowledge through no fault of the receiving party; (iii) the receiving party lawfully acquires from a third party not under an obligation of confidentiality to the disclosing party; (iv) is independently developed by the receiving party; or (v) is required to be disclosed by law or court order.

7.3 OWNER agrees that ENGINEER may use and publish OWNER's name and a general description of the Services provided to OWNER in describing ENGINEER's experience and qualifications to other clients and potential clients.

8. Work Product

8.1 "Work Product" consists of all reports, notes, laboratory test data and other information prepared by ENGINEER for delivery to OWNER. OWNER shall have the right to make and retain copies and use all Work Product; provided, however, such use shall be limited to the particular Site and project for which the Work Product is provided.

8.2 OWNER may release the Work Product to third parties at its sole risk and discretion; provided, however, ENGINEER shall not be liable for any claims or damages resulting from or connected with such release or any third party's use of the Work Product, and OWNER shall indemnify, defend and hold ENGINEER harmless from any and all such claims or damages.

9. Billing and Payment

9.1 Invoices shall be submitted monthly by ENGINEER, are due upon presentation, and shall be considered past due if not paid within 30 days of the invoice date. If payment is not received by ENGINEER within 45 days of the invoice date, OWNER shall pay as interest an additional charge of one percent (1.0%) or the maximum allowable by law, whichever is lower, of the past due amount per month. Payment thereafter

shall first be applied to accrued interest and then to the unpaid principal.

9.2 If OWNER objects to any portion of an invoice, OWNER shall so notify ENGINEER in writing within 10 days of receipt of the invoice. OWNER shall identify the specific cause of the disagreement and shall pay when due that portion of the invoice not in dispute. Interest as stated above shall be paid by OWNER on all disputed invoiced amounts resolved in ENGINEER's favor and unpaid for more than 45 days after date of submission.

9.3 In the event legal action is necessary to enforce the payment provisions of this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred. If both parties receive judgment in any dollar amount, the court will determine the prevailing party, taking into consideration the merits of the claims asserted by each party, the amount of the judgment received by each party, and the relative equities between the parties.

9.4 If OWNER fails to make payments when due or otherwise is in breach of this Agreement, ENGINEER may suspend performance of services upon seven (7) days' notice to OWNER. ENGINEER shall have no liability whatsoever to OWNER for any costs or damages as a result of such suspension caused by any breach of this Agreement by OWNER.

9.5 Real Estate Improvements: If the services provided under this Agreement result in or could lead to improvement to real estate, ENGINEER reserves the right to file a construction lien against the property/real estate on which these services are being provided for OWNER's failure to make payment for services.

9.6 If and to the extent the time initially established by this Agreement for completion of ENGINEER's services is exceeded or extended through no fault of ENGINEER, compensation for any services rendered during the additional period of time shall be computed in accordance with the additional services provision of this Agreement, or, in the absence thereof, on the basis of ENGINEER's then-current standard hourly billing rates, plus reimbursable expenses at a multiplier of 1.15 times the actual expense incurred by ENGINEER, its employees and consultants, in the interest of the Project.

9.7 Payments Upon Termination.

9.7.1 In the event of any termination under the terms of this Agreement, ENGINEER will be entitled to invoice OWNER for all services performed or furnished and all expenses incurred through the effective date of termination.

9.7.2 In the event of termination by ENGINEER for cause, in addition to invoicing for those items identified in paragraph 9.7.1, above, ENGINEER shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's consultants, and other related close-out costs.

10. Insurance

10.1 During the term of this Agreement, ENGINEER shall maintain not less than the following insurance coverages:

- 10.1.1 Workers' Compensation Insurance – statutory amount
- 10.1.2 Employer's Liability Insurance - \$100,000 each accident, \$500,000 disease policy limit, \$100,000 disease each employee
- 10.1.3 Commercial General Liability Insurance - \$1,000,000 per occurrence / \$1,000,000 aggregate
- 10.1.4 Automobile Liability Insurance - \$1,000,000 combined single limit
- 10.1.5 Professional Liability Insurance - \$1,000,000 per claim / \$1,000,000 aggregate

10.2 At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage or increased limits that are more protective than those maintained by ENGINEER.

11. Allocation of Risks; Limitation of Remedies

11.1 It is intended by the parties to this Agreement that ENGINEER's services in connection with the Project shall not subject ENGINEER's individual employees, officers, or directors to any personal legal exposure for the risks associated with this Project. Therefore, OWNER agrees that as OWNER's sole and exclusive remedy, any claim, demand or suit arising out of ENGINEER's services in connection with the Project shall be directed and/or asserted only against ENGINEER and not against any of ENGINEER's individual employees, officers, or directors.

