

FARGO CITY COMMISSION AGENDA

Monday, April 22, 2019 - 5:00 p.m.

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at www.FargoND.gov/streaming. They are rebroadcast Mondays at 5:00 p.m., Thursdays at 7:00 p.m. and Saturdays at 8:00 a.m. They are also included in the video archive at www.FargoND.gov/citycommission.

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, April 8, 2019).

CONSENT AGENDA – APPROVE THE FOLLOWING:

1. Receive and file an Ordinance Amending Section 4-0106 of Article 4-01 of Chapter 4 of the Fargo Municipal Code Relating to the General Provisions Governing City Officials and Employees; Amending Section 11-0814 of Article 11-08 of Chapter 11 of the Fargo Municipal Code Relating to Environmental Nuisances; and Amending Section 1-0305 of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Ordinance Violations.
2. 2nd reading and final adoption of the following Ordinances; 1st reading on 4/8/19:
 - a. Rezoning Certain Parcels of Land Lying in Case Peake and Hall Addition.
 - b. Rezoning Certain Parcels of Land Lying in Eagle Valley Third Addition.
 - c. Repealing and Re-Enacting Articles 17-02, 17-04 and 17-05 and Enacting Articles 17-06 through 17-16 of Chapter 17 of the Fargo Municipal Code Relating to Sewers and Sewerage.
3. Applications for property tax exemptions for improvements made to buildings:
 - a. Amy Jo and Eric Bye, 226 28th Avenue North (3 year).
 - b. Amy Jo and Eric Bye, 226 28th Avenue North (5 year).
 - c. Keith J. and Deborah A. Battles, 160 Eagle Street North (5 year).
 - d. Michael J. and Angela Mathers, 401 18th Street South (5 year).
 - e. Banner LLC, 222 Broadway North (5 year).
 - f. Marie E. and Nicholas G. Anderson, 305 15th Avenue South (5 year).
4. Site Authorizations for Games of Chance:
 - a. Northern Prairie Performing Arts at the Pour House, O'Clevy's at the Ramada, Space Aliens and Windbreak Lounge.
 - b. Red River Human Services Foundation at Fargo Elks Lodge #260 and The Northern.
 - c. Team Makers Club, Inc. at the FARGODOME, Frank's Lounge, Holiday Inn, Lucky's 13 Pub and Sanford Health Athletic Complex, Scheel's Center.
 - d. Jon Greenley Amvets Post #7 at the Amvets.
5. Applications for Games of Chance:
 - a. YWCA Cass Clay for a raffle on 5/6/19.
 - b. HERO (Healthcare Equipment Recycling Organization) for a raffle on 5/10/19; Public Spirited Resolution.

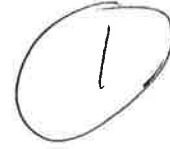
- c. Chelsey Smedsrud Haukos Benefit for a raffle on 5/19/19; Public Spirited Resolution.
 - d. Fargo Lions for a sports pool from 9/9/19 to 12/23/19.
 - e. EL Zagal Provost for a sports pool from 9/8/19 to 12/29/19.
6. General Fund – Budget to Actual through March 2019 (unaudited).
 7. Purchase of Service Agreement with Northern Cass Public School District for nursing services for the 2019-2020 school year.
 8. Agreement with FTJ Fund Choice as a 457 Deferred Compensation Provider.
 9. Adopt Resolutions Approving the following Plats:
 - a. Gehrig Addition.
 - b. Prairie Farms Second Addition.
 10. Extension of the Services Agreements – Lawn Maintenance Services with Glacier Snow Management Company and Valley Green & Associates for the 2019 mowing season.
 11. Bid awards for Public Works East Building Renovation (AFB19068).
 12. Mass Transit Agreement with the City of West Fargo for 2019.
 13. Agreement with KLJ, Inc. for the work on the Ground Transportation Center (RFQ18325).
 14. ND Department of Transportation Section 5339 Transit Grant Agreement to purchase three 35-foot replacement buses (CFDA #20.526).
 15. Contract with Routematch Software, Inc. for amble software.
 16. Purchase Agreement with LHS Investments, LLC for City property located at 2 6th Avenue North.
 17. Memorandum of Offer to Landowner for an Easement (Temporary Construction Easement) associated with Project No. FM-14-71.
 18. Bid award for Project No. TR-19-A1.
 19. Change Order No. 1 and Time Extension for Project No. SN-19-A1.
 20. Change Order No. 6 for Project No. FM-15-K1.
 21. Consulting services contract awards for Project Nos. FM-19-A0, FM-19-B0, FM-19-C0, FM-19-E0 and FM-19-F0.
 22. Contract and bond for Project No. TM-19-B1.
 23. Bills.
 24. Infrastructure requests to create Improvement District Nos. BN-19-J and BN-19-C.
 25. Bid award for Improvement District No. PR-19-G1.
 26. Declaration of Easement (Storm Sewer) associated with Improvement District No. UR-19-A1.

REGULAR AGENDA:

28. 2018 Fargo Police Department Annual Report.
29. Public Hearings - 5:15 pm:
 - a. Section 5307 Federal Transportation Administration Grant Preliminary Program of Projects for 2019.
 - b. Renaissance Zone project for BCWB, LLC for a commercial lease project at 550 2nd Avenue North.
 - c. Application filed by Pho D'Licious, Inc. d/b/a Pho D'Licious for a Class "H" Alcoholic Beverage License at 623 NP Avenue North; continued from the 3/25/19 Regular Meeting.
 - d. Application filed by BCWB ND, LLC d/b/a Black Coffee and Waffle Bar for a Class "I" Alcoholic Beverage License at 550 2nd Avenue North.
 - e. Transfer of a Class "FA" Alcoholic Beverage License from Barbacoa ND LLC d/b/a Barbacoa to Babacoa ND LLC d/b/a Chef's Table Private Dining and Events to be located at 670 4th Avenue North.
 - f. Transfer of a Class "FA-Golf" Alcoholic Beverage License from E.R.L., Inc. d/b/a Seasons at Rose Creek to Big Erv's Bar and Grill, LLC d/b/a Big Erv's at Rose Creek to be located at 1500 Rose Creek Parkway South.
30. Planning Department Updates:
 - a. American Planning Association Annual Meeting.
 - b. Land Development Code and Core Neighborhood RFP's.
 - c. Downtown Neighborhood Association remarks.
31. Appointment to the Growth Initiative Fund Board of Directors.
32. Recommendation to authorize staff to submit a request from Roers Development, Inc. for tax increment financing for the redevelopment of property located northeast of University Drive and 11th Avenue North to the City's financial advisors for review.
33. Cost share proposal for burying overhead power and telecommunication lines in Roberts Alley.

People with disabilities who plan to attend the meeting and need special accommodations should contact the Commission Office at 701.241.1310. Please contact us at least 48 hours before the meeting to give our staff adequate time to make arrangements.

Minutes are available on the City of Fargo website at www.FargoND.gov/citycommission.



Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

April 18, 2019

Board of City Commissioners
City Hall
225 Fourth Street North
Fargo, ND 58102

RE: Ordinance Amendments – Typographical Errors and Minor Updating

Dear Commissioners,

Enclosed for receipt and filing is an ordinance amending certain sections of the Fargo Municipal Code that either contain typographical errors or require minor updating. At its April 8, 2019 meeting, the Board of City Commissioners directed the City Attorney's Office to draft amendments to certain City ordinances that either contain typographical errors or require minor updating, as detailed below.

Section 1-0305(A)(1) contains a typographical error.

Section 4-0106 provides that the oath of office is prescribed in Section 211 of the Constitution of North Dakota. However, Section 211 was amended in 2012 and is now currently Section 4 of Article XI of the Constitution of North Dakota.

Section 11-0814 provides that a violation is punishable as a noncriminal offense as described in Section 1-0305(C)(6). However, a violation of Section 11-0814 is not found in Section 1-0305(C)(6), as Section 1-0305 has had numerous updates.

Suggested Motion: I move to receive and file an ordinance amending Section 4-0106 of Article 4-01 of Chapter 4 relating to the general provisions governing city officials and employees; Section 11-0814 of Article 11-08 of Chapter 11 relating to environmental nuisances; and Section 1-0305(A)(1) of Article 1-03 of Chapter 1 relating to ordinance violations to the Fargo Municipal Code, as presented.

Please feel free to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Alissa R. Farol".

Alissa R. Farol
Assistant City Attorney



OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 4-0106
OF ARTICLE 4-01 OF CHAPTER 4 OF THE FARGO MUNICIPAL CODE
RELATING TO THE GENERAL PROVISIONS GOVERNING CITY OFFICIALS AND
EMPLOYEES; AMENDING SECTION 11-0814 OF ARTICLE 11-08 OF CHAPTER 11 OF THE
FARGO MUNICIPAL CODE RELATING TO ENVIRONMENTAL NUISANCES; AND
AMENDING SECTION 1-0305 OF ARTICLE 1-03 OF CHAPTER 1 OF THE FARGO
MUNICIPAL CODE RELATING TO ORDINANCE VIOLATIONS

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in accordance with Chapter 40-05.1 of the North Dakota Century Code; and,

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City shall have the right to implement home rule powers by ordinance; and,

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purposes; and,

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. Amendment.

Section 4-0106 of Article 4-01 of Chapter 4 of the Fargo Municipal Code is hereby amended to read as follows:

4-0106. Oath of office of elective or appointive officers--Filing.

All officers of the city, whether elected or appointed, before entering upon the duties of their respective offices shall take and subscribe the oath of office prescribed in section 211 4 of article XI of the constitution of the state of North Dakota. Such oath shall be filed in the office of the city auditor; provided, that the oath of the city auditor and the city treasurer shall be filed in the office of the county auditor.

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Section 2. Amendment.

1 Section 11-0814 of Article 11-08 of Chapter 11 of the Fargo Municipal Code is hereby
2 amended to read as follows:

3 11-0814. Littering on private property prohibited.--No person may discard or abandon
4 any litter, garbage, furniture, or other debris upon public or private property not owned
5 by that person, unless the property is designated for the disposal of such items and that
6 person is authorized to use the property for that purpose. For purposes of this section,
litter shall include any rubbish, junk, refuse, or waste of any kind. ~~A violation of this
section shall be punishable as a noncriminal offense as described in section 1-0305(C)(6).~~

7 Section 3. Amendment.

8 Section 1-0305.A of Article 1-03 of Chapter 1 of the Fargo Municipal Code is hereby
9 amended to read as follows:

10 1-0305. Classification of ordinance violations.--

11 A. Violations of the following ordinances are Class B misdemeanors, subject to punishment
12 as provided in this article:

- 13 1. Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic
14 offense), section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3)
15 (lending registration plates), section 8-0308 (reproducing operator's or driver's
16 license or permit), section 8-0309 (driving under suspension), section 8-0310
17 (driving under the influence), section 8-0314 (reckless driving), section 8-0320
18 (driving without liability insurance - \$150.00 minimum fine), section 8-0803
19 (accidents involving damage to vehicle), section 8-0804 (duty to give information
20 and render aid), section 8-0805 (duty upon striking fixture or other property),
21 section 8-0809 (false reports), section 10-0101 (minor using alcohol), 10-0104
22 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly
23 conduct), section 10-0304 (carrying weapons), section 10-0317 (resisting police
officer), section 10-0319 (incendiary devices), section 10-0320 (registration in
schools), section 10-0321 (criminal mischief), section 10-0322 (harassment),
section 10-0323 (simple assault), section 10-0324 (aiding and abetting), section
10-0601 (shoplifting), section 10-0602 (theft), section 10-0702 (order to disperse),
section 10-0703 (tenant/owner cooperation required), sections 10-1202
(marijuana) and 10-1204 (marijuana paraphernalia), section 12-0117(C) and 12-
0117(G) (potentially dangerous and dangerous dogs), section 13-0511 (removal of
wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse

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of compost sites), article 13-13 (drug lab cleanup), chapter 17 (sewers and sewerage), article 18-09 (excavation code), ~~4~~—7 section 25-1509(A) (selling alcoholic beverage to minor), section 25-1513(C) (minor misrepresenting age), and section 25-1513(D) (delivery of alcoholic beverage to minor), article 25-33 (tattoos, body art and body piercing), article 25-36 (tanning facilities).

Section 4. Effective Date.

This ordinance shall be in full force and effect from and after its passage and approval.

Timothy J. Mahoney, M.D., Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2a

1 AN ORDINANCE REZONING CERTAIN PARCELS
2 OF LAND LYING IN CASE, PEAKE AND HALL ADDITION
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

4 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the
5 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain
6 parcels of land lying in Case, Peake and Hall Addition to the City of Fargo, Cass County, North
7 Dakota; and,

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
9 request on March 5, 2019; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on April 8,
11 2019,

12 NOW, THEREFORE,

13 Be It Ordained by the Board of City Commissioners of the City of Fargo:

14 Section 1. The following described property:

15 Lot Nineteen (19), Block Five (5) of Case, Peake and Hall Addition to the City of
16 Fargo, Cass County, North Dakota;

17 is hereby rezoned from "SR-3", Single-Dwelling Residential, District to "MR-2", Multi-Dwelling
18 Residential, District;

19 Section 3. The City Auditor is hereby directed to amend the zoning map now on file in his
20 office so as to conform with and carry out the provisions of this ordinance.
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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 4. This ordinance shall be in full force and effect from and after its passage and approval.

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

2 b

AN ORDINANCE REZONING CERTAIN PARCELS
OF LAND LYING IN EAGLE VALLEY THIRD ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Eagle Valley Third Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on February 5, 2019; and,

WHEREAS, the rezoning changes were approved by the City Commission on April 8, 2019,

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the City of Fargo:

Section 1. The following described property:

Lots One (1) through Eight (8), Block One (1); Lots Ten (10) through Fourteen (14), Block One (1); Lots One (1) through Fifteen (15), Block Two (2) of Eagle Valley Third Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "MR-2", Multi-Dwelling Residential, District to "SR-4", Single-Dwelling Residential, District;

Section 2. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 3. This ordinance shall be in full force and effect from and after its passage and approval.

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Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

20

**AN ORDINANCE REPEALING AND RE-ENACTING
ARTICLES 17-02, 17-04 AND 17-05 AND
ENACTING ARTICLES 17-06 THROUGH 17-16
OF CHAPTER 17 OF THE FARGO MUNICIPAL CODE
RELATING TO SEWERS AND SEWERAGE**

WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in accordance with Chapter 40-05 .1 of the North Dakota Century Code; and

WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the city shall have the right to implement home rule powers by ordinance; and

WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict therewith and shall be liberally construed for such purpose; and

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance;

NOW, THEREFORE,

Be It Ordained by the Board of City Commissioners of the city of Fargo:

Section 1. Repeal.

Articles 17-02, 17-04 and 17-05 of Chapter 17 of the Fargo Municipal Code relating to Sewers and Sewerage, as the same were amended from time to time, are hereby repealed in their entirety.

Section 2. Re-enactment.

Article 17-02 of Chapter 17 of the Fargo Municipal Code is hereby re-enacted to read as follows:

ARTICLE 17-02

CONTROL AND REGULATION OF SEWERAGE SYSTEM

17-0201 Purpose and Policy.-- This ordinance sets forth uniform requirements for users of the Publicly Owned Treatment Works (POTW) for the city of Fargo, ND and enables the city of Fargo to comply with all applicable State and Federal laws, including the Clean Water Act (33 USC §1251 *et seq.*) and the General Pretreatment Regulations (40 C.F.R. Part 403). The objectives of this ordinance are:

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- 1 A. To prevent the introduction of pollutants into the POTW that will interfere with the operation
2 of the POTW;
- 3 B. To prevent the introduction of pollutants into the POTW which will pass through the POTW,
4 inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- 5 C. To ensure that the quality of the wastewater treatment plant sludge is maintained at a level
6 which allows its use and disposal in compliance with applicable statutes and regulations;
- 7 D. To protect POTW personnel who may be affected by wastewater and sludge in the course of
8 their employment and to protect the general public; and
- 9 E. To improve the opportunity to recycle and reclaim wastewater and sludge from the POTW.

This article shall apply to all users of the POTW. This article authorizes the issuance of wastewater discharge permits; authorizes monitoring, compliance, and enforcement activities; establishes administrative review procedures; requires user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

11 17-0202 Administration.-- Except as otherwise provided herein, the Director shall administer, implement,
12 and enforce the provisions of this ordinance. Any powers granted to or duties imposed upon the Director
13 may be delegated by the Director to other city of Fargo personnel.

14 17-0203 Definitions.-- The following words, terms and phrases are hereby defined and shall be
15 interpreted as such throughout this chapter. Terms not herein defined shall have the meaning customarily
16 assigned to them:

- 17 1. Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water
18 Act, as amended. 33 U.S.C. 1251 *et seq.*
- 19 2. Approval Authority. State of North Dakota Department of Health
- 20 3. Authorized Representative of the User.
 - 21 a. If the user is a corporation or limited liability company (LLC):
 - 22 i. The president, general manager of an LLC, secretary, treasurer, or a vice-
23 president of the corporation in charge of a principal business function, or any
other person who performs similar policy or decision-making functions for
the corporation or LLC; or
 - ii. The manager of one or more manufacturing, production, or operation
facilities, provided, the manager is authorized to make management decisions
which govern the operation of the regulated facility including having the
explicit or implicit duty of making major capital investment

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1 recommendations and initiating and directing other comprehensive measures
2 to assure long-term environmental compliance with environmental laws and
3 regulations; can ensure that the necessary systems are established or actions
4 taken to gather complete and accurate information for control mechanism
5 requirements; and where authority to sign documents has been assigned or
6 delegated to the manger in accordance with corporate procedures.

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- 8 b. If the user is (a) a partnership including a limited partnership, limited liability
9 partnership or limited liability limited partnership or (b) a sole proprietorship: a
10 general partner or proprietor, respectively;
- 11 c. If the user is a federal, state, or local governmental facility: a director or highest
12 official appointed or designated to oversee the operation and performance of the
13 activities of the government facility, or his/her designee.
- 14 d. The individuals described in paragraphs a through c above may designate another
15 authorized representative if the authorization is in writing, the authorization specifies
16 the individual or position responsible for the overall operation of the facility from
17 which the discharge originates or having overall responsibility for environmental
18 matters for the company, and the written authorization is submitted to the city of
19 Fargo.
- 20 4. Best Management Practices (BMPs). Shall mean the schedules of activities, prohibitions of
21 practices, maintenance procedures, and other management practices to implement the
22 prohibitions listed in §403.5(a)(1) and (b) of the Act and in section 17-0403. BMP also
23 include treatment requirements, operating procedures, and practices to control plant site
runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
5. Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical
oxidation of organic matter under standard laboratory procedures for five (5) days at 20
degrees Celsius, usually expressed as a concentration [milligrams per liter (mg/l)].
6. Building drain. That part of the lowest horizontal piping of a drainage system which receives
the discharge from soil, waste, and other drainage pipes inside the walls of the building and
conveys it to the building sewer.
7. Building sewer (also house connection or service sewer). The extension from the building
drain to the public sewer or other place of disposal.
8. Categorical Pretreatment Standard or Categorical Standard. Any regulation containing
pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307(b)
and (c) of the Act (33 U.S.C. §1317) which applies to a specific category of users and which
appears in 40 C.F.R. Chapter 1, Subchapter N, Parts 405 – 471, as the same may be amended
from time to time.
9. Categorical User. An industrial user regulated by one of the EPA's Categorical Pretreatment
Standards.
10. City. The city of Fargo, a municipal corporation of the state of North Dakota.

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- 1 11. Color. The optical density at the visual wave length of maximum absorption, relative to
2 distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical
3 density.
- 4 12. Combined Sewer. A sewer intended to receive both wastewater and storm or surface water.
- 5 13. Composite Sample. The sample resulting from the combination of individual wastewater
6 samples taken at selected intervals based on an increment of either flow or time.
- 7 14. Control Authority. The city of Fargo
- 8 15. Cooling Water/Non-Contact Cooling Water. Water used for cooling which does not come into
9 direct contact with any raw material, intermediate product, waste product, or finished product.
10 Cooling water may be generated from any use, such as air conditioning, heat exchangers,
11 cooling or refrigeration to which the only pollutant added is heat.
- 12 16. Director. The director of wastewater utilities of the city of Fargo, or the authorized deputy,
13 agent or representative of said director.
- 14 17. Domestic User (Residential User). A “domestic user” is a user that is not regulated under
15 federal categorical pretreatment standards but that applies to the city of Fargo for a new
16 building permit or occupies an existing building and plans to commence discharge of
17 wastewater to the city of Fargo collection system after the effective date of this ordinance. A
18 “new source”, as defined above, is regulated under federal categorical pretreatment standards
19 and, therefore, a new source is not a domestic user as described in this definition.
- 20 18. Easement. An acquired legal right for the specific use of real property owned by others.
- 21 19. Environmental Protection Agency (EPA). The U.S. Environmental Protection Agency or,
22 where appropriate, the Director of Region 8 Office of Water, or duly authorized official of said
23 agency.
20. Floating Oil. Oil, fat, or grease in a physical state such that it will separate by gravity from
wastewater by treatment in an approved pretreatment facility. A wastewater shall be
considered free of floatable oil if it is properly pre-treated and the wastewater does not
interfere with the wastewater facilities.
21. Grab Sample. A sample which is taken from a waste stream on a one-time basis without
regard to the flow in the waste stream and without consideration of time.
22. Indirect Discharge or Discharge. The introduction of pollutants into the POTW from any non-
domestic source regulated under Section 307(b), (c), or (d) of the Act. The discharge into the
POTW is normally by means of pipes, conduits, pumping stations, force mains, constructed
drainage ditches, surface water intercepting ditches, and all constructed devices and appliances
appurtenant thereto.
23. Industrial cost recovery period. A period of 30 years starting at the time of receipt of federal
grant money used for the purpose of constructing wastewater facilities during which the grant
allocable to the treatment of waste from industrial users is recovered from the industrial users
of such facilities.

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ORDINANCE NO. _____

- 1 24. Industrial User. Shall mean any nondomestic source regulated under section 307(b),(c) or (d)
2 of the Clean Water Act that introduces pollutants into the city’s wastewater treatment works.
- 3 25. Interference. A discharge which alone or in conjunction with a discharge or discharges from
4 other sources, either: (1) inhibits or disrupts the POTW, its treatment processes or operations;
5 (2) inhibits or disrupts its sludge processes, use or disposal; or (3) is a cause of a violation of
6 the city of Fargo’s NPDES permit or of the prevention of sewage sludge use or disposal in
7 compliance with any of the following statutory/regulatory provisions or permits issued
8 thereunder (or more stringent State or local regulations): Section 405 of the Act; the Solid
9 Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource
10 Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge
11 management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic
12 Substances Control Act.
- 13 26. Letter of intent. Notification from an industrial user to the city of Fargo of that user’s intent to
14 utilize a publicly owned treatment facility for a given period of time.
- 15 27. Maximum Allowable Discharge Limit. The maximum concentration (or loading) of a
16 pollutant allowed to be discharged at any time, determined from the analysis of any discrete or
17 composited sample collected, independent of the industrial flow rate and the duration of the
18 sampling event.
- 19 28. May. “May” is permissive. (See “Shall”).
- 20 29. National Pretreatment Standard, Pretreatment Standard, or Standard. Shall mean any
21 regulation containing pollutant discharge limits promulgated by the EPA in accordance with
22 Section 307(b) and (c) of the Act, which applies to Industrial Users. This term includes
23 prohibitive discharge limits established pursuant to Section 403.5 of the Act.
30. Natural outlet. Any outlet, including storm sewers and combined sewer overflows, into a
watercourse, pond, ditch, lake or other body of surface or ground water.
31. New Source.
- a. Any building, structure, facility, or installation from which there is (or may be) a
discharge of pollutants, the construction of which commenced after the publication of
proposed categorical pretreatment standards under Section 307. 8 of the Act which
will be applicable to such source if such standards are thereafter promulgated in
accordance with that section, provided that:
 - i. The building, structure, facility, or installation is constructed at a site at
which no other source is located; or
 - ii. The building, structure, facility, or installation totally replaces the process or
production equipment that causes the discharge of pollutants at an existing
source; or
 - iii. The production or wastewater generating processes of the building, structure,
facility, or installation are substantially independent of an existing source at
the same site. In determining whether these are substantially independent,

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1 factors such as the extent to which the new facility is integrated with the
2 existing plant, and the extent to which the new facility is engaged in the same
3 general type of activity as the existing source, should be considered.

4 b. Construction on a site at which an existing source is located results in a modification
5 rather than a new source if the construction does not create a new building, structure,
6 facility, or installation meeting the criteria of Section a.(ii) or (iii) above but
7 otherwise alters, replaces, or adds to existing process or production equipment.

8 c. Construction of a new source as defined under this definition has commenced if the
9 owner or operator has:

10 i. Begun, or caused to begin as part of a continuous on-site construction
11 program:

12 1. Any placement, assembly, or installation of facilities or equipment;
13 or

14 2. Significant site preparation work including clearing, excavation, or
15 removal of existing buildings, structures, or facilities which is
16 necessary for the placement, assembly, or installation of new source
17 facilities or equipment; or

18 ii. Entered into a binding contractual obligation for the purchase of facilities or
19 equipment which are intended to be used in its operation within a reasonable
20 time. Options to purchase or contracts which can be terminated or modified
21 without substantial loss, and contracts for feasibility, engineering, and design
22 studies do not constitute a contractual obligation under this definition.

23 32. Pass Through. A discharge which exits the POTW into waters of the United States in
quantities or concentrations which, alone or in conjunction with a discharge or discharges from
other sources, is a cause of a violation of any requirement of the city's NPDES permit
(including an increase in the magnitude or duration of the violation).

33. Permittee: A person or user issued a wastewater discharge permit.

34. Person. Any individual, partnership, including limited partnership, limited liability
partnership or limited liability limited partnership, co-partnership, firm, company, corporation,
limited liability company, association, joint stock company, trust, estate, governmental entity,
or any other legal entity; or their legal representatives, agents, or assigns. This definition
includes all federal, state, or local governmental entities.

35. pH. A measure of the acidity or alkalinity of a substance, expressed in standard units.

36. Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage
sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive
materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and
industrial wastes, and the characteristics of the wastewater [i.e., pH, temperature, TSS,
turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity, or odor].

