



Bismarck Airport

DATE: 5/28/2021

FROM: Gregory Haug, Airport Director

ITEM:

Consider a lease agreement with Chad Wachter, Investcore, Inc., for equipment and vehicle parking.

REQUEST:

Consider a lease agreement with Chad Wachter, Investcore, Inc., for equipment and vehicle parking.

Please place this item on the 6/8/2021 City Commission meeting agenda.

BACKGROUND INFORMATION:

On February 27, 2018 the Board approved a lease with Chad Wachter for equipment and vehicle parking. The lease has expired. Chad Wachter has asked for a new lease for parking equipment and vehicles on a 150 foot by 50 foot rectangular strip on the Northeast corner of Lot 3 Block 7 Bismarck Airport Addition adjacent to commercial property controlled by Chad Wachter. Lot 3 Block 7 is on the Northwest corner of Bismarck Airport. The lease is effective October 1, 2019 to July 31, 2023 then month to month for a period not to exceed 18 months. The lease rate of \$279.30 per month was set by a November 2016 appraisal adjusted by CIP. The lease format includes required Federal Aviation Administration clauses.

RECOMMENDED CITY COMMISSION ACTION:

Airport staff recommends that the Board of City Commissioners approve the Lease Agreement at Enclosure 1.

STAFF CONTACT INFORMATION:

Greg Haug | Airport Director, 355-1808 or ghaug@bismarcknd.gov

2 Enclosure

1. Lease Agreement
2. Lot Diagram

ON JUNE 8, 2021
AGENDA

CONTRACT REVIEW FORM

DEPARTMENT

Contract between the City of Bismarck and CHAD WACHTER, INVESTCORE INC.

Purpose of Contract: PARCEL LEASE FOR PARKING OF VEHICLES

Contract Amount: \$279.30 PER MONTH

Contract Period: OCTOBER 1, 2019 TO JULY 31, 2023

Funding Source: INCOME TO AIRPORT ENTERPRISE FUND

Project Number: (If needed, send copy to Fiscal)

Comments: JAWWELLE, THIS IS THE SAME LEASE BOILERPLATE USED ON THE PREVIOUSLY APPROVED LEASE. (TN)

After Mayor's Signature, route to: AIRPORT

Date:

Department Head Signature:

Date:

CITY ATTORNEY

Comments:

City Attorney Signature:

Date:

FINANCE

Comments:

Director of Finance Signature:

Date:

ADMINISTRATION

City Administrator Signature:

Date:

Please send copy of completed contracts to Administration.

**LEASE AGREEMENT
CITY/AIRPORT PROPERTY**

THIS AGREEMENT, made and by and between the CITY OF BISMARCK, North Dakota, a municipal corporation, hereinafter called the "Lessor" Chad Wachter, Investcore, Inc. PO Box 1437 Bismarck, ND 58502 hereinafter call the "Lessee", with reference to certain lands owned by the City of Bismarck, North Dakota, and controlled by the Bismarck Municipal Airport, hereinafter referred to as the "Airport".

WITNESSETH:

THE PARTIES HERETO, in consideration of the rents, covenants, and agreements herein contained, decree as follow:

I. PREMISES.

The Lessor does hereby let to the Lessee and the Lessee does hereby rent and take from the Lessor land for the purpose of parking equipment, of land as described. A 150 foot by 50 foot (7,500sq ft.) portion of Lot 3 Block 7 Bismarck Airport Addition, the portion measured from the NE corner east 150 feet and from the NE corner south 50 feet forming a rectangle.

II. TERM.

The term of the Lease shall be from October 1, 2019 to July 31, 2023.

1. Upon mutual consent by the Airport and Lessee the term of this agreement may be extended month to month not to exceed 18 months and be subject to all the provisions and conditions of this agreement.
2. Airport or Lessee may terminate this agreement at any time for any reason by providing the other party with at least thirty days written notice. The Lessee is to remove equipment by the end of term.