11.2 In recognition of the relative risks and benefits of the Project to both OWNER and ENGINEER, OWNER agrees, to the fullest extent permitted by law and notwithstanding any other provision in this Agreement, that any liability created by or arising out of this Agreement on the part of ENGINEER to OWNER and any person or entity claiming by, through or under OWNER, for any and all claims, liabilities, losses, costs, damages of any nature whatsoever, or claims expenses from any cause or causes (including without limitation any attorneys' fees under this Agreement), shall be limited to the lesser of \$100,000 or the total amount of compensation received by ENGINEER hereunder.

11.3 Allocations of risks and limitations of remedies in this Agreement are business understandings between the parties and shall apply to all the different theories of recovery, including, without limitation, breach of contract or warranty (expressed or implied), tort (including, without limitation, negligence), strict or statutory liability, or any other cause of action. These limitations of remedies will not apply to any losses or damages that have been found by a trier of fact to have been caused by ENGINEER's gross negligence or willful or wanton misconduct. The parties agree that the Owner will not seek damages in excess of the contractually agreed limitations through suits with other parties who may join ENGINEER as a third-party defendant.

11.4 Notwithstanding any other provision in this Agreement, neither ENGINEER nor OWNER shall be liable to the other party for any special, incidental, indirect or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or performance of this Agreement.

12. Certificate of Merit

COPY

12.1 OWNER shall make no claim for professional negligence, either directly or in a third-party claim, against ENGINEER unless OWNER has first provided ENGINEER with a written certification executed by an independent design professional currently practicing in the same discipline as ENGINEER and licensed in the state in which the Project is located. This certification shall: (i) contain the name and license number of the certifier; (ii) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a design professional performing professional services under similar circumstances in the same location; and (iii) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to ENGINEER not less than 30 days prior to the presentation of any claim or the institution of any mediation, arbitration, or judicial proceeding.

13. Integration, Severability and Survival

13.1 This Agreement comprises the final and complete agreement between OWNER and ENGINEER. It supersedes all prior or contemporaneous communications, representations or agreements, whether oral or written, relating to the subject matter of this Agreement. Amendments to this Agreement shall not be binding unless made in writing and signed by both OWNER and ENGINEER. Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect, if the essential provisions of this Agreement for each party remain valid, binding, and enforceable.

13.2 All provisions of this Agreement related to assignment, indemnification, limitation of remedies, and limitations on actions, or otherwise allocating responsibility or liability between the parties, shall survive the completion of the services hereunder and the termination of this Agreement and shall remain enforceable between the parties.

14. Assignment

14.1 Neither party to this Agreement may assign, sublet, or transfer any rights or obligations under or interest (including, without limitation, moneys that are due or may become due) in this Agreement, or any claims, causes of action or rights against the other party arising from or under this Agreement; or any proceeds from claims arising from or under this Agreement as security, collateral or the source of payment for any notes or liabilities to the Contractor or any other third party; or any control of any claims or causes of action arising from or under this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. This section shall not, however, apply to any subrogation rights of any insurer of either party. The provisions of this paragraph shall survive the completion or termination of this Agreement for any reason and shall remain enforceable between the parties.

14.2 Notwithstanding the provisions of Section 14.1, above, or any other provision of this Agreement, ENGINEER may assign or otherwise transfer its rights and obligations under this Agreement to any parent, subsidiary, or affiliated company of ENGINEER or to any purchaser of the business of ENGINEER that agrees to assume the obligations of ENGINEER under this Agreement.

15. Suspension of Services

15.1 If the Project is suspended for more than 30 days in the aggregate, ENGINEER shall be compensated for services performed and charges incurred prior to suspension and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the Project schedule based on the delay caused by the suspension. If the Project is suspended for more than 90 days in the aggregate, ENGINEER may, at its option, terminate this Agreement upon giving notice in writing to OWNER. If OWNER fails to make payments when due or otherwise is in breach of this Agreement, ENGINEER may suspend performance of services upon seven days' prior written notice to OWNER. ENGINEER shall have no liability whatsoever to OWNER for any costs or damages as a result of such suspension caused by any breach of this Agreement by OWNER.

16. Force Majeure

16.1 Neither party shall be liable for any delay in, or failure of, its performance of any of its obligations under this Agreement if such delay or failure is caused by events beyond the reasonable control of the affected party, including, but not limited to, any acts of God, governmental embargoes, restrictions, quarantines, strikes, riots, wars or other military action, civil disorder, acts of terrorism, fires, floods, vandalism, sabotage or the acts of third parties (a "Force Majeure Event").