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- 1 37. Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the
2 alteration of the nature of pollutant properties in wastewater prior to (or in lieu of) introducing
3 such pollutants into the POTW, whether obtained by physical, chemical, or biological
4 processes; by process changes; or by other means (except by diluting the concentration of the
5 pollutants unless allowed by an applicable pretreatment standard).
- 6 38. Pretreatment Requirement. Any substantive or procedural requirement related to pretreatment
7 imposed on a user, other than a pretreatment standard.
- 8 39. Pretreatment Standards or Standards. Prohibited discharge standards, categorical pretreatment
9 standards, and local limits and/or BMPs established by the city of Fargo/POTW.
- 10 40. Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the
11 discharge of certain substances, which appear in section 17-0403.
- 12 41. Publicly Owned Treatment Works (POTW). A “treatment works,” as defined by Section 212
13 of the Act (33 U.S.C. §1292) which is owned by the city. This definition includes any devices
14 or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or
15 industrial wastes of a liquid nature and any conveyances which convey wastewater to a POTW
16 as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to
17 and the discharges from such a treatment works. The term also means the municipality as
18 defined in section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and
19 the discharges from such a treatment works.
- 20 42. Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets,
21 campers, trailers, and septic tanks.
- 22 43. Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).
- 23 44. Sewer. Any pipe, conduit ditch, or other device used to collect and transport sewage from the
generating source.
45. Sewer use charge. A monthly charge to all users of the wastewater facilities which is based on
sewage volume, strength and/or flow.
46. Shall, May, May Not. “Shall” is mandatory, “may” is permissive, and “may not” is
prohibitive.
47. Significant Industrial User (SIU).
- a. A user subject to categorical pretreatment standards; or
 - b. A user that:
 - i. Discharges an average of 25,000 gallons per day (GPD) or more process
wastewater to the POTW (excluding sanitary, non-contact cooling, and boiler
blowdown wastewater); or
 - ii. Contributes a process waste stream which makes up five (5) percent or more
of the average dry weather hydraulic or organic capacity of the POTW
treatment plant; or

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- 1 iii. Is designated as such by the city on the basis that it has a reasonable potential
2 for adversely affecting the POTW's operation or for violating any
3 pretreatment standard or requirement; unless,
- 4 iv. Upon a finding that a user meeting any of the above three criteria has no
5 reasonable potential for adversely affecting the POTW's operation or for
6 violating an applicable pretreatment standard or requirement, Fargo may at
7 any time, on its own initiative or in response to a petition received from a
8 user [and in accordance with procedures in 40 C.F.R. § 403.8(f)(6)]
9 determine that such user should not be considered a significant industrial
10 user.

11 48. Significant Noncompliance (403.8(f)(2)(vii)).

12 IU violations that meet one or more of the following criteria:

- 13 a. Chronic violations of wastewater discharge limits, defined here as those in which 66
14 percent or more of all the measurements for each pollutant parameter taken during a
15 6-month period exceed (by any magnitude) a numeric pretreatment standard or
16 requirement, including instantaneous limits, as defined by 40 C.F.R. § 403.3(l).
- 17 b. Technical Review Criteria (TRC) violations, defined here as those in which 33
18 percent or more of all the measurements for each pollutant parameter taken during a
19 6-month period equal or exceed the product of the numeric pretreatment standard or
20 requirement including instantaneous limits, as defined by 40 C.F.R. § 403.3 (l)
21 multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil and grease and
22 1.2 for all other pollutants except pH).
- 23 c. Any other violation of a pretreatment standard or requirement as defined by 40
 C.F.R. § 403.3 (l) (daily maximum, long-term average, instantaneous limit, or
 narrative standard) that the POTW determines has caused, alone or in combination
 with other dischargers, interference or pass through (including endangering the health
 of POTW personnel or the general public).
- d. Any discharge of a pollutant that has caused imminent endangerment to human
 health, welfare, or to the environment or has resulted in the POTW's exercise of its
 emergency authority under paragraph (f)(1)(vi)(B) of 40 C.F.R. § 403.8 to halt or
 prevent such a discharge.
- e. Failure to meet, within 90 days after the schedule date, a compliance schedule
 milestone contained in a local control mechanism or enforcement order for starting
 construction, completing construction, or attaining final compliance.
- f. Failure to provide, within 30 days after the due date, required reports such as baseline
 monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and
 reports on compliance with compliance schedules

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- g. Failure to accurately report noncompliance
- h. Any other violation or group of violations, which can include a violation of best management practices, that the POTW determines will adversely affect the operation or implementation of the local pretreatment program.

- 49. Slug Load. Any discharge at a flow rate or concentration which could cause a violation of the discharge standards in sections 17-0403 through 17-0406 or any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge.
- 50. Solid Waste Disposal Act (SWDA). Federal law located at 43 U.S.C. §6901 et seq.
- 51. Standard Industrial Classification (SIC) Code. A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.
- 52. Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.
- 53. Superintendent. The person designated by the city to supervise the operation of the POTW, and who is charged with certain duties and responsibilities by this ordinance, or a duly authorized representative.
- 54. Total Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.
- 55. Toxic Pollutant. One of 126 pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by the EPA under the provision of Section 307 (33 U.S.C. §1317) of the Act.
- 56. Treatment Plant Effluent. The discharge from the POTW into waters of the United States.
- 57. Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
- 58. Wastewater Discharge Permit (Industrial Wastewater Discharge Permit, Discharge Permit). An authorization or equivalent control document issued by the city to users discharging wastewater to the POTW. The permit may contain appropriate pretreatment standards and requirements as set forth in this ordinance.
- 59. Wastewater Treatment Plant or Treatment Plant. The portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

17-0204 Abbreviations.-- The following abbreviations shall have the designated meanings:

- ASPP - Accidental Spill Prevention Plan
- BOD - Biochemical Oxygen Demand
- C.F.R. § - Code of Federal Regulations

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- COD - Chemical Oxygen Demand
- EPA - U.S. Environmental Protection Agency
- GPD - gallons per day
- IWA - Industrial Waste Acceptance
- l - Liter
- IU – Industrial User
- LEL - Lower Explosive Limit
- mg - milligrams
- mg/l - milligrams per liter
- NPDES - National Pollutant Discharge Elimination System
- O&M - Operation and Maintenance
- POTW - Publicly Owned Treatment Works
- RCRA - Resource Conservation and Recovery Act
- SIC - Standard Industrial Classifications
- SIU – Significant Industrial User
- SWDA - Solid Waste Disposal Act (43 U.S.C. 6901, et seq.)
- TSS - Total Suspended Solids
- USC - United States Code

Section 3. Re-enactment.

Article 17-04 of Chapter 17 of the Fargo Municipal Code is hereby re-enacted to read as follows:

ARTICLE 17-04

GENERAL REQUIREMENTS

17-0401 Sanitary sewers, building sewers and connections.--

- A. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the city engineer.
- B. There shall be two classes of building sewer permits:
 - 1. For residential and commercial service, and
 - 2. For service to establishments producing industrial wastes. In either case, the owner, or his agent, shall make application on a special form furnished by the city. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the city engineer. A permit and inspection fee shall be paid to the city at the time the

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1 application is filed. The amount of such fee shall be established by
2 resolution of the board of city commissioners in accordance with
3 §22-0114.

- 4 C. All costs and expenses incidental to the installation and connection of the building
5 sewer shall be borne by the owner. The owner shall indemnify the city from any
6 loss or damage that may directly or indirectly be occasioned by the installation of
7 the building sewer.
- 8 D. A separate and independent building sewer shall be provided for every building;
9 except where one building stands at the rear of another on an interior lot and no
10 private sewer is available or can be constructed to the rear building through an
11 adjoining alley, court, yard, or driveway, the building sewer from the front building
12 may be extended to the rear building and the whole considered as one building
13 sewer, but the city does not and will not assume any obligation or responsibility for
14 damage caused by or resulting from any such single connection aforementioned.
- 15 E. Old building sewers may be used in connection with new buildings only when they
16 are found, on examination and test by the director to meet all requirements of this
17 ordinance.
- 18 F. The size, slope, alignment, materials of construction of all sanitary sewers including
19 building sewers, and the methods to be used in excavating, placing of the pipe,
20 jointing, testing and backfilling the trench, shall all conform to the requirements of
21 the building and plumbing code or other applicable rules and regulations of the city.
22 In the absence of suitable code provisions set forth in appropriate specifications of
23 the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply.
- G. Whenever possible, the building sewer shall be brought to tile building at an
elevation below the basement floor. In all buildings in which any building drain is
too low to permit gravity flow to the public sewer, sanitary sewerage carried by
such building drain shall be lifted by an approved means and discharged to the
building sewer.
- H. No person shall make connection of roof downspouts, foundation drains, areaway
drains, or other sources of surface runoff or ground water to a building sewer, or
building drain which in turn is connected directly or indirectly to a public sanitary
sewer unless such connection is approved by the director and the North Dakota state
department of health.
- I. The connection of the building sewer into the public sewer shall conform to the
requirements of the building and plumbing code or other applicable rules and
regulations of the city, or the procedures set forth in appropriate specifications of the
A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be
made gastight and watertight and verified by proper testing. Any deviation from the
prescribed procedures and materials must be approved by the director before
installation.
- J. The applicant for the building sewer permit shall notify the director when the
building sewer is ready for inspection and connection to the public sewer. The

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1 connection and testing shall be made under the supervision of the director or his
2 representative.

- 3 K. All excavations for building sewer installation shall be adequately guarded with
4 barricades and lights so as to protect the public from hazard. Streets, sidewalks,
5 parkways, and other public property disturbed in the course of the work shall be
6 restored in a manner satisfactory to the city.

7 Source: 2187 (1985).

8 17-0402 Prohibited connections to sewer system - - Inspection and surcharge authority. - - Waiver
9 Provisions.--

- 10 A. Section 22-0432 prohibits surface or ground water drains, including roof drains and
11 foundation drain tiles, from being connected to the sanitary sewer. Said ordinance
12 requires that surface or ground water drains shall be connected directly to the city
13 storm sewer or discharged into a sump and thereafter pumped into the city storm
14 sewer system or onto a yard in such a manner so as to drain into the city storm
15 sewer system. The following subsections further expand on such prohibited
16 connections and provide for inspections, surcharges, waivers and penalties.
- 17 B. All dwellings, buildings and structures constructed after September 21, 1971,
18 which require, because of infiltration of water into basements, crawl spaces and the
19 like, a foundation drainage system shall have a permanently installed discharge line
20 which, shall not at any time, discharge water into the sanitary sewer system except
21 as hereinafter provided in 17-0402(F). A permanent installation shall be one in
22 which the direction of flow cannot be altered and provides for year-round
23 discharge to either the outside of the dwelling, building or structure, or is connected
directly to the city storm sewer, or discharges to the curb and gutter.
- C. Prior to June 1, 2001, all dwellings, buildings or structures constructed after
September 21, 1971, having surface or ground water drains, including sump
pumps, now connected and/or discharging into the sanitary sewer system shall
disconnect and/or remove the same. Any disconnects or openings in the sanitary
sewer shall be closed or repaired in an effective, workmanlike manner, as approved
by the city engineer.
- D. Authorized city personnel, or its designated representatives bearing proper
credentials and identification, shall be permitted to enter all properties constructed
after September 21, 1971, for the purposes of inspection and observation to
identify prohibited discharges to the sanitary sewer system. Any person may
furnish a certificate from a licensed plumber certifying that their property is in
compliance with §22-0432 and this section, in lieu of having the city inspect their
property. Any person refusing to allow their property to be inspected (or failing to
furnish a plumber's certificate in lieu thereof) within fourteen (14) days of the date
city employees or their designated representatives are denied admittance to the
property, shall immediately become subject to the surcharge penalty as required

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1 under §17-0402(E). Any person found to have violated this provision shall make
2 the necessary changes to eliminate the discharge of surface or ground water into
3 the sanitary sewer system and furnish proof of the changes to the city within ninety
4 (90) days. Each prohibited connection identified may be re-inspected by the city,
5 its designated representative or a licensed plumber, to confirm compliance.

6 E. A monthly surcharge penalty, established by resolution of the board of city
7 commissioners, shall be imposed and added to the regular sewer billing on and
8 after June 1, 2001, to property owners who are not in compliance with this section.
9 The surcharge shall be added every month through December 2001 until the
10 property is in compliance. The surcharge shall continue to be levied monthly,
11 every year on properties not complying with this section. It is provided, however,
12 that the surcharge shall not be charged unless and until a property has been
13 inspected and found to be not in compliance, or if the property owner refuses to
14 allow an inspection and fails to provide a plumber's certificate in lieu thereof as set
15 forth in this section.

16 F. The Superintendent shall have the authority to grant exemptions from strict
17 compliance with this section.

18 Exemptions may be granted in the form of seasonal waivers which would allow the
19 property owner to temporarily discharge directly into the sanitary sewer system
20 between the date of October 1 and March 31. The holder of a seasonal waiver shall
21 allow a city employee or designated representative to certify that, prior to April 1
22 of each subsequent year, their discharge water connection has been removed from
23 the sanitary sewer. Failure to provide such certification shall place the seasonal
waiver holder in violation and subject to the surcharge penalty as required under
§17-0402(E). Seasonal waiver requests shall be submitted on the official form
provided by the city engineer for utilities.

Exemptions may be granted in the form of non-seasonal waivers for a particular
property owner who can demonstrate undue hardship because of unique or
extenuating circumstances, including physical or handicap limitations. A non-
seasonal waiver would allow the property owner to discharge directly into the
sanitary sewer system without seasonal restrictions. The non-seasonal waiver
request shall be submitted to the Superintendent in writing and, at a minimum,
identify the property for which the waiver is being requested, the name of the
property owner/applicant, and a detailed description of the circumstances justifying
the request.

G. Any person granted a seasonal waiver shall be charged an additional monthly fee
on their utility bill to cover the cost of compliance inspections and the cost for
treating the extra discharge water during the waiver period. The seasonal waiver
amount shall be set by resolution of the board of city commissioners.

Any person granted a non-seasonal waiver shall be charged an additional monthly
fee on their utility bill to cover the cost for treating the extra discharge water on a
year-round basis. The non-seasonal waiver amount shall be set by resolution of the

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board of city commissioners.

1 H. If a seasonal waiver is granted, the owner of the property may place a pipe
2 connecting the sump pump to the sanitary sewer, which must have a shut-off
3 valve. city staff or its designated representative, on or around April 1 of each
4 year, will inspect the system to verify that the valve is closed so no prohibited
5 water is discharged into the sanitary sewer. By applying for the waiver, the
6 owner has granted permission to the city staff or its representatives to inspect the
7 connection at any time between April 1 and October 31 to verify compliance
8 with this section. Such inspections must be made between 8:00 a.m. and 5:00
9 p.m., Monday through Friday, and only when a resident of the premises is on
10 site. Failure to allow such an inspection or to allow city staff or its designated
11 representatives entry for verification of compliance shall result in automatic
12 revocation of the seasonal waiver and imposition of the surcharge penalty
13 pursuant to §17-0402(E).

14 I. If any new structure is found to have been constructed wherein the sump pump
15 connection for the structure has been unlawfully connected to the sanitary sewer
16 system, or that there is another connection or device or lack of a plug which allows
17 surface run-off or ground water to enter into the sanitary sewer system, either
18 permanently or temporarily, the city may deny the issuance of a certificate of
19 occupancy for said new structure.

20 Source: 4150 (2001), _____ (2019).

21 17-0403 Prohibited Discharge Standards.--

22 A. General Prohibitions: No user shall introduce or cause to be introduced into the POTW any
23 pollutant or wastewater which causes pass through or interference. These general
prohibitions apply to all users of the POTW whether or not they are subject to categorical
pretreatment standards or any other federal, state, or local pretreatment standards or
requirements.

B. Specific Prohibitions: No user shall introduce or cause to be introduced into the POTW the
following pollutants, substances, or wastewater:

1. Oils and Grease.

- i. Oil and grease concentrations or amounts from industrial facilities violating pretreatment standards.
- ii. Wastewater from industrial facilities containing floatable fats, wax, grease or oils in amounts which would cause interference or pass through the treatment process.
- iii. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts which would cause interference or pass through.

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- 1 2. Pollutants which create a fire or explosive hazard in the POTW, including, but not
2 limited to, waste streams with a closed-cup flash point of less than 140 F (60 C) using
3 the test methods specified in 40 C.F.R. § 261.21;
- 4 3. Wastewater having a pH less than 5.0 S.U. or more than 12.5 S.U., or otherwise
5 causing corrosive structural damage to the POTW or equipment.
- 6 4. Solid or viscous wastes. Solid or viscous wastes which will interfere with the proper
7 operation of the wastewater treatment system. Prohibited materials include, but are
8 not limited to, grease, un-comminuted garbage, animal guts or tissues, paunch
9 manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders,
10 sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings,
11 rags, spent grains, spent hops, waste paper, wood, plastic, tar, asphalt residues,
12 residues from refining or processing of fuel or lubricating oil, and similar substances.
- 13 5. Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a
14 discharge at a flow rate and/or pollutant concentration which, either independently or
15 by interaction with other pollutants, will cause interference with the POTW;
- 16 6. Wastewater having a temperature which will inhibit biological activity in the
17 treatment plant resulting in interference, but in no case wastewater which causes the
18 temperature at the introduction into the treatment plant to exceed 104° F (40° C)
19 unless the Approval Authority, upon the request of the POTW, approves alternate
20 temperature limits;
- 21 7. Petroleum oil, non-bio-degradable cutting oil, or products of mineral oil origin, in
22 amounts that will cause interference or pass through;
- 23 8. Pollutants which result in the presence of toxic gases, vapors, or fumes within the
POTW in a quantity that may cause acute worker health and safety problems;
9. Trucked or hauled pollutants, except a discharge points designated by the city.

17-0404 Federal Categorical Pretreatment Standards.-- The federal categorical pretreatment standards as amended and promulgated by EPA pursuant to the Act and as found at 40 C.F.R. Chapter I, Subchapter N, Parts 405 – 471, are hereby adopted by reference.

17-0405 State Requirements.-- The state requirements as set forth in North Dakota Administrative Code (N.D.Admin.C.) §33-16-01.1 and limitations on discharges to the POTW shall be met by all users which are subject to such standards in any instance in which they are more stringent than federal requirements and limitations or those in this ordinance or in other applicable ordinances.

17-0406 Local Limits.-- The Superintendent is authorized to establish Local Limits pursuant to 40 C.F.R. § 403.5(c). No person shall discharge wastewater containing pollutant levels in excess of the following daily maximum allowable discharge limits:

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| <u>Pollutant</u> | <u>Daily Maximum Concentration</u> |
|------------------|------------------------------------|
| Arsenic (As) | 2.8 mg/l |
| Cadmium (Cd) | 0.11 mg/l |
| Chromium (III) | 5.86 mg/l |
| Chromium (VI) | 0.65 mg/l |
| Chromium (Total) | 5.57 mg/l |
| Copper (Cu) | 2.82 mg/l |
| Lead (Pb) | 1.60 mg/l |
| Mercury (Hg) | 0.001 mg/l |
| Nickel (Ni) | 5.60 mg/l |
| pH | 5 to 12.5 S.U. |
| Selenium (Se) | 0.26 mg/l |
| Silver (Ag) | 0.43 mg/l |
| Zinc (Zn) | 18.17 mg/l |

The above limits apply at the point where the wastewater is discharged to the POTW (end of pipe). All concentrations for metallic substances are for “total” metal unless indicated otherwise. Where a user is subject to a categorical pretreatment standard and a local limit for a given pollutant, the more stringent limit or applicable pretreatment standard shall apply.

Total SIU BOD mass loading or Maximum Allowable Industrial Loadings (MAIL) at the wastewater treatment plant headworks shall not exceed 7,353 pounds per day. Total SIU TSS mass loading or MAIL at the wastewater treatment plant headworks shall not exceed 4,825 pounds per day. The city may, at its discretion, implement local limits through allocation of the BOD and TSS MAILs to significant industrial Users.

Under no circumstances shall the industrial user achieve compliance with the above limitations or categorical pretreatment standards by diluting its industrial waste with tap water, unpolluted water, sanitary sewage, or any other liquid diluent.

The POTW may develop Best Management Practices (BMPs) to implement provisions of this Chapter. Such BMPs shall be considered local limits and Pretreatment Standards for the purposes of this part and section 307(d) of the Act.

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The POTW may develop site-specific limits in addition to Local Limits.

The following limits shall apply to wastewater that are discharged from the groundwater cleanup of petroleum and gasoline underground storage tanks or other remediation wastewaters containing these pollutants or where these pollutants are appropriate surrogates. It shall be unlawful user to discharge to cause to be discharged any waste or wastewater that exceeds the following limits, as applicable:

| Pollutant ^{(a)(b)} | Daily Maximum Limit (mg/L) |
|-----------------------------|-------------------------------|
| Benzene | 0.050 |
| BTEX ^(c) | 0.750 |

(a) These limits are based on the installation of air stripping technology as described in the EPA document: "Model NPDES Permit for Discharges Resulting from the Cleanup of Gasoline Released from Underground Storage Tanks, June 1989."

(b) All pollutants shown in the table are total.

(c) BTEX shall be measured as the sum of Benzene, Ethylbenzene, Toluene, and Xylene

17-0407 City's Right of Revision-- The city reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

17-0408 Special Agreement-- The city may enter into special agreements with users setting out special terms under which they may discharge to the POTW so long as such special agreement does not waive compliance with a categorical pretreatment standard. However, users may request of the superintendent a net/gross adjustment to a categorical standard in accordance with 40 C.F.R. §403.15. They may also request a variance from the categorical pretreatment standard from the Approval Authority in accordance with 40 C.F.R. §403.13.

17-0409 Dilution-- No user shall increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with an applicable pretreatment standard or requirement unless expressly authorized by an applicable pretreatment standard or requirement. The Superintendent may impose mass limitations on users which he believes may be using dilution to meet applicable pretreatment standards or requirements or in other cases when the imposition of mass limitations is appropriate.

17-0410 Pretreatment Facilities-- Users shall provide necessary wastewater treatment as required to comply with this ordinance and shall achieve compliance with all applicable pretreatment standards and requirements set out in this ordinance within the time limitations specified by the EPA, the state, or the Superintendent, whichever is more stringent. Any facilities required to pretreat wastewater to a level

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1 acceptable to the city of Fargo shall be provided, operated, and maintained at the user's expense. Detailed
2 plans showing the pretreatment facilities and operating procedures shall be submitted to the city for
3 review and must be approved by the Superintendent before construction of the facility. The review of
4 such plans and operating procedures will in no way relieve the user from the responsibility of modifying
5 the facility as necessary to produce an acceptable discharge to the city under the provisions of this
6 ordinance.

7 17-0411 Deadline for Compliance with Applicable Pretreatment Requirements.-- Compliance by existing
8 sources covered by a modification of Categorical Pretreatment Standards shall be achieved within three
9 years of the date the standard is effective unless a shorter compliance time is specified in the appropriate
10 standard. The city shall establish a final compliance deadline date for any existing user not covered by
11 Categorical Pretreatment Standards or for any categorical user when the local limits for said user are more
12 restrictive than the federal Categorical Pretreatment Standards.

13 New source and domestic users are required to comply with applicable pretreatment standards
14 within the shortest feasible time, not to exceed 90 days from the beginning of discharge. New Sources
15 and domestic users shall install, have in operating condition, and shall start up all pollution control
16 equipment required to meet applicable pretreatment standards before beginning to discharge.

17 Any wastewater discharge permit issued to a categorical user shall not contain a compliance date
18 beyond any deadline date established in EPA's Categorical Pretreatment Standards. Any other existing
19 user or a categorical user that must comply with a more stringent local limit which is in non-compliance
20 with any local limits shall be provided with a compliance schedule placed in an industrial wastewater
21 permit to insure compliance within the shortest time feasible.

22 17-0412 Additional Pretreatment.--

23 A. Whenever deemed necessary, the Superintendent may require users to restrict their discharge
during peak flow periods, designate that certain wastewater be discharged only into specific sewers,
relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste
streams, and such other conditions as may be necessary to protect the POTW and determine the user's
compliance with the requirements of this ordinance.

B. Grease, oil, and sand interceptors shall be provided when, in the opinion of the
Superintendent, they are necessary for the proper handling of wastewater containing excessive amounts of
grease and oil, or sand, except that such interceptors shall not be required for residential users. All
interception units shall be of type and capacity approved by the Superintendent and shall be so located to
be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and
repaired regularly, as needed, by the user at its expense.

C. Users with the potential to discharge flammable substances may be required to install and
maintain an approved combustible gas detection meter.

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1 17-0413 Accidental Spill Prevention Plans.--The Superintendent may require any user to develop and
2 implement an accidental spill prevention plan (ASPP) or slug control plan. Where deemed necessary by
3 the city, facilities to prevent accidental discharge or slug discharges of pollutants shall be provided and
4 maintained at the user's cost and expense. An accidental spill prevention plan or slug control plan
5 showing facilities and operating procedures to provide this protection shall be submitted to the city for
6 review and approval before implementation. The city shall determine which user is required to develop a
7 plan and require said plan to be submitted within 180 days after notification by the city. Each user shall
8 implement its ASPP as submitted or as modified after such plan has been reviewed and approved by the
9 city. Review and approval of such plans and operating procedures by the city of Fargo shall not relieve
10 the user from the responsibility to modify its facility as necessary to meet the requirements of this
11 ordinance.

12 A. Any user required to develop and implement an accidental spill prevention plan shall submit a
13 plan which addresses, at a minimum, the following:

- 14 1. Description of discharge practices, including non-routine batch discharges;
15 2. Description of stored chemicals;
16 3. Procedures for immediately notifying the POTW of any accidental or slug discharges.
17 Such notification must also be given for any discharge which would violate any of the
18 standards in sections 17-0403 through 17-0406; and

19 Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures
20 include, but are not limited to, inspection and maintenance of storage areas, handling and transfer
21 of materials, loading and unloading operations, control of plant site runoff, worker training
22 building of containment structures or equipment, measures for containing toxic organic chemicals
23 (including solvents), and/or measures and equipment for emergency response.

24 B. Users shall notify the city Wastewater Treatment Facility immediately after the occurrence of a
25 slug or accidental discharge of substances regulated by this chapter. The notification shall
26 include location of discharge, date and time thereof, type of waste, concentration and volume, and
27 corrective actions. Any affected user shall be liable for any expense, loss, or damage to the
28 POTW, in addition to the amount of any fines imposed on the city on account thereof under state
29 or federal law.

30 C. Within five (5) days following an accidental discharge, the user shall submit to the
31 Superintendent a detailed written report describing the cause of the discharge and the measures to
32 be taken by the user to prevent similar future occurrences. Such notification shall not relieve the
33 user of any expense, loss, damage, or other liability which may be incurred as a result of damage
34 to the POTW, fish kills, or any other damage to person or property nor shall such notification

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1 relieve the user of any fines, civil penalties, or other liability which may be imposed by this
2 chapter or other applicable law.

- 3 D. Signs shall be permanently posted in conspicuous places on the user's premises advising
4 employees whom to call in the event of a slug or accidental discharge. Employers shall instruct
5 all employees who may cause or discover such a discharge with respect to emergency notification
6 procedures.

7 **17-0414 Septic Tank Waste--**

- 8 A. Septic tank waste may be introduced into the POTW only at a designated receiving structure
9 within the treatment plant area, and at such times as are established by the Superintendent. Such
10 wastes shall not violate this section or any other requirements established or adopted by the city.
11 Wastewater discharge permits for individual vehicles to use such facilities may be issued by the
12 Superintendent.
- 13 B. Septic tank waste haulers may only discharge loads at locations specifically designated by the
14 Superintendent. No load may be discharged without prior consent of the Superintendent. The
15 Superintendent may collect samples of each hauled load to ensure compliance with applicable
16 pretreatment standards. The Superintendent may require the hauler to provide a waste analysis of
17 any load prior to discharge.
- 18 C. Septic tank waste haulers must provide a waste-tracking manifest form for every load. This form
19 shall include, at a minimum, the name and address of the waste hauler, permit number, truck
20 identification, sources of waste, and volume and characteristics of waste.
- 21 D. Fees for dumping hauled wastes will be established as part of the user fee system as authorized in
22 article 17-16 of this chapter.

