



City of Grand Forks Staff Report

APPROVED & ACCEPTED
by City Council

07/07/2025

Maureen Storstad
Maureen Storstad
City Auditor

Committee of the Whole – June 23, 2025
City Council – July 7, 2025

Agenda Item: Northern Plains Nitrogen, LLP – Update and Letter of Intent Agreement Extension

Submitted by: Todd Feland, City Administrator

Staff Recommended Action: Approve extending the Letter of Intent (LOI) Agreement with the Northern Plains Nitrogen, LLP (NPN) related to Industrial Water Supply and Discharge Permitting from July 1, 2025 to December 31, 2025, subject to the City Attorney's Office final review and approval.

Committee Recommended Action: Motion by Weigel, second by Berg to move agenda item to City Council with a recommendation to approve. Motion carried 6-1, with Osowski dissenting.

Council Action: Motion by Sande, second by Berg to approve on consent agenda. Motion carried 6-1 with Osowski dissenting.

BACKGROUND:

According to NPN COO Larry Mackie, NPN Project has continued to be worked on by the NPN Project sponsors over the last six (6) months. Specifically, NPN officials continue to work on the investment component of the project and remain cautiously optimistic regarding this important component of the project, especially considering the significant progress that has been made to “derisk” the project specifically related to environmental and engineering perspectives and the current geopolitical and economic drivers of the need for the project in the region.

Based on the discussion with Mr. Mackie, the estimated \$3 billion plus NPN Project has become a more economically viable and sustainable project due to long term access to low-cost and uninterrupted natural gas supply, region is in the middle of the highest priced nitrogen fertilizer market in the USA, regional market is underserved and reliant on imported fertilizer, growing regional corn belt, and competitive and supportive state and local communities and governments. The NPN products will be considered “Blue” or using the latest proven and efficient technology to include carbon capture and utilization.

Until a successful financial close is more imminent, City staff has paused regarding moving forward with a final draft development agreement on serving NPN related to such matters as infrastructure development, design and construction requirements, and health and safety considerations. In addition, the City of Grand Forks would plan to further involve the State of North Dakota regarding the NPN project and related funding support and partnership as the NPN

project becomes closer to reality. City staff would reengage with the third-party consultant, Black & Veatch, regarding updating the agreement related to the noted follow-up matters in advance and in case the NPN project moves forward.

NPN COO Larry Mackie will attend the Committee of the Whole meeting virtually on June 23 to provide a project overview and update and to answer questions of the City Council.

ANALYSIS AND FINDINGS OF FACT:

NPN Project Status

- Expanded Pre-Front End Engineering Design (FEED) completed.
- All major project related property purchased.
- Site plan finalized.
- City of Grand Forks infrastructure development plan and associated cost estimates completed.
- Detailed site works package ready to issue proposals.
- Initial geo-tech drilling complete.
- Detailed rail network and service plan developed with R&R Contracting and BNSF.
- BNSF New Business Review is complete and submitted.
- Wastewater reuse testing is complete.
- The Surface Transportation Study is complete and NPN presents no significant issues on existing federal and state transportation corridors.
- Grand Forks/East Grand Forks Metropolitan Planning Organization (MPO) Rail Service Study Completed.
- ND State Water Commission (SWC) industrial water supply permits approved. These noted industrial water supply permits for Red River surface water and City of Grand Forks wastewater have been submitted for permit renewal to the SWC.
- Cultural Resource Study completed.
- Phase 1 Environmental Site Assessment completed.
- Wetlands study completed.
- Visual and thermal plumes modeled.
- Updated Visual Exhaust Plume Aviation Analysis for Proposed Northern Plains Nitrogen Facility Final Report dated July 28, 2015 and associated letters from the Grand Forks Regional Airport Authority dated September 24, 2015, and University of North Dakota dated September 16, 2015.

The Grand Forks Regional Airport Authority has completed an updated airport master plan. This airport master plan includes the reconstruction of the current commercial North/South runway. To maintain commercial service availability during the noted reconstruction project, the solution is to extend an existing East/West runway so that this runway can accept commercial aircraft service. This extension of the East/West runway requires additional study and modeling related to the NPN project and the previously modeled and analyzed visual and thermal plumes.

On May 4, 2020, the Grand Forks Jobs Development Authority approved updating the Proposed Northern Plains Nitrogen Facility – Visual Exhaust Plume Aviation Analysis Final Report Dated – July 28, 2015 with Kadrmas, Lee, & Jackson, Inc. (KLJ). KLJ has had many stakeholder meetings and received significant feedback from stakeholders to include the primary contributors of the City of Grand Forks, University of North Dakota,

Grand Forks Airport Authority, and Grand Forks Region Economic Development Corporation. The FAA and NPN have been a part of the process and provided opportunities to contribute and provide feedback.