16.2 Upon completion of the Force Majeure Event the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Agreement.

16.3 A Force Majeure Event does not relieve a party from liability for an obligation that arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner that matured prior to the occurrence of that event.

17. Ownership of Waste

17.1 "Pre-Existing Waste" is any hazardous or non-hazardous wastes, substances or materials existing on the Site prior to the date that the Services are initiated.

17.2 OWNER shall be responsible for the proper handling, storage, transportation and/or disposal of the Pre-Existing Waste in accordance with all applicable federal, state and local laws and regulations. OWNER shall provide appropriate disposal identification numbers, select the disposal site(s) and sign all required manifests, disposal contracts and other documentation necessary to allow ENGINEER to complete the Services in a timely manner. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of Pre-Existing Waste which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

17.3 OWNER agrees to look solely to the disposal facility and/or transportation concern for any damages arising from improper transportation or disposal of the Pre-Existing Waste.

18. Termination

18.1 This Agreement may be terminated by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

19. Third Party Beneficiaries

19.1 All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and not for the benefit of any other party. No other party shall have any claim against ENGINEER because of this Agreement or the performance or nonperformance of services hereunder. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either OWNER or ENGINEER.

20. Dispute Resolution

20.1 ENGINEER and OWNER will attempt in good faith to resolve through negotiation any dispute, claim, counterclaim, or controversy arising out of or relating to this Agreement (hereafter collectively referred to as "Dispute"). If the Dispute is not resolved by these negotiations, the parties agree to submit any such unresolved Dispute to mediation. Either party may commence mediation by providing the other party a written request for mediation, setting forth the subject of the Dispute and the relief requested. The parties will cooperate with one another in selecting a mediator, and in scheduling the mediation proceedings. The parties will share equally in the costs of the mediator. Neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the parties so desire. The provisions of this paragraph may be enforced by any Court of competent jurisdiction.

21. Limitations on Actions

21.1 Causes of action by either party against the other party, however denominated, shall be barred two years from the day ENGINEER's services are completed or ENGINEER otherwise ceases providing the services called for in this Agreement, whichever first occurs.

22. Controlling Law

22.1 This Agreement is to be governed by the laws and regulations of the state in which the project is located, without regard to any choice of law principles that may otherwise have permitted the application of the laws of any other jurisdiction.

23. Interpretation

23.1 The parties expressly agree that this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

24. Notices

24.1 Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address as listed in the Agreement and given personally, by registered or certified mail post prepaid or by a commercial courier service. All notices shall be effective upon the date of receipt.

End of Standard Terms and Conditions for Professional Services

	<u>Current</u>	<u>1%</u>	<u>2%</u>	<u>3%</u>	<u>4%</u>	<u>5%</u>
Doc	48,565.44	49,051.09	49,536.75	50,022.40	50,508.06	50,993.71
<i>Annual Increase</i>		485.65	971.31	1,456.96	1,942.62	2,428.27
Dean	61,006.32	61,616.38	62,226.45	62,836.51	63,446.57	64,056.64
<i>Annual Increase</i>		610.06	1,220.13	1,830.19	2,440.25	3,050.32
Pattie	50,666.64	51,173.31	51,679.97	52,186.64	52,693.31	53,199.97
<i>Annual Increase</i>		506.67	1,013.33	1,520.00	2,026.67	2,533.33

	<u>Current</u>		<u>Proposed</u>	
	<u>Annual</u>	<u>Monthly</u>	<u>Annual</u>	<u>Monthly</u>
Commission	2,700.00	225.00	3,300.00	275.00
President	4,050.00	337.50	4,950.00	412.50

Special Meetings: \$50.00 per meeting

<u>2023</u>	<u>2022</u>	<u>2021</u>	<u>2020</u>	<u>2019</u>	<u>2018</u>	<u>2017</u>
3%	3%	2%	2%	3%	1%	1%

COURT SERVICES CONTRACT

(Transfer of Municipal Cases and Transfer of Cases for Jury Trial)

This Agreement is made and entered into by and among the State of North Dakota (STATE), McLean County, North Dakota (COUNTY), and the City of (CITY).

SECTION I - Transfer of Municipal Ordinance Cases to District Court

WHEREAS, N.D.C.C. § 40-18-06.2 permits the CITY to transfer its municipal ordinance cases to the District Court of the STATE.