23 **Section 4. Re-enactment.**

Article 17-05 of Chapter 17 of the Fargo Municipal Code is hereby re-enacted to read as follows:

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ARTICLE 17-05

WASTEWATER DISCHARGE PERMIT REQUIREMENTS

1
2
3 17-0501 Permit required.-- No significant industrial user shall discharge wastewater into the POTW
4 without first obtaining a wastewater discharge permit from the Superintendent; the permit must be
5 enforceable and contain all the elements as required by 40 C.F.R. § 403.8(f)(1)(iii)(B). Any violation of
6 the terms and conditions of a wastewater discharge permit shall be deemed a violation of this ordinance
7 and subjects the wastewater discharge permittee to the penalties or sanctions set forth in this article.
8 Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all
9 federal and state pretreatment standards or requirements or with any other requirements of federal, state,
10 and local law. The Superintendent may require other users, including liquid waste haulers, to obtain
11 wastewater discharge permits (as necessary) to carry out the purposes of this ordinance.

12 17-0502 Wastewater Discharge Permitting.--Any SIU that was discharging wastewater into the POTW
13 prior to the effective date of this ordinance and that wishes to continue such discharges in the future shall,
14 within 60 days after notification by the Superintendent submit a permit application to the city in
15 accordance with section 17-0505.

16 17-0503 Wastewater Discharge Permitting: New Source.-- At least 90 days prior to the anticipated start-
17 up, any new source, which is a source that becomes a user subsequent to the proposal of an applicable
18 categorical pretreatment standard that is later promulgated, and any domestic user considered by the city
19 of Fargo to fit the definition of SIU shall apply for a wastewater discharge permit and will be required to
20 submit to the city of Fargo at least the information listed in section 17-0505(A)-(E). A new source or
21 domestic user may not discharge without first receiving approval from the city of Fargo. New sources
22 and domestic users shall also be required to include in their application information on the method of
23 pretreatment they intend to use to meet applicable pretreatment standards. New Sources and domestic
users shall give estimates of the information requested in section 17-0505(D) and (E).

17-0504 Wastewater Discharge Permitting: Extra jurisdictional Users.-- Any existing user who is
located beyond the city of Fargo limits and who is required to obtain a wastewater discharge permit shall
submit a wastewater discharge permit application as outlined in section 17-0502. New Source and
domestic users who are located beyond the city of Fargo limits and who are required to obtain a
wastewater discharge permit shall comply with section 17-0503.

17-0505 Wastewater Discharge Permit Application Contents.-- The Superintendent shall approve a form
to be used as a permit application for a wastewater discharge permit. Categorical users submitting the
following information must have complied with 40 C.F.R. §403.12(b) prior to submitting said
application. All users required to obtain a wastewater discharge permit must submit, at a minimum, the
following information.

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- 1 A. Identifying information. The user shall submit the name and address of the facility including the
2 name of the operator and owners.
- 3 B. Permits. The user shall submit a list of all environmental control permits held by or for the
4 facility;
- 5 C. Description of operations. The user shall submit a brief description of the nature, average rate of
6 production, and standard industrial classification of the operation(s) carried out by such Industrial
7 User, including a list of all raw materials and chemicals used or stored at the facility which are or
8 could accidentally or intentionally be discharged to the POTW; number or processes, and rate of
9 production; type and amount or raw materials processed (average and maximum per day) and the
10 time and duration of discharges. This description should also include a schematic process
11 diagram which indicates points of discharge to the POTW from the regulated or manufacturing
12 processes; site plans; floor plans; mechanical and plumbing plans; and details to show all sewers,
13 sewer connections, inspection manholes, sampling chambers and appurtenances by size, location
14 and elevation.
- 15 D. Flow Measurement.
 - 16 1. Categorical User: The user shall submit information showing the intended measured
17 average daily and maximum daily flow, in gallons per day, to the POTW from each of
18 the following:
 - 19 i. Regulated or manufacturing process streams; and
 - 20 ii. Other streams as necessary to allow use of the combined waste stream formula
21 [40 C.F.R. §403.6(e)].
 - 22 2. Non-Categorical User The user shall submit information showing the intended
23 measured average daily and maximum daily flow, in gallons per day, to the POTW
from each of the following:
 - i. total process flow,
 - ii. wastewater treatment plant flow,
 - iii. total plant flow or
 - iv. individual manufacturing process flow as required by the Superintendent.

The city may allow verifiable estimates of said flows where justified by cost or feasibility considerations proposed by the applicant to the satisfaction of the city.

- 20 E. Measurements of pollutants.
 - 21 1. Categorical User:
 - 22 i. The user shall identify the applicable pretreatment standards for each regulated or
23 manufacturing process.
 - ii. In addition, the user shall submit the results of sampling and analysis identifying
the nature and concentration (or mass, where required by Categorical

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1 Pretreatment Standard or as required by the city or regulated pollutants
2 (including standards contained in sections 17-0403 through 17-0406 as
3 appropriate) in the discharge from each regulated or manufacturing process.
4 Both daily maximum and average concentration (or mass, where required) shall
5 be reported. The sample shall be representative of daily operations and shall
6 conform to sampling and analytical procedures outlined in article 17-07.

- 7 iii. The user shall take a minimum of one representative sample to compile that data
8 necessary to comply with the requirements of this subsection.
- 9 iv. Where an alternate concentration or mass limit has been calculated in accordance
10 with 40 C.F.R. §403.6(e) for a categorical user, this adjusted or alternate limit
11 along with supporting data shall be submitted as part of the application.

12 2. Non-Categorical User:

- 13 i. The user shall identify the applicable pretreatment standards for its wastewater
14 discharge.
- 15 ii. In addition, the user shall submit the results of sampling and analysis identifying
16 the nature and concentration in the discharge (or mass where required by the city)
17 of regulated pollutants contained in sections 17-0403 through 17-0406, as
18 appropriate. Both daily maximum and average concentration (or mass, where
19 required) shall be reported. The sample shall be representative of daily
20 operations and shall conform to sampling and analytical procedures outlined in
21 article 17-07.
- 22 iii. The user shall take a minimum of one representative sample to compile the data
23 necessary to comply with the requirements of this subsection.
- iv. Where the Superintendent has developed alternate concentration or mass limits
because of dilution, this adjusted or alternate limit along with supporting data
shall be submitted as part of the application.

16 F. Certification. The user shall submit a statement, worded as specified in section 17-0506, which
17 has been reviewed by an authorized representative of the user, and certified by a qualified
18 professional, indicating whether the applicable pretreatment standards are being met on a
19 consistent basis, and, if not, whether additional operation and maintenance and/or additional
20 pretreatment is required for the user to meet the applicable pretreatment standards and
21 Requirements.

22 G. Compliance Schedule. If additional pretreatment and/or operation and maintenance will be
23 required to meet the applicable pretreatment standards, the user shall submit the shortest schedule
by which the user will provide such additional pretreatment and/or operation and maintenance.
The user's schedule shall conform with the requirements of section 17-0604. The completion

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1 date in this schedule shall not be later than the compliance date established pursuant to section
2 17-0411.

- 3 1. Where the user's categorical Pretreatment Standard has been modified by a removal
4 allowance (40 C.F.R. §403.7), the combined waste stream formula (40 C.F.R.
5 §403.6(e)), and/or a Fundamentally Different Factors variance (40 C.F.R. §403.13) at
6 the time the user submits the report required by this subsection, the information
7 required by subsections (F) and (G), hereof, shall pertain to the modified limits.
8 2. If the categorical Pretreatment Standard is modified by a removal allowance (40 C.F.R.
9 §403.7), the combined waste stream formula (40 C.F.R. §403.13) after the user submits
10 the report required by subsections (F) and (G), hereof, then a report containing
11 modified information shall be submitted by the user within 60 days after the new limit
12 is approved.

13 H. The user shall submit any other information as may be deemed necessary by the Superintendent
14 to evaluate the wastewater discharge permit application.

15 Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.

16 17-0506 Signatory and Certification Requirement-- All wastewater discharge permit applications and
17 user reports must be signed and certified by the authorized representative of the user, as defined in this
18 chapter, containing the following certification statement:

19 "I certify under penalty of law that this document and all attachments were prepared under my
20 direction or supervision in accordance with a system designed to assure that qualified personnel
21 properly gather and evaluate the information submitted. Based on my inquiry of the person or
22 persons who manage the system, or those persons directly responsible for gathering the
23 information, the information submitted is to the best of my knowledge and belief, true, accurate,
and complete. I am aware that there are significant penalties for submitting false information,
including the possibility of fine and imprisonment for knowing violations."

17-0507 Wastewater Discharge Permit Decisions--The Superintendent will evaluate the data furnished
by the user and may require additional information. Within 30 days of receipt of a complete wastewater
discharge permit application, the Superintendent will determine whether or not to issue a wastewater
discharge permit. Upon a determination to issue, the permit shall be issued within 30 days of full
evaluation and acceptance of the data furnished. The Superintendent may deny any application for a
wastewater discharge permit. Failure of the Superintendent to take such action within said 30 days shall
be deemed to be a denial of the permit.

17-0508 Wastewater Discharge Permit Contents--The Superintendent is authorized to include such
conditions on a wastewater discharge permit as are reasonably deemed necessary by the Superintendent to
prevent pass through or interference, protect the quality of the water body receiving the treatment plant's

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1 effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against
2 damage to the POTW.

3 A. All Wastewater discharge permits are subject to the following conditions and the
4 Superintendent shall ensure that the permit expressly states the following:

- 5 1. A statement that indicates wastewater discharge permit duration, which in no event
6 shall exceed five (5) years;
- 7 2. A statement that the wastewater discharge permit is non-transferable without prior
8 notification to and approval from the city, and provisions for furnishing the new
9 owner or operator with a copy of the existing wastewater discharge permit;
- 10 3. Applicable pretreatment standards and requirements, including any special state
11 requirements;
- 12 4. Self-monitoring, sampling, reporting, notification, submittal of technical reports,
13 compliance schedules, and record-keeping requirements. These requirements shall
14 include an identification of pollutants to be monitored, sampling location, sampling
15 frequency, and sample type based on federal, state, and local law.
- 16 5. Requirement for immediate notification to the city where self-monitoring results
17 indicate non-compliance;
- 18 6. Requirement to report a bypass or upset of a pretreatment facility;
- 19 7. Requirement to report immediately to the city all discharges, including slug loadings,
20 that could cause problems to the POTW;
- 21 8. Requirement for the SIU who reports non-compliance to repeat the sampling and
22 analysis and submit results to the city within 30 days after becoming aware of the
23 violation.
9. A statement of applicable civil, criminal, and administrative penalties for violation of
pretreatment standards and requirements, and any applicable compliance schedule.
10. Requirements to control slug discharges, if determined by the POTW to be necessary.

B. Wastewater discharge permits may contain, but need not be limited to, the following
conditions:

1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or
requirements for flow regulation and equalization;
2. Requirements for the installation of pretreatment technology, pollution control, or
construction of appropriate containment devices, designed to reduce, eliminate, or
prevent the introduction of pollutants into the treatment works;
3. Requirements for the development and implementation of spill control plans or other
special conditions including management practices necessary to adequately prevent
accidental, unanticipated, or routine discharges;
4. Development and implementation of waste minimization plans to reduce the amount
of pollutants discharged to the POTW;

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- 1 5. The unit charge or schedule of user charges and fees for the management of the
wastewater discharged to the POTW;
- 2 6. Requirements for installation and maintenance of inspection and sampling facilities
and equipment;
- 3 7. A statement that compliance with the wastewater discharge permit does not relieve
4 the permittee of responsibility for compliance with all applicable Federal and State
5 pretreatment standards, including those which become effective during the term of
the wastewater discharge permit;
- 6 8. Any special agreements the Superintendent chooses to continue or develop between
the city and user;
- 7 9. Other conditions as deemed appropriate by the Superintendent to ensure compliance
with this article, and state and federal laws, rules, and regulations.

8 17-0509 Wastewater Discharge Permit Appeals.-- Any person, including the user, may petition the city to
9 appeal the denial of, or to reconsider the terms of, a wastewater discharge permit or may appeal the terms
10 of the permit required by the Superintendent in issuing the permit by filing a written notice of appeal with
the Superintendent within 180 days of its denial or issuance.

- 11 A. Failure to submit a timely petition for review shall be deemed to be a waiver of the right to
appeal.
- 12 B. In its written petition and notice to appeal, the appealing party must indicate the wastewater
13 discharge permit provisions objected to, the reasons for this objection, and the alternative
condition, if any, it seeks to place in the wastewater discharge permit or, if it is an appeal of a
14 denial of the permit, the reasons for challenging the denial.
- 15 C. The denial of the wastewater discharge permit shall not be stayed pending the appeal.
- 16 D. The appeal shall be heard and considered by the Director. The Director may schedule a hearing
at which time the appellant and the city may appear and present evidence, information and
17 arguments in support of, or opposing, the appeal or reconsideration. Unless the Director extends
the time within which the city will consider the appeal or reconsideration, if the city fails to act
18 within 30 days, a request for reconsideration shall be deemed to be denied. Decisions not to
reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to
19 modify a wastewater discharge permit shall be considered final action for purposes of judicial
review.
- 20 E. The decision of the Director on appeal, including the denial of an appeal or reconsideration that
has resulted from a failure to act within said 30 days, shall be subject to further appeal to the
21 board of city commissioners of the city, by the appellant filing a written notice of appeal with the
Director within fifteen (15) days of such denial.

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1 17-0510 Wastewater Discharge Permit Duration-- Wastewater discharge permits shall be issued for a
2 specified time period, not to exceed five (5) years. A wastewater discharge permit may be issued for a
3 period less than five (5) year, at the discretion of the Superintendent. Each wastewater discharge permit
shall indicate a specific date upon which it will expire, although the failure of the permit to so indicate
shall not invalidate the permit.

4 17-0511 Wastewater Discharge Permit Modification-- The Superintendent may modify the wastewater
5 discharge permit for good cause including, but not limited to, the following:

- 6 A. To incorporate any new or revised federal, state, or local pretreatment standards or
requirements;
- 7 B. To address significant alterations or additions to the user's operation, processes, or
wastewater volume or character since the time of wastewater discharge permit issuance;
- 8 C. A change in the POTW that requires either a temporary or permanent reduction or
elimination of the authorized discharge;
- 9 D. Information indicating that the permitted discharge poses a threat to the city's POTW,
personnel, or receiving waters;
- 10 E. Violation of any terms or conditions of the wastewater discharge permit;
- 11 F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge
permit application or in any required report;
- 12 G. Revision of or a grant of variance from categorical pretreatment standards pursuant to 40
C.F.R. §403.13;
- 13 H. To correct typographical or other errors in the wastewater discharge permit; or
- 14 I. To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

15 17-0512 Wastewater Discharge Permit Transfer-- Wastewater discharge permits may be reassigned or
16 transferred to a new owner and/or operator only if the permittee gives at least thirty (30) days advance
notice to the Superintendent and the Superintendent approves the wastewater discharge permit transfer.
17 The notice to the Superintendent must include a written certification by the new owner and/or operator
which:

- 18 A. States that the new owner and/or operator has no immediate intent to change the facility's
operations and processes;
- 19 B. Identifies the specific date on which the transfer is to occur; and
- 20 C. Assumes full responsibility for complying with the existing wastewater discharge permit
beginning on the date of the transfer.

21 Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable
as of the date of facility transfer.

22 17-0513 Wastewater Discharge Permit Revocation-- Wastewater discharge permits may be revoked for,
23 but not limited to, the following reasons:

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- 1 A. Failure to notify the city of significant changes to the wastewater prior to said change.
- 2 B. Failure to provide prior notification to the city of changed conditions;
- 3 C. Misrepresentation or failure to full disclose all relevant facts in the wastewater discharge
4 permit application;
- 5 D. Falsifying self-monitoring reports;
- 6 E. Tampering with monitoring equipment;
- 7 F. Refusing to allow the city timely access to the facility premises and records;
- 8 G. Failure to meet discharge limitations;
- 9 H. Failure to pay fines;
- 10 I. Failure to pay sewer charges;
- 11 J. Failure to meet compliance schedules;
- 12 K. Failure to complete a wastewater survey or the wastewater discharge permit application;
- 13 L. Failure to provide advance notice of the transfer of permitted facility; or
- 14 M. If the city has to invoke its emergency provision as cited in article 17-11.
- 15 N. Violation of any pretreatment standard or requirement, or any terms of the wastewater
16 discharge permit or this ordinance.

17 Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business
18 ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a
19 new wastewater discharge permit to that user.

20 17-0514 Wastewater Discharge Permit Reissuance-- A user who is required to have a wastewater
21 discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete
22 wastewater discharge permit application, in accordance with section 17-0505, a minimum of [thirty (30)]
23 days prior to the expiration of the user's existing wastewater discharge permit. A user whose existing
wastewater discharge permit has expired and who has submitted its re-application in the time period
specified herein shall be deemed to have an effective wastewater discharge permit until the city issues or
denies the new wastewater discharge permit. A user whose existing wastewater discharge permit has
expired and who failed to submit its re-application in the time period specified herein will be deemed to
be discharging without a wastewater discharge permit.

Section 5. Re-enactment.

Article 17-06 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

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ARTICLE 17-06

REPORTING REQUIREMENTS

17-0601 Baseline Monitoring Reports.--

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- A. Within either one hundred and eighty (180) days after the effective date of a categorical pretreatment standard or the final administrative decision on a category determination under 40 C.F.R. §403.6(a)(4) (whichever is later) existing categorical users currently discharging to or scheduled to discharge to the POTW, shall be required to submit to the city a report which contains the information listed in subsection B, below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the city a report which contains the information listed in subsection B, below. A new source shall also be required to report the method of retreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity off pollutants discharged.
 - B. Users described above shall submit the following information:
 - 1. Identifying Information. The name and address of the facility, including the name of the operator and owner.
 - 2. Environmental Permits. A list of any environmental control permits held by or for the facility.
 - 3. Description of Operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
 - 4. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 C.F.R. §403.6(e).
 - 5. Measurement of Pollutants.
 - i. The categorical pretreatment standards applicable to each regulated process.
 - ii. The results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or by the city) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long term average concentrations (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in article 17-07.
 - iii. Sampling must be performed in accordance with procedures set out in article 17-07.

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- 1 6. Certification. A statement, reviewed by the user's authorized representative and
2 certified by a qualified professional, indicating whether pretreatment standards are being
3 met on a consistent basis, and, if not, whether additional operation and maintenance
4 (O&M) and/or additional pretreatment, is required to meet the pretreatment standards
5 and requirements.
- 6 7. Compliance Schedule. If additional pretreatment and/or O&M will be required to meet
7 the pretreatment standards, the shortest schedule by which the user will provide such
8 additional pretreatment and/or O&M. The completion date in the schedule shall not be
9 later than the compliance date established for the applicable pretreatment standard. A
10 compliance schedule pursuant to this section must meet the requirements set out in
11 section 17-0604.
- 12 8. Signature and Certification. All baseline monitoring reports must be signed and
13 certified in accordance with section 17-0506.

14 17-0602 Compliance Reporting--

- 15 A. Within ninety (90) days following the date for final compliance of an existing Significant
16 Industrial User (SIU) with applicable pretreatment standards and requirements set forth in
17 this article, in federal categorical standards, or in a wastewater discharge permit, or, in the
18 case of a new source or a domestic user considered by the city to fit the definition of SIU,
19 within 90 days following commencement of the introduction of wastewater into the POTW,
20 the affected user shall submit to the city a report containing the information outlined in
21 subsections (D)-(F) of section 17-0505.
- 22 B. For users subject to equivalent mass or concentration limits established by the city in
23 accordance with procedures established in 40 C.F.R. §403.6(c), this report shall contain a
24 reasonable measure of the user's long term production rate. For all other users subject to
25 categorical pretreatment standards expressed in terms of allowable pollutant discharge per
26 unit of production (or other measure of operation), this report shall include the user's actual
27 production during the appropriate sampling period.

28 17-0603 Periodic Compliance Report--

- 29 A. Any user that is required to have an industrial waste discharge permit and performs self-
30 monitoring shall comply with all applicable requirements under 40 C.F.R. §403.12 and
31 submit to the city on or before June 1 and December 1 of each year, unless required on other
32 dates or more frequently by the city, a report indicating the nature of the effluent over the
33 previous reporting period. The frequency of monitoring shall be as prescribed within the
34 industrial waste discharge permit. At a minimum, users shall sample their discharge at least
35 twice per year.
- 36 B. The report shall include a record of the concentrations (and mass if specified in the
37 wastewater discharge permit) of the pollutants listed in the wastewater discharge permit that

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1 were measured and a record of all flow measurements (average and maximum) taken at the
2 designated sampling locations and shall also include any additional information required by
3 this ordinance or the wastewater discharge permit. Production data shall be reported if
4 required by the wastewater discharge permit. Both daily maximum and average
5 concentration (or mass, where required) shall be reported. If a user sampled and analyzed
6 more frequently than what was required by the city or by this ordinance, using methodologies
7 in 40 C.F.R. Part 136, it must submit all results of sampling and analysis of the discharge
8 during the reporting period.

- 9 C. Any user subject to equivalent mass or concentration limits established by the city or by unit
10 production limits specified in the applicable categorical standards shall report production data
11 as outlined in section 17-0602(B).
- 12 D. If the city calculated limits to factor out dilution flows or non-regulated flows, the user will
13 be responsible for providing flows from the regulated process flows, dilution flows and non-
14 regulated flows.
- 15 E. Flows shall be reported on the basis of actual measurement, provided, however, that the city
16 may accept reports of average and maximum flows estimated by verifiable techniques if the
17 city determines that an actual measurement is not feasible.
- 18 F. Discharges sampled shall be representative of the user's daily operations and samples shall be
19 taken in accordance with the requirements specified in article 17-07.
- 20 G. The city may require reporting by users that are not required to have an industrial wastewater
21 discharge permit if information or data is needed to establish a sewer charge, determine the
22 treatability of the effluent, or determine any other factor which is related to the operation and
23 maintenance of the sewer system.
- 24 H. The city may require self-monitoring by the user or, if requested by the user, may agree to
25 perform the periodic compliance monitoring needed to prepare the periodic compliance report
26 required under this section. If the city agrees to perform such periodic compliance
27 monitoring, it may charge the user for such monitoring, based upon the costs incurred by the
28 city for the sampling and analyses. Any such charges shall be added to the normal sewer
29 charge and shall be payable as part of the sewer bills. The city is under no obligation to
30 perform periodic compliance monitoring for a user.

17-0604 Compliance schedules for meeting applicable pretreatment standards.--

- 31 A. The schedule shall contain increments of progress in the form of dates for the commencement
32 and completion of major events leading to the construction and operation of additional
33 pretreatment required for the user to meet the applicable pretreatment standards (e.g., hiring
34 an engineer, completing preliminary plans, completing final plans, executing contract for
35 major components, commencing construction, completing construction, etc.).
- 36 B. No increment referred to in subsection (A) of this section shall exceed nine (9) months.

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1 C. Not later than fourteen (14) days following each date in the schedule and the final date for
2 compliance, the user shall submit a progress report to the city including, at a minimum,
3 whether or not it complied with the increment of progress to be met on such date and, if not,
4 the date on which it expects to comply with this increment of progress, the reason for delay,
5 and the steps being taken by the user to return the construction to the schedule established. In
6 no event shall more than 9 months elapse between such progress reports.

7 17-0605 Notification of Significant Production Changes.-- Any user operating under a wastewater
8 discharge permit incorporating equivalent mass or concentration limits shall notify the city within two (2)
9 business days after the user has a reasonable basis to know that the production level will significantly
10 change within the next calendar month. Any user not providing a notice of such anticipated change will
11 be required to comply with the existing limits contained in its wastewater discharge permit.

12 17-0606 Hazardous Waste Notification.-- Any user that is discharging more than 15 kilograms of
13 hazardous wastes as defined in 40 C.F.R. §261 (listed or characteristic wastes) in a calendar month or any
14 facility discharging any amount of acutely hazardous wastes as specified in 40 C.F.R. §§261.30(d) and
15 261.33(e) is required to provide a one-time notification in writing to the city, to the EPA Region 8
16 Hazardous Waste Director, and to the state of North Dakota. Any existing user exempt from this
17 notification shall comply with the requirements contained herein within 30 days of becoming aware of a
18 discharge of 15 kilograms of hazardous wastes in a calendar month or any discharge of acutely hazardous
19 wastes to the city sewer system.

20 Such notification shall include:

- 21 A. The name of the hazardous waste as set forth in 40 C.F.R. Part 261.
22 B. The EPA Hazardous waste number; and
23 C. The type of discharge (continuous, batch, or other).
D. If an industrial user discharges more than 100 kilograms of such waste per calendar month to
the sewer system, the notification shall also contain the following information to the extent it
is known or readily available to the industrial user:
1. An identification of the hazardous constituents contained in the wastes,
2. An estimation of the mass and concentration of such constituents in the waste streams
discharged during that calendar month, and;
3. An estimation of the mass of constituents in the waste streams expected to be
discharged during the following 12 months.

These notification requirements do not apply to pollutants already reported under the self-
monitoring requirements.

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1 Whenever the EPA publishes final rules identifying additional hazardous wastes or new
2 characteristics of hazardous waste, a user shall notify the city of the discharge of such a substance with 90
3 days of the effective date of such regulations.

4 In the case of any notification made under this paragraph, an industrial user shall certify that it
5 has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it
6 has determined to be economically practical.

7 17-0607 Notice of potential problems, including accidental spills, bypasses, and slug loads.-- Any user
8 shall give verbal notice of an unanticipated bypass, accidental spill, and/or slug load that exceeds
9 applicable Pretreatment Standards to the Control Authority within 24 hours from the time the becomes
10 aware of the issue. The notification shall include the concentration and volume and corrective action.
11 Steps being taken to reduce any adverse impact should also be noted during the notification. A written
12 submission shall also be provided within 5 days of the time the user becomes aware of the accidental
13 spill, bypass, or slug load. Any user who discharges a slug load of pollutants shall be liable for any
14 expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the city under
15 state or federal law.

16 17-0608 Non-Compliance Reporting.-- If sampling performed by a user indicates a violation, the user
17 shall notify the Control Authority within 24 hours of becoming aware of the violation. Within five (5)
18 days following such discharge, the User shall submit a detailed written report describing the cause(s) of
19 the discharge and the measures to be taken by the User to prevent similar future occurrences. Such
20 notification shall not relieve the User of any expense, loss damage, or other liability which might be
21 incurred as a result of damage to the POTW, natural resources, or any other damage to person or property;
22 nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed
23 pursuant to this ordinance. The user shall also repeat the sampling and submit the results of the repeat
analysis to the Control Authority within 30 days after becoming aware of the violation [Where the
Control Authority has performed the sampling and analysis in lieu of the Industrial User, the Control
Authority must perform the repeat sampling and analysis unless it notifies the User of the violation and
requires the User to perform the repeat analysis]. Resampling is not required if:

- 17 A. The Control Authority performs sampling at the site of the Industrial User at a frequency of at
18 least once per month, or
- 19 B. The Control Authority performs sampling at the User between the time when the initial sampling
20 was conducted and the time when the User or the Control Authority receives the results of this
21 sampling.

22 17-0609 Notification of changed discharge.-- All users shall promptly notify the Control Authority in
23 advance of any substantial change in the volume or character of pollutants in their discharge, including
significant manufacturing process changes, pretreatment modifications, and the listed or characteristic
hazardous wastes for which the user has submitted initial notification under 40 C.F.R. §403.12(p).

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1 17-0610 Reports from un-permitted Users-- All users not required to obtain a wastewater discharge
2 permit shall provide appropriate reports to the city as the Superintendent may require.

