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August 10, 2023

Joshua Skluzacek
City of Dickinson
38 1st St W
Dickinson, ND 58601

Re: Lot Combination for North Dakota National Guard Readiness Center Site

Dear Joshua:

Thank you for allowing Bartlett & West the opportunity to offer our professional services.

The anticipated services to be provided to complete your project are as follows:

1. Prepare a Lot Combination Plat to combine the two subject parcels at the NDNG Readiness Center.
2. This work will be performed to meet the City of Dickinson's municipal code.

If the project progresses as anticipated and remains within the scope, we estimate the invoice to be \$2950. The survey can be delivered within two weeks of receipt of signed agreement.

To best meet your needs and schedule, we request that you provide the following to us:

1. Any deeds or boundary surveys in the area of the project that may not be of public record but that are known to you and/or your staff.

Attached to this proposal is a copy of our Standard Provisions of Agreement for Professional Services, which shall apply to the work of this proposal.

If the proposal is acceptable, please sign and return a copy to us for our records. This proposal is valid for 90 days from the date of this letter.

Sincerely,

Kevin Martin, PLS
Project Manager

Enclosure(s)

ACCEPTED BY: City of Dickinson, ND

By: _____
Printed name of person signing

Dated: _____



Driving Community and Industry Forward, Together.

STANDARD PROVISIONS OF AGREEMENT FOR PROFESSIONAL SERVICES

Client and Bartlett & West, Inc. (referred to as Consultant), agree that the following provisions shall be part of this Agreement.

1. **Payment.** Unless stated otherwise in this Agreement, fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing. If Client does not pay invoices within thirty (30) days of the billing date, Consultant may, upon written notice to Client, suspend further work until payment is current. Interest not exceeding the maximum rate allowable by law will be payable on any amounts not paid within thirty (30) days of the billing date, payment thereafter applied first to accrued interest and then to the principal unpaid amount. In the event Client fails to pay Consultant within ninety (90) days after the billing date, then Client agrees that Consultant shall have the right to consider such failure as a substantial breach of this Agreement and the duties of Consultant under this Agreement may be terminated at the election of Consultant upon five (5) days written notice.

2. **Suspension.** In the event all or any portion of the work prepared or partially prepared by Consultant is suspended, abandoned, or terminated, Client shall pay Consultant for the work performed on an hourly basis, not to exceed any maximum contract amount specified herein.

3. **Termination.** This Agreement may be terminated by Client or Consultant upon thirty (30) days written notice in the event of substantial failure of the other party to perform in accordance with the terms of this Agreement. In the event of termination of this Agreement, Client shall promptly pay Consultant for all fees, charges, and services performed by Consultant in accordance with the compensation arrangements under this Agreement or on an agreed hourly basis.

4. **Delay.** All agreements on Consultant's part are contingent upon, and Consultant shall not be responsible for damages or be in default, or be deemed to be in default, by reason of delays in performance of others by reason of strikes, lock-outs, accidents, acts of God, widespread infectious disease outbreaks (including, but not limited to, epidemics and pandemics), and other delays unavoidable or beyond Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rate or delays caused by failure of Client or Client's agents to furnish information or to approve or disapprove Consultant's work promptly, or due to late or slow, or faulty performance by Client, other contractors or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of Consultant's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

5. **Client Changes.** In the event any changes are made in the work to be performed hereunder, by Client or persons other than Consultant, and which affect Consultant's work, any and all liability arising out of such changes is waived as against Consultant, and Client assumes full responsibility for such changes unless Client has given Consultant prior notice and has received from Consultant written consent for such changes.

6. **Third Party Information.** Consultant is not responsible, and liability is waived by Client as against the Consultant, for use by Client or any other person of any data, reports, plans or drawings not prepared by Consultant.

7. **Waiver of Consequential Damages.** Neither Client nor Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

8. **Completion.** In no event shall any statute of limitations commence to run any later than the date when Consultant's services are substantially completed, and any cause of action against Consultant arising from or pertaining to this Agreement must be initiated no later than two (2) years after the date when Consultant's services are substantially completed.

