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Subject: Notification of Service for Case No. 18-2015-CV-00240 (Public Service Commission, et al. vs. Grand Forks Bean Company, Inc.)

This is a service filing for Case No. 18-2015-CV-00240, Public Service Commission, et al. vs. Grand Forks Bean Company, Inc..

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Notification of Service – Exhibit B to Affidavit – Newspaper Article

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ND Historical Society hires outside attorneys to fight lawsuit over Heritage Center

By Mike Nowatzki / Forum News Service on Apr 8, 2016 at 10:07 p.m.

BISMARCK – The State Historical Board is hiring outside attorneys to fight a \$1.5 million lawsuit filed by a Wahpeton contractor who claims the state improperly withheld payments for work done on the \$51.7 million expansion of the North Dakota Heritage Center.

Board members voted unanimously Friday to retain Ron McLean and Peter Zuger of Serkland Law Firm in Fargo to represent the State Historical Society in the breach-of-contract lawsuit filed by Comstock Construction Inc. last month in Burleigh County District Court.

McLean already is representing the North Dakota Veterans Home in a similar ongoing lawsuit filed by Comstock in May 2013, and Serkland has offered the same terms to the historical society, said Assistant Attorney General Edward Erickson, the board's legal counsel.

The agency will pay McLean \$250 an hour, Zuger \$200 an hour and other legal staff \$130 an hour. By comparison, the attorney general's office currently bills state agencies \$129 an hour.

Board member Diane Larson, a state legislator from Bismarck, questioned why the attorney general's office isn't representing the agency. Erickson said the office lacks an in-house expert on construction litigation, and that retaining outside counsel for such cases is "unusual but not unprecedented."

Larson also noted that state Facility Management Director John Boyle oversaw the project and made recommendations about when to pay Comstock, and she asked if that agency should also be on the hook.

"Legal expenses can add up so fast, and with a decreasing state budget, I'm a little

concerned that we're going to get into a bind here," she said.

For now, the historical society, as the project's owner and lone defendant in the lawsuit, needs to answer Comstock's complaint

"Right now, the onus is on us," he said.

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Comstock's attorney, Aaron Dean of Mitchell, says the historical society did a wonderful job" on the expansion project and that it should be treated the way they've been treated.

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Comstock signed a \$22.2 million contract with a contractor for the 97,000-square-foot expansion of the original museum that opened in 1981. The expansion was completed in late April 2014, about 15 months behind the original schedule.

The historical society is withholding \$387,204 from Comstock for what it says is unfinished work, including repairs to concrete that's already cracking. Dean said Comstock doesn't have a list of what work remains, but Erickson said facility management has provided lists to Comstock and has thoroughly documented the project.

"If they complete the work, they're entitled to that money," he said, later adding, "I believe we have a very good defense to these claims."

In the complaint, Comstock lays much of the blame for delays, design errors, cost increases and problems with materials on the project's design consultant and the historical society. It claims a faulty design and plans for the building's exterior limestone panels cost the company \$1,485,972 – the same amount being sought in damages.

Erickson said the state could try to recoup its attorneys' fees if the court finds Comstock's claims to be frivolous.

The historical society doesn't know how it will pay the attorney fees.

State lawmakers appropriated \$39.7 million for the project, but that's already been spent. Of the \$12 million in private donations pledged, the historical society's foundation has

collected \$9 million, and \$8 million of that has been spent, agency Director Claudia Berg said.

The Veterans Home has racked up more than \$24,100 in legal fees from Serkland since Comstock sued it for breach of contract almost three years ago, chief financial officer Kristin Lunneborg said. That figure doesn't include more than \$7,100 spent on mailing and filing fees, paper copies and other costs, or Serkland's legal fees from a two-day mediation session last month that failed to resolve the dispute, she said.

The roughly \$30 million, 150-bed facility opened in May 2011, replacing the old Veterans Home.

Comstock claims it suffered delays and damages of more than \$50,000 caused either by flawed soil compaction by utility contractors or by subsurface conditions that differed substantially from what was expected on the project, resulting in extra work without equitable pay.

The state has denied the claims and filed a counterclaim alleging Comstock did not properly prepare the site and didn't complete construction on time.

A jury trial is set for August 2017.

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