



Public Works Service Operations Department

DATE: 3/17/2022

FROM: Jeff Heintz, Public Works Service Operations Director

ITEM: Permission to enter into an Agreement for Facility Planning with Sitelogiq for the building condition assessment services project

REQUEST:

Approval to enter into an Agreement for Facility Planning with Sitelogiq to provide architectural consulting services for the building condition assessment services project.

Please place this item on the 3/22/2022 City Commission meeting agenda.

BACKGROUND INFORMATION:

An RFQ was released in December, 2021 and a review committee selected Sitelogiq to provide architectural consulting services to identify existing conditions, repairs needed, and project repair costs for City of Bismarck facilities as outlined in the attached Agreement for Facility Planning.

RECOMMENDED CITY COMMISSION ACTION:

Enter into an Agreement for Facility Planning with Sitelogiq for the building condition assessment services project.

STAFF CONTACT INFORMATION:

Jeff Heintz | Public Works Service Operation Director, 355-1700 or jheintz@bismarcknd.gov

Agreement for Facility Planning

City of Bismarck
 601 South 26th Street
 Bismarck, ND 58506

SitelogIQ, Inc.
 3523 45th Street South, Suite 100
 Fargo, ND 58104

March 10, 2022

SitelogIQ agrees to undertake a detailed Facility Plan (as defined below) of the City of Bismarck's facilities:

Facility	Address	City, State	Sq. Ft.
Animal Control	2011 North 52nd Street	Bismarck, ND	500
City Hall (City/County Building)	221 North Fifth Street	Bismarck, ND	85,000
Civic Center	315 South Fifth Street	Bismarck, ND	105,000
Civic Center Exhibit Hall	315 South Fifth Street	Bismarck, ND	105,000
CVB	1600 Burnt Board Road	Bismarck, ND	7,592
Fire Department Headquarters	1020 East Central Avenue	Bismarck, ND	30,000
Fire Station-2	832 East Bismarck Expressway	Bismarck, ND	18,060
Fire Station-3	2340 Tyler Parkway	Bismarck, ND	7,568
Fire Station-4	4103 Miram Drive	Bismarck, ND	13,093
Fire Station-5	4217 Lockport Street	Bismarck, ND	12,078
Landfill	2111 North Fifth Street	Bismarck, ND	25,000
Library	515 North Fifth Street	Bismarck, ND	85,000
Miscellaneous Water and Sewer Stations	Throughout the city limits	Bismarck, ND	To be Determined
Parking Authority—Galleria Parking Ramp	625 East Broadway Avenue	Bismarck, ND	50,000
Parking Authority—Parkage Building/Ramp	515 East Broadway Avenue	Bismarck, ND	190,000
Parking Authority—Ramp 3rd	North Third Street and East Main Street	Bismarck, ND	160,000
Police (SWAT) Building	2424 East Divide Avenue	Bismarck, ND	16,750
Police Department Headquarters	700 South Ninth Street	Bismarck, ND	65,000
Public Works Facility	601 South 26th Street	Bismarck, ND	125,000
Senior Center	315 North 20th Street	Bismarck, ND	25,000
Wastewater Treatment Facility	601 London Avenue	Bismarck, ND	125,000
Water Treatment Facility	615 North River Road	Bismarck, ND	100,000
City Total			1,350,641

The “Facility Plan” is a comprehensive set of documents intended to furnish the City of Bismarck (City) with study findings, conclusions, alternatives, and recommendations which would assist the City’s leadership in fashioning a comprehensive plan of action intended to provide a comprehensive list of building system needs and const budgets for the near term, two (2) years, through the next ten (10) years. Additionally, the assessment will assist the City in achieving an improved indoor environment, and enhance the effectiveness, efficiency, and cost effectiveness of the City’s facility operations.

This Facility Plan involves surveying and documenting current operational and physical conditions and deficiencies evident in the above-referenced buildings. The information documented in the Facility Plan will be gathered primarily through field observation and supplemented by evaluation of existing information and discussion with City personnel. The survey will review the appearance, condition, and current uses of the buildings.

This data is used to determine the feasibility and cost of infrastructure replacement/enhancement. The process includes a review of available existing floor plans and walk-through of all the buildings.