9. **Disputes.** If a claim, dispute or other matter in question arises out of or related to this Agreement, the parties shall first try to resolve the issue through prompt negotiations conducted by an officer authorized to make decisions on behalf of each party. Each party shall be allowed to pursue any remedies available under North Dakota law.

10. **Waiver of Subrogation.** To the extent any damage or claim is covered by property insurance, Client and Consultant waive all rights against each other and against the contractors, consultants, and employees of the other for damages, except such rights as they may have to the proceeds of such property insurance. Client or Consultant, as applicable, shall require of the contractors, consultants, agents, and employees of any of them similar waivers in favor of the other parties enumerated herein.

11. **Standard of Care.** Consultant's services shall be performed in a manner consistent with that degree of skill and care exercised by practicing professionals performing similar services at the same time, at the same locality, and under the same or similar circumstances and conditions. Consultant makes no other representations or any warranties, whether expressed or implied, with respect to the services rendered hereunder.

12. **Consultant Data.** All reports, plans, specifications, computer files, data resulting from laser scanning, survey notes, and other original documents are instruments of service and shall remain the property of Consultant. Consultant may sell said instruments of service to third-party sources.

13. **Software Ownership.** Consultant has and will retain all ownership rights of its software and of any software developed under this Agreement, including all patent rights, copyrights, trade secrets, trademarks, and service marks.

14. **Work Product Ownership.** Work Products shall be defined as any deliverable provided to Client as a result of services provided under this Agreement, including but not limited to software applications, drawings, databases, specifications, and any and all deliverables by Consultant per this Agreement. Work Products are owned exclusively by Consultant and are protected by United States copyright laws, trademark laws, and applicable international treaties and/or conventions. In consideration of the rights granted herein, Client agrees to retain all Work Product delivered or provided to Client in strict confidence. Client shall not sell,

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transfer, lease, lend, assign, time-share, sublicense, publish, disclose, display, or otherwise make available Consultant's Work Product to any other person or entity other than the parties to this Agreement without the express written permission of Consultant. Client shall secure and protect the Work Product in the same manner and to the same degree it protects its own proprietary information, using no less than a reasonable standard of care. Client shall not decompile or reverse engineer any of Consultant's software that may be contained in Consultant's Work Product. Client shall not make any modifications or derivative works from Work Product.

15. Ownership. All error corrections, enhancements, new releases, and any other Work Product created by Consultant as a result of services provided under this Agreement are and shall remain the exclusive property of Consultant, regardless of whether Client, its employees, or agents may have contributed to the conception, joined in its development, or paid Consultant for the development or use of said Work Product.

16. Fees. When applicable to the project, Client shall pay the costs of inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial photography fees, and all other fees, permits, bond premiums, title company charges, and reproductions, and all other charges not specifically covered by the terms of this Agreement.

17. Construction Costs. If any opinion is prepared by Consultant as to anticipated construction costs, such opinion represents a judgment as a professional and is supplied for the general guidance of Client. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinion as compared to contractor bids or actual cost to Client.

18. Job Site. If the work involves construction services, Client agrees that in accordance with generally accepted construction practices, the construction contractor will be required by Client to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property and that this requirement shall be made to apply continuously and not be limited to normal working hours. Consultant does not assume responsibility for the safety of persons or property on or about the project site.

