MEMORANDUM OF UNDERSTANDING
Between
Bismarck State College, Bismarck, ND and Bismarck City Police Department, Bismarck, ND

The parties to this Agreement are Bismarck State College, Bismarck, North Dakota (“BSC”), and Bismarck City Police Department, Bismarck, North Dakota (“City PD”).

WHEREAS, BSC is a public higher education institution of the state of North Dakota, governed by the North Dakota State Board of Higher Education (“SBHE”), of which the campus is located within the City of Bismarck, North Dakota;

WHEREAS, BSC maintains a Safety and Security Office on its main campus, which employs licensed peace officers and other security personnel with the responsibility of providing for the safety and security needs of the campus community;

WHEREAS, BSC and City PD have determined that their collective responsibilities to provide for the safety and security of employees, students and visitors of BSC and of the citizens and visitors of the City of Bismarck are served by an agreement between them outlining responsibilities with respect to the BSC campus property;

NOW, THEREFORE, the parties agree as follows:

1. CAMPUS:

The BSC campus is defined for purposes of this Agreement as property owned, leased or used by BSC, a state governmental entity, and more specifically, it means the premises of the campus proper, i.e., main campus, located in City of Bismarck. It does not include properties owned, leased or used by BSC at other locations within the City of Bismarck.

2. DESIGNATED LIAISON OFFICERS:

Each party shall designate a primary liaison officer to serve in that capacity for communications between the parties, and shall further designate, if deemed appropriate by either party, a secondary liaison officer to act in times when the primary liaison officer is unavailable.

3. BSC SAFETY AND SECURITY OFFICE RESPONSIBILITIES:

a. BSC licensed peace officers shall comply with standards established by the North Dakota Peace Officers Standards and Training (“POST”) Board for licensed peace officers in the state of North Dakota; and with state laws, city ordinances, and the policies and procedures of BSC and SBHE.

b. BSC security personnel shall comply with state laws, city ordinances, and the policies and procedures of BSC and SBHE.
c. BSC will provide to City PD a listing of employee names and positions held within the BSC Safety and Security Office, and shall promptly provide updates to this listing as changes occur within the BSC Office.

d. BSC licensed peace officers shall initiate traffic stops on campus property, and may handle investigations into crimes involving persons and property which occur on campus. If a BSC Peace officer determines that any incident requires investigative expertise or operational resources beyond their abilities or capacity, they will notify City PD immediately and request that City PD assume responsibility. BSC staff will promptly provide City PD all available information and detailed reports, including those relating to their observations and actions prior to referral.

e. Additionally, BSC officers have exclusive responsibility to address violations of student and employee codes of conduct, and violations of SBHE and BSC policies which by their nature or by requirement necessitate the involvement of BSC officers.

f. In every case where BSC Peace officers make a criminal arrest or initiate criminal process, they will notify the City PD of their actions in a timely manner, and pursuant to the manner as agreed to by the parties. Copies of all documents and reports relating to the matter will be provided to City PD upon request.

g. BSC Peace officers shall cooperate fully with the City PD relative to the investigation of crimes on BSC properties.

h. BSC Peace officers will not initiate or conduct any traffic stops or criminal investigations at locations off campus, excepting at direction of City PD and concerning a crime in-progress and begun or occurring in part on campus.

4. BISMARCK CITY POLICE DEPARTMENT RESPONSIBILITIES:

a. City PD shall have primary responsibility for handling police related activities occurring within the campus as follows:

   i. Crimes of violence resulting in serious bodily injury or death, including actual and attempted homicide, sex offenses (subject to discussion in section 6 below), robbery, burglary, weapons violations, assaults involving weapons, suicides, suspicious or unattended deaths and industrial accidents. BSC officers shall immediately refer any such crimes to the City PD for investigation.

   ii. Missing person cases. BSC Peace officers shall initiate the report of these cases to and request assistance from City PD for investigation.

b. City PD may monitor traffic and initiate traffic stops on city streets located within the campus.
c. Nothing herein is intended to restrict City PD from initiating and conducting investigations into suspected, reported or actual criminal activity occurring on campus.

d. Prior to coming on the BSC campus or other BSC properties to investigate suspected, reported or actual criminal activity, City PD shall make a reasonable effort to notify the BSC Safety and Security office of its planned activity. The City PD shall comply with all measures requested by the BSC officials to avoid disruption of the educational and other campus activities and of students and which the City PD determines, in its sole discretion, are reasonable; provided however, that in the event of an emergency involving threat to life or property or if the need for immediate action makes it impossible or impracticable to first notify BSC Safety and Security, the City PD may act in its discretion and make the required notification as soon thereafter as possible.