3 17-0611 Record Keeping-- Users subject to the reporting requirements of this article shall retain and
4 make available for inspection and copying all records of information obtained pursuant to any monitoring
5 activities required by this ordinance and any additional records of information obtained pursuant to
6 monitoring activities undertaken by the user independent of such requirements. Records shall include the
7 date, exact place, method, and time of sampling and the name of the person(s) taking the samples; the
8 dates analysis were performed; who performed the analyses; the analytical techniques or methods used;
9 and the results of such analyses including documentation associated with Best Management Practices.
10 These records shall remain available for a period of at least three (3) years. This period shall be
11 automatically extended for the duration of any litigation concerning the user or POTW, or where the User
12 has been specifically notified of a longer retention period by the Superintendent.

13 **Section 6. Enactment.**

14 Article 17-07 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

15 ARTICLE 17-07

16 SAMPLING AND ANALYTICAL REQUIREMENTS

17 17-0701 Sampling Requirements for Users--

- 18 A. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile
19 organic compounds. For all other pollutant, 24-hour composite samples must be obtained
20 through flow-proportional composite sampling techniques, unless time-proportional composite
21 sampling or grab sampling is authorized by the Control Authority, the samples must be
22 representative of the discharge and the decision to allow the alternative sampling must be
23 documented in the Industrial User file for the Industrial User manifested by the city. Using
protocols (including appropriate preservation) specified in 40 C.F.R. Part 136 and appropriate
EPA guidance, multiple grab samples collected during the 24-hour period may be composited in
the laboratory. Composite samples for other parameters unaffected by compositing procedures as
documented in approved EPA methodologies may be authorized by the Control Authority, as
appropriate.
- B. For sampling required in support of baseline monitoring and 90-day compliance reports, a
minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease,
sulfide and volatile organic compounds for facilities for which historical sampling data does not
exist; for facilities for which historical sampling data are available, the Control Authority may
authorize a lower minimum. For the reports required by 40 C.F.R. §403.12 (e) and (h), the

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Control Authority shall require the number of grab samples necessary to assess and assure compliance by Industrial Users with applicable Pretreatment Standards and Requirements.

C. Samples shall be taken immediately downstream from facilities if such exist, immediately downstream from the regulated or manufacturing process if no pretreatment exists, or at a location determined by the city and specified in the user’s wastewater discharge permit. For categorical users, if other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 C.F.R. §403.6(e) in order to evaluate compliance with the applicable Categorical Pretreatment Standards. For other SIU for which the city has adjusted its local limits to factor out dilution flows, the user shall measure the flows and concentrations necessary to evaluate compliance with the adjusted pretreatment standard(s).

D. All sample results shall indicate the time, date and place of sampling, and the methods of analysis and shall certify that the waste stream sampled is representative of normal work cycles and expected pollutant discharges from the user. If a user sampled and analyzed the waste stream more frequently than what was required in its wastewater discharge permit, using methodologies in 40 C.F.R. Part 136, it must submit all results of sampling and analysis of the discharge as part of its self-monitoring report.

17-0702 Analytical Requirements.-- All pollutant analyses, including sampling techniques, shall be performed in accordance with the techniques prescribed in 40 C.F.R. Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 C.F.R. Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

17-0703 City Monitoring of User’s Wastewater.-- The city will follow the same procedures as outlined in sections 17-0701 and 17-0702.

Section 7. Enactment.

Article 17-08 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-08

COMPLIANCE MONITORING

17-0801 Inspection and Sampling.-- The city shall have the right to enter the facilities of any user to ascertain whether the purpose of this ordinance and any wastewater discharge permit or order issued hereunder is being met and whether the user is complying with all requirements thereof. Users shall allow the Superintendent ready access to all areas of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

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- 1 A. Where a user has security measures in force which require proper identification and clearance
2 before entry into its premises, the User shall make necessary arrangements with its security
guards so that, upon presentation of suitable identification, the Superintendent will be permitted
3 enter without delay for the purposes of performing specific responsibilities.
- 4 B. The Superintendent shall have the right to set up on the User's property, or require installation of,
such devices as are necessary to conduct sampling and/or metering of the user's operations.
- 5 C. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected
and/or sampled shall be promptly removed by the user at the written or verbal request of the
6 Superintendent and shall not be replaced. The costs of clearing such access shall be borne by the
user.
- 7 D. Unreasonable delays in allowing the Superintendent access to the user's premises shall be a
violation of this ordinance.

8 17-0802 Monitoring Facilities.-- Each user shall provide and operate at its own expense a monitoring
9 facility to allow inspection, sampling, and flow measurements of each sewer discharge to the city. Each
10 monitoring facility shall be situated on the user's premises, except where such a location would be
impractical or cause undue hardship on the user, the city may concur with the facility being constructed in
11 the public street or sidewalk area, provided that the facility is located so that it will not be obstructed by
landscaping or parked vehicles. The Superintendent, whenever applicable, may require the construction
12 and maintenance of sampling facilities at other locations (for example, at the end of a manufacturing line
or a wastewater treatment system).

13 There shall be ample room in or near such sampling facility to allow accurate sampling and
preparation of samples for analysis. The facility, including the sampling and measuring equipment, shall
14 be maintained at all times in a safe and proper operating condition at the expense of the user.

15 The Superintendent may require the user to install monitoring equipment as necessary at the
User's expense. All monitoring facilities shall be constructed and maintained in accordance with all
16 applicable local construction standards and specifications. All devices used to measure wastewater flow
and quality shall be calibrated to ensure their accuracy.

17 17-0803 Search Warrants.-- If the Superintendent has been refused access to a building, structure or
18 property, or any part thereof and is able to demonstrate probable cause to believe that there may be a
violation of this ordinance, or that there is a need to inspect as part of a routine inspection program of the
19 city designed to verify compliance with this ordinance or any wastewater discharge permit or order issued
hereunder, or to protect the overall public health, safety and welfare of the community, the city may seek
20 an administrative search warrant pursuant to N.D.C.C. Chapter 29-29.1, or may seek any other search
warrant as authorized by law.

21 17-0804 Vandalism.-- No person shall willfully or negligently break, damage, destroy, uncover, deface,
22 tamper with, or prevent access to any structure, appurtenance or equipment, or other part of the POTW.

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1 Any person found in violation of this requirement shall be subject to the sanctions set out in this
2 ordinance.

3 **Section 8. Enactment.**

4 Article 17-09 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

5
6 ARTICLE 17-09

7 CONFIDENTIAL INFORMATION

8 17-0901 **Confidential Information.**-- Information and data on a user obtained from reports, surveys,
9 wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and
10 from city inspection and sampling activities is held and maintained subject to North Dakota Open Record
11 Law, including N.D.C.C. §44-04-17.1 *et seq.*, and specifically N.D.C.C. §44-04-18.4. City Wastewater
12 constituents, characteristics and other "effluent data" as defined by 40 C.F.R. §2.302 will not be
13 recognized as confidential information and will be available to the public without restriction.

14 **Section 9. Enactment.**

15 Article 17-10 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

16 ARTICLE 17-10

17 PUBLICATION OF USERS IN SIGNIFICANT NON-COMPLIANCE

18 17-1001 **Publication of Significant Non-Compliant Users.**-- The city shall publish annually, in one or
19 more newspaper(s) of general circulation providing meaningful public notice within the jurisdiction(s)
20 served by the POTW, a list of the users which, during the previous twelve (12) months, were in
21 significant non-compliance with applicable pretreatment standards and requirements. For the purposes of
22 this provision, an industrial user is in significant noncompliance if its violation meets one or more of the
23 following criteria:

- 24 A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six
25 percent (66%) or more of wastewater measurements taken for each pollutant parameter during a
26 six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or
27 Requirement, including instantaneous limits, as defined by 40 C.F.R. §403.3(1);
- 28 B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent
29 (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6)
30 month period equals or exceeds the product of the numeric Pretreatment Standard or

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1 Requirement, including instantaneous limits, as defined by 40 C.F.R. §403.3(l) multiplied by the
2 TRC [TRC=1.4 for BOD, TSS, fats, oils and grease, and TRC = 1.2 for all other pollutants except
3 pH];

4 C. Any other discharge violation of a Pretreatment Standard or Requirement as defined by 40 C.F.R.
5 §403.3(l) (daily maximum, longer-term average, instantaneous limit, or narrative Standard) that
6 the POTW determines has caused, alone or in combination with other discharges, Interference or
7 Pass Through (including endangering the health of POTW personnel or the general public);

8 D. Any discharge of pollutants that has caused imminent endangerment to the public or to the
9 environment, or has resulted in the city’s exercise of its emergency authority to halt or prevent
10 such a discharge;

11 E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone
12 contained in a wastewater discharge permit or enforcement order for starting construction,
13 completing construction, or attaining final compliance;

14 F. Failure to provide within thirty (30) days after the due date, any required reports, including
15 baseline monitoring reports, reports on compliance with categorical pretreatment standard
16 deadlines, periodic self-monitoring reports, and reports on compliance with compliance
17 schedules;

18 G. Failure to accurately report non-compliance; or

19 H. Any other violation or group of violations, which may include a violation of Best Management
20 Practices, which the POTW determines will adversely affect the operation or implementation of
21 the local Pretreatment Program.
22
23

Section 10. Enactment.

Article 17-11 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-11

ADMINISTRATIVE ENFORCEMENT REMEDIES

17-1101 Definitions.-- The following definitions apply to this chapter:

24 A. “Notice of violation (NOV)” shall mean a notice of violation is a written notice of the violation of
25 an ordinance in this chapter which identifies the nature of the violation, the section or ordinance
26 allegedly violated and the time of occurrence of the violation, if known.

27 B. “Administrative compliance order (ACO)” shall mean an administrative compliance order is an
28 order issued by the director which identifies the nature of the violation, the section or ordinance
29 allegedly violated, the time of occurrence of the violation, if known, the corrective steps
30

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1 necessary and the nature of subsequent penalties and enforcement actions should the situation not
2 be corrected and ordering that the alleged violator come into compliance with the section or
3 ordinance within which compliance must occur.

4 C. "Order to show cause" shall mean an order issued by the director issued when there is reason to
5 believe that the violation identified in the administrative compliance order has not ceased or been
6 corrected as required, and directing the alleged violator to appear before the director to show
7 cause why service should not be terminated.

8 D. "Restitution" shall mean restitution is the amount determined by the director to be payable to the
9 city by a violator of this chapter necessary to reimburse the city for damage caused to the sewage
10 system as a result of such violation.

11 17-1102 Responsibility for enforcement.-- The director is authorized to enforce this chapter.

12 17-1103 Types of violations.-- All of the following represent violations of this article and of law and will
13 be subject to the remedies and penalties provided in this article, the city code and state law.

14 A. Discharge of sewage without required permit or approval. It is a violation of this section to
15 discharge sewage into the sewerage system of the city without obtaining all the permits,
16 approvals, certificates and other forms of authorization required by this article.

17 B. Discharge of sewage inconsistent with permit. It is a violation of this section to discharge sewage
18 into the sewerage system of the city in any way inconsistent with the terms and conditions of any
19 permit, approval, certificate or other form of authorization required in order to engage in such
20 activity.

21 C. Discharge of sewage inconsistent with conditions. It is a violation of this section to violate, by
22 act or omission, any term, condition, or qualification imposed by a decision-making body upon a
23 required permit, certificate, or other form of authorization.

D. Sewerage discharge equipment and structures inconsistent with this section. It is a violation of
this section to erect, construct, reconstruct, remodel, alter, maintain, move, or use any equipment,
building or structure or to use any equipment, building or structure in violation or contravention
of this section.

E. Continuing violations. It is a violation of this section to continue any of the violations specified
in this section. Each day that a violation continues shall be considered a separate offense.

17-1104 Remedies and enforcement powers.-- The city shall have the following remedies and
enforcement powers:

A. Withhold permits. The city may deny or withhold all permits, certificates or other forms of
authorization as to any applicant for a permit, or to refuse the discharge into the sewerage system

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1 as to any land or structure or improvements thereon upon which there is an uncorrected violation
2 of this chapter or of a condition or qualification of a permit, certificate, approval or other
3 authorization previously granted by a decision-making body. Instead of withholding or denying
4 an authorization, the city may grant such authorization subject to the condition that the violation
5 be corrected. This enforcement provision applies regardless of whether the current owner or
6 applicant is responsible for the violation in question. The city may deny or withhold all permits,
7 certificates or other forms of authorization on any land or structure or improvements owned by a
8 person who owns, developed or otherwise caused an uncorrected violation of a provision of this
9 article or of a condition or qualification of a permit, certificate, approval or other authorization
10 previously granted by a decision-making body. This provision applies regardless of whether the
11 property for which the permit or other approval is sought is the property in violation.

12 B. Revoke permits. A permit may be revoked when the director determines that:

- 13 1. There is departure from the plans, specifications, or conditions as required under terms of
14 the permit;
- 15 2. The plans, specifications, or conditions were obtained by false representation or was
16 issued by mistake; or
- 17 3. Any of the provisions of this chapter are being violated.

18 C. Revoke plan or other approval. When a violation of this article involves a failure to comply with
19 approved plans or conditions to which the approval of such plans was made subject, the
20 superintendent, may, upon notice to the applicant and other known parties in interest (including
21 an holders of building or other permits affected) and after a public hearing, revoke the plan or
22 other approval or condition its continuance on strict compliance, the provision of security or such
23 other conditions as the superintendent may reasonably impose.

D. Sewer service shut off. In a situation deemed by the director to be an emergency, the director
may order the shut off of sewer service subject to the user's right to a hearing before the director
as set forth in this article. In non-emergency situations, subject to the user's right to a hearing
prior to such shut-off, as set forth in this article, the superintendent may order the sewer service of
a violator to be shut off.

E. Injunctive relief. The city may seek an injunction or other equitable relief in court to stop any
violation of this chapter or of a permit, certificate or other form of authorization granted
hereunder.

F. Abatement. The city may seek a court order in the nature of mandamus, abatement, injunction or
other action or proceeding to abate or remove a violation or to otherwise restore the premises in
question to the condition in which they existed prior to the violation

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1 G. Restitution. The city may seek an order requiring restitution as a condition to be met by a person
2 before the person's permit is restored, before the person is allowed to lawfully discharge into the
3 sewer system, or before other action may be taken by the person as determined by an appropriate
4 order.

5 H. Penalties. The penalty for a violation of this ordinance shall be governed by the penalty
6 provisions of Fargo Municipal Code 1-0305, and the city may also seek such criminal or civil
7 penalties provided by North Dakota law or city ordinance.

8 I. Other remedies. The city shall have such other remedies as are and as may be from time to time
9 provided by North Dakota law and municipal codes for the violation of this chapter or related
10 provisions.

11 J. Remedies cumulative. The remedies and enforcement powers established in this article are
12 cumulative.

13 17-1105 Enforcement procedures.-- The following enforcement procedures shall apply to violations of
14 this chapter:

15 A. Non-emergency matters. In the case of violations of this chapter that do not constitute an
16 emergency, the superintendent may:

- 17 1. Issue a notice of violation; or
- 18 2. Issue an administrative compliance order;

19 which shall be issued to the property owner and to any other person who is alleged to be in
20 violation of this article or of the terms of any permit or condition granted and to any applicant
21 for any relevant permit.

22 B. Emergency matters. In the case of violations of this chapter that do constitute an emergency
23 situation, the city shall use all remedies, penalties and enforcement powers available under
this chapter without prior notice, including shutting off sewer service, but the director must
send notice simultaneously with beginning enforcement action to the property owner, to any
other person who is party to the agreement and to applicants for any relevant permit and must
advise persons affected by the sewer service shut off that a hearing will be held within seven
days from the date sewer service was shut off. At the hearing, the director will determine
whether there were appropriate grounds for the sewer service to be shut off, and whether the
shut off of sewer service should continue.

C. Administrative compliance orders procedure. Persons receiving an administrative
compliance order or an administrative compliance order with fine shall have ten (10) days, or
such longer period as the director allows, to correct the violation. If the violation is not

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1 corrected within the required time-frame, the director may use all penalties, remedies and
2 enforcement powers available under this article.

- 3 D. Order to Show Cause Hearing. In the event the director has issued an administrative
4 compliance order, if the violation is not corrected by timely compliance, the director may
5 order any person who causes or allows an unauthorized discharge to show cause before the
6 director why sewer service should not be shut off. A notice shall be served on the offending
7 party, specifying the time and place of a hearing to be held by the director regarding the
8 violation, and directing the offending party to show cause before said board why an order
9 should not be made directing the shut off of service. The notice of the hearing shall be served
10 personally or by registered or by certified mail, return receipt requested, at least 10 days
11 before the hearing. Such notice shall be deemed served if a copy thereof is (a) delivered to
the offending party personally or to the offending party's registered agent; (b) sent by
certified mail addressed to the offending party or to the offending party's registered agent at
the last known address with a return-receipt requested; or (c) delivered in any other manner as
permitted under local law. If the certified mailing is returned showing that the item was not
delivered, a copy thereof shall be posted in a conspicuous place in or about the property
affected by such notice. Service by mail shall be deemed made or accomplished when it is
deposited for delivery with the U.S. Postal Service.

12 17-1106 Emergency Suspensions.-- The Superintendent may immediately suspend a user's discharge
13 (after informal notice to the user) whenever such suspension is necessary to stop an actual or threatened
14 discharge which reasonably appears to present or cause an imminent or substantial endangerment to the
15 health or welfare of persons. The Superintendent may also immediately suspend a user's discharge (after
16 notice and opportunity to respond) that threatens to interfere with the operation of the POTW or which
17 presents or may present an endangerment to the environment.

- 18 A. Any user notified of a suspension of its discharge shall immediately stop or eliminate its
19 contribution. In the event off a user's failure to immediately comply voluntarily with the
20 suspension order, the Superintendent shall take such steps as deemed necessary, including
21 immediate severance of the sewer connection, to prevent or minimize damage to the POTW,
22 its receiving stream, or endangerment to any individuals. The superintendent shall allow the
23 user to recommence its discharge when the user has demonstrated to the satisfaction of the
city that the period of endangerment has passed, unless the termination proceedings in section
17-1107 are initiated against the user.
- B. A user that is responsible, in whole or in part, for any discharge presenting imminent
endangerment shall submit a detailed written statement, describing the causes of the harmful
contribution and the measures taken to prevent any future occurrence, to the Superintendent
prior to the date of any show cause or termination hearing underthis chapter.

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Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this chapter.

17-1107 Termination of Discharge (Non-Emergency).-- In addition to the provisions in section 17-0513, any user that violates the following conditions is subject to discharge termination:

- A. Violation of wastewater discharge permit conditions;
- B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
- C. Failure to report significant changes in operation or wastewater volume, constituents and characteristics prior to discharge;
- D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling; or
- E. Violation of the pretreatment standards in article 17-04.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under section 17-1105 why the proposed action should not be taken. Exercise of this option by the city shall not be a bar to, or a prerequisite for, taking any other action against the user.

17-1108 Other Powers.-- In addition to the enforcement powers specified in this chapter, the city may exercise any and all enforcement powers granted to them by North Dakota law.

17-1109 Continuation.-- Nothing in this chapter shall prohibit the continuation of previous enforcement actions, undertaken by the city pursuant to previous and valid ordinances and laws.

Section 11. Enactment.

Article 17-12 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-12

JUDICIAL ENFORCEMENT REMEDIES

17-1201 Injunctive Relief.-- When the Superintendent finds that a user has violated or continues to violate any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the Superintendent may petition the state district court or federal district court, as applicable, for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this ordinance on activities of the user. The city may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a
2 prerequisite for, taking any other action against a user.

3 17-1202 Criminal Prosecution--

- 4 A. A user which has willfully or negligently violated any provision of this ordinance, a wastewater
5 discharge permit, or order issued hereunder, or any other pretreatment standard or requirement
6 shall, upon conviction, be guilty of a Class B misdemeanor, punishable by a fine of not more than
7 \$1500, imprisonment for not more than thirty (30) days, or both said imprisonment and fine.
- 8 B. A user which has willfully or negligently introduced any substance into the POTW which causes
9 personal injury or property damage shall, upon conviction, be guilty of a Class B misdemeanor,
10 punishable by a fine of not more than \$1500, imprisonment for not more than thirty (30) days, or
11 both said imprisonment and fine. This penalty shall be in addition to any other cause of action for
12 personal injury or property damage available under State law.
- 13 C. A user which knowingly made any false statements, representations, or certifications in any
14 application, record, report, plan, or other documentation filed, or required to be maintained,
15 pursuant to this ordinance, wastewater discharge permit, or order issued hereunder, or who
16 falsified, tampered with, or knowingly rendered inaccurate any monitoring device or method
17 required under this ordinance shall, upon conviction, be guilty of a Class B misdemeanor,
18 punishable by a fine of not more than \$1500, imprisonment for not more than thirty (30) days, or
19 both said imprisonment and fine.

20 17-1203 Remedies Non-exclusive-- The provisions in articles 17-10 through 17-13 of this ordinance are
21 not exclusive remedies. The city reserves the right to take any, all, or any combination of these actions
22 against a non-compliant user. Enforcement in response to pretreatment violations will generally be in
23 accordance with the city's enforcement response plan. However, the city reserves the right to take other
action against any user when the circumstances warrant. Further, the city is empowered to take more than
one enforcement action against any non-compliant user. These actions may be taken concurrently.

Section 12. Enactment.

Article 17-13 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-13

SUPPLEMENTAL ENFORCEMENT ACTION

17-1301 Performance Bonds-- The Superintendent may decline to issue or reissue a wastewater
discharge permit to any user which has failed to comply with any provision of this ordinance, a previous
wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 unless such user first files a satisfactory bond, payable to the city, in a sum not to exceed a value
2 determined by the Superintendent to be necessary to achieve consistent compliance.

3 17-1302 Liability Insurance.-- The Superintendent may decline to issue or reissue a wastewater discharge
4 permit to any user which has failed to comply with any provision of this ordinance, a previous wastewater
5 discharge permit or order issued hereunder, or any other pretreatment standard or requirement, unless the
6 user first submits proof that is has obtained financial assurances sufficient to restore or repair damage to
7 the POTW caused by its discharge.

8 17-1303 Water Supply Severance.-- Whenever a user has violated or continues to violate any provision
9 of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment
10 standard or requirement, water service to the user may be severed. Service will only recommence, at the
11 user's expense, after it has satisfactorily demonstrated its ability to comply.

12 17-1304 Public Nuisances.-- A violation of any provision of this article, a wastewater discharge permit,
13 or order issued hereunder, or any other pretreatment standard or requirement, is hereby declared a public
14 nuisance and city may be abated, enjoined or repressed in the same manner as any other public nuisance,
15 including restraining order or injunction issued by a court of competent jurisdiction.

16 17-1305 Contractor Listing.-- Users which have not achieved compliance with applicable pretreatment
17 standards and requirements are not eligible to receive a contractual award for the sale of goods or
18 services to the city. Existing contracts for the sale of goods or services to the city held by a user found to
19 be in significant non-compliance with the pretreatment standards or requirements may be terminated at
20 the discretion of the city.
21
22
23

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 **Section 13. Enactment.**

2 Article 17-14 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

3 ARTICLE 17-14

4 AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

5 17-1401 Upset.--

- 6 A. For the purposes of this chapter, "upset" means an exceptional incident in which there is
7 unintentional and temporary non-compliance with applicable pretreatment standards because of
8 factors beyond the reasonable control of the user. An upset does not include non-compliance to
9 the extent caused by operational error, improperly designed treatment facilities, inadequate
10 treatment facilities, lack of preventive maintenance, or careless or improper operation.
- 11 B. An upset shall constitute an affirmative defense to an action brought for non-compliance with
12 applicable pretreatment standards if the requirements of subsection C hereof are met.
- 13 C. A user who wishes to establish the affirmative defense of upset shall demonstrate, through
14 properly signed, contemporaneous operating logs, or other relevant evidence that:
- 15 1. An upset occurred and the user can identify the cause(s) of the upset;
 - 16 2. The facility was at the time being operated in a prudent and workman-like manner and in
17 compliance with applicable operation and maintenance procedures; and
 - 18 3. The user has submitted the following information to the POTW and treatment plant
19 operator within twenty four (24) hours of becoming aware of the upset [if this
20 information is provided orally, a written submission must be provided within five(5)
21 days]:
 - 22 i. A description of the indirect discharge and cause of non-compliance;
 - 23 ii. The period of non-compliance, including exact dates and times or, if not
corrected, the anticipated time the non-compliance is expected to continue; and
 - iii. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of
the non-compliance.
- 24 D. In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have
the burden of proof.
- 25 E. Users will have the opportunity for a judicial determination on any claim of upset only in an
enforcement action brought for non-compliance with applicable pretreatment standards.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

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1 F. Users shall control production of all discharges to the extent necessary to maintain compliance
2 with applicable pretreatment standards upon reduction, loss, or failure of their treatment facility
3 until the facility is restored or an alternative method of treatment is provided. This requirement
4 applies in the situation where, among other things, the primary source of power of the treatment
5 facility is reduced, lost, or fails.

6 17-1402 Prohibited Discharge Standards.-- A user shall have an affirmative defense to an enforcement
7 action brought against it for non-compliance with the prohibitions in section 17-0403(A) and (B) if it can
8 prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with
9 discharges from other sources, would cause pass through or interference and that either: (a) a local limit
10 exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and
11 during, the pass through or interference; or (b) no local limit exists, but the discharge did not change
12 substantially in nature or constituents from the user's prior discharge when the city was regularly in
13 compliance with its NPDES permit, and in the case of interference, was in compliance with applicable
14 sludge use or disposal requirements.

15 17-1403 Bypass.--

16 A. For the purposes of this chapter,

- 17 1. "Bypass" means the intentional diversion of waste streams from any portion of a user's
18 treatment facility.
- 19 2. "Severe property damage" means substantial physical damage to property, damage to the
20 treatment facilities which causes them to become inoperable, or substantial and
21 permanent loss of natural resources which can reasonably be expected to occur in the
22 absence of a bypass. Severe property damage does not mean economic loss caused by
23 delays in production.

B. A user may allow any bypass to occur which does not cause applicable pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (C) and (D) hereof.

C. Notice to Bypass

1. If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW at least ten (10) days before the date of the bypass, if possible.
2. A user shall submit oral notice to the city of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

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and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The POTW may waive the written report on a case by case basis if the oral report has been received within twenty-four (24) hours.

D. Bypass Conditions

1. Bypass is prohibited, and the POTW may take an enforcement action against a user for a bypass, unless the user demonstrates:
 - i. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - iii. The user submitted notices as required under subsection (C) hereof.
2. The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three conditions listed in subparagraph (a) of this subsection.

Section 14. Enactment.

Article 17-15 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-15

WASTEWATER TREATMENT RATES

17-1501 Sewerage rates and rules.-- The city reserves the right to change the rates for the use and availability of sewerage service from time to time, by resolution, and at all times to make such sewerage service restrictions, rules, and regulations as, in the judgment of the board of city commissioners may be necessary; provided, that the schedules of such rates and charges shall be such as will provide the amounts required, over and above the current expenses of operation and maintenance for depreciation, replacement, and improvement of said utility which will keep the same in a state of efficiency corresponding to the progress of such sewerage utilities generally, including payment of principal and interest and creation and maintenance of reserves securing such payments on any bond issued to finance

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 or refinance improvements thereto, in accordance with the resolutions and ordinances authorizing such
2 bonds. Sewerage rates, surcharges, discounts, penalties, service, or advance charges shall be those
3 established by the board of city commissioners by resolution:

- 4 A. Payment of the user’s wastewater service charge and penalties—The city shall submit statements
5 on a quarterly or more frequent basis to the user. The city shall add a penalty of 10% if the
6 payment is not received by the city within 15 days. Should any user fail to pay the user
7 wastewater service charge and penalty within three months of the due date, the city may stop the
8 wastewater service to the property.
- 9 B. Wastes prohibited from being discharged to the wastewater treatment system—The discharge of
10 wastes containing materials in such quantities as to be detrimental to the wastewater treatment
11 process is hereby prohibited. The discharge of wastes which cause or are likely to cause
12 maintenance problems such as to hinder flow, block pipes and/or pumps is hereby prohibited.