III. RENTAL.

The Lessee shall pay to the Lessor a rental of \$279.30 per month. Payment shall be made no later than thirty days following the end of the month to PO Box 991 Bismarck, ND 58502 or in person at Bismarck Airport, 2301 University Drive Building 17, Suite 225B, Bismarck, ND 58502

IV. UTILITIES.

The lessee agrees to furnish all utilities necessary to perform Lessee's operation.

V. REPAIRS.

The Lessee agrees to maintain fences, wells, roadways, or any of the Lessor's equipment, which may be applicable to the Lessee's landscaping operation. The Lessee agrees to maintain, during the term and to surrender at the end of the term, the leased premises in the condition they were in at the commencement of this Lease, less ordinary wear, tear, and damage by fire or casualty.

VI. INSURANCE

The Lessee agrees to indemnify and hold harmless the Lessor from any loss, liability, or expenses for injury to or death of any person or damage to or destruction of any property caused by Lessee's negligence, use of occupancy of the Airport, except the loss, liability, or expense caused by the negligence of the Lessor, its agents or employees. The Lessor will give the Lessee prompt notice of any claim made or suite instituted which in any way affects or might affect Lessee and Lessee will have the right to compromise and defend to the extent of its own interest. The Lessee, its officers, agents, and employees shall not be liable for any loss or damage to the premises, facilities, and equipment in which the leased premises are located to the extent that such loss is compensated by insurance, provided that this provision shall not be effective if it shall invalidate any insurance policy. The Lessee shall procure and maintain liability insurance in the amount of \$1,000,000 and property and inland marine as the Lessee deems appropriate. The Lessee shall provide a certificate of insurance for the term of the lease.

VII. LAWS AND REGULATORY ENFORCEMENT.

Lessee acknowledges its obligations for security on the leased premises as prescribed by FAA and TSA regulations and shall employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles to or on its leased premises and any portion of the aircraft operations areas connected therewith. Lessee further shall abide by the ordinances adopted by the Lessor in carrying out the Lessor's obligations under FAA and TSA regulations and other measures the Lessor deems necessary from time to time for the security and safety of the airport and of persons and vehicles entering the Aircraft Operations Area. Lessee shall reimburse the Lessor in full for any fines or penalties levied against the Lessor for any violation of Federal State and local laws, rules, or regulations as a result of any act or failure to act on the part Lessee, its agents, suppliers, or employees.

VIII. NON-EXCLUSIVE RIGHTS.

Lessee shall have the right and privilege of engaging in the operations and business herein specified on the premises leased under the terms herein provided; however, this agreement does not grant the Lessee or those claiming under it the exclusive right to the use of the premises and facilities of said airport other than those premises leased exclusively to the Lessee hereunder.

IX. FAA REQUIRED AIRPORT LEASE PROVISIONS.

The following FAA Required Airport Lease Provisions shall be minimum provisions of any lease agreement associated with these properties. These provisions are consistent with those found in FAA compliance documents to be executed between the Bismarck Municipal Airport (as Lessor) and with a future Ground Lease operating as Commercial Tenant (as Lessee) in future airport non-aeronautical lease agreements as follows:

- a. Lessee, for itself, 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 property described in this Agreement for a purpose for which a Department of Transportation (“DOT”) program or activity is extended or for another purpose involving the provision of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- b. Lessee, for itself, 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: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities on the property; (2) that in the construction of any improvements on, over, or under the property and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that the Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- c. Lessee assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participation in any activity conducted with or benefiting from Federal assistance. This Provision obligates the Lessee or its transferee for the period during which Federal assistance is extended to the Airport program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases, the Provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the Lessee or (b) the period during which any transferee retains ownership or possession of the Property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.