The Facility Plan explores conditions and deficiencies in nine important areas, which are outlined in the chart below.

C	Controls and Energy Management	This section documents the existing controls and energy management systems, components, and their known deficiencies.
E	Electrical Systems	This section documents the existing electrical systems and components, and their known deficiencies.
EQUIP	Capital Equipment/Assets	This section documents the existing capital equipment and assets, and their known deficiencies.
EXT	Exterior Envelope Including Roofing	This section documents the existing exterior building envelope and roofing, including information supplied by the City.
M	Mechanical Systems	This section documents the existing mechanical systems and components, and their known deficiencies.
P	Plumbing Systems	This section documents the existing plumbing systems and components, and their known deficiencies.
S	Electronic Security Systems	This section documents the existing electronic security systems and components, and their known deficiencies.
U	Utility Service Improvements	This section documents opportunities for operational cost reduction associated with enhancements to the facilities’ utility services.
V	Ventilation / Dehumidification Systems	This section documents the existing ventilation systems and components, and their known deficiencies.

The City shall enter a long-term partnership with SitelogIQ and implement the identified energy conservation measures and facility measures, provided that SitelogIQ meets the following objectives:

Energy Optimization Study Objectives

- 1) Provide an energy efficiency analysis identifying energy conservation measures and other facility improvement measures.
- 2) Provide a description of the operating and maintenance procedures that will affect and reduce the energy and operating costs of the facilities and well as identify any calculated energy and operational savings.
- 3) Provide a list of alternative utility procurement strategies that will reduce the unit cost of utilities at the facilities.
- 4) Provide a list of estimated costs to implement the identified energy conservation and facility improvement measures.
- 5) Provide financial analyses that include funding and financing options for various project scopes demonstrating how the cost for identified energy conservation and facility improvement measures will be paid for.
- 6) Work with the City to prioritize needs.
- 7) Conduct scope and financial workshops as necessary to define the Energy Efficiency Plan.

Long-Term Facility Maintenance Study Objectives

- 1) All the items in the **Energy Optimization Study**, plus:
- 2) Perform a non-destructive visual inspection of each facility to identify systems- level deficiencies and life-cycle conditions.
- 3) Review, document, and photograph physical condition deficiencies.
- 4) Inventory all major building equipment including quantity, size, asset tag number, manufacturer, model, and serial number.
- 5) Provide a facilities conditional assessment document and supporting digital photos which shall include, but shall not be limited to the following for each facility:
- 6) A narrative summary of the facility and building system shall be documented in addition to a quantitative information.
- 7) Categorization of immediate, short-term, and long-term capital repair and replacement requirements with project timelines to include:
 - a. Assessment of current conditions of City-owned/operated buildings.
 - b. Identification of major repairs which require immediate undertaking (present-five (5) years out).
 - c. Estimate of likely cost of necessary immediate repairs.
 - d. Identification of major repairs which will likely be necessary in the foreseeable future.
 - e. Estimate of likely costs of the long-term repairs.
 - f. Assessment of current mechanical systems and components thereof.
 - g. Assessment of the functioning condition of each systems and the components thereof.



- h. Estimation of the likely cost of repairing each system and/or components thereof.
- 8) Provide individual cost tables to document the deficient conditions at each property.
- 9) A ten (10) year capital plan with an executive summary with graphic presentation of results to provide a quick, user-friendly summary of the properties including observed condition and estimated costs assigned by category.
- 10) Provide financial analyses that include funding and financing options for various project scopes demonstrating how the cost for identified facility improvement measures will be paid for.
- 11) Work with the City to prioritize needs.
- 12) Conduct scope and financial workshops as necessary to define a Long-Term Facility Maintenance (LTFM) Plan.
- 13) Using the assessment information, provide a Facility Plan which takes into consideration the City's anticipated future needs for space and the organizational use.
- 14) Enter the results of planning into a cloud-based database.

Break Fee and Development Cost

Break Fee –Good Faith Understanding

When SitelogIQ delivers a Facility Plan and the City of Bismarck enters into an energy services agreement with SitelogIQ to implement the proposed facility improvement measures, the development costs for the analysis will be included in the total program costs. SitelogIQ will defer billing until the end of the study in an act of good faith.