13 17-1502 Industrial waste surcharge.--

- 14 A. There shall be collected from any permitted user within the city an additional charge over and
15 above the base sewage rates provided for commercial users based upon the extent to which the
16 sewage or waste so discharged has a biochemical oxygen demand (BOD) concentration greater
17 than two hundred seventy-five (275) mg/l, total suspended solids (TSS) greater than two hundred
18 seventy-five (275) mg/l or other pollutants in such concentration as to require special attention to
19 treatment as determined by resolution of the board of city commissioners.
- 20 B. Any sums so charged in addition to the base sewage charges shall be termed “surcharge” and
21 shall be ascertained as hereinafter described.
 - 22 1. Sampling and testing of the permittees’ wastewater shall be conducted at periodic
23 intervals as specified in the industrial waste permit or agreed upon by the city and
24 permittee for the purpose of computation of the monthly surcharge and penalty fee, if
25 any.
 - 26 2. The surcharge to the permitted user shall be based upon the following:
 - 27 i. $S = (RB(BOD-275) + RS(TSS-275) + RP(P)) * 8.34 * VW$
 - 28 ii. For the purposes of this ordinance the following terms apply:
 - 29 (a.) RB = surcharge rate in \$/lb for BOD
 - 30 (b.) BOD = Concentration of BOD in user’s wastewater, mg/l
 - 31 (c.) RS = surcharge rate in \$/lb for TSS

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FARGO, NORTH DAKOTA

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(d.) TSS = Concentration of TSS in user's discharge, mg/l

(e.) RP = surcharge rate in \$/lb for other specified pollutant

(f.) P = Concentration of other pollutant(s) in user's discharge, mg/l

(g.) VW= Volume of wastewater discharged for the billing period, million gallons

iii. If the surcharge amount for any pollutant in the above formula becomes less than zero (0) it shall not be used to offset or reduce the surcharge amount to be collected for other pollutants listed in the surcharge formula.

3. Wastewater surcharges shall be in addition to and shall be collected with the wastewater base rate charges and all regulations which apply to the collection of these wastewater base rate charges shall also apply to wastewater surcharges.

4. The rates to be applied in the surcharge formula for treatment of pollutants in addition to the wastewater rentals are established as follows:

i. For BOD: The BOD rate (RB) = is amount set by resolution of the board of city commissioners.

ii. For TSS: The TSS rate (RS) = is amount set by resolution of the board of city commissioners.

iii. For other pollutants: The rate (P) = (rate to be determined by board of city commissioners when need exists for special attention to treatment of other pollutants.)

C. Any person discharging any waste which by its nature or toxicity causes damage to the treatment works or increases the cost of managing the effluent, sludge or other products of treatment shall pay the costs of cleanup, restoration of such damage, and any increased treatment costs.

17-1505 Maximum Loadings.-- The Board of city commissioners, by resolution, may establish the maximum load of BOD and TSS, or other pollutant, for each permittee.

17-1506 Transitional provision.-- The requirement of the maximum loadings set by the board of city commissioners, as provided by section 17-1505, shall take effect no earlier than July 1, 2007.

17-1507 Industrial waste permit fee.-- An annual fee of one hundred dollars (\$100.00) shall be charged for each industrial waste permit. The initial fee shall be submitted at the time of application for such permit and subsequent renewal fees shall be submitted with a written application for renewal of the permit prior to December 31 of each year.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 17-1508 Notification of rates and charges-- The charges for wastewater service (user charges) shall be
2 stated separately from the water, refuse collection or other amounts shown on the periodic water bills
3 issued to each user. Each user will be notified annually, or at more frequent intervals, as to the current
4 rates for wastewater service, surcharges for high strength wastes, and any other charges made for
5 collection and treatment of wastewater in the city.

6 17-1509 When due-- Wastewater charges shall be collected with the water charges of the city by the city
7 water department, and shall become due and delinquent upon the same dates as the water bills upon which
8 the same are charged, and for failure to pay the said wastewater charges the authorized city representative
9 shall have the same authority to shut off water and said authorized city representative shall refuse to turn
10 on or reconnect the same as is now provided in the case of default in the payment of water bills.
11 Whenever the authorized city representative shall have shut off water service as provided herein for
12 failure of the owner or occupant to pay the wastewater charges, such service shall not be reinstated until
13 all past due bills for wastewater service are paid in full.

14 17-1510 Exemptions--

- 15 A. No wastewater fees shall be charged or collected upon water meter readings for water which is
16 carried out of the city for use. This section shall not be construed as exempting from wastewater
17 charges water which is used for processing purposes within the city though the product thereof is
18 carried outside of the city for use, but shall apply only to water users actually hauling or carrying
19 their water beyond the city limits for use.
- 20 B. No wastewater fees shall be charged upon premises outside the city limits unless said premises
21 are served by the city wastewater system.

22 17-1511 Out of city sewer connections--

- 23 A. No wastewater services shall be connected to the systems of the city to serve property lying
outside the corporate limits of the city.
- B. Exceptions:
1. Political subdivision. Wastewater service may be extended to any village, city, township,
county, state, or federal governmental agency with the approval of the board of city
commissioners.
 2. Existing connections. Any sewer connection serving property outside the corporate
limits of the city, on the effective date of this article, shall be continued.
 3. Institutions of learning and public charity. Wastewater service may be extended to
schools, academics, colleges, institutions of learning, institutions of public charity,

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 hospitals, churches and religious organizations with the approval of the board of city
2 commissioners.

- 3 C. Any person, firm or corporation that is permitted as an out of city sewer connection shall enter
4 into an agreement with the city that said person, firm or corporation will construct and maintain
5 in good repair at the user's own expense under the direction, supervision, and according to
6 instruction of the authorized city representative, the necessary service pipe, manholes, and other
7 appurtenances to serve the premises in compliance with all city codes and ordinances, will obtain
8 the necessary plumbing permits therefor and will pay all sewer connection or service fees, permit
9 fees, and inspection fees required for such installations. The authorized city representative shall
10 have the same authority to collect monthly wastewater fees and to shut off water for failure of the
11 user to pay the said wastewater fees as for users within the city limits.
- 12 D. In the event an additional user desires to be connected to an existing out of city sewer service the
13 written consent of the owner of the sewer and of the authorized city representative, together with
14 the payment of all applicable fees shall be required. Said fees shall include the inspection fee,
15 sewer connection or service fee, industrial waste permit fee, and/or any other fees if and when
16 applicable to the service desired and shall accompany a written application to the city for said
17 service.
- 18 E. The payment of the monthly wastewater service charges provided in this article shall also apply
19 to out of city property owners who have been heretofore connected to said service, and in
20 addition said users shall be subject to all conditions and regulations imposed by this chapter, and
21 amendments thereto and shall be subject to such other conditions as may be required by the
22 authorized city representative.

23 **Section 15. Enactment.**

Article 17-16 of Chapter 17 of the Fargo Municipal Code is hereby enacted to read as follows:

ARTICLE 17-16

MISCELLANEOUS PROVISIONS

17-1601 Pretreatment Charges and Fees.--The city may adopt reasonable fees for reimbursement of costs
of setting up and operating the city's Pretreatment Program which may include:

- A. Fees for wastewater discharge permit applications including the cost of processing such
application;
- B. Fees for monitoring, inspection, and surveillance procedures including the cost of collection
and analyzing a user's discharge, and reviewing monitoring reports submitted by users;

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 C. Fees for reviewing and responding to accidental discharge procedures and construction'

2 D. Fees for filing appeals; and

3 E. Other fees as the city may deem necessary to carry out the requirements contained herein.
4 These fees relate solely to the matters covered by this ordinance and are separate from all
5 other fees, fines, and penalties chargeable by the city.

6 17-1602 Severability.-- If any provision of this ordinance is invalidated by any court of competent
7 jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

8 17-1603 Conflicts.-- All other ordinances and parts of other ordinances inconsistent or conflicting with
9 any part of this ordinance are hereby repealed to the extent of the inconsistency or conflict.

10 17-1604 Days.-- A day under this chapter should be a calendar day unless context suggests otherwise.

11 17-1605 Savings Clause. – To the extent that any portion of Chapter 17 of the Fargo Municipal Code has
12 been repealed and re-enacted with a different or revised section or article number, particularly with
13 respect to a repeal and re-enactment occurring with the year 2019 passage of Ordinance No.
14 _____[codifier to insert ordinance number upon enactment hereof] of the city of Fargo, and to the extent
15 said re-enacted section or portion thereof addresses the same subject matter as existed under the prior
16 version of said law; and to the extent such prior city ordinance was referenced in an agreement with the
17 state, an agency thereof, or another political subdivision or other party, public or private, the re-enacted
18 version of the ordinance or section shall be deemed to be an amendment of the prior version, regardless of
19 the change in numbering or title of the re-enacted law.

20 Section 16. Penalty Clause.

21 A person who willfully violates this ordinance is guilty of a Class B misdemeanor. Every person, firm or
22 corporation violating an ordinance which is punishable as a Class B misdemeanor shall be punished by a
23 fine not to exceed \$1,500, or by imprisonment not to exceed 30 days, or by both such fine and
imprisonment, in the discretion of the court; the court to have power to suspend said sentence and to
revoke the suspension thereof. In addition to such fine and/or imprisonment, the court, in its discretion,
may assess a fee in an amount not to exceed \$25.00 as provided in N.D.C.C. §27-01-10.

Section 17. Effective date. This ordinance shall be in full force and effect from and after its
passage, approval and publication.

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

CITY OF
Fargo
ASSESSMENT DEPARTMENT

3a

April 3, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 226 28 Ave. N as submitted by Amy Jo & Eric Bye. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2017, 2018, & 2019.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$375 with the City of Fargo's share being \$65.

Sincerely,



Ben Hushka
City Assessor

hah
attachment

**Application For Property Tax Exemption For Improvements
To Commercial And Residential Buildings**
North Dakota Century Code ch. 57-02.2
(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Amy Jo & Eric Bye Phone No. 218/791-6145

2. Address of Property 226 28 Ave N
City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed. Lt, 1, Blk 2, Edgewood 1st

4. Parcel Number 01-0720-00030-000 Residential Commercial Central Business District

5. Mailing Address of Property Owner Same
City _____ State _____ Zip Code _____

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Bath/Kitchen remodels, egress windows & finish lower level

7. Building Permit No. 141432 8. Year Built 1965

9. Date of Commencement of making the improvement August 2014

10. Estimated market value of property before improvement \$ 200,700

11. Cost of making the improvement (all labor, material and overhead) \$ 40,000

12. Estimated market value of property after improvement \$ 229,500

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.
Applicant's Signature [Signature] Date 7-1-19

Assessor's Determination

14. The local assessor finds that the improvements in this application has has not met the qualifications for exemption for the following reason(s): 3 YEARS FOR QUALIFYING WORK
Assessor's Signature [Signature] Date 4/4/19

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied Approved
Approval subject to the following conditions: _____
Chairman of Governing Body _____ Date _____

CITY OF
Fargo
ASSESSMENT DEPARTMENT

36

April 3, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

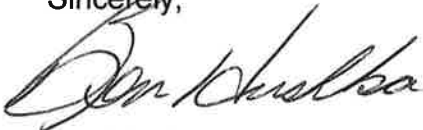
Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 226 28 Ave. N as submitted by Amy Jo & Eric Bye. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2018, 2019, 2020, 2021, & 2022.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$160 with the City of Fargo's share being \$25.

Sincerely,



Ben Hushka
City Assessor

hah
attachment

**Application For Property Tax Exemption For Improvements
To Commercial And Residential Buildings**
North Dakota Century Code ch. 57-02.2
(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Amy Jo & Eric Bye Phone No. 218/791-6145

2. Address of Property 226 28 Ave N
City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed. Lt, 1, Blk 2, Edgewood 1st

4. Parcel Number 01-0720-00030-000 Residential Commercial Central Business District

5. Mailing Address of Property Owner Same
City _____ State _____ Zip Code _____

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Metal siding

7. Building Permit No. 170951 8. Year Built 1965

9. Date of Commencement of making the improvement June 2017

10. Estimated market value of property before improvement \$ 229,500

11. Cost of making the improvement (all labor, material and overhead) \$ 3,000

12. Estimated market value of property after improvement \$ 280,800

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.
Applicant's Signature EJB Date 4/2/19

Assessor's Determination

14. The local assessor finds that the improvements in this application has has not met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK
Assessor's Signature Don Quibbler Date 4/4/19

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied Approved
Approval subject to the following conditions: _____
Chairman of Governing Body _____ Date _____

CITY OF
Fargo
ASSESSMENT DEPARTMENT

April 3, 2019

3c

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 160 Eagle St. N as submitted by Keith J. & Deborah A. Battles. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2019, 2020, 2021, 2022, & 2023.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$660 with the City of Fargo's share being \$110.

Sincerely,



Ben Hushka
City Assessor

hah
attachment

**Application For Property Tax Exemption For Improvements
To Commercial And Residential Buildings**

North Dakota Century Code ch. 57-02.2
(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Keith & Deborah Battles Phone No. 701-373-5039

2. Address of Property 160 Eagle St N
City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed. Lt 22 Blk 4A
Golf Course 5th

4. Parcel Number 01-1005-00750-000 Residential Commercial Central Business District

5. Mailing Address of Property Owner Same
City _____ State _____ Zip Code _____

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Convert pool room into master suite with living area

7. Building Permit No. 180211 8. Year Built 1977

9. Date of Commencement of making the improvement MARCH 2018

10. Estimated market value of property before improvement \$ 355,100 (2018)

11. Cost of making the improvement (all labor, material and overhead) \$ 130,000

12. Estimated market value of property after improvement \$ _____

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.
Applicant's Signature [Signature] Date 3/28/2019

Assessor's Determination

14. The local assessor finds that the improvements in this application has has not met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK
Assessor's Signature [Signature] Date 4/1/19

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied Approved
Approval subject to the following conditions: _____
Chairman of Governing Body _____ Date _____

CITY OF
Fargo
ASSESSMENT DEPARTMENT

3d

April 3, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

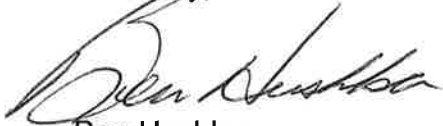
Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 401 18 St. S as submitted by Michael J. & Angela Mathers. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2018, 2019, 2020, 2021, & 2022.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$975 with the City of Fargo's share being \$165.

Sincerely,



Ben Hushka
City Assessor

hah
attachment

**Application For Property Tax Exemption For Improvements
To Commercial And Residential Buildings**
North Dakota Century Code ch. 57-02.2
(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Michael and Angela Mueller Phone No. 201.405.4857

2. Address of Property 401 18th St Seattle

City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed. Residential
Pt of Lts 9, 10, 11 B1K9 Arnesons

4. Parcel Number 01-0060-00680-00 Residential Commercial Central Business District

5. Mailing Address of Property Owner 401 18th St Seattle

City Fargo State ND Zip Code 58103

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Remodel 2nd level Bath
Remove walls in basement, Painted Exterior, windows siding

7. Building Permit No. _____ 8. Year Built 1959

9. Date of Commencement of making the improvement 4.1.2018

10. Estimated market value of property before improvement \$ 202,000

11. Cost of making the improvement (all labor, material and overhead) \$ 75,900

12. Estimated market value of property after improvement 277,900

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.

Applicant's Signature Michael Mueller Date 4.6.2019

Assessor's Determination

14. The local assessor finds that the improvements in this application has has not met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK

Assessor's Signature Don Quasha Date 4/4/19

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied Approved

Approval subject to the following conditions: _____

Chairman of Governing Body _____ Date _____

CITY OF
Fargo
ASSESSMENT DEPARTMENT

3e

April 3, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 222 Broadway N. as submitted by Banner LLC. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2020, 2021, 2022, 2023, & 2024.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$10,390 with the City of Fargo's share being \$1,765.

Sincerely,



Ben Hushka
City Assessor

hah
attachment

Application For Property Tax Exemption For Improvements To Commercial And Residential Buildings

North Dakota Century Code ch. 57-02.2
(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Banner LLC Phone No. 701-889-5991

2. Address of Property 222 Broadway N
 City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed. Commercial/Office rental space

4. Parcel Number 01-2381-00520-000 Residential Commercial Central Business District

5. Mailing Address of Property Owner 1330 Page Dr. S. Ste 202C
 City Fargo State ND Zip Code 58103

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Kilstone Brewery will be outfitting the 2nd floor in order to function.

7. Building Permit No. Not Sure Yet 190048 8. Year Built 1949

9. Date of Commencement of making the improvement 02/25/19

10. Estimated market value of property before improvement \$ 2,500,000

11. Cost of making the improvement (all labor, material and overhead) \$ Not Sure Yet maybe \$800,000

12. Estimated market value of property after improvement \$ 3,300,000

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.
 Applicant's Signature Stephen J. Nelson Date 4/18/18

Assessor's Determination

14. The local assessor finds that the improvements in this application has has not met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK
 Assessor's Signature Don Kuske Date 4/4/19

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied Approved
 Approval subject to the following conditions: _____

 Chairman of Governing Body _____ Date _____

CITY OF
Fargo
ASSESSMENT DEPARTMENT

36.

April 3, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

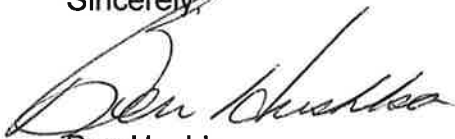
Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 305 15 Ave. S as submitted by Marie E. & Nicholas G. Anderson. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2020, 2021, 2022, 2023, & 2024.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$70 with the City of Fargo's share being \$10.

Sincerely,



Ben Hushka
City Assessor

hah
attachment

**Application For Property Tax Exemption For Improvements
To Commercial And Residential Buildings**
North Dakota Century Code ch. 57-02.2
(File with the local city or township assessor)

Property Identification

1. Name of Property Owner Marie E. & Nicholas G. Anderson Phone No. (701)371-2376

2. Address of Property 306 15 Ave. S
 City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed. Lot 137 Belmont Park

4. Parcel Number 01-0120-01270-000 Residential Commercial Central Business District

5. Mailing Address of Property Owner SAME
 City _____ State _____ Zip Code _____

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Remove Non-bearing Kitch/Dining wall. Add island, cabs, tops, floors, trim

7. Building Permit No. 190098 8. Year Built 1927

9. Date of Commencement of making the improvement 02/06/2019

10. Estimated market value of property before improvement \$ 176400

11. Cost of making the improvement (all labor, material and overhead) \$ 5300

12. Estimated market value of property after improvement \$ 181700

Applicant's Certification and Signature

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.

Applicant's Signature [Signature] Date 2-6-19

Assessor's Determination

14. The local assessor finds that the improvements in this application has has not met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK

Assessor's Signature [Signature] Date 4/4/19

Action of Governing Body

15. Action taken on this application by local governing board of the county or city: Denied Approved

Approval subject to the following conditions: _____

Chairman of Governing Body _____ Date _____

401



GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

G - _____ (____)____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization Northern Prairie Performing Arts

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|---|-------------------------------------|---|-------------|
| Name of Location Pour House | | | |
| Street 4281 45th St S | City Fargo | ZIP Code 58104 | County Cass |
| Beginning Date(s) Authorized 7/1/2019 | Ending Date(s) Authorized 6/30/2020 | Number of twenty-one tables if zero, enter "0": 2 | |
| Specific location where games of chance will be conducted and played at the site (required) Entire lounge and patio, excluding restrooms and entry ways | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input checked="" type="checkbox"/> Twenty-One |
| <input type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input type="checkbox"/> Poker |
| <input type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input checked="" type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheels with Tickets |
| <input type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input checked="" type="checkbox"/> Paddlewheel Table |
| <input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|---|------------|
| Attorney General | Date |
| Signature of City/County Official | Date |
| PRINT Name and official position of person signing on behalf of city/county above | 04/22/2019 |
| Steve Sprague/City Auditor | |

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

RETURN ALL DOCUMENTS TO:

Office of Attorney General
 Licensing Section
 600 E Boulevard Ave, Dept. 125
 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

402

G - _____ (_____)____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization **Northern Prairie Performing Arts**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|---|--|--|--------------------|
| Name of Location O'Clevy's at the Ramada | | | |
| Street 3333 13th Ave S | City Fargo | ZIP Code 58103 | County Cass |
| Beginning Date(s) Authorized 7/1/2019 | Ending Date(s) Authorized 6/30/2020 | Number of twenty-one tables if zero, enter "0": 2 | |
| Specific location where games of chance will be conducted and played at the site (required) Entire lounge, patio, banquet facilities, excluding restrooms and entry ways | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

| | | |
|---|--|---|
| <input checked="" type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input checked="" type="checkbox"/> Twenty-One |
| <input type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input checked="" type="checkbox"/> Poker |
| <input type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input checked="" type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheels with Tickets |
| <input checked="" type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input checked="" type="checkbox"/> Paddlewheel Table |
| <input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|--|-------------------|
| Attorney General | Date |
| Signature of City/County Official | Date |
| PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor | 04/22/2019 |

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
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RETURN ALL DOCUMENTS TO:

Office of Attorney General
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 600 E Boulevard Ave, Dept. 125
 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

4/a3

G - _____ (____)____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization Northern Prairie Performing Arts

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|---|-------------------------------------|---|-------------|
| Name of Location Space Aliens | | | |
| Street 1840 45th St S | City Fargo | ZIP Code 58103 | County Cass |
| Beginning Date(s) Authorized 7/1/2019 | Ending Date(s) Authorized 6/30/2020 | Number of twenty-one tables if zero, enter "0": 0 | |
| Specific location where games of chance will be conducted and played at the site (required) Entire lounge, excluding restrooms and entry ways | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

| | | |
|--|--|--|
| <input type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input type="checkbox"/> Twenty-One |
| <input type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input type="checkbox"/> Poker |
| <input type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheels with Tickets |
| <input checked="" type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input type="checkbox"/> Paddlewheel Table |
| <input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|---|------------|
| Attorney General | Date |
| Signature of City/County Official | Date |
| PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor | 04/22/2019 |

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

RETURN ALL DOCUMENTS TO:

Office of Attorney General
 Licensing Section
 600 E Boulevard Ave, Dept. 125
 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

4a4

G - _____ (_____) _____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization Northern Prairie Performing Arts

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|---|-------------------------------------|---|-------------|
| Name of Location Windbreak Lounge | | | |
| Street 3150 39th St S | City Fargo | ZIP Code 58104 | County Cass |
| Beginning Date(s) Authorized 7/1/2019 | Ending Date(s) Authorized 6/30/2020 | Number of twenty-one tables if zero, enter "0": 3 | |
| Specific location where games of chance will be conducted and played at the site (required) Entire lounge and patio, excluding restrooms and entry ways | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

| | | |
|--|--|---|
| <input type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input checked="" type="checkbox"/> Twenty-One |
| <input type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input checked="" type="checkbox"/> Poker |
| <input type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input checked="" type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheels with Tickets |
| <input checked="" type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input checked="" type="checkbox"/> Paddlewheel Table |
| <input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|---|-----------------|
| Attorney General | Date |
| Signature of City/County Official | Date 04/22/2019 |
| PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor | |

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

RETURN ALL DOCUMENTS TO:

Office of Attorney General
 Licensing Section
 600 E Boulevard Ave, Dept. 125
 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

46

G - _____ (____)____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization **Red River Human Services Foundation**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|--|-------------------|--|--------------------|
| Name of Location Fargo Elks lodge #260 | | | |
| Street 3435 North Broadway | City Fargo | ZIP Code 58102 | County Cass |
| Beginning Date(s) Authorized 7/1/19 | | Ending Date(s) Authorized 6/30/20 | |
| Number of twenty-one tables if zero, enter "0": | | | |
| Specific location where games of chance will be conducted and played at the site (required) Gaming area is the entire bar (except restrooms/office/storage areas) | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

| | | |
|--|--|--|
| <input type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input type="checkbox"/> Twenty-One |
| <input type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input type="checkbox"/> Poker |
| <input type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheels with Tickets |
| <input checked="" type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input type="checkbox"/> Paddlewheel Table |
| <input type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|--|-------------------|
| Attorney General | Date |
| Signature of City/County Official | Date |
| PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor | 04/22/2019 |

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

RETURN ALL DOCUMENTS TO:

Office of Attorney General
 Licensing Section
 600 E Boulevard Ave, Dept. 125
 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

462

G - _____ (____)____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization **Red River Human Services Foundation**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|---|-------------------|--|--------------------|
| Name of Location The Northern | | | |
| Street 325 10th St. N. | City Fargo | ZIP Code 58102 | County Cass |
| Beginning Date(s) Authorized 7/1/19 | | Ending Date(s) Authorized 6/30/20 | |
| Number of twenty-one tables if zero, enter "0": | | | |
| Specific location where games of chance will be conducted <u>and</u> played at the site (required) SW area of bombshelter - northern area of main bar/ Gaming area is the entire bar | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

| | | |
|---|--|--|
| <input type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input checked="" type="checkbox"/> Twenty-One |
| <input type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input type="checkbox"/> Poker |
| <input type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input checked="" type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheels with Tickets |
| <input checked="" type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input type="checkbox"/> Paddlewheel Table |
| <input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|--|-------------------|
| Attorney General | Date |
| Signature of City/County Official | Date |
| | 04/22/2019 |
| PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor | |

INSTRUCTIONS:

1. City/County-Retain a **copy** of the Site Authorization for your files.
2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

RETURN ALL DOCUMENTS TO:

Office of Attorney General
 Licensing Section
 600 E Boulevard Ave, Dept. 125
 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

401

G - _____ (____)____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization **Team Makers Club, Inc.**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|--|--|--|--------------------|
| Name of Location Fargo Dome | | | |
| Street 1800 N University Dr | City Fargo | ZIP Code 58102 | County Cass |
| Beginning Date(s) Authorized 7/1/19 | Ending Date(s) Authorized 6/30/20 | Number of twenty-one tables if zero, enter "0": 0 | |
| Specific location where games of chance will be conducted and played at the site (required) Entire facility and parking area, excluding restrooms and entryways | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

| | | |
|--|--|--|
| <input type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input checked="" type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input type="checkbox"/> Twenty-One |
| <input checked="" type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input type="checkbox"/> Poker |
| <input checked="" type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheels with Tickets |
| <input type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input type="checkbox"/> Paddlewheel Table |
| <input type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|---|-------------------|
| Attorney General | Date |
| Signature of City/County Official | Date |
| PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor | 04/22/2019 |

INSTRUCTIONS:

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2. City/County-Return the **original** Site Authorization form to the Organization.
3. Organizations - Send the **original, signed**, Site Authorization to the Office of Attorney General with any other applicable licensing forms for final approval.