5. INFORMATION SHARING:

a. The parties agree that information, including public safety information, criminal intelligence and criminal history information, will be shared regularly and proactively between the City PD and BSC Peace officers, in a manner consistent with all applicable laws, to assist with providing and securing a safe campus and community. Further, that certain information exchanged between the parties will be maintained as confidential unless its release is authorized by the party disclosing the information, is required by law or court order, or is necessary under circumstances involving a health or safety emergency.

b. The information and records shared under this Agreement may, when appropriate, include any information or records permitted to be released under any exception to the privacy protections of the Family Educational Rights and Privacy Act (“FERPA”). It is noted that FERPA applies to “education records,” which include records relative to students and created by BSC and information derived from tangible records; it does not protect the confidentiality of information in general and does not apply to disclosure of information derived from a source other than an education record (even if education records exist which contain that information). As a general rule, information that is obtained through personal knowledge or observation and not from an education record is not covered by FERPA. Thus, verbal reports involving criminal activity may be reported to the City PD as necessary or appropriate for the City PD to conduct its investigation.

c. When deemed appropriate, BSC Peace officers and City PD will exchange police investigatory information and copies of police incident reports reporting any alleged offense of violence or sex offense including non-public information.

6. TREATMENT OF REPORTS OF SEX OFFENSES:
a. For purposes of this Agreement, the definition of “sex offenses” includes those as set out in Title IX. This definition includes forcible and nonforcible sex offenses (e.g., rape, forcible sodomy, sexual assault with an object, forcible fondling, statutory rape, sexual contact with person incapable of consenting to the activity).

b. BSC will address reports of sexual offenses in a manner consistent with federal and state laws, which must include consideration of the wishes of the complainant. A complainant involved in a sexual offense shall be encouraged to make a report of the incident to the City PD. However, should the complainant wish not to report the incident to the City PD, BSC will execute a form in which the complainant indicates her/his unwillingness to participate with a criminal investigation, and barring extraordinary circumstances which would necessitate disclosure of the complainant’s identity, her/his identity shall be kept confidential. BSC officers must report the crime pursuant to federal laws, and will therefore provide the City PD with the required specifics of the crime, but will not reveal the identity of the complainant, except if permission to do so is provided by the complainant. It is understood that this will inhibit or prohibit the ability of the City PD to investigate the report, as there will be no or limited opportunity to interview or to timely interview the complainant or to gather other physical evidence.

7. MISCELLANEOUS PROVISIONS:

a. Annual review and Amendments. This Agreement will be reviewed no less than annually by the parties. Changes may be made at any time upon mutual agreement by the authorized officials of each party.

b. Term and Termination. The term of this Agreement is for one year, beginning on date last executed, and shall automatically renew for successive one year terms unless terminated by either party. Either party may terminate this Agreement upon _180__ days’ notice to the other.

c. Independent Relationship. Neither party has the power or authority to create any obligation on behalf of the other, express or implied. Neither party is responsible for the manner in which each party conducts its operation. The officers, agents, employees and representatives of each party shall not be construed as employees, agents or representatives of the other for any purpose.

d. Separation of College Disciplinary Proceedings. It is understood that BSC officials retain the sole prerogative to invoke disciplinary proceedings against students and employees for violations of BSC rules and policies, and to impose sanctions as a result of the outcome of those proceedings, separately from any law enforcement involvement or investigation or criminal charges or prosecution that may be warranted.

e. Duplicate Originals. This Agreement is executed in two counterparts each one of which shall be deemed an original for each party.