



Engineering Department

DATE: January 18, 2022
FROM: Gabe Schell, City Engineer
ITEM: Sewer Utility Project 84 Settlement Agreement and Release

REQUEST:

Consider approval of Settlement Agreement and Release with Tand Construction, LLC.
Please place this item on the January 25, 2022 City Commission meeting agenda.

BACKGROUND INFORMATION:

Sewer Utility Project SU 84 consists of rehabilitating approximately 500 LF of pipe at the Wastewater Treatment Plant. The project was bid and awarded to Tand Construction, LLC (Tand) at the July 13, 2021 Bismarck City Commission Meeting. The contract for the project was signed by Tand on July 21, 2021 and executed by the City on August 12, 2021.

City Engineering staff were in contact with Tand on the morning of August 12 and discussed that the contract was executed and the next steps for the project. Tand then contacted their supplier to produce shop drawings for the materials to be incorporated into the project.

The afternoon of August 12, Tand contacted City staff with information that, previously unknown to Tand, their supplier had not included all of the materials within its quote prior to the bid. Over the next several weeks Tand worked with multiple suppliers to source the specialty materials while keeping City staff apprised of the situation.

On October 1, 2021, Tand submitted a change order request to the City in the amount of \$235,582.69. The change order was requested to cover the material cost of the specialty materials. The request was denied by the City as a bidding error was not grounds for a change order.

Staff from Engineering, Public Works, and the City Attorney met with Tand to discuss a process for completing the project. A framework was determined and is outlined in the attached Settlement Agreement and Release. The agreement states the City will rebid the project with some modifications and Tand will be responsible for any cost difference greater than their original bid amount of \$485,745.

Upon approval of the Settlement Agreement and Release, the revised project would be bid with an anticipated award in late March with a fall 2022 project completion.

RECOMMENDED CITY COMMISSION ACTION:

Approve Settlement Agreement and Release with Tand Construction, LLC.

STAFF CONTACT INFORMATION:

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

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is made and entered into this 1/14th day of January 2022, by and between the **City of Bismarck**, a municipal corporation of the State of North Dakota ("**City**") and **Tand Construction, LLC** ("**Tand**").

WHEREAS, on July 14, 2021, **City** and **Tand** executed the City of Bismarck Construction Agreement regarding Sewer Utility Project No. 84.

WHEREAS, on October 1, 2021, **Tand** requested a change order relating to additional material costs of \$235,582.69 due to an error on the part of **Tand** and/or its vendor regarding HDPE manholes.

WHEREAS, only **Tand** bid the project under the awarded HDPE Manhole alternate but they were also the low bid on the unawarded alternate to remove and replace the effluent pipe.

NOW, THEREFORE, in consideration of the foregoing, and for adequate consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The parties agree that obtaining the HDPE manholes in the current supply chain environment is unlikely to get a vendor who can reasonably complete the project, and that revising the project scope to install spray-lined concrete manholes is a viable option in the best interest of the **City**.

2. **Tand** agrees that in exchange for voiding the contract, the **City** will rebid the project with changes for the HDPE manholes to spray-lined concrete manholes and revise other items due to these changes, and **Tand** will be responsible for the difference between the current contract cost and the lowest, responsible new bid. The City will not be responsible for any difference if the new bid is lower.

3. The parties agree the original contract was for \$485,745.00. **Tand** will obtain a performance bond for the difference between \$485,745.00 and the new lowest bid. Upon the approval of that bond, the current bond held by the **City** would be released.

4. The undersigned parties hereby declare and represent that in making this release, it is understood and agreed that the undersigned rely wholly upon the undersigned's judgment, belief and knowledge of the nature, extent, effect and duration of said damages

and liabilities therefore. This release is made without reliance upon any statement or representation of the parties released, or their representation.

The parties declare and represent that no promise, inducement or agreement not herein expressed has been made to the undersigned by the parties hereby released, and that this release contains the entire agreement between the parties and that the terms of the agreement are contractual and not a mere recital.

5. Each party shall bear their own costs and attorney fees.

IN WITNESS WHEREOF, the parties hereto, with the intent to be legally bound hereby, have executed this Settlement Agreement and Release as of the date first above written.

CITY OF BISMARCK:

By: _____
Keith Hunke
City Administrator

By _____
Steve Bakken, President
Board of City Commissioners


Tand Construction, LLC
By LORI SPINA-HOHERZ
Its Managing Member