In contrast, when SitelogIQ delivers a Facility Plan that reasonably meets the aforementioned objectives and the City elects not to enter into an agreement with SitelogIQ to implement the Facility Plan, the City will pay SitelogIQ the rate of one hundred fifty-two thousand, seven hundred dollars (\$152,700.00) for the costs they incurred performing the Energy Optimization Study Objectives and Long-Term Facility Maintenance Study Objectives.

In either of the aforementioned events, all data, reports, assessments and alike remain the work product and property of SitelogIQ.

Development Cost

If after reviewing the Facility Plan, the City enters into an agreement with SitelogIQ to implement the proposed recommendations, the actual Development Cost for the Facility Plan analysis will be included in the total program cost.

Indemnification

SitelogIQ and the City shall each defend, indemnify, and hold the other harmless from any and all claims, actions, costs, expenses, damages, and liabilities, including reasonable attorney's fees, resulting from death or bodily injury or damage to property of the other or third parties, to the extent caused by negligence or willful misconduct of their respective employees or other authorized agents in connection with their activities with the scope of the Agreement for Facility Planning. Neither party shall indemnify the other against claims, damages, expenses, or liabilities

to the extent attributable to the negligence, gross negligence, or intentional misconduct of the other party. If the parties are both at fault, then the obligation to indemnify shall be proportional to their relative fault as determined by (a) agreement of the parties, (b) a jury or court, (c) a third party neutral, or (d) any other mutual agreed upon process. The duty to indemnify and defend will continue in full force and effect, notwithstanding the expiration or early termination of the Agreement for Facility Planning, with respect to any claims based on facts or conditions which occurred prior to expiration or termination. Notwithstanding any provision to the contrary herein, neither party shall be liable to the other for any special, indirect, consequential, or punitive damages.

Limitation of Liability

SitelogIQ’s total liability to the City for damages or injury to persons or property that may be caused by or arise through performing any obligation under the Agreement for Facility Planning shall be limited only to losses proximately caused by SitelogIQ’s negligence and only to the extent of the compensation received by SitelogIQ under this Agreement for Facility Planning. Neither party will be liable to the other for any indirect or consequential damages, whether in contract or tort (including negligence).

NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT FOR FACILITY PLANNING TO THE CONTRARY, NEITHER PARTY, NOR ITS OFFICERS, EMPLOYEES, AGENTS, OR AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY, ITS OFFICERS, EMPLOYEES, AGENTS, PARTNERS, AFFILIATES OR CONTRACTORS, FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR OTHER SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF ANTICIPATED PROFITS (EXCEPT AS DERIVED FROM PAYMENT OR OTHER COMPENSATION DUE FOR PERFORMANCE HEREUNDER), LOSS OF USE OR REVENUE, LOSSES BY REASON OF COST OF CAPITAL CONNECTED WITH OR RESULTING FROM ANY PERFORMANCE OR LACK OF PERFORMANCE HEREUNDER REGARDLESS WHETHER A CLAIM IS BASED ON THE AGREEMENT FOR FACILITY PLANNING, TORT (INCLUDING NEGLIGENCE AND EXCLUDING INTENTIONAL ACTS, GROSS NEGLIGENCE, AND WANTON MISCONDUCT) OR A THEORY OF STRICT LIABILITY; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION IS NOT INTENDED TO APPLY TO, AND SHALL NOT BE CONSTRUED TO LIMIT OR EXCLUDE, THE CITY’S OBLIGATIONS UNDER THIS AGREEMENT FOR FACILITY PLANNING. NEITHER PARTY SHALL HAVE ANY REMEDY AT LAW OR IN EQUITY WHICH IS INCONSISTENT WITH ANY PROVISION OF THIS AGREEMENT FOR FACILITY PLANNING, AND NEITHER PARTY SHALL HAVE A RIGHT TO TERMINATE THIS AGREEMENT FOR FACILITY PLANNING EXCEPT AS SPECIFICALLY AND EXPLICITLY SET FORTH HEREIN.