- d. Lessor reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of the Lessee, and without interference or hindrance.
- e. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Property, or in the event of any planned modification or alteration of any present or future building or structure situated on the Property.
- f. There is hereby reserved to the Lessor, its successors and assigns, for the use of and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Property. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation any aircraft used for navigation or flight through the said airspace or landing at, taking off from, or operation on the Airport.
- g. Lessee by accepting the Ground Lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object nor permit the growth of any tree on the land leased hereunder determined by the FAA to constitute a hazard to air navigation. In the event the aforesaid covenants are breached, Lessor reserves the right to enter upon the Property hereunder and to remove the offending structure or objects and cut the offending tree, all of which shall be at the expense of the Lessee.
- h. Lessee by accepting the Ground Lease expressly agrees for itself, its successors, and assigns that it will not make use of the Property in any manner which might interfere with the landing and taking off of aircraft from the Airport or otherwise constitute a hazard. In the event the aforesaid is breached, Lessor reserves the right to enter upon the Property hereby and cause the abatement of such interference at the expense of the Lessee.
- i. The Ground Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or require affecting the control, operation, regulation, and taking over of the Airport

X. Civil Rights Provisions Attachment A

General.

The Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessor.

This provision obligates the Lessee for the period during which the property is owned, used or possessed by the Lessee and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

Title VI Assurances.

1. Title VI Solicitation Notice:

The City of Bismarck, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

2. Contract clauses

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- a. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- b. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- d. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of

information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

- e. Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
- f. Incorporation of Provisions: The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
- g. Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program.
 - 1. The Lessee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:
 - a. In the event facilities are constructed, maintained, or otherwise operated on the property described in this lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be

amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

- b. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the City of Bismarck will have the right to terminate the lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the lease had never been made or issued.
- c. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the City of Bismarck will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the City of Bismarck and its assigns.

8. Clauses for Construction/Use, Access to Real Property Acquired Under the Activity, Facility or Program.

- a. The Lessee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- b. With respect to the Lessee, in the event of breach of any of the above nondiscrimination covenants, the City of Bismarck will have the right to terminate the lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said lease had never been made or issued.
- c. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, the City of Bismarck will there upon revert to and vest in and become the absolute property of the City of Bismarck and its assigns.

9. Title VI List of Pertinent Nondiscrimination Authorities.

(Source: Appendix E of Appendix 4 of FAA Order 1400.11, Nondiscrimination in Federally-Assisted Programs at the Federal Aviation Administration)

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

49 CFR part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;

The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs,

policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

XI.

Federal Fair Labor Standards Act (Federal Minimum Wage)

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Federal Agency with Enforcement Responsibilities	Requirement
U.S. Department of Labor – Wage and Hour Division	Federal Fair Labor Standards Act (29 USC 201)

XII. Occupational Safety and Health Act of 1970.

All contracts and subcontracts that result from this solicitation incorporate the following provisions by reference, with the same force and effect as if given in full text. The contractor has full responsibility to monitor compliance to the referenced statute or regulation. The contractor must address any claims or disputes that pertain to a referenced requirement directly with the Federal Agency with enforcement responsibilities.

Requirement	Federal Agency with Enforcement Responsibilities
Occupational Safety and Health Act of 1970 (20 CFR Part 1910)	U.S. Department of Labor – Occupational Safety and Health Administration

XIII. PROPERTY TAXES.

The Lessor agrees to pay all property or possessory interest taxes applicable to the Leased premises through the Lessee’s possession of such land, during the term of the Lease.

XIV. ASSIGNMENT.

Lessee shall not at any time assign this Lease or any part thereof without the written consent of the Lessor.

IN WITNESS WHEREOF, the parties have executed this Lease agreement by their duly authorized officers the day and year above written.