The review and study have extended for a longer period than first considered due to additional considered variables and personnel transitions at KLJ. The principal project manager Tom Schauer transitioned to the consulting firm Mead & Hunt and Tom Schauer and Mead & Hunt continue to serve as part of the project team as a subconsultant to KLJ. In addition, Mead & Hunt is currently the Grand Forks Airport Authority's consultant, as previously and at the start of this updated study, KLJ was the Grand Forks Airport Authority's consultant.

Based on significant feedback, KLJ/Mead & Hunt provided plume modeling results that were significantly more complex and have many more contributing factors integrated into the plume model than was previously completed in the 2015 study. A final report was completed in the first quarter of 2022. On April 8, 2022, a stakeholder meeting, which included the City of Grand Forks, University of North Dakota, Grand Forks Airport Authority, Grand Forks Region EDC, NPN, and consultants, was held to provide a study overview. The stakeholder group agreed on the next steps for further analysis and reasonable solutions and action plan. This planning has paused with the NPN Project not moving forward at this point.

- FAA Determination of No Hazard to Air Navigation.
- The City of Grand Forks approved annexation, platting, and rezoning of land for industrial use.
- Redundant utility power supply procured.
- Natural gas transportation rates for both WBI and Viking.
- North Dakota Department of Health Air Quality Permit approval and renewal is ongoing.
- FEED proposals received from Engineering Procurement Construction (EPC) firms.

NPN Project Future Timeline

- FEED Study Completion – 9 to 12 months.
- Construction – 36 months.
- Total timeframe of 48 months from successful financial close.

SUPPORT MATERIALS:

- Proposed LOI Extension from June 30, 2025 to December 31, 2025.
- LOI dated May 20, 2013.

June 19, 2025

Mr. Larry Mackie
NORTHERN PLAINS NITROGEN, LLP
4200 James Ray Drive
Grand Forks, ND 58203

Dear Mr. Mackie:

This letter is intended to act as an extension of the parties' previous agreement of intent originally dated May 20, 2013 between the City of Grand Forks, a North Dakota municipal corporation and Northern Plains Nitrogen, LLP. The original letter agreement of intent was to terminate on December 31, 2014 and the parties have mutually agreed to extend the terms of the May 20, 2013 agreement of intent to June 30, 2025. This letter hereby memorializes the intent of both parties to modify, in part, the original agreement so as to provide for a termination date of December 31, 2025, unless extended further by mutual agreement of the parties. All other terms of the original letter agreement of intent remain in effect.

CITY OF GRAND FORKS

By: _____
Brandon Bochenski, Mayor

Attest: _____
MAUREEN STORSTAD, City Auditor

Agreed to and accepted by: **NORTHERN PLAINS NITROGEN, LLP**

By: _____

Its: _____

May 20, 2013

NORTHERN PLAINS NITROGEN, LLP
11221 35TH ST. S.E.
VALLEY CITY, ND 58072

Dear LARRY MACIE:

This letter will demonstrate the City of Grand Forks' intent to negotiate with Northern Plains Nitrogen, LLP ("NPN") for the provision of potable and nonpotable water, wastewater discharge and industrial stormwater services for a proposed fertilizer production facility to be located within the city limits of Grand Forks, North Dakota. These negotiations will also include matters relating to local, state and federal permitting, as required.

Subject to approval by the Grand Forks City Council and further subject to the receipt of all necessary state and/or federal approvals, the City of Grand Forks represents to NPN the following intents:

1. Water supply. Subject to the provisions set forth herein, the City would seek to supply NPN with an expected annual water supply for the proposed facility believed to be 7.7 mgd, including obtaining in addition to the City's existing water supply permits, supplemental industrial water supply permits. In supplying the annual water supply to NPN, the City shall provide approximately 6.8 mgd of gray water from a point of diversion from the City's existing wastewater effluence infrastructure supplemented with approximately 0.9 mgd from the City's potable water supply from the City's existing raw water intake.

2. Wastewater discharge.

- a. The parties will cooperate to provide the North Dakota Department of Health with information as may be requested by the North Dakota Department of Health to determine the modifications necessary to the City's existing North Dakota Pollutant Discharge Elimination System Permit to facilitate wastewater discharge streams from the proposed facility, which shall include, but not be limited to, supplying information regarding expected volume and effluent concentrations for the two wastewater effluent streams referred to as (1) reverse osmosis concentrate (with a to be determined flow, volume and effluent characteristics), and (2) industrial wastewater discharges from the proposed facility which are expected to include fertilizer production process uses, domestic uses, and cooling uses with a to be determined flow, volume, effluent characteristics; all which will return to the City's wastewater system from the proposed facility.

b. The City will provide data gathering and sampling to NPN as soon as it is available. It is understood that in order for NPN to supply the effluent water quality information required to obtain the modified NDPDES permit, the City will perform data gathering and initiate sampling to gain an understanding of base line water quality data for both the gray water and potable water supplies to be provided by the City to the proposed facility.

c. The parties will cooperate to submit to the North Dakota Department of Health the following expected wastewater discharge information from the proposed facility, at such time such information becomes available:

- i. an understanding of the expected return concentration of BODs, PH, TSS, total ammonia as N, fecal coliforms, E. coli, and oil and grease;
- ii. an understanding of the expected total concentration of the metals suite for both RO concentrate and industrial wastewater as required by the Grand Forks City Code;
- iii. an understanding of the expected discharge concentrations of effluent characteristics as required by the City Code for RO concentrate and industrial wastewater;
- iv. information on additional general chemistry requirements identified by the North Dakota Department of Health as additional effluent characteristics for RO concentrates; and
- v. the parties shall continue to work together to further explore how to demonstrate the ability to achieve NDPDES permit compliance under the whole effluent toxicity parameters set by the North Dakota Department of Health.