Insurance

SitelogIQ and the City agree to the following insurance provisions:

SitelogIQ shall procure and maintain the following insurance limits:

- *Worker’s Compensation Insurance.* SitelogIQ shall procure and maintain in effect, during the term of this Agreement Worker’s compensation insurance in accordance with applicable state and federal law which adequately protects all labor employed by SitelogIQ during the term of this Agreement for Facility Planning.
- *Comprehensive General liability Insurance.* SitelogIQ shall procure and maintain in effect during the term of this Agreement for Facility Planning, Comprehensive General Liability

Insurance, or the equivalent, in an amount not less than \$1,000,000 each occurrence and \$1,000,000, aggregate for Bodily Injury Liability and \$500,000 for Property Damage Liability. Underwriters will waive all rights of recovery against SitelogIQ or the City.

- *Automobile Liability.* SitelogIQ shall carry a combined single limit of \$1,000,000, any automobile.
- *Professional Liability.* SitelogIQ shall procure and maintain in effect during the term of the of this Agreement for Facility Planning, Professional Liability Insurance in an amount not less than \$1,000,000 per claim and \$1,000,000 aggregate.
- *Certificate of Insurance.* SitelogIQ will provide a memorandum of insurance to the City, if requested, as evidence of the coverages herein. Such policies shall not be canceled without endeavoring to provide thirty (30) days' prior written notification to the City.

The City shall also procure and maintain general liability, automobile, and worker's compensation insurance. The City shall cause SitelogIQ and its consultants to be listed as additional insured on any general liability or property insurance policies carried by the City applicable to this Agreement for Facility Planning.

SitelogIQ and the City shall each deliver to the other evidence of the insurance coverages indicated above. Such evidence shall be furnished prior to SitelogIQ's commencement of the Facility Planning process and at renewals thereafter during the term of this Agreement for Facility Planning.

At any time, the City may request SitelogIQ or its consultants, at the City's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those currently required. If so requested by the City, and if commercially available, SitelogIQ shall obtain and shall require its consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by the City.

Conditions Beyond Control of Parties

Except as otherwise provided herein, if either party shall be unable to carry out any material obligation under this Agreement for Facility Planning due to events beyond its control, such as acts of God, governmental or judicial authority, insurrections, riots, labor disputes, labor or material shortages, fires, explosions, or floods, this Agreement shall remain in effect but the affected party's obligations shall be suspended until the uncontrollable event terminates.

Notice and Changes of Address

All notices to be given by either party to the other shall be in writing and must be either delivered or mailed by registered or certified mail, return receipt requested, addressed as follows:

If to SitelogIQ:

SitelogIQ, Inc.
 3523 45th Street South, Suite 100
 Fargo, ND 57103
*Attention: Gavin Benson, Public Sector
 Business Development*

If to the City:

City of Bismarck
 601 South 26th Street
 Bismarck, ND 58506
*Attention: Jeff Heintz, Director of Public Works-
 Service Operations*



or such other addresses as either party may hereinafter designate by notice to the other. Notices are deemed delivered or given and become effective upon mailing if mailed as aforesaid or upon actual receipt if otherwise delivered.

Applicable Law; Severability; Venue; Interpretation

This Agreement for Facility Planning shall be interpreted and enforced in accordance with the laws of the State of North Dakota. To the extent of any inconsistency between the language of this Agreement for Facility Planning and that of the aforesaid applicable North Dakota law, the language contained in this Agreement for Facility Planning shall control and/or prevail to the fullest extent permitted by North Dakota law. If a court of competent jurisdiction adjudicates any provision of this Agreement to be invalid or unenforceable, the remaining provisions of this Agreement for Facility Planning shall nevertheless continue in full force and effect. The court of competent jurisdiction shall be the Courts of the State of North Dakota. The parties hereby agree to waive all rights to bring a claim in Federal Court. Any clause that may be interpreted as a covenant, promise to agree, or agreement to agree, shall be interpreted as a condition precedent to performance.

Good Faith Understanding

In consideration of the development of a Facility Plan, the City agrees that it will negotiate in good faith with SitelogIQ to implement the Facility Plan.

City of Bismarck

Date

SitelogIQ, Inc.

Date