CITY OF BISMARCK

Date: _____

RECOMMENDED APPROVAL
TERMS AND CONDITIONS BY:

APPROVED AS TO FORM AND
LEGALITY BY:

Gregory B. Haug
Airport Director

Janelle Combs
City Attorney

ATTEST:

CITY OF BISMARCK, NORTH DAKOTA

Keith J. Hunke
City Administrator

Steve Bakken, President
Board of City Commissioners

Date: _____

ATTEST:

LESSEE:

Attest Signature

Lessee Signature

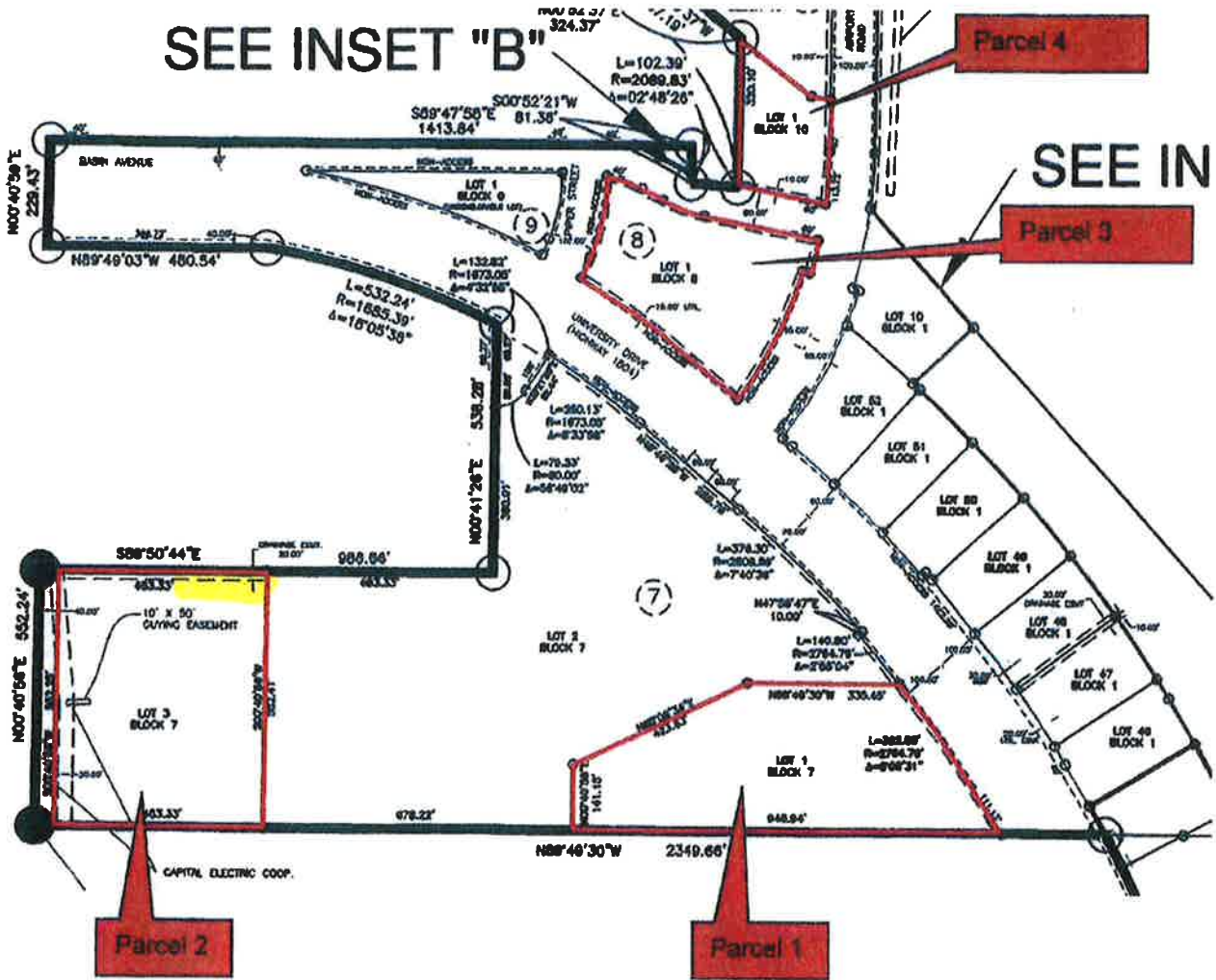
Printed Name

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PLAT MAP EXCERPT

Source: NDRIN

● Denotes subject sites



ENCL 2