3. Stormwater permitting. The NPN proposed facility will be subject to construction permitting and industrial permitting requirements through the North Dakota Department of Health and the City of Grand Forks. However, the parties agree that it is not prudent to pursue such permitting until NPN is commenced with the development of plans for the construction of the facility at which time the party shall cooperate to pursue such permitting. NPN further acknowledges that additional permits may be required by the City of Grand Forks, including but not limited to, building permits.

4. Negotiations for final agreement. The parties agree that, at such time as NPN determines it is appropriate, to enter into negotiations for a definitive water service agreement relating to NPN's water supply needs for the proposed facility and cooperation regarding wastewater discharge and stormwater permitting. It is expected that such negotiations will be finalized prior to the commencement of construction by NPN of the proposed facility. It is anticipated that the agreement would include terms summarized in this letter of intent and such other representations, warranties, conditions, covenants, indemnities and other terms that are customary for arrangements of this kind and are not inconsistent with this letter.

5. **Conditions.** The obligation of the parties to utilize good faith efforts in its negotiations and to enter into a final agreement will be subject to customary conditions, including:

- a. Approval by the managing partners of NPN and the Grand Forks City Council;
- b. NPN's determination that it intends to proceed with development and construction of the proposed facility;
- c. Mutual agreements by the parties on the terms of the final agreement; and
- d. The receipt of any necessary regulatory approvals and third party consents, on terms satisfactory to both parties.

6. **Exclusivity.** In consideration of the expenses that NPN has incurred and will incur in connection with the proposed arrangement described in this letter of intent, the City will extend an exclusive option to NPN for the use and purchase of approximately 6.9 mgd of gray water from a diversion from the City's existing wastewater effluence infrastructure to serve the proposed facility. This option expires on December 31, 2014. The exercise of the option shall be subject to all other terms and provisions set forth herein as well as all required local, state and federal permits or authorizations. During the term of the option the City will not initiate, solicit, negotiate or approve any proposal for industrial water supply that would reasonably be expected to interfere with the supply of gray water set forth herein for the operation of the proposed facility.

7. **Non-Binding Agreement.** This letter of intent reflects the intentions of the parties, but for the avoidance of doubt neither this letter of intent nor its acceptance shall give rise to any legally binding or enforceable obligation of any party, except with regard to paragraph 6 hereof which shall be binding.

8. **Fees, charges and rates.** The parties understand that the provision of services by the City to NPN will be in exchange for the payment of fees, charges and rates as established by the Grand Forks City Council.

9. **Termination.** This letter of intent will automatically terminate and be of no force and effect upon the earlier of (1) execution of a final agreement by NPN and the City; (2) mutual agreement of NPN and the City; (3) termination by NPN if NPN determines it does not intend to proceed with development and construction of the proposed facility; and (4) December 31, 2014, unless extended by mutual agreement of the parties.

10. **Nondisclosure.** The parties recognize and understand that the City of Grand Forks is governed by the North Dakota open records law as codified in North Dakota Century Code Chapter 44-04. Records designated as confidential by NPN will not be disclosed by the City to the extent permitted under the provisions of North Dakota Century Code Chapter 44-04. NPN acknowledges that some records and meetings will require public notice and disclosure as required by law.

11. Governing law. It is intended that any agreement by and between the parties shall be governed in accordance with the laws of the State of North Dakota without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdiction other than those of the State of North Dakota, whether of the State of North Dakota or any other jurisdiction.

12. No third party beneficiaries. No third party beneficiaries, except as specifically set forth referred to herein, nothing herein is intended or shall be construed to confer upon any person or entity other than the parties and their successors or assigns; any rights or remedies under or by reason of this letter.

13. Expenses. Except as otherwise provided herein, each party shall be responsible for their own expenses incurred in connection with the negotiations contemplated hereunder.

14. Miscellaneous. The headings of the various sections of this letter have been inserted for reference only and shall not be deemed to be a part of this letter.

Sincerely,

Approved:

By: Michael R. Brown
Name: Michael R. Brown
Title: Mayor

Howard D. Swanson
Howard D. Swanson, City Attorney

ATTEST:

Maureen Storstad
Maureen Storstad
City Auditor

Agreed to and accepted:

By: Larry Mackie
Name: LARRY MACKIE
Title: COO