20.1 Job Site - Confined Space and/or Permit Required Entry. If confined space and/or permit required entry is required for the services to be provided, Owner/general contractor shall provide subcontractor and Consultant with a completed Confined Space Pre-Entry checklist that complies with 29 CFR 1910.146 and 29 CFR 1926.1200 AA standards for construction as amended and applicable state laws and regulations. Owner/general contractor, at its expense, shall obtain any and all required permits and equipment for such entry. Owner/general contractor shall determine if the job requires anyone to enter manholes, vaults, lift station, piping, tanks or other confined spaces. Before work at a worksite, Owner/general contractor must ensure that a competent person identifies all confined spaces in which one or more of the persons it directs may work, and identifies each space that is a permit space, through consideration and evaluation of the elements of that space,

including testing as necessary. If the workplace contains one or more permit spaces, Owner/general contractor who identifies, or who receives notice of, a permit space must:

- (1) Inform exposed persons by posting danger signs or by any other equally effective means, of the existence and location of, and the danger posed by, each permit space; and a sign reading "DANGER – PERMIT REQUIRED CONFINED SPACE, DO NOT ENTER" or using other similar language would satisfy the requirement for a sign.
- (2) Inform, in a timely manner and in a manner other than posting, its employees' authorized representatives and the controlling contractor of the existence and location of, and the danger posed by, each permit space.

If Owner/general contractor determines any person will enter a permit space, that host employer must have a written permit space program that complies with §1926.1204 implemented at the construction site. Contractor shall provide appropriate air monitoring equipment, employee training, permit forms, rescue procedures, personnel, and other means necessary to safely and independently enter confined spaces. The written program and permit must be made available prior to and during entry operations for inspection by person(s) who need to enter the space for work or inspection.

20.2. Job Site - Fall Protection and Rescue Plans. In the event personal fall arrest systems are used, the following rescue considerations shall apply. Owner/general contractor must assure that persons can be promptly rescued or can rescue themselves should a fall occur. The availability of rescue personnel, ladders, or other rescue equipment should be evaluated. In some situations, equipment that allows employees to rescue themselves after the fall has been arrested may be desirable, such as devices that have descent capability. All new persons on site shall be given instructions on the proper use of fall protection devices before they begin work, as well as rescue procedures. The written fall protection plan will be reviewed before work begins on the job site. Fall protection equipment use will be reviewed regularly at the weekly safety meetings.

19. Construction Site Visits. If applicable, Consultant shall make periodic visits to the project site to observe the progress and quality of the executed work and to generally review whether the work is proceeding in accordance with plans and specifications. Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work and does not assume responsibility for construction techniques, procedures, sequences and schedules or for the conduct, action, errors or omissions of any construction contractor, subcontractor, or material supplier, their agents or employees.

20. Resident Project Representation. When applicable, and by separate attachment executed by Client and Consultant, Consultant may provide resident project representation under Consultant's supervision that will be paid for by Client as indicated in such separate agreement and that will be intended to give Client further assurance with regard to the finished work, but will not involve Consultant in the construction means, methods, techniques, sequences or procedures or safety precautions or programs nor provide to Client any guarantee by Consultant of the accuracy, quality or timeliness of performance by any contractor, subcontractor, or material supplier.

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21. Hazardous Materials. In the event that Consultant or any other party encounters asbestos or hazardous or toxic materials at the job site, or should become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of Consultant's services, Consultant may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until Client retains appropriate specialist consultants or contractors to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations.

22. Assignment/Third Party Reliance/Certification. Neither Client nor Consultant shall assign its interest in this Agreement without the written consent of the other. The services to be provided pursuant to this Agreement are being performed solely for the benefit of Client, and no benefit is meant to be conferred upon any person or entity not a party to this Agreement, and no such person or entity should rely upon Consultant's performance of those services to Client; and no claim against Consultant shall accrue to any contractor, subcontractor, consultant, engineer, supplier, fabricator, manufacturer, lender, tenant, surety, homeowner's association or any other third-party as a result of this Agreement or the performance or non-performance of services on the project. Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant's having to certify, guaranty, or warrant the existence of conditions that Consultant cannot ascertain.

23. Client Representative. Client shall designate an individual with authority to act on behalf of Client as to all aspects of the project, shall examine and respond promptly to submissions from Consultant, shall give prompt written notice to Consultant if Client becomes aware of any defect in the project, and shall otherwise fully cooperate as may be required or appropriate in connection with the project.

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

25. Severability. Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end, the provisions of this Agreement are declared to be severable.