

Summary of Proposed Action SBHE Meeting – February 22, 2018

1. **Issue:** Pending legal costs for litigation involving Roer's Construction will require NDSU to exceed appropriation authority for the A. Glenn Hill Building (STEM building) project. NDSU requests approval to deficit spend with the intent to request a state general fund deficiency appropriation from a future Legislative Assembly to cover all costs.
2. **Proposed motion:** Ratify Chancellors interim authorization for NDSU to: (1) retain the law firm of Stinson Leonard Street LLP to defend the lawsuit initiated by Roers Construction, Inc. ("Roers") [relating to the A. Glenn Hill Building](#) and initiate all related claims that are legally advisable; and (2) establish a deficiency fund to pay the costs of the litigation in the expectation that NDSU will seek reimbursement of such costs through a deficiency appropriation in a future legislative session.
3. **Background:** Roers Construction, Inc. is a general contractor hired by NDSU for construction of A. Glenn Hill Building (STEM Building). Roers had communicated to NDSU the intent to seek compensation for additional costs incurred on the project, and requested mediation of the claim. NDSU sought and received authorization from the SBHE to pursue mediation to the extent of the remaining appropriation authority for construction. Roers has since filed a claim. This action requires NDSU to respond to the claim and enter into litigation in lieu of pursuing mediation.
4. **Financial implications:** The costs in excess of appropriation authority are not yet known. Roers Construction is seeking in excess of \$1.0 million in the claim. Litigation cost are dependent upon many factors which are not yet known. NDSU will seek a deficiency appropriation for all costs once the legal action is concluded. Costs incurred to date will be requested from the 2019 Legislative Assembly, if legal action remains underway.
5. **Academic implications:** None
6. **Legal/policy issues:** Litigation will involve reviewing the contractual liabilities of all parties.
7. **Review Process:** Reviewed by Chris Wilson and Rick Tonder
8. **Enclosures:** (agenda item and related material)
9. **Contact person:** Chris Wilson, COS, NDSU
10. **Chancellor's Recommendation:** Chancellor Hagerott recommends approval.