RETURN ALL DOCUMENTS TO:

Office of Attorney General
 Licensing Section
 600 E Boulevard Ave, Dept. 125
 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

402

G - _____ (____)____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization **Team Makers Club, Inc.**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|--|-------------------|--|--|
| Name of Location Frank's Lounge | | | |
| Street 2640 52nd Ave S | City Fargo | ZIP Code 58104 | County Cass |
| Beginning Date(s) Authorized 7/1/19 | | Ending Date(s) Authorized 6/30/20 | Number of twenty-one tables if zero, enter "0": 1 |
| Specific location where games of chance will be conducted and played at the site (required) Entire lounge and patio area, excluding restrooms and entryways | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

| | | |
|--|--|---|
| <input checked="" type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input checked="" type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input checked="" type="checkbox"/> Twenty-One |
| <input checked="" type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input checked="" type="checkbox"/> Poker |
| <input checked="" type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input checked="" type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheels with Tickets |
| <input checked="" type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input checked="" type="checkbox"/> Paddlewheel Table |
| <input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|---|-------------------|
| Attorney General | Date |
| Signature of City/County Official | Date |
| PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor | 04/22/2019 |

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GAMING SITE AUTHORIZATION
OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

403

G - _____ (_____)_____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization **Team Makers Club, Inc.**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|--|--|--|--------------------|
| Name of Location Holiday Inn | | | |
| Street 3803 13th Ave S | City Fargo | ZIP Code 58103 | County Cass |
| Beginning Date(s) Authorized 7/1/19 | Ending Date(s) Authorized 6/30/20 | Number of twenty-one tables if zero, enter "0": 4 | |
| Specific location where games of chance will be conducted and played at the site (required) Entire lounge and banquet facilities, excluding restrooms and entryways | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

| | | |
|--|--|---|
| <input checked="" type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input checked="" type="checkbox"/> Twenty-One |
| <input checked="" type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input checked="" type="checkbox"/> Poker |
| <input checked="" type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input checked="" type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheels with Tickets |
| <input checked="" type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input checked="" type="checkbox"/> Paddlewheel Table |
| <input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|---|-------------------|
| Attorney General | Date |
| Signature of City/County Official | Date |
| PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor | 04/22/2019 |

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GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

424

G - _____ (____)____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization **Team Makers Club, Inc.**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|--|-------------------|--|--|
| Name of Location Lucky's 13 Pub | | | |
| Street 1301 17th Ave S | City Fargo | ZIP Code 58103 | County Cass |
| Beginning Date(s) Authorized 7/1/19 | | Ending Date(s) Authorized 6/30/20 | Number of twenty-one tables if zero, enter "0": 0 |
| Specific location where games of chance will be conducted <u>and</u> played at the site (required) Entire lounge and patio, excluding restrooms and entryways | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

| | | |
|---|--|--|
| <input checked="" type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input type="checkbox"/> Twenty-One |
| <input checked="" type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input type="checkbox"/> Poker |
| <input type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheels with Tickets |
| <input checked="" type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input type="checkbox"/> Paddlewheel Table |
| <input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|---|-------------------|
| Attorney General | Date |
| Signature of City/County Official | Date |
| PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor | 04/22/2019 |

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GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

405

G - _____ (____)____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization **Team Makers Club, Inc.**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|--|--|--|--------------------|
| Name of Location Sanford Health Athletic Complex, Scheel's Center | | | |
| Street 1340 Administration Ave | City Fargo | ZIP Code 58102 | County Cass |
| Beginning Date(s) Authorized 7/1/19 | Ending Date(s) Authorized 6/30/20 | Number of twenty-one tables if zero, enter "0": 0 | |
| Specific location where games of chance will be conducted and played at the site (required) Entire facility and parking area, excluding restrooms and entryways | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

| | | |
|--|--|--|
| <input type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input type="checkbox"/> Sports Pools |
| <input type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input type="checkbox"/> Twenty-One |
| <input checked="" type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input type="checkbox"/> Poker |
| <input checked="" type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input type="checkbox"/> Paddlewheels with Tickets |
| <input type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input type="checkbox"/> Paddlewheel Table |
| <input type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|---|-------------------|
| Attorney General | Date |
| Signature of City/County Official | Date |
| PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor | 04/22/2019 |

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 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 OR 800-326-9240



GAMING SITE AUTHORIZATION
 OFFICE OF ATTORNEY GENERAL
 SFN 17996 (02/2018)

4d

G - _____ (____)____
 Site License Number
 (Attorney General Use Only)

Full, Legal Name of Gaming Organization **Jon Greenley Amvets Post # 7**

The above organization is hereby authorized to conduct games of chance under the license granted by the Attorney General of the State of North Dakota at the following location

| | | | |
|--|--|--|--------------------|
| Name of Location Amvets | | | |
| Street 1001 1st Ave S. | City Fargo | ZIP Code 58103 | County Cass |
| Beginning Date(s) Authorized 7/1/19 | Ending Date(s) Authorized 6/30/20 | Number of twenty-one tables if zero, enter "0": 0 | |
| Specific location where games of chance will be conducted and played at the site (required) West Wall - Where Alcohol can be Served | | | |
| If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known | | | |

RESTRICTIONS (City/County Use Only)

| | |
|---|---------------------------------|
| Days of week of gaming operations (if restricted) | Hours of gaming (if restricted) |
|---|---------------------------------|

ACTIVITY TO BE CONDUCTED Please check all applicable games to be conducted at site (required)

| | | |
|--|--|---|
| <input type="checkbox"/> Bingo | <input type="checkbox"/> Club Special | <input checked="" type="checkbox"/> Sports Pools |
| <input type="checkbox"/> ELECTRONIC Quick Shot Bingo | <input type="checkbox"/> Tip Board | <input type="checkbox"/> Twenty-One |
| <input checked="" type="checkbox"/> Raffles | <input type="checkbox"/> Seal Board | <input type="checkbox"/> Poker |
| <input type="checkbox"/> ELECTRONIC 50/50 Raffle | <input type="checkbox"/> Punchboard | <input type="checkbox"/> Calcuttas |
| <input type="checkbox"/> Pull Tab Jar | <input type="checkbox"/> Prize Board | <input checked="" type="checkbox"/> Paddlewheels with Tickets |
| <input checked="" type="checkbox"/> Pull Tab Dispensing Device | <input type="checkbox"/> Prize Board Dispensing Device | <input type="checkbox"/> Paddlewheel Table |
| <input checked="" type="checkbox"/> ELECTRONIC Pull Tab Device | | |

APPROVALS

| | |
|--|-------------------|
| Attorney General | Date |
| Signature of City/County Official | Date |
| | 04/22/2019 |
| PRINT Name and official position of person signing on behalf of city/county above Steve Sprague/City Auditor | |

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RETURN ALL DOCUMENTS TO:

Office of Attorney General
 Licensing Section
 600 E Boulevard Ave, Dept. 125
 Bismarck, ND 58505-0040
 Telephone: 701-328-2329 OR 800-326-9240



APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT
 OFFICE OF ATTORNEY GENERAL
 SFN 9338 (08/2016)

5a

CC
 25.00
 4/4/19

Application for: Local Permit * Charity Local Permit (one event per year)

| | | | |
|---|---|--|------------------------|
| Name of Non-profit Organization Ywca Cass Clay | Date(s) of Activity 5/6/2019 to 5/6/2019 | For a raffle, provide drawing date(s): 5/6/2019 | |
| Person Responsible for the Gaming Operation and Disbursement of Net Income Erin Prochnow | Title Ceo | Business Phone Number (701) 232-2547 | |
| Business Address 3100 12th Ave N | City Fargo | State ND | Zip Code 58102-3070 |
| Mailing Address (if different) | City | State | Zip Code |
| Name of Site Where Game(s) will be Conducted Delta by Marriott | Site Address 1635 42nd St. Sw | | |
| City Fargo | State ND | Zip Code 58103-3323 | County Cass County |
| Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit. <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels * | | | |

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

| Game Type | Description of Prize | Retail Value of Prize | Game Type | Description of Prize | Retail Value of Prize |
|---------------|----------------------|-----------------------|-----------|----------------------|--|
| Raffle | Scheels Cert | \$250.00 | | | |
| Raffle | Auto Spa Cert | \$200.00 | | | |
| Raffle | Jewelry | \$270.00 | | | |
| Raffle | Golf Ensemble | \$500.00 | | | |
| Raffle | Room Makeover | \$550.00 | | | |
| Raffle | Hotel Package | \$800.00 | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Total: | | | | | (Limit \$12,000 per year) \$ 2,570.00 |

Intended uses of gaming proceeds: All proceeds benefit YWCA emergency shelter programs and operations.

Does the organization presently have a state gaming license? No Yes - If "Yes," the organization is not eligible for a local permit or charity local permit and should call the Office of Attorney General at 1-800-326-9240.

Has the organization received a charity local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," the organization does not qualify for a local permit or charity local permit.

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," indicate the total value of all prizes previously awarded: \$ 2,304.00. This amount is part of the total prize limit of \$12,000 per year.

| | | | |
|--|------------------|--------------|---|
| Signature of Organization's Top Executive Official | Date 4/4/2019 | Title Ceo | Business Phone Number (701) 232-2547 |
|--|------------------|--------------|---|



APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT
 OFFICE OF ATTORNEY GENERAL
 SFN 9338 (08/2016)

25.00
 CC
 4/8/19

Application for: Local Permit * Charity Local Permit (one event per year)

| | | | | | |
|---|--|--|--------------------------|--|--------------------------|
| Name of Non-profit Organization HERO (Healthcare Equipment Recycling Organization) | | Date(s) of Activity May 10th, 2019 | | For a raffle, provide drawing date(s): | |
| Person Responsible for the Gaming Operation and Disbursement of Net Income Maren Gemar | | Title Executive Director | | Business Phone Number 701-318-3221 | |
| Business Address 5012 53rd St. S, Ste. C1 | | City Fargo | | State ND | Zip Code 58104 |
| Mailing Address (if different) | | City | | State | Zip Code |
| Name of Site Where Game(s) will be Conducted Delta Hotels by Marriott | | Site Address 1635 42nd St. S | | | |
| City Fargo | | State ND | Zip Code 58103 | County Cass | |
| Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit. | | | | | |
| <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input checked="" type="checkbox"/> Paddlewheels * | | | | | |

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

| Game Type | Description of Prize | Retail Value of Prize | Game Type | Description of Prize | Retail Value of Prize |
|---------------|----------------------|-----------------------|-----------|----------------------|--|
| Raffle | 50/50 | 50% raised | | | |
| Heads/Tails | \$100 gift card | \$100 | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Total: | | | | | (Limit \$12,000 per year) \$ 200 |

Intended uses of gaming proceeds: HERO Nonprofit waived fee program

Does the organization presently have a state gaming license? No Yes - If "Yes," the organization is not eligible for a local permit or charity local permit and should call the Office of Attorney General at 1-800-326-9240.

Has the organization received a charity local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," the organization does not qualify for a local permit or charity local permit.

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," indicate the total value of all prizes previously awarded: \$ _____ . This amount is part of the total prize limit of \$12,000 per year.

| | | | |
|--|------------------------|------------------------------------|--|
| Signature of Organization's Top Executive Official <i>Maren Gemar</i> | Date 3/27/19 | Title Executive Director | Business Phone Number 701-212-1921 |
|--|------------------------|------------------------------------|--|

50

\$25.00
4-16-19



APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT
OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

Application for: Local Permit * Charity Local Permit (one event per year)

| | | | | |
|--|--|---------------------------------------|--|--------------------------|
| Name of Non-profit Organization Chelsey Smedsrud Hauko's Benefit | | Date(s) of Activity 5-19-19 | For a raffle, provide drawing date(s): 5-19-19 | |
| Person Responsible for the Gaming Operation and Disbursement of Net Income Danielle Maas | | Title Volunteer | Business Phone Number 763 350 1298 | |
| Business Address | | City | State | Zip Code |
| Mailing Address (if different) 4227 Clubhouse Dr. S | | City Fargo | State ND | Zip Code 58104 |
| Name of Site Where Game(s) will be Conducted EL ZAGAL SHRINE | | Site Address 1429 3rd St N | | |
| City FARGO | | State ND | Zip Code 58102 | County CASS |
| Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit. | | | | |
| <input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels * | | | | |

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

| Game Type | Description of Prize | Retail Value of Prize | Game Type | Description of Prize | Retail Value of Prize |
|-----------|------------------------|-----------------------|-----------|----------------------|--|
| RAFFLE | QUILT | \$ 400.00 | | | |
| RAFFLE | AIRMED HELICOPTER RIDE | \$ 900.00 | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| Total: | | | | | (Limit \$12,000 per year) \$ 1,300 |

Intended uses of gaming proceeds: Chelsey's medical Expenses

Does the organization presently have a state gaming license? No Yes - If "Yes," the organization is not eligible for a local permit or charity local permit and should call the Office of Attorney General at 1-800-326-9240.

Has the organization received a charity local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," the organization does not qualify for a local permit or charity local permit.

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," indicate the total value of all prizes previously awarded: \$ _____. This amount is part of the total prize limit of \$12,000 per year.

| | | | |
|--|------------------------|---------------------------|--|
| Signature of Organization's Top Executive Official D. Maas | Date 4-10-19 | Title Volunteer | Business Phone Number 7633501298 |
|--|------------------------|---------------------------|--|



APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT
 OFFICE OF ATTORNEY GENERAL
 SFN 9338 (08/2016)

5d

✓ 2592
 25.00
 4/16/19

Application for: Local Permit * Charity Local Permit (one event per year)

| | | | | | |
|--|--|--|--------------------------|--|--------------------------|
| Name of Non-profit Organization Fargo Lions | | Date(s) of Activity 9/9/19 to 12/23/19 | | For a raffle, provide drawing date(s): | |
| Person Responsible for the Gaming Operation and Disbursement of Net Income Trent Freier | | Title Treasurer | | Business Phone Number 701-226-1475 | |
| Business Address PO Box 21 | | City Fargo | | State ND | Zip Code 58102 |
| Mailing Address (if different) | | City | | State | Zip Code |
| Name of Site Where Game(s) will be Conducted Radisson Hotel | | Site Address 200 N 5th St | | | |
| City Fargo | | State ND | Zip Code 58102 | County Cass | |
| Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit. <input type="checkbox"/> Bingo <input type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input checked="" type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels * Calendar | | | | | |

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

| Game Type | Description of Prize | Retail Value of Prize | Game Type | Description of Prize | Retail Value of Prize |
|--|----------------------|-----------------------|-----------|----------------------|-----------------------|
| Sports Pool | Cash | \$19,600.00 | | | |
| Monday Night Football (NFL) calendar sports pool - Cash prizes of \$150 each game per board. 16 games in season for total prizes of \$1800 per board set (book) sold. Maximum book sales of 12 for maximum prize payouts of \$9600.00 | | | | | |

Total: (Limit \$12,000 per year) \$ **9,600.00**

Intended uses of gaming proceeds: **Lions Club Charitable programs**

Does the organization presently have a state gaming license? No Yes - If "Yes," the organization is not eligible for a local permit or charity local permit and should call the Office of Attorney General at 1-800-326-9240.

Has the organization received a charity local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," the organization does not qualify for a local permit or charity local permit.

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," indicate the total value of all prizes previously awarded: \$ _____. This amount is part of the total prize limit of \$12,000 per year.

| | | | |
|--|------------------------|---------------------------|--|
| Signature of Organization's Top Executive Official Jennifer Gorman | Date 4/15/19 | Title President | Business Phone Number 701-261-9670 |
|--|------------------------|---------------------------|--|



APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2016)

25.00
✓ (300)
4-19-19

(5e)

Application for: Local Permit * Charity Local Permit (one event per year)

| | | | | | |
|--|--|--|----------|--|--------------------------|
| Name of Non-profit Organization <i>EL ZAGAL PROVEST GAMING</i> | | Date(s) of Activity <i>9-8-19 to 12-29-19</i> | | For a raffle, provide drawing date(s): | |
| Person Responsible for the Gaming Operation and Disbursement of Net Income <i>Scott Schaffer</i> | | Title | | Business Phone Number | |
| Business Address <i>1429 3rd St. N, Fargo, ND</i> | | City <i>Fargo</i> | | State <i>ND</i> | Zip Code <i>58102</i> |
| Mailing Address (if different) | | City | | State | Zip Code |
| Name of Site Where Game(s) will be Conducted <i>Oxbow Country Club</i> | | Site Address | | | |
| City <i>Oxbow</i> | | State <i>ND</i> | Zip Code | County <i>Cass</i> | |
| Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit. | | | | | |
| <input type="checkbox"/> Bingo <input type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input checked="" type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels * | | | | | |

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

| Game Type | Description of Prize | Retail Value of Prize | Game Type | Description of Prize | Retail Value of Prize |
|---------------------|----------------------|-----------------------|-----------|----------------------|---|
| <i>Vikings</i> | | | | | |
| <i>Sports Board</i> | <i>CASH</i> | <i>225/game</i> | | | |
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| | | | | | |
| Total: | | | | | (Limit \$12,000 per year) <i>\$ 5250</i> |

Intended uses of gaming proceeds: *EL ZAGAL HOSPITAL TRANSPORTION FUND*

Does the organization presently have a state gaming license? No Yes - If "Yes," the organization is not eligible for a local permit or charity local permit and should call the Office of Attorney General at 1-800-326-9240.

Has the organization received a charity local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," the organization does not qualify for a local permit or charity local permit.

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30? No Yes - If "Yes," indicate the total value of all prizes previously awarded: \$ ____ . This amount is part of the total prize limit of \$12,000 per year.

| | | | |
|--|------------------------|---------------------|--|
| Signature of Organization's Top Executive Official <i>David Johnson</i> | Date <i>4/17/19</i> | Title <i>MGR</i> | Business Phone Number <i>701-288-3725</i> |
|--|------------------------|---------------------|--|

**CITY OF FARGO
GENERAL FUND - BUDGET TO ACTUAL
THROUGH MARCH 2019
(UNAUDITED)**

| | 2019 BUDGET | 2019 ACTUAL | VARIANCE |
|--|------------------------|------------------------|-----------------------|
| REVENUES: | | | |
| Taxes | \$ 23,761,513 | \$ 23,983,439 | \$ 221,926 |
| Licenses & Permits | 633,125 | 556,395 | (76,730) |
| Fines & Traffic Tickets | 515,871 | 337,980 | (177,891) |
| Intergovernmental Revenue | 2,018,699 | 1,503,645 | (515,054) |
| Charges for Services | 2,384,116 | 2,118,881 | (265,235) |
| Interest | 1,170,000 | 1,398,726 | 228,726 |
| Miscellaneous Revenue | 155,524 | 92,707 | (62,817) |
| Transfers In | 5,175,345 | 4,207,255 | (968,090) |
| Total Revenues | \$ 35,814,193 | \$ 34,199,028 | \$ (1,615,165) |
| EXPENDITURES: | | | |
| City Administrator | \$ 2,454,077 | \$ 2,131,949 | \$ 322,128 |
| Finance | 1,721,023 | 1,375,065 | 345,958 |
| Planning & Development | 900,571 | 785,326 | 115,245 |
| Transit | 2,030,353 | 1,590,827 | 439,526 |
| Public Works | 3,783,529 | 4,572,683 | (789,154) |
| Fire Department | 2,777,854 | 2,597,001 | 180,853 |
| Police | 4,627,066 | 4,357,301 | 269,765 |
| Health | 2,585,945 | 2,444,390 | 141,555 |
| Library | 1,053,514 | 993,954 | 59,560 |
| Commission | 154,383 | 169,457 | (15,074) |
| Civic Center | 113,317 | 110,046 | 3,271 |
| Social Services | 100,848 | 276,733 | (175,885) |
| Capital Outlay | 129,348 | 70,252 | 59,096 |
| Vehicle Replacement/IT | 94,075 | 122,147 | (28,072) |
| Contingency | (275,868) | 8,766 | (284,634) |
| Transfers Out | 2,760,945 | 2,760,945 | - |
| Total Expenditures | \$ 25,010,980 | \$ 24,366,842 | \$ 644,138 |
| Excess of Revenue Over (Under) Expenditures | \$ 10,803,213 | \$ 9,832,186 | \$ (971,027) |



7

FARGO CASS PUBLIC HEALTH
1240 25th Street South
Fargo, ND 58103-2367
Phone 701-241-1360
Fax 701-241-1366
FargoCassPublicHealth.com

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: DESI FLEMING ~~DX~~
DIRECTOR OF PUBLIC HEALTH

DATE: APRIL 17, 2019

RE: SCHOOL CONTRACT

The attached contract with Northern Cass School for \$44,612.72 are for nursing services for the 2019-2020 school year.

No budget adjustments are required for these contracts.

If you have any questions, please contact me at 241-1380.

Suggested Motion: Move to approve the school contracts for nursing services for the coming school year.

DF/lls
Enclosures

**PURCHASE OF SERVICE AGREEMENT
NORTHERN CASS PUBLIC SCHOOL DISTRICT**

Whereas the Northern Cass Public School District hereinafter referred to as District, has agreed to purchase the services described in the "Scope of Service" (Attachment A); and

Whereas, Fargo Cass Public Health, 1240 25th Street South, Fargo, North Dakota 58103-2367 hereinafter referred to as Provider desires to provide the services described in the "Scope of Services" (Attachment A):

Now, therefore the District and the Provider enter into the following:

I. TERMS OF CONTRACT

The term of this contract shall be for school year 2019-2020, beginning on July 1, 2019 and ending on June 30, 2020. This contract may be renewed for subsequent school years by written agreement of the parties. Provided, that either party may terminate this contract at any time upon thirty (30) days written notice to other.

II. TERMINATION

In the event the agreement is terminated, the termination shall be without prejudice to any obligations or liabilities of either party for services provided prior to such termination.

III. SCOPE OF SERVICE

The Provider agrees to provide services in accordance with documentation in this contract.

IV. COMPENSATION

1. The District agrees to reimbursement for service in accordance with the agreed upon charges in this contract (Attachment B). The billing will occur monthly, at the previously determined rate of 63 percent for the district and 37 percent for the provider. The hours to be billed will include the scheduled nursing time, any annual or sick leave taken by the nursing personnel and holiday pay as determined by the City of Fargo.
2. The provider will attempt to get substitute nursing coverage, when the regularly scheduled nurse is on an extended leave.
3. Northern Cass Public School District has requested an increase in school nursing hours over the original 32 hour per week agreement plus an extra eight hours to use over the school year. Therefore, Northern Cass Public School District agrees to pay 100% (salary plus benefits) of the school nursing hours in excess of 32 hours per week and the extra eight hours, including any overtime accrued in lieu of this request. The school nurse rate for those hours over the originally contracted amount of 32 hours with salary and benefits will be billed at \$45.03.

V. CHANGES

No change or amendment to this agreement may be made unless made in writing signed by the parties.

VI. NO GRANT OF AUTHORITY TO CONTRACT ON BEHALF OF THE DISTRICT

No part of this agreement shall be construed to grant to the Provider any authority to contract for on behalf of or incur obligations on behalf of the District.

VII. AUTHORITY TO SUBCONTRACT

The Provider may subcontract with qualified providers of services, provided that any subcontract must acknowledge the binding nature of this agreement and incorporate this agreement, together with its attachments. The Provider agrees to be solely responsible for the performance of any subcontractor.

VIII. INDEPENDENT CONTRACTOR

The Provider is performing the duties under this agreement as an independent contractor. No part of this agreement, or the arrangements made by the parties to perform this agreement, shall be construed as creating an employer/employee relationship.

IX. COPYRIGHT

The District reserves a right to copy or reproduce any materials created or produced, by the Provider, in performance of this agreement except with confidential health information.

X. AGREEMENT CONSTITUTES CONTRACT

This agreement shall constitute the entire contract, between the parties, for performance of the Scope of Service. There are no other agreements, either verbal or written, that alter or affect this agreement.

XI. PROVIDER ASSURANCES

The Provider agrees to comply with the applicable provider Assurances hereto attached, on Attachment C.

XII. INTEGRATION AND MODIFICATION

This contract constitutes the entire agreement between the Provider and the District. No alteration, amendment or modification in the provisions of this agreement shall be effective unless it is reduced to writing signed by the parties and attached hereto.

XIII. COLLATERAL CONTRACTS

Where there exists any inconsistency between this agreement and other provisions of collateral contractual agreements which are made a part of this agreement by reference or otherwise, the provisions of this agreement shall control.

XIV. ACCESS TO RECORDS

Fargo Cass Public Health and the North Dakota State Health Department, and their duly authorized representatives, shall have access to the books, documents, paper and records of the District, which are pertinent, as determined by Fargo Cass Public Health, to this contract for the purpose of making audit, examination, excerpts, and transcripts.

XV. RETENTION OF RECORDS

The Provider agrees to retain financial and program records. The District is responsible for student records including, all electronic health information, if applicable, and will follow their own retention policy.

XVI. CONFIDENTIALITY

The Provider will not, except upon the written consent of the recipient's or their responsible parent, guardian, or custodian, use or cause to be used any information concerning such individual for any purpose not directly connected with the District or the Provider's responsibilities with respect to services purchased hereunder. The District acknowledges their role in abiding by the adherence to FERPA regulations relative to educational records confidentiality in order to protect student privacy. The consequences of failing to comply with FERPA must be borne by the School District and not Fargo Cass Public Health.

XVII. APPLICABLE LAW

This agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

XVIII. CAPTIONS

The captions or heading in this agreement are for convenience only and in no way define, limit, or describe the scope of intent of any provisions of this agreement.

XIX. EXECUTION AND COUNTERPARTS

This agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one of the same instrument.

XX. AMENDMENTS

The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.

XXI. NOTICES

All notices, certificates or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at their respective places of business as set forth in the preamble to this agreement or at a place designated hereafter in writing by the parties.

XXII. SUCCESSORS IN INTEREST

The provisions of this agreement shall be binding upon and shall insure to the benefit of the parties hereto, and their respective successors and assigns.

XXIII. SEVERABILITY

The parties agree that any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

XXIV. WAIVER

The failure of the District to enforce any provisions of this contract shall not constitute a waiver by the District of that or any other provision.

XXV. MERGER CLAUSE

This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in modification or change, if made, shall be effective only the specific instance and for the specific purpose given. There are no understandings, agreements, or representatives, oral or written, not specified herein regarding this agreement. Provider, by the signature below of its authorized representative, hereby acknowledges that the Provider has read this agreement, understands it and agrees to be bound by its terms and conditions.

XXVI. INDEMNIFICATION AND HOLD HARMLESS

The District hereby agrees to indemnify and hold the Provider, its officers, agents, employees, and members, harmless from any and all claims, demands and causes of action which may be asserted against the Provider as a result of the rendering of any

of the services by the Provider which are described in this Agreement. The obligation of the District under the terms of this provision shall include the duty to provide a legal defense of such claims; provided that this provision shall not be construed to require reimbursement of any legal expenses incurred by the District, without prior written approval of the District.

XXVII. COMPLIANCE WITH LAWS

The Provider shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this agreement.

XXVIII. NON-DISCRIMINATION

The Provider makes available all services and assistance without regard to race, color, national origin, religion, age, sex, or handicap, and is subject to Title VI of the Civil Rights Act of 1964. Section 504 of the Rehabilitation Act of 1975 as amended. Persons who contract with or receive funds to provide services for Provider are obligated to abide by the provisions of their federal laws. Questions concerning the contractor's or provider's obligations under these acts may be directed to the Provider's representative as set forth in the signature block of this agreement, at the address established in the agreement, or the Branch Chief, Officer for Civil Rights, Region VIII, Federal Office Building, 1961 Stout Street, Denver, Colorado 82094.

