



Bismarck Airport

DATE: 1/24/2022

FROM: Gregory Haug, Airport Director

ITEM:

Consider Project Payment Claim Resolution & Funds Control-Wetland Phase 5/6 .

REQUEST:

Consider Project Payment Claim Resolution & Funds Control-Wetland Phase 5/6.

Please place this item on the January 25, 2022 City Commission meeting agenda.

BACKGROUND INFORMATION:

On September 8, 2020, the Board of City Commissioners met and approved actions for Wetland Phase 5/6 project including award of construction bids for General Contractor KLE Construction. The Project completion date was to be October 15, 2021. KLE did not complete the project on time and has completed 41% of the project through December 31, 2021. The project continues with Liquidated Damages assessed at \$2,500 per each late calendar day. KLE's latest estimate for completion is mid June 2022.

On October 26, 2021, one KLE's subcontractors submitted a Prompt Payment Complaint to Bismarck Airport and a payment claim to Hudson Insurance Company (KLE' Bond Company) because of lack of payment. After review and checking Airport staff found the Claim to be valid. Airport staff suspended partial payments until the Prompt Payment Complaint was satisfied. Subsequently, we received and verified a second prompt payment complaint. Partial Payments remain suspended.

Airport Staff received a letter from KLE requesting Project Payment Claim Resolution & Funds Control for the project using Disbursement Agent, Napa River Insurance Services, Inc. ("NAPA"). Checks for project payments to KLE would be sent to NAPA and NAPA would disburse payments due. The letter represents a process endorsed by KLE's Bond Company to resolve payment issues so that the project can continue forward.

On January 12, 2022, Airport Staff, City Attorney Jannelle Combs, Finance Director Dmitriy Chernyak, and Consulting Engineer Tom Neigum representing KLJ had a conference call with Hudson representatives Chris Simmelink, Manager-Security Claims and Craven Bradham, Contract Surety Claims Specialist, to review KLE's proposal and to discuss the process. The meeting resulted in general agreement to proceed with funds control. Airport Staff has worked with the City Attorney Jannelle Combs and Hudson representatives to revise the request letter. The revised letter of Agreement is at Enclosure 1.

RECOMMENDED CITY COMMISSION ACTION:

Approve the Project Payment Claim Resolution & Funds Control process for Wetland Phase 5/6 and authorize Mayor Bakken to sign the proposal letter.

STAFF CONTACT INFORMATION:

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

Enclosure

1. Revised KLE Letter: Project Payment Claim Resolution & Funds Control - Wetland Phase 5/6



Date: December 23, 2021

City of Bismarck Airport
Attn: Tim Thorsen & Greg Haug
PO Box 991
Bismarck, ND 58502
tthorsen@bismarcknd.gov ghaug@bismarcknd.gov

RE: Project Payment Claim Resolution & Funds Control - Bismarck Airport, Removal of Wetlands to Reduce Wildlife Attractants

Dear Mr. Thorsen & Mr. Haug,

As discussed by Lynn Meyer in the weekly meeting related to the subcontractor claims & bonding company handling those claims, moving forward with the project we feel that in an effort to resolve these issues and provide for security of all parties including the City of Bismarck, KLE and Performance and Payment bonds provided by Hudson Insurance Company ("Surety"), relative to the Bismarck Airport, Removal of Wetlands to Reduce Wildlife Attractants project (the "Project") for the City of Bismarck (the "Owner"), KLE Construction LLC ("Contractor") would request to employ a Disbursement Agent for the purpose of receiving and disbursing of funds related to the contract going forward.

In this capacity as Disbursement Agent, Napa River Insurance Services, Inc. ("NAPA") is being employed directly by the Contractor and is in no way a party to the Agreement between "Owner" and "Contractor".

Contractor agrees to provide Owner with copies of the disbursement amounts, entities paid and date paid on the project until such time as all prompt payment claims submitted to Owner have been resolved.

This Agreement is between the Contractor and NAPA, moving forward, the Owner would simply forward the Contract Proceeds (Project Payments) for the Project to NAPA for disbursement.

If agreeable by owner, Contractor hereby directs contract funds paid by the Owner, to be sent to NAPA and deposited into a disbursement account.

As such, payments shall still be made payable to KLE Construction LLC however mailed to:

NAPA River Insurance Services, Inc.
19 Ensign Drive
Avon, Connecticut 06001
(212) 978-2851
Attention: Christopher Morkan / cmorkan@napariverinsurance.com

If such funds are to be disbursed electronically, either ACH or Wire transactions please contact us directly for specific ACH/Wire account information.



This direction will remain in place the duration of the project and may be modified only by written agreement (email acceptable) of Owner, Contractor and Surety. Nothing herein waives any rights available to any party under the Bond or contract, including the Owner's right to withhold payment.

Best Regards,

Jason Everett
COO
KLE Construction, LLC


Accepted and Acknowledged

Accepted and Acknowledged

_____ (Owner)

By: _____

Print Name: _____

Date: _____

_____ (Surety)

By: _____

Print Name: _____

Date: _____