NOW, THEREFORE, the STATE, the COUNTY, and the CITY agree as follows:

1. CITY has enacted the appropriate ordinance and agrees to transfer, and the STATE agrees to accept, the following municipal ordinance cases from and after January 1, 2024:
2. COUNTY shall provide the prosecuting attorney and pay all prosecution costs and expenses for all cases covered under this CONTRACT.
3. COUNTY shall pay all indigent defense costs and expenses for all cases covered under this CONTRACT.
4. COUNTY shall pay any required transcript costs for all cases covered under this CONTRACT.
5. COUNTY shall pay for any necessary transportation and detention expenses for defendants in cases covered under this CONTRACT.
6. COUNTY or STATE as appropriate, through the Clerk of District Court, shall provide for recording and management of all files and papers for cases transferred under this CONTRACT.

7. STATE shall provide and pay for courtroom supplies, salaries of the district judge and staff, office-related expenses, and jury expenses in the adjudication and disposition of cases transferred under this CONTRACT.
8. Except for mandatory administration fees imposed under state law and fee assessments for funding crime victim and witness programs, all fees, fines, costs, and forfeitures and any other monetary consideration collected from cases covered under this Agreement, and any delinquent fines and costs, will be collected by the Clerk of District Court and distributed in the following manner:
 - A. CITY will receive **20%** of all amounts collected.
 - B. COUNTY will receive **20%** of all amounts collected.
 - C. STATE will receive **60%** of all amounts collected.

All amounts due the CITY, COUNTY, and STATE must be transmitted by the Clerk of District Court to the CITY, COUNTY, and STATE on a quarterly basis. The Clerk of District Court shall account to the CITY, COUNTY, and STATE for all monies collected and distributed under this Contract.

SECTION II - Transfer of Cases for Jury Trial

WHEREAS, N.D.C.C. § 40-18-15.1 requires transfer to District Court of municipal ordinance cases in which the defendant has requested in writing within 28 days after arraignment a transfer to District Court for a jury trial and further provides that in the absence of a contract all fees, fines, costs, forfeitures, and any other monetary consideration collected from transferred cases must be deposited in the state general fund.

NOW, THEREFORE, the STATE, the COUNTY, and the CITY agree that the division of responsibilities and distribution of monetary consideration agreed to under Section I of this contract will also apply to cases transferred to the district court for jury trial.

SECTION III - Term of Agreement

The term of this Agreement is for one (1) year from January 1, 2024 through December 31, 2024 and continues thereafter from year-to-year unless a party to the CONTRACT gives written notice within at least ninety (90) days before the end of the contract period of the intention to terminate or seek modification of the CONTRACT.

SECTION IV - Separate Agreement between City and County

An addendum agreement between the CITY and the COUNTY may be attached and incorporated as part of this CONTRACT.

SECTION V - Signatures

IN WITNESS WHEREOF, the STATE, the COUNTY, and CITY, by and through the State Court Administrator, the Presiding Judge of the South Central Judicial District, the McLean County Board of Commissioners, and the City Council of , ND, execute this Contract.

STATE OF NORTH DAKOTA:

Date: _____
Presiding District Judge
South Central Judicial District

Date: _____
State Court Administrator

CITY:
_____, Mayor
Date: _____

_____, Auditor
Date: _____

COUNTY:

Date: _____
McLean County Commission Chair

City of Wilton

From: Knutson, Beth A. <baknutson@nd.gov>
Sent: Friday, December 8, 2023 11:11 AM
To: garrisoncity; City of Max (maxcity@restel.com); City of Turtle lake (citytl@westriv.com); City of Riverdale (riverdale@westriv.com); City of Underwood (ctyunder@westriv.com); City of Wilton (wiltonnd@bektel.com); washaud@westriv.com; AMY ONES; Cleveland, Sunshyne; City of Mercer (cityofmercer@westriv.com); Benedict City Of; jandkstria@gmail.com; City of Coleharbor (coleharbor@westriv.com); schmaltzy1@hotmail.com; debra.sink@hotmail.com
Subject: RE: Court Contract
Attachments: Court Services Contract - combined - Blank.rtf

For those of you who have not seen or received the contract yet here is a copy of it.