SERVICES PROVIDED: See Attachment A (Goals and Objectives)

REIMBURSEMENT: See Attachment B (Budget)

PROVIDER-FARGO CASS PUBLIC HEALTH

NORTHERN CASS PUBLIC SCHOOL DISTRICT

TIMOTHY J. MAHONEY, MAYOR, CITY OF FARGO


SIGNATURE
AGENCY REPRESENTATIVE

DATE

Superintendent
TITLE


DESI FLEMING, DIRECTOR OF PUBLIC HEALTH

4/16/19
DATE

4/17/19
DATE

ATTACHMENT A

SCHOOL HEALTH PROGRAM A COLLABORATIVE PROGRAM BETWEEN NORTHERN CASS PUBLICSCHOOL DISTRICT AND FARGO CASS PUBLIC HEALTH

PURPOSE: The purpose of this partnership is to share expertise, time, energy, and economic resources to coordinate and provide a comprehensive health program in our school community.

GOALS: The goal of this program is to provide Public Health School Nurse services and/or Nurse Aide services to all components of the Northern Cass School District health program: education, environment and services.

- A. Improve the student and family access to community health services.
- B. Improve the early identification, referral, and follow-up of students experiencing unresolved health problems.
- C. Determine the current compliance rate for follow-up on health screening results and on immunization requirements.
- D. Improve the students' access to basic health services at school for first aid symptom management and medications.

OBJECTIVES:

The Public Health School Nurse is a liaison between education and health care and will provide a link between the school, home and community.
The nurse will:

- A. Manage health care in the school health program
The nurse will participate in planning, implementation, and evaluation of the program.
- B. Deliver health services
The nurse will deliver health services to the client system using systematic processes to assess needs, plan interventions, and evaluate outcomes so that high-level wellness can be achieved. The nurse will also monitor follow through related to health referrals. The nurse aide, if applicable, will deliver health services primarily focused on first aid, medication administration or emergencies. The nurse aide will work in conjunction with the nurse assigned to that building and will be supervised by that nurse.
- C. Advocate for the health rights of children
The nurse will act as an advocate for the health rights of children and their families both within the school and between the school and community.
- D. Provide health consult for individuals and groups
The nurse will provide health counseling and guidance for the client system on an individual basis or within a group setting.
- E. Provide health education
The nurse will participate in health education program activities for children, youth, school personnel, and the community.

**ATTACHMENT B
2019-2020**

SCHOOL HEALTH SERVICES BUDGET

| NORTHERN CASS PUBLIC SCHOOL DISTRICT PROPOSED FUNDING FOR SCHOOL HEALTH SERVICES | AMOUNT |
|---|----------------------------|
| 32 RN HOURS /WEEK X 35 WEEKS AT \$42.00 /HOUR | \$47,040.00 |
| 40 RN HOURS/YEAR FOR EXTRA ACTIVITES AT \$42.00/HR | \$1,680.00 |
| 30 HOURS OF ADMINISTRATIVE NURSING SUPPORT AT \$50.29/HOUR | \$1,508.70 |
| TOTAL | \$ 50,228.70 |
| 8 RN HOURS /WEEK X 35 WEEKS AT \$45.03 AT 100% | \$12,608.40 |
| 8 ADDITIONAL RN HOURS AT \$45.03 at 100% | <u>360.24</u> |
| GRAND TOTAL | <u>\$ 63,197.34</u> |
| DISTRICT PORTION AT 63 % OF \$50,228.70 | \$31,644.08 |
| DISTRICT PORTION AT 100% OF 12,968.64 | \$12,968.64 |
| PROVIDER PORTION AT 37% OF \$50,228.70 | \$18,584.62 |
| TOTAL FOR DISTRICT OF AMOUNT AT 63% | \$31,644.08 |
| TOTAL FOR DISTRICT OF AMOUNT AT 100% | <u>\$ 12,968.64</u> |
| GRAND TOTAL FOR DISTRICT (ADDED PORTION AT 100%) | \$44,612.72 |


ATTACHMENT C

PROVIDER ASSURANCES

- A. All licensing or other standards required by Federal and State Law and regulations and by ordinance of the City and county in which the services purchased hereunder are provided will be complied with in full for the duration of this contract.
- B. No qualified person(s) shall be denied services purchased hereunder, or be subjected to discrimination, because of race, religion, color, national origin, sex, age, or handicap.
- C. The Provider will abide by the provisions of Title VII of the Civil Rights Act of 1964 (42 USC 2000C) which prohibits discrimination against any employee or applicant for employment because of race, religion, color, national origin, sex, age, or handicap. In addition, the Provider agrees to abide by Executive Order 11246, as amended by Executive Order No. 11375, which prohibit discrimination because of sex.
- D. The Provider will comply with Section 504 of the Rehabilitation Act of 1973, as amended, and all requirements imposed by and pursuant to regulations promulgated thereunder to the end that no otherwise qualified handicapped individual shall, solely by reason of their handicap, be excluded from participation in, be denied benefits of or be subjected to discrimination under any program in the provision of services under this agreement.
- E. The Provider will not, except upon the written consent of the affected individual or their responsible parent, guardian or custodian, use or cause to be used, any information concerning such individual for any purpose not directly connected with Board or the Provider's responsibilities with respect to services purchased hereunder.
- F. Unless otherwise authorized by federal law, the charges to be made by the Provider do not include costs financed by federal monies other than those generated by this agreement.
- G. The Provider shall not assign this agreement.
- H. Provider assures that the sources from which it purchases goods and services used for the provision of the services described in the agreement will conform to applicable provisions of Executive Order 11346, Equal Opportunity.

8

To: Board of City Commissioners

From: Jill Minette, Director of Human Resources 

Re: FTJ FundChoice - 457(b) Plan Agreement

Date: April 18, 2019

Please see the attached agreement with FTJ FundChoice, the new 457 Deferred Compensation provider. The approval to add FTJ FundChoice as a 457 provider occurred in late 2018 during the benefit renewal process. The request before you is to approve the attached agreement with FTJ Fund Choice.

The agreement has been reviewed by the Assistant City Attorney.

RECOMMENDED MOTION: To approve the agreement with FTJ Fund Choice, the new 457 Deferred Compensation provider, effective upon approval.

9a

| City of Fargo Staff Report | | | |
|---------------------------------------|--|---------------------------|---|
| Title: | Gehrig Addition | Date: Updated: | November 21, 2018 April 17, 2019 |
| Location: | 1702 40 th Street South and 3926 17 th Avenue South | Staff Contact: | Donald Kress (substituting for Kylie Bagley) |
| Legal Description: | Lots 1 and 2, Block 3, West Acres 4 th Addition | | |
| Owner(s)/Applicant: | PACES Lodging | Engineer: | Bolton and Menk |
| Entitlements Requested: | Minor Subdivision (Replat of Lots 1 & 2, Block 3, West Acres 4 th Addition) | | |
| Status: | City Commission Public Hearing: April 22, 2019 | | |

| Existing | Proposed |
|---|---|
| Land Use: Vacant | Land Use: Commercial development |
| Zoning: GC, General Commercial | Zoning: No change |
| Uses Allowed: colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self storage, vehicle repair, limited vehicle service, aviation, surface transportation, and major entertainment events. | Uses Allowed: No change |
| Maximum Lot Coverage: 85% | Maximum Lot Coverage: 85% |

| |
|--|
| <p>Proposal:</p> <p>The applicant is seeking approval of a minor subdivision, entitled Gehrig Addition, which is a replat Lots 1 and 2, Block 3, West Acres 4th Addition. The subject property is located at 1702 40th Street South and 3926 17th Avenue South and encompasses approximately 2.07 acres.</p> <p><u>Update 4/17/2019:</u> A zone change application for this property was heard and approved at the December 3, 2018 City Commission meeting to rezone the property from MR-3, Multi-dwelling Residential, to GC, General Commercial (Ordinance 5185). The property is now zoned GC. The applicant intends commercial development on these lots.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p>Surrounding Land Uses and Zoning Districts:</p> <ul style="list-style-type: none"> • North: Across 17th Avenue South properties are zoned GC, General Commercial, with retail sales and service uses. • East: MR-3, Multi-Dwelling Residential, with multi-dwelling structures • South: MR-3, Multi-Dwelling Residential, with multi-dwelling structures • West: Across 40th Street South properties are zoned GC, General Commercial, with retail sales and service uses. <p>Area Plans:</p> <p>No area plans apply</p> |
|--|

| |
|---|
| <p>Schools and Parks:</p> <p>Schools: The subject property is located within the West Fargo School District and is served by Westside Elementary, Cheney Middle and West Fargo High School.</p> <p>Parks: Rabanus Park is located within a quarter mile of the subject property. This park has playground equipment, tennis, sand volleyball and basketball courts and the shelter has restrooms, electricity and water. It is the site of the Fargo Project.</p> <p>Pedestrian / Bicycle: The subject property has off road bike facilities to the north and east, which is a component of the metro area trail system</p> <p>Neighborhood: The subject property is located within the West Acres Neighborhood.</p> |
| <p>Staff Analysis:</p> <p>Minor Subdivision The LDC stipulates that the following criteria is met before a minor plat can be approved:</p> <ol style="list-style-type: none"> <p>Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.</p> <p>The subdivision is intended to replat the subject property into two lots to accommodate future development. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has not received any inquiries. Staff has reviewed this request and finds that this application complies with standards of Article 20-06 and all applicable requirements of the Land Development Code. (Criteria Satisfied)</p> <p>Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.</p> <p>While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. (Criteria Satisfied)</p> |
| <p>Staff Recommendation:</p> <p>Suggested Motion: "To accept the findings and recommendations of staff and the Planning Commission and hereby approve the proposed subdivision plat, Gehrig Addition, as outlined within the staff report, as the proposal complies with the adopted Area Plan, the standards of Article 20-06, and all other applicable requirements of the Land Development Code".</p> |
| <p>Planning Commission Recommendation: December 4, 2018</p> <p>On December 4, 2018, by a vote of 10-0 with one Commissioner absent, the Planning Commission moved to accept the findings and recommendations of staff and recommended approval to the City Commission of the proposed subdivision plat, Gehrig Addition, as outlined within the staff report, as the proposal complies with the adopted Area Plan, the standards of Article 20-06, and all other applicable requirements of the Land Development Code".</p> |
| <p>Attachments:</p> <ol style="list-style-type: none"> Zoning Map Location Map Plat |

Plat (Minor)

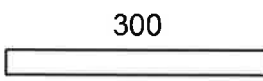
1702 40th Street South &
3926 17th Avenue South

Gehrig Addition



Legend

| | | | | |
|----|------|------|-----|-------------|
| AG | DMU | LC | MHP | SSR-2 |
| CC | GC | MR-1 | NC | SSR-3 |
| GO | MR-2 | MR-3 | UMU | SSR-4 |
| | | | | SSR-5 |
| | | | | City Limits |



Fargo Planning Commission
December 4, 2018

Plat (Minor)

Gehrig Addition

1702 40th Street South &
3926 17th Avenue South



GEHRIG ADDITION

A REPLAT OF LOTS 1 & 2, BLOCK 3 OF WEST ACRES FOURTH ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA (A MINOR SUBDIVISION)

CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL
Approved by City Engineer, 3/29/2023

State of North Dakota } 2023
County of Cass }
City of Fargo }

CITY OF FARGO PLANNING COMMISSION APPROVAL
Approved by the City of Fargo Planning Commission, 3/29/2023

State of North Dakota } 2023
County of Cass }
City of Fargo }

FARGO CITY COMMISSION APPROVAL
Approved by the Board of City Commissioners and cleared final use

State of North Dakota } 2023
County of Cass }
City of Fargo }

OWNER DESCRIPTION AND DEDICATION

The undersigned hereby dedicates the above described land for the use of a public street, to be known as WEST ACRES FOURTH ADDITION, and for all other purposes for which said land may be lawfully dedicated.

State of North Dakota }
County of Cass }
City of Fargo }

State of North Dakota }
County of Cass }
City of Fargo }

State of North Dakota }
County of Cass }
City of Fargo }

State of North Dakota }
County of Cass }
City of Fargo }

SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

I, the undersigned, being duly sworn, depose and say that I am a duly licensed Professional Surveyor in the State of North Dakota, and that the within subdivision was prepared by me and is correct in all particulars.

State of North Dakota }
County of Cass }



- EXISTING PROPERTY LINE
- EXISTING SURVEY LINE
- EXISTING BOUNDARY LINE
- PROPOSED SURVEY LINE
- PROPOSED BOUNDARY LINE




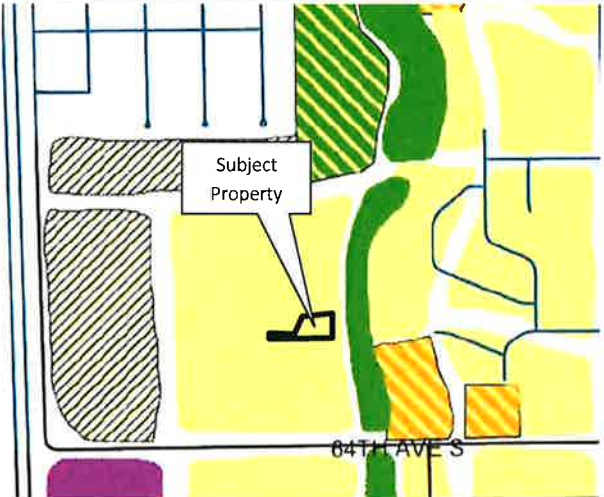
10-2011-215 (REV. 11/15) - 100% BOUNDARY CONTROL

96

| City of Fargo Staff Report | | | |
|---------------------------------------|--|--------------------------|------------------------|
| Title: | Prairie Farms Second Addition | Date: Update: | 2/26/2019 4/17/2019 |
| Location: | 6059, 5069, & 6087 Prairie Grove Court South | Staff Contact: | Aaron Nelson |
| Legal Description: | Lots 1-3, Block 4, Prairie Farms Addition | | |
| Owner(s)/Applicant: | Prairie Grove Inc, Dietrich Homes Inc./Designer Homes FM (Bronson Mathiason) | Engineer: | Moore Engineering |
| Entitlements Requested: | Minor Subdivision (Replat of Lots 1-3, Block 4, Prairie Farms Addition) | | |
| Status: | City Commission: April 22, 2019 | | |

| Existing | Proposed |
|---|-----------------------------------|
| Land Use: Vacant & Household Living | Land Use: Household Living |
| Zoning: SR-4, Single-Dwelling Residential with C-O, Conditional Overlay | Zoning: No Change |
| Uses Allowed: SR-4 allows detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, religious institutions, safety services, schools, and basic utilities. | Uses Allowed: No Change |
| Maximum Density: SR-4 allows a maximum 12.1 units per acre | Maximum Density: No Change |

| Proposal: |
|---|
| <p>The applicant is seeking City approval of a minor subdivision, which would replat three existing lots into two new lots for detached single-dwelling residential development. The subject property encompasses approximately 1.3 acres.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p>Surrounding Land Uses and Zoning Districts:</p> <ul style="list-style-type: none"> • North: Vacant within SR-4, Single-Dwelling Residential; • East: Vacant within SR-4, Single-Dwelling Residential; • South: Household living within SR-2, Single-Dwelling Residential; • West: Household living within SR-4, Single-Dwelling Residential; |

| |
|---|
| <p>Area Plans:</p> <p>The subject property is located within the bounds of the 2003 Southwest Future Land Use Plan. This plan identifies "Low/Medium Density Residential" use as the preferred land uses for this area and is included by reference within the 2007 Growth Plan.</p>   |
| <p>Schools and Parks:</p> <p>Schools: The subject property is located within the Fargo Public School District and is served by Centennial Elementary, Discovery Middle, and Davies High schools.</p> <p>Neighborhood: The subject property is located in the Maple Valley Neighborhood.</p> <p>Parks: Prairie Farms Park (5970 31 Street South) is located northeast of the subject property.</p> <p>Pedestrian / Bicycle: An off-street bike facility runs along Drain 53, east of the subject property, and is a component of the metro area trail system.</p> |
| <p>Staff Analysis:</p> <p>Minor Subdivision</p> <p>The LDC stipulates that the following criteria is met before a minor plat can be approved:</p> <ol style="list-style-type: none"> Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. <p>This subdivision is intended to create two residential lots through the replatting of three existing residential lots. The proposed use is consistent with the existing zoning. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received one inquiry regarding this application and no comments. Additionally, the property owner to the south is working with the applicant to participate in modifications to the storm sewer inlet located on their shared property line, as detailed below. Staff has reviewed this request and finds that this application complies with standards of Article 20-06 and all applicable requirements of the Land Development Code. (Criteria Satisfied)</p> |

2. Section 20-907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.

While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principals.

There is a storm sewer inlet and pipe located along the shared interior-side lot line of the existing two easternmost lots (Lots 1 & 2, Block 4, Prairie Farms Addition). Since the location of this lot line will become part of the proposed Lot 2 upon replat, the storm sewer will need to be relocated. As such, the owners of the subject property have been working with the neighboring property owner to the south and the City of Fargo Engineering Department to relocate this storm sewer in a manner that improves drainage for all adjacent lots. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby approve the proposed *Prairie Farms Second Addition* subdivision plat as presented; as the proposal complies with the 2007 Growth Plan, Standards of Article 20-06 of the LDC, and all other applicable requirements of the LDC."

Planning Commission Recommendation: March 5, 2019

On March 5, 2019, with an 8-0 vote, the Planning Commission accepted the findings and recommendations of staff and recommended approval to the City Commission of the proposed *Prairie Farms Second Addition* subdivision plat as presented; as the proposal complies with the 2007 Growth Plan, Standards of Article 20-06 of the LDC, and all other applicable requirements of the LDC.

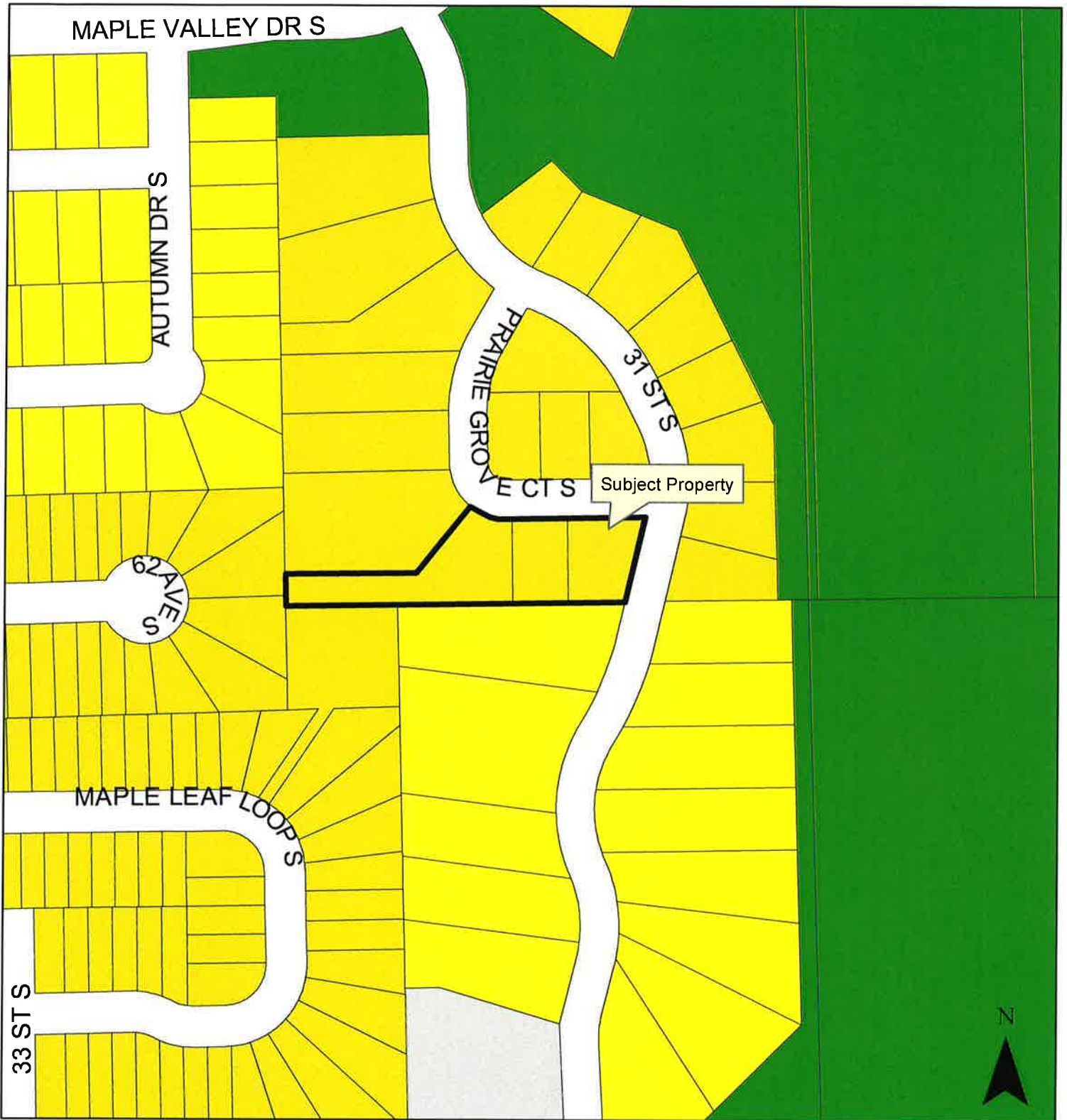
Attachments:

1. Zoning Map
2. Location Map
3. Preliminary Subdivision Plat

Plat (Minor)

Prairie Farms 2nd Addition

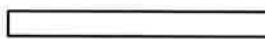
6087, 6069, 6059 Prairie Grove Ct S



Legend

| | | | | |
|-----|------|------|-----|-------------|
| AG | DM | LC | MHP | SR |
| GGC | GO | MR-1 | NO | SR-2 |
| GO | MR-2 | MR-3 | UMI | SR-3 |
| | | | | City Limits |

300



Fargo Planning Commission

February 5, 2019

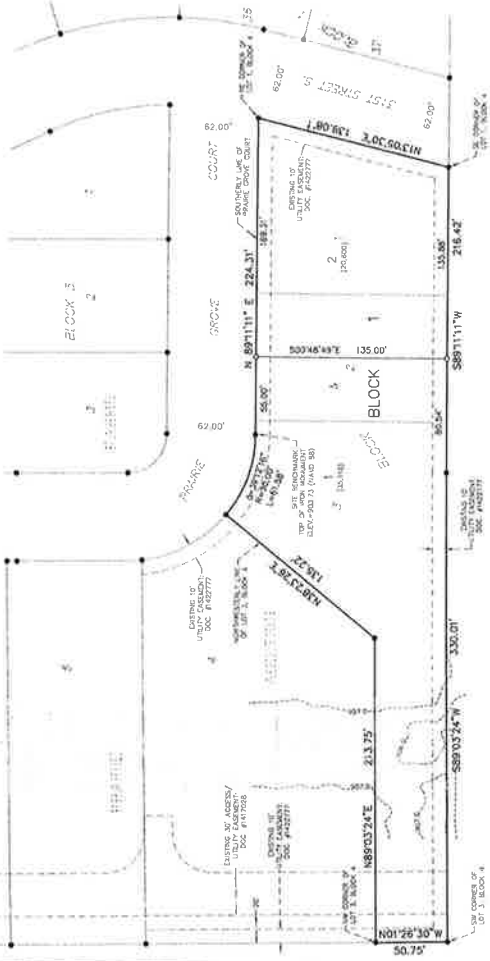
Plat (Minor)

Prairie Farms 2nd Addition

6087, 6069, 6059 Prairie Grove Ct S

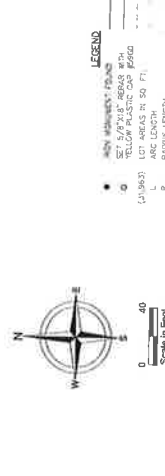


**A MINOR SUBDIVISION PLAT OF
PRAIRIE FARMS SECOND ADDITION
TO THE CITY OF FARGO, A REPLAT OF LOTS 1 THROUGH 3, BLOCK 4, PRAIRIE FARMS ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA.**



NOTES:
1. ALL LOTS ARE TO BE CONVEYED TO THE CITY OF FARGO, NORTH DAKOTA, BY DEED.
2. THE CITY OF FARGO, NORTH DAKOTA, SHALL BE THE OWNER OF THE LOTS AND SHALL BE RESPONSIBLE FOR THE COSTS OF RECORDING AND MAINTENANCE OF THE PLAT.

LEGEND:
● NEW SURVEY POINT
○ OLD SURVEY POINT
— PLAT BOUNDARY LINE
--- LOT LINE
--- EXISTING EASEMENT LINE
--- EXISTING LOT LINE
--- CURB LINE
--- CONCRETE WALL
--- 0.00' 00" CONTOUR LINE WITH ELEVATION 901.00' (NAVD 88)



EASEMENTS OF RECORD:
EASEMENT OF RECORD:
ALTERNATE ACCESS
RECORD NO. 2014
AS DOCUMENT NO. 116682.

DESCRIPTION OF THE PROPERTY:
RECORD NO. 2014
AS DOCUMENT NO. 116682.

CERTIFICATE:
I, **Shawn M. Thom**, Notary Public for the State of North Dakota, do hereby certify that the foregoing plat is a true and correct copy of the original plat as shown to me by the petitioner and that the same has been duly recorded in my office in accordance with the laws of the State of North Dakota.

Shawn M. Thom
Notary Public
My Commission Expires Mar. 1, 2025
STATE OF NORTH DAKOTA
COUNTY OF CASS

DECLARATION:
I, the undersigned, do hereby certify that I am the owner of the land described in the plat of Prairie Farms Second Addition to the City of Fargo, North Dakota, and that the description as shown in the certificate of the petitioner and shown in the plat of Prairie Farms Second Addition to the City of Fargo, North Dakota, is a true and correct copy of the original plat as shown to me by the petitioner and that the same has been duly recorded in my office in accordance with the laws of the State of North Dakota.

Shawn M. Thom
Notary Public
My Commission Expires Mar. 1, 2025

NOTARY PUBLIC, CASS COUNTY, NORTH DAKOTA
Shawn M. Thom
Notary Public
My Commission Expires Mar. 1, 2025

CITY ENGINEER'S APPROVAL:
THIS PLAT IS THE CITY OF FARGO IS HEREBY APPROVED THIS 27th DAY OF MARCH 2019.

Walter Schaefer
City Engineer
My Commission Expires Mar. 1, 2025

CITY ENGINEER'S APPROVAL:
THIS PLAT IS THE CITY OF FARGO IS HEREBY APPROVED THIS 27th DAY OF MARCH 2019.

Walter Schaefer
City Engineer
My Commission Expires Mar. 1, 2025



April 16, 2019

The Honorable Board of City Commissioners
City of Fargo
200 North 3rd Street
Fargo, ND 58102

RE: Authorization to extend the 2017 Lawn Maintenance Services contracts with Valley Green & Associates and Glacier Snow Management Company for the 2019 mowing season.

Commissioners:

In March of 2017, Public Works issued a Request for Proposal (RFP) for lawn maintenance services for the 2017 mowing season at various locations throughout the city. Upon the closing of the RFP a committee made up of Mark Williams, Public Works Services Manager, Corey Houim, Public Works Streets Supervisor, and Ben Dow, Public Works Director of Operations, reviewed the proposals received on the following criteria:

Work Performance "*references*" (15%),
Previous Work Experience (50%)
Price (35%) "*Attached Bid Tab*"

Based on the established evaluation criteria, contracts were extended to Valley Green & Associates and Glacier Snow Management Company. As part of the 2017 RFP, language was included that allows for four (4) one (1) year extensions under the original terms of the RFP. Public Works staff has visited with both 2017 contract holders and at this time we are requesting authorization to extend their contracts for the 2019 mowing season under the same terms with a minimal price increase to the 2017 RFP (RFP17063 and RFP17155).

RECOMMENDED MOTION: I/we hereby move, based on the request for proposal (RFP17063 and RFP17155), to extend the initial 2017 lawn maintenance services contacts with Valley Green & Associates and Glacier Snow Management Company for the 2019 mowing season.

Respectfully submitted,



Matt Andvik
Public Works
Services Manager

SERVICES AGREEMENT

LAWN MAINTENANCE SERVICES

I. Agreement

This agreement is between the City of Fargo (City) and Glacier Snow Management Company (Contractor) to provide lawn maintenance services for the City. This agreement shall commence upon signing by both parties and expire on October 31, 2019. The term of this agreement may be extended, if accepted and signed by the Contractor and City, for three (3) additional one (1) year extensions.

II. Scope of Services

The contractor will perform the lawn maintenance services as set forth within this agreement. It will be up to the individual contractor's discretion to perform the services as weather conditions permit.

Lawn Maintenance Services: All grass shall be mowed on a weekly basis, or as directed. Grass will be maintained at a height of approximately three and one-half (3 ½) inches. Upon completion a mowed area shall be free of clumped grass, tire tracks or ruts from contractor's mowing equipment. Turf shall be cut in a professional manner as not to scalp turf or leave any areas of uncut grass. Care shall be taken to prevent discharge of grass clippings onto any adjacent private properties or onto any paved surface such as streets, jogging trails, sidewalks or storm drain system. These surfaces should be swept/blown clean by the Contractor immediately after each mowing. Contractor shall pick up all litter before each mowing, which is subsidiary to the mowing bid, and remove same from site. If in the course of mowing, trash is overlooked and shredded by mowers, it should immediately be collected and disposed of properly by the contractor. If mowing is interrupted by inclement weather, the Contractor shall continue mowing at the same location on the next available mowing day. The Director of Operations has the authority to cancel or schedule mowing cycles on a week-to-week basis. Any cancellations will be based upon need, prevailing weather conditions and available funding.

Trimming: Contractor will trim all turf areas on a weekly basis or as directed in association with mowing cycle. All trimming shall be accomplished maintaining the three and one-half inches (3 ½") cutting height. All trimming must be performed concurrently with mowing operations. Turf shall be trimmed in a professional manner as not to scalp the grass or leave areas of uncut grass. All amenities (trees, poles, signs, etc.) shall be trimmed around. Special care shall be given in trimming around small trees. Care should be taken to prevent discharge of grass clippings onto any paved surface such as streets, parking lots, sidewalks, driveways or adjacent properties. Any material so discharged shall be removed immediately after trimming.

Weed Control: Contractor will perform two weed control applications of all properties during each season's term. The Contractor shall perform weed control spraying on City properties as designated (Spring, Pre-emergent Herbicide & Midsummer, Post-emergent Herbicide) Soil Sterilant may not be used unless directed by the City. It shall be the Contractor's responsibility to determine the most appropriate times of year to apply treatment within the confines of the general guidance provided above. The Contractor shall use the necessary equipment in order to accomplish the work in a satisfactory manner. The Contractor shall arrange operations so that the herbicides will not be distributed beyond the limit of property sprayed. The Contractor shall apply the herbicides using nozzles and pressure necessary for a proper application. The Contractor shall supply water for any chemical mixes developed for the purpose of spraying weed treatment. The materials used by the Contractor must be of such composition and of sufficient strength to kill weeds, but may not sterilize the soil. The chemicals used shall not be toxic or harmful in any manner to animals or human beings when used in prescribed manner. The materials used shall not harm desirable vegetation such as trees or turf. The materials used shall not be flammable or leave an oily residue that will discolor or leave a slippery film on sidewalks and curbs. The City may at any time during the spraying operation take samples to check materials being used. Upon request, the Contractor shall provide the City with information regarding chemicals applied to specified locations. In addition, the Contractor shall upon request provide the City with specimen labels of chemicals applied. Contractor shall furnish all labor, materials, equipment, permits, fees and insurance coverage for weed control applications.

Property Damage: Contractors will be notified by the Director of Operations of any property damage that occurs as a result of lawn maintenance services. Notification will be within 48 hours of Director of Operations becoming aware of such property damage. The contractor will be solely and wholly financially liable for any damaged property, as a result of negligence on the part of the Contractor.

III. Responsibility of the City

City shall oversee the execution of this agreement and disbursing of funds.

IV. Contractor's Compensation and Method of Payment

City will reimburse Contractor for services render per mowing event as shown in the attached Exhibit A. All final invoices shall be submitted no later than December 1 of the contract year.

V. Termination of the Agreement

This contract may be terminable at will by either party after giving ten (10) days written notice to the other party.

VI. Assignability

This agreement will not be assigned or transferred by Contractor to another party without the prior written consent of the City.

VII. Hold Harmless and Insurance

Contractor agrees to indemnify and hold City harmless from any and all claims, demands or causes of action resulting from the provision of services as described in this contract. All insurance (Worker's Compensation, Comprehensive General Liability, and/or Automobile) shall be maintained at the expense of the contractor during the term of this contract.

VIII. Contractor Records

Contractor shall maintain accurate and updated records of all reimbursable services provided to City under the terms of this agreement, and shall record the date such services are provided. Such records shall conform to generally recognized accounting principles. The City, or their authorized representatives, shall have access to any records of Contractor pertinent to the agreement.

IX. Monitoring and Evaluation

City may monitor and evaluate Contractor progress and performance to assure that the terms of this agreement are being satisfactorily met. Contractor shall cooperate with City relating to such monitoring and evaluation.

X. Independence of Recipient

Contractor is not the agent or employee of City. Contractor is solely responsible for its acts and the acts of its agents, employees and subcontractors.

XI. Conflict of Interest

Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

XII. Entire Agreement

The provisions as set forth in Items I, and all attachments of this agreement constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 4-15-19

Glacier Snow Management Company

By: 

Its: DON NELSON

Date: _____

CITY OF FARGO, North Dakota, a North
Dakota Municipal Corporation

Dr. Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

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Contractor agrees that it does not have any undisclosed influence or relationship with City staff regarding the award or performance of this contract.

XII. Entire Agreement

The provisions as set forth in Items I, and all attachments of this agreement constitute the entire agreement between the parties.

IN WITNESS WHEREOF, the undersigned enter into this agreement.

Date: 4/15/19

Valley Green & Associates



By: Josh Abrahamson

Its: Owner

Date: _____

CITY OF FARGO, North Dakota, a North
Dakota Municipal Corporation

Dr. Timothy J. Mahoney, Mayor

ATTEST:

Steve Sprague, City Auditor

11

April 17, 2019

The Honorable Board of City Commissioners
City of Fargo
200 North 3rd Street
Fargo, ND 58102

RE: Public Works East Building Renovation – Bid Acceptance and Award
Recommendations

Commissioners:

In March 2019, Fargo Public Works published an advertisement requesting bids (AFB19068) for structural, electrical and mechanical improvements at the Public Works East Facility. Bids were received April 3, 2019 from two General Contractors, eight Mechanical Contractors, and four Electrical Contractors. Based on the bids and alternatives we recommend the acceptance of the bids and following bid award.

General Construction Award Recommendation – Naseth Construction, Inc.

| | |
|---|----------------------|
| Base Bid | \$ 272,500.00 |
| Alternate #1 Epoxy Line Striping | \$ 7,320.00 |
| Alternate #2 Overhead Door/Opener Replacements | \$ 27,400.00 |
| Recommended Award – General Construction | \$ 307,220.00 |

Mechanical Construction Award Recommendation – Sheyenne Mechanical

| | |
|--|----------------------|
| Base Bid | \$ 152,071.00 |
| Recommended Award – Mechanical Construction | \$ 152,071.00 |

Electrical Construction Award Recommendation – JDP Electric, Inc.

| | |
|--|---------------------|
| Base Bid | \$ 79,986.00 |
| Alternate #1 Overhead Door Electrical | \$ 1,560.00 |
| Recommended Award – Electrical Construction | \$ 81,546.00 |

Total Recommended Award **\$540,837.00**

RECOMMENDED MOTION: I/we hereby move based on advertisement for bids (AFB19068) to accept the bids and award the contracts listed for structural, electrical and mechanical improvements, as funded in the 2018 budget, for the Public Works East facility.

Respectfully submitted,



Ben Dow
Public Works Director

728 East Beaton Drive Suite 101
 PO Box 190
 West Fargo, ND 58078-2650
 701 232 5353
 kljeng.com



April 16, 2019

Mr. Benjamin Dow
 Director of Operations
 City of Fargo
 402 N. 23rd St
 Fargo, ND 58102

Re: Recommendation of Award – Public Works East Building Renovations

Mr. Dow:

Bids on the above referenced project were opened on April 3, 2019. A total of 14 bids were received: two (2) general construction, eight (8) mechanical construction, and four (4) electrical construction. All bids were opened. The bids were checked for mathematical accuracy and no discrepancies were found. A complete tabulation of all bids received is attached.

The apparent low bidders for the general, mechanical and electrical construction are shown below.

| Low Bid Contractor | Contract | Base Bid | Add Alt.#1 | Add Alt.#2 |
|---------------------------|-------------------------|---------------------|-------------------|--------------------|
| Naseth Construction, Inc. | General Construction | \$272,500.00 | \$7,320.00 | \$27,400 |
| Sheyenne Mechanical | Mechanical Construction | \$152,071.00 | \$0.00 | \$0.00 |
| JDP Electric, Inc. | Electrical Construction | \$79,986.00 | \$0.00 | \$1,560.00 |
| Total | | \$504,557.00 | \$7,320.00 | \$28,960.00 |

Including both alternates, the overall total of the project as bid is \$540,837.00, which is \$100,000 below the engineer's estimate. KLJ recommends the City accept the low bid contractors identified above and accept both the add alternates.

We will start processing the construction contracts based on the information included herein. If something changes, please let us know.



If you have any questions, please contact our office.

Sincerely,

KLJ

Cassie McNames

Cassie McNames, PE
Project Manager

Enclosure(s): April 3, 2019 Bid Tabulation
Project #: 14416103 - 16



**TABULATION OF BIDS
PUBLIC WORKS EAST BUILDING RENOVATION
CITY OF FARGO**

Bid Letting: April 3, 2019
Checked by: Cindy Quibell

| Contractor | Division 1 Single Prime Bid | | Multiple Prime Bid | | | | Alt. #2 | Alt. #2 |
|---|--------------------------------|------------|--------------------|-----------|-----------|---------|------------|---------|
| | Base Bid | Alt. #1 | Base Bid | Alt. #1 | Alt. #2 | Alt. #2 | | |
| Gast Construction Company, Inc. | \$ | \$ | 285,600.00 | 7,600.00 | 27,500.00 | | \$ | |
| Naseth Construction, Inc. | \$ | \$ | 272,500.00 | 7,320.00 | 27,400.00 | | \$ | |
| JDP Electric, Inc. | \$ | \$ | | | | | 79,986.00 | |
| Advanced Electrical Systems, LLC | \$ | \$ | | | | | 89,434.00 | |
| Bergstrom Electric, Inc. | \$ | \$ | | | | | 94,913.00 | |
| CB & Sons Electric, Inc. | \$ | \$ | | | | | 83,775.00 | |
| Dakota Plains Mechanical | \$ | \$ | | | | | 159,000.00 | |
| Robert Gibb & Sons, Inc. | \$ | \$ | | | | | 164,630.00 | |
| Laney's Inc. | \$ | \$ | | | | | 208,000.00 | |
| Manning Mechanical | \$ | \$ | | | | | 169,550.00 | |
| Mission Mechanical, Inc. | \$ | \$ | | | | | 186,400.00 | |
| Northern Plains Mechanical | \$ | \$ | | | | | 169,420.00 | |
| Peterson Mechanical, Inc. | \$ | \$ | | | | | 182,200.00 | |
| Shyenne Mechanical | \$ | \$ | | | | | 152,071.00 | |
| LOW BID PRICE DIVISION 1 (NO ALT) | \$ | 0.00 | | | | | | |
| LOW BID PRICE DIVISION 2 & 3 & 4 (NO ALT) | \$ | | 272,500.00 | | | | 152,071.00 | |
| TOTAL BID PRICE DIVISION 2 * 3 * 4 (NO ALT) | \$ | | 272,500.00 | | | | 152,071.00 | |
| | \$ | | 504,557.00 | | | | 504,557.00 | |
| ABSOLUTE LOW BID * ALTERNATE #1 | \$ | 504,557.00 | 7,320.00 | | | | 511,877.00 | |
| ABSOLUTE LOW BID * ALTERNATE #2 | \$ | 504,557.00 | 7,320.00 | 28,960.00 | | | 533,517.00 | |
| ABSOLUTE LOW BID * ALTERNATE #1 & #2 | \$ | 504,557.00 | 7,320.00 | 28,960.00 | | | 540,837.00 | |
| Engineer's Opinion of Cost | \$ | 609,157.93 | 7,100.00 | 24,100.00 | | | 640,357.93 | |

TRUE TABULATION OF BIDS
Kadras, Lee & Jackson

Division 1 Bids Received: 0
Division 1 Bids Rejected: 0
Division 1 Bids Withdrawn: 0
Division 2 - General Bids Received: 2
Division 2 - General Bids Rejected: 0
Division 2 - General Bids Withdrawn: 0
Division 2 - Mechanical Bids Received: 8
Division 2 - Mechanical Bids Rejected: 0
Division 2 - Mechanical Bids Withdrawn: 0
Division 2 - Electrical Bids Received: 4
Division 2 - Electrical Bids Rejected: 0
Division 2 - Electrical Bids Withdrawn: 0

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April 22, 2018

City of Fargo Commissioners
200 N 3rd Street
Fargo, ND 58102

Dear Commissioners:

The City of Fargo has provided transit service in West Fargo for many years. An annual Mass Transit Agreement defines the level and cost of the service, and West Fargo provides Fargo with an appropriate amount of funds to pay for local costs of the transit service. A portion of the cost of transit service is paid for with grants from the Federal Transit Administration and the State of North Dakota.

An agreement for these services for 2019 is attached for your consideration. Under the terms of this agreement, the City of West Fargo will contribute \$23,383.11 a month toward the cost of fixed route transit service and \$16.57 a ride toward the cost of paratransit service.

RECOMMENDED MOTION: Approve of a Mass Transit Agreement with the City of West Fargo for 2019.

Sincerely,



Julie Bommelman
City of Fargo Transit Director
476-6737

/enc

MASS TRANSIT AGREEMENT

This AGREEMENT made and entered into this 1st day of January, 2019, by and between the City of West Fargo, North Dakota (hereinafter "West Fargo") and the City of Fargo, North Dakota (hereinafter "Fargo").

WHEREAS, Fargo provides regular transit service and Paratransit service for its citizens; and

WHEREAS, West Fargo would like to provide such services to the citizens of West Fargo; and

WHEREAS, Fargo is agreeable to provide such transit service to West Fargo on the terms and conditions set out below;

NOW THEREFORE, be it agreed between West Fargo and Fargo as follows:

1. Fargo will provide regular transit service to West Fargo during the term of this agreement under the following conditions:
 - A. Fargo and West Fargo shall agree to routes, schedules, and stopping points of the transit service in West Fargo. It is understood that such West Fargo routes will tie into the Fargo route system at West Acres. Route 20 and stopping points must be such that the route can be completed in approximately thirty (30) minutes; the route will run once each hour. Route 24 and stopping points must be such that the route can be completed in approximately 60 minutes; the route will run once each hour.
 - B. West Fargo shall pay Fargo, on a monthly basis, \$23,383.11 a month in 2019, with payment being due by the 10th day of each month, for Route 20 and Route 24 transit service to be available in West Fargo. Fargo will use these funds for the local share of the overall cost of these services and for transit capital needs.
 - C. Persons who get onto the bus in West Fargo shall not be charged a fee to transfer onto other bus routes of the bus system, and may transfer onto another bus with no transfer fee.
 - D. The bus fare for using the buses in West Fargo shall be the same fare that is charged to passengers using the bus service in Fargo.
 - E. Fargo shall be responsible for all administrative responsibilities regarding the bus transit service provided to West Fargo, including dispatching, complaint issues, annual grant applications, marketing of routes, preparation and revision of route maps and schedules, and filing of any necessary reports.
2. Fargo shall provide West Fargo transit service for persons with disabilities through the Paratransit service on the following conditions:

- A. The service shall be available to the citizens of West Fargo on the same basis that it is available to citizens in Fargo.
 - B. The cost of the service to the citizens of West Fargo shall be the same cost as available to the citizens of Fargo.
 - C. It is understood between West Fargo and Fargo, that Fargo contracts with a provider for drivers services for the Paratransit service. West Fargo shall pay Fargo \$16.57 per ride in 2019, for paratransit services taken by a resident of West Fargo, except for those rides that are paid at an agency rate or those rides that are paid by Medicaid. West Fargo will not pay for rides billed at an agency rate or those rides that are paid by Medicaid. Fargo will track the number of rides for which West Fargo will be billed, as described herein, and will submit a monthly invoice to West Fargo. West Fargo will remit payment to Fargo by the 10th day of the following month. Fargo will use these funds for the local share of the overall cost of these services and for transit capital needs.
 - D. West Fargo, by written notification to Fargo, may limit the hours of Paratransit service in West Fargo, provided that such limitation would not cause any violation of any state or federal law.
3. West Fargo shall adhere to the Emergency Service Guidelines that Fargo has implemented.
 4. This agreement shall be for a period of twelve (12) months, beginning on January 1, 2019 and terminating on December 31, 2019.
 5. Either party may terminate or reduce the amount of service to be rendered if there is, in the opinion of either party's City Commission, a significant increase in local costs; or, in the opinion of either party's City Commission, insufficient state or federal funding available for the service, thereby terminating this agreement or reducing the service and compensation to be paid under this agreement. In such event the terminating party will notify the other party in writing one hundred eighty (180) days in advance of the date such actions are to be implemented. In the event of any termination, West Fargo shall pay the agreed rate only for services delivered up to the date of termination. West Fargo has no obligation to Fargo, of any kind, after the date of termination.
 6. This agreement shall not be amended, except in writing executed by both parties.
 7. Nothing in this agreement shall be deemed a waiver by West Fargo or Fargo of the limits of liability set forth in N.D.C.C. § 32-12.1-03 or a waiver of any available immunities or defenses. Additionally, the limitations on liability for West Fargo and Fargo shall not be added together or stacked to increase the maximum amount of liability.
 8. West Fargo and Fargo are each responsible for securing liability insurance that it believes, in its discretion, will be adequate for this agreement. Additionally, West Fargo and Fargo are each responsible for securing workers' compensation insurance and

employer's liability insurance at levels required under state law, or within its discretion, to cover any of its respective employees working under this agreement.

9. Both parties agree to indemnify, save, and hold harmless the other and its agents and employees from any and all liability, loss, cost, damages, expenses, claims, or causes of action, including attorney's fees, arising out of or by reason of actions of the other or its agents or employees in connection with or in the execution, performance, or failure to adequately perform obligations pursuant to this agreement. The indemnification and hold harmless obligations set forth in this agreement shall survive the termination of this Agreement.
10. The parties will cooperate and use their best efforts to ensure that the various provisions of this agreement are fulfilled. The parties agree to act in good faith to undertake resolution of disputes in an equitable and timely manner and in accordance with the provisions of this agreement.
11. The District Court of Cass County, North Dakota, will be the sole and exclusive venue for any lawsuit pertaining to this agreement, and the Parties consent to the personal jurisdiction in said court in the event of any such lawsuit.
12. This agreement shall not be assigned without the express written consent of the other party.
13. Each provision, section, sentence, clause, phrase, and word of this agreement is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court with jurisdiction to be illegal or invalid whatsoever, such illegality or invalidity will not affect the validity of the remainder of this agreement.
14. No party will be liable to another party during any period in which its performance is delayed or prevented, in whole or in part, by circumstances beyond its reasonable control. Circumstances include, but are not limited to, the following: act of God (e.g., flood, earthquake, wind), fire, war, act of a public enemy or terrorist, act of sabotage, strike or other labor dispute, riot, misadventure of the sea, inability to secure materials, or a restriction imposed by legislation, an order or a rule, or regulation of a governmental entity. If such a circumstance occurs, the party claiming the delay must undertake reasonable action to notify the other party of the same.
15. All notices, certificates, or other communications required under this agreement will be deemed sufficiently given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

If to West Fargo:

City Administrator
City of West Fargo
800 4th Avenue East, Suite #1
West Fargo, ND 58078

If to Fargo:

City Administrator
City of Fargo
225 4th Street North
Fargo, ND 58102

- 16. This agreement will be controlled by the laws of the State of North Dakota.
- 17. This agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. All parties will receive a fully-executed counterpart. The facsimile, email, or other electronically delivered signatures of the parties will be deemed to constitute original signatures, and facsimile or electronic copies hereof will be deemed to constitute duplicable originals.
- 18. This agreement constitutes the entire agreement by and between the parties, and any other prior representations or agreements are deemed merged herein, and those not specified herein do not represent any agreements or promises or covenants or representations on the part of either party hereto.

IN WITNESS WHEREOF, the parties have caused this Mass Transit Agreement to be executed on the day and year first above written.

CITY OF WEST FARGO
 BY: 
 Bernie L. Dardis, President, City Commission

ATTEST: 
 City Auditor

CITY OF FARGO
 BY: _____
 Timothy J. Mahoney, M.D., Mayor

ATTEST: _____
 City Auditor

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April 22, 2019

Board of City Commissioners
City Hall - 200 N 3rd Street
Fargo, ND 58102

Dear Commissioners:

The MATBUS Transit Facility Study was developed to address several short, medium, and long-range facility-related issues facing MATBUS. The MATBUS Facility Study, completed by KLJ, Inc., was received and filed by the Fargo City Commission January 28, 2019. Grant funds have been secured and the work on the Ground Transportation Center (GTC) has been identified – the attached contracts outline the scope of work for (1) renovation of the GTC above grade, (2) renovation of the Jefferson space, and (3) renovation of the below grade parking facility. KLJ, Inc. and the City of Fargo Assistant City Attorney has finalized the appropriate contracts (attached).

The requested motion: The Fargo City Commission approve the attached contracts between the City of Fargo and KLJ, Inc.

(RFQ18325)

Sincerely,



Julie Bommelman
Transit Director
City of Fargo

/attachment

**AGREEMENT
BETWEEN**

**CITY OF FARGO
And
KADRMAS, LEE & JACKSON, INC.**

This agreement is made and entered into effective by and between the **CITY OF FARGO, NORTH DAKOTA**, a North Dakota Municipal Corporation, hereinafter referred to as “City” and **KADRMAS, LEE & JACKSON, INC.**, a North Dakota Corporation, hereinafter referred to as “Engineer”.

WITNESSETH

WHEREAS, the City has determined that it requires architectural and engineering services to undertake a remodel of the Ground Transportation Center (GTC) to add a Jefferson Lines Ticketing and Storage counter to the facility located at 502 NP Avenue, Fargo, ND; and

WHEREAS, Engineer has represented that it has the necessary expertise and personnel and is qualified to perform such services.

NOW, THEREFORE, for good and valuable consideration hereby acknowledged, it is mutually understood and agreed as follows:

I. Complete Agreement

This Agreement and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the Agreement between the City and the Engineer and it supersedes all prior representations, understanding and communications. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. City’s failure to insist in one or more instances upon performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of City’s right to such performance by the Engineer.

II. City and Engineer Designees

The City Administrator, or his Designee, shall have the authority to act for and exercise any of the rights of City as set forth in the herein Agreement, subsequent to the authorization by the City Commission of the City.

The Engineer or his/her Designee, shall have the authority to act and exercise any of the rights of Engineer as set forth in the herein Agreement.

III. Employment of the Engineer

City hereby engages the Engineer and the Engineer agrees to perform the services, hereinafter described in the connection with the condition and assessment services, design services, bidding and contracting services, as provided for in Exhibit A attached hereto.

City and Engineer agree that Engineer may engage such subconsultants as necessary from time to time, with the consent of City, to provide the services provided for hereunder. For

purposes of this Agreement, all references to Engineer shall encompass Engineer's approved use of subconsultants to perform the services.

IV. Engineer's Employees

The personnel performing services under this Agreement shall at all times be under Engineer's exclusive direction and control and shall be employees of Engineer and not employees of City. Engineer shall pay all wages, salaries and other amounts due its employees in connection with the Agreement and shall be responsible for social security, income tax withholding, unemployment compensation, worker compensation insurance and similar matters.

V. Scope of Work

Engineer shall provide services in accordance with Exhibit A to this Agreement attached hereto and by reference incorporated herein, during the entire term of the Agreement.

VI. Amendment- Changes in Scope of Work

It is understood and agreed by City and Engineer that it may be necessary, from time to time during the term of this Agreement, to modify its provisions or to revise the scope. In each such instance, City and Engineer shall consult with each other and shall come to a mutually acceptable agreement as to the nature of the required modification or revision desired. Each modification or revision required shall be reduced to writing and when appropriately executed by both parties, shall constitute an amendment to this Agreement. Each amendment will be identified and sequentially numbered as "Amendment No. 1" and so forth, shall be subject to all the other applicable provisions of the Agreement, and shall be attached to the Agreement. Until an amendment has been approved in the foregoing manner, it shall have no force or effect.

Add Alternative Services as described in Exhibit A shall be agreed to by the parties and based on the estimated distribution of compensation as provided in Exhibit A attached hereto.

VII. Insurance

Engineer shall keep and maintain the following insurance coverages:

A. Professional Liability Insurance. Engineer shall maintain in full force and effect until at least three years subsequent to completion of the Agreement professional liability insurance covering the performance of the Services. Such insurance shall be on a "claims made" basis and in the amount of at least \$1,000,000/\$1,000,000 aggregate..

B. Workers Compensation Insurance. Engineer shall maintain workers compensation insurance with following limits or with the minimum limits required by law, if greater:

Coverage A: Statutory

| | | | |
|-------------|-------------|---------------------------|---------------|
| Coverage B: | \$1,000,000 | Bodily Injury by accident | Each accident |
| | \$1,000,000 | Bodily Injury by disease | Policy limit |
| | \$1,000,000 | Bodily Injury by disease | Each employee |

C. General Liability Insurance. Engineer shall maintain general liability insurance with coverage to include: Premises/Operations, Completed Operations and

Contractual Liability (to cover the indemnification provision in paragraph 2.1 of the Agreement). Limits of coverage shall not be less than:

\$1,000,000 Per occurrence
\$2,000,000 Aggregate

D. **Automobile Insurance.** Engineer shall maintain automobile liability insurance to include all owned autos (private passenger and other than private passenger), hired and non-owned vehicles. Limits of coverage shall not be less than:
\$1,000,000 Per accident

E. **Evidence of Insurance.** The above insurance shall be maintained in companies lawfully authorized to do business in North Dakota and which are reasonably acceptable to City. Consultant shall furnish City with certificates reflecting such insurance (ACORