



Engineering Department

DATE: May 18, 2021
FROM: Gabe Schell, City Engineer
ITEM: Memorandum of Understanding for SI 539

REQUEST

Consider Memorandum of Understanding with Dennis Senger relating to N 26th Street construction as part of SI 539.

Please place this item on the 5/25/2021 City Commission meeting agenda.

BACKGROUND INFORMATION

The City of Bismarck is constructing N 26th Street from Grant Drive to E Capitol Avenue as part of SI 539 (see exhibit on second page of this memo). In order to improve access and safety for vehicles leaving Lot 14, Block 1 Kilber Addition, a retaining wall is proposed in order to grade a level area behind the wall to allow for nose-first exiting of vehicles from Lot 14 onto N 26th Street. The owner of this property has agreed to construct the wall with materials supplied by the City. This MOU assigns the responsibility of the City to contribute financial to the material procurement. Funding for this MOU is within the approved contingencies for the overall project.

RECOMMENDED CITY COMMISSION ACTION

Approval of Memorandum of Understanding with Dennis Senger relating to N 26th Street construction as part of SI 539.

STAFF CONTACT INFORMATION

Gabe Schell, PE | City Engineer, 355-1505 or gschell@bismarcknd.gov



MEMORANDUM OF UNDERSTANDING

Name: Dennis Senger. Address: 1916 Harding Pl, Bismarck, ND 58501-2386. Phone: 220-9793 ("**Owner**") and the City of Bismarck ("**City**"), agree as follows:

1. Payment. In exchange for consideration of improved safety during egress from Lot 14, Block 1 Kilber Addition onto N 26th Street by virtue of a retaining wall constructed on the **Owner's** property, the **City** will pay the **Owner** in the amount of **\$18,201**. Payment to be made \$9100 upon **Owner's** submittal of an itemized invoice specifying the materials purchased with the balance paid upon verification that the project is completed.
2. Completion. All provisions of the contract relating to time of performance and completion of the work are of the essence of this contract. Accordingly, the **Owner** shall fully and entirely perform this contract, and all work incidental thereto; and all work completed no later than May 22, 2026. Time is of the essence in this contract.
3. Supervision/Indemnification. The **Owner** is solely responsible for all supervision of the work and materials to meet specification, personnel and subcontractors insofar that these items are in conformance with the description in paragraph 1. The **City** shall have no responsibility with regard to these matters. The **Owner** agrees to indemnify and save harmless the **City** from and against all loss or expense, including attorney's fees and costs by reason of liability imposed by law upon the **City** employees for damages because of bodily injury including death at any time resulting therefrom sustained by any person or persons and on account of damage to property including loss of use thereof, arising out of or in consequence of the performance of this work, whether such injuries to persons or damage to property is due to the negligence of the **Owner**, his agents or employees, his subcontractors, their employees, **City**, its appointed or elected officers, employees, or their agents, except only such injury or damage as shall have been occasioned by sole negligence of the **City**.
4. Assignment. This agreement may not be assigned except with the written permission of the **City**.
5. Breach of Contract Terms. Any violation or breach of terms of this Contract on the part of the Owner or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.
6. Termination of Contract. This contract is terminated by its completion of work by **Owner or May 11, 2026, whichever is first**.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

CITY OF BISMARCK:

Dated this _____ day of _____, _____.

ATTEST:

CITY OF BISMARCK, NORTH DAKOTA

Keith J. Hunke
City Administrator

Steve Bakken, President
Board of City Commissioners

OWNER:

Dennis Senger

Dated this ____ day of _____, _____.

Signature

Printed Name