Beth A. Knutson

McLean County Auditor
 712 5th Avenue
 PO Box 1108
 Washburn ND 58577
 701-462-8541 ext. 825

From: Knutson, Beth A.
Sent: Friday, December 8, 2023 10:58 AM
To: City of Garrison (garrisoncity@restel.com) <garrisoncity@restel.com>; City of Max (maxcity@restel.com) <maxcity@restel.com>; City of Turtle lake (citytl@westriv.com) <citytl@westriv.com>; City of Riverdale (riverdale@westriv.com) <riverdale@westriv.com>; City of Underwood (ctyunder@westriv.com) <ctyunder@westriv.com>; City of Wilton (wiltonnd@bektel.com) <wiltonnd@bektel.com>; washaud@westriv.com; AMY ONES <onesconsulting@outlook.com>; Cleveland, Sunshyne <Sunshyne.Cleveland@connectbyamfam.com>; City of Mercer (cityofmercer@westriv.com) <cityofmercer@westriv.com>; Benedict City Of <cityofbenedict@gmail.com>; jandkstria@gmail.com; City of Coleharbor (coleharbor@westriv.com) <coleharbor@westriv.com>; schmaltzy1@hotmail.com; debra.sink@hotmail.com
Subject: Court Contract
Importance: High

Hello,

I have gotten a few calls on the court contract. Sorry to alarm you. The commission approved these contracts and I sent them to the Cities as an option. There have been a few cities that have inquired about the District Court taking over their court cases so we have began the process. While discussing the process our Clerk of Court and the commission as well as the deputies have agreed that it would easier for everyone if all the cities would be on the same system so we agreed to offer this to all the cities and leave the decision up to you.

Please do not feel obligated to do so I know there are some cities that have judges that are involved and do their jobs well. However I know there are other cities that either do not have judges, have trouble finding judges or have judges that do not perform their duties so tis is another option for you. We thought we would get them out since election is coming up and if you have a judge [position coming up and you choose to sing the contract you would not have to put

that position on the ballot and candidates would not have to gather signatures if you are intending to not have that **COPY** position any longer.

Below is the outline of the process. I realize that the boards action is the last step however with the time line being short we have sent you a copy of the contract and the Judge a copy at the same time we have been in contact with Judge and Court administration and they are on board with this process as they do it in other counties and find it works well for smaller towns that have trouble finding judges. If you have questions please feel free to call me.

40-18-06.2. Transfer of municipal ordinance cases to district court - Abolition of office of municipal judge. With the agreement of the governing body of the county, the presiding judge of the judicial district in which the city is located, and the state court administrator, the governing body of a city may, by ordinance, transfer some or all of the cases of the municipal court to the district court serving the county in which the city is located. These cases are deemed district court cases for purposes of appeal. The governing body of a city with a population of less than five thousand, upon transferring all municipal court cases to the district court, may abolish by resolution the office of municipal judge. The term of office of the municipal judge elected to serve that city terminates upon the last day of the month in which all municipal cases have been transferred to district court or the expiration of the judge's term, whichever occurs first.

I also received the following information from the State:

In order for a city to abolish the office of municipal judge, the following steps must be taken in the order listed.

1. Agreement with the county to absorb all of the cases.
2. The presiding district judge must agree that this move service the interest of justice.
3. The state court administrator must concur with the district judge's decision.
4. The city taking action must amend the city ordinance to transfer court case to district.
5. The city council must vote to abolish the office of municipal judge.
6. The judge's term ends only after all previous steps have been taken and all pending cases have been finalized in municipal court.

Beth A. Knutson

McLean County Auditor
712 5th Avenue
PO Box 1108
Washburn ND 58577
701-462-8541 ext. 825

Bill Summary
January 3, 2024

-89605 NDPERS	Def. Comp	137.50
-89604 NDPERS	Retirement	2,037.70
-89603 US Treasury	W/H	3,280.22
-89602 ND Office of Sate Tax Commissic	W/H	569.05
21655 Dennis Dockter	Salary	1,513.53
21656 Dean Larson	Salary	1,727.88
21657 Pattie Solberg	Salary	1,825.70
21658 Aflac	Insurance	54.87
21659 Tru Community Bank	HSA	100.00
21660 Tru Community Bank	HSA	100.00
21661 Advanced Business Methods	Printer	121.28
21662 Wilton Park Board	4th Qtr. Rev Share	4,109.28
21663 Dakota Supply Group	Water Fittings	455.55
21664 Garrett Noon	Reissued Check / Water Deposit	11.53
21665 Gildea Concrete	Concrete for Pond	1,000.00
21666 NSC Mineral	Road Ash	3,772.08
21667 Morgan Hedstrom	Salary	152.38
21668 Confederation of Clubs	Reissued Check / Hall Deposit	150.00
		<u>\$ 21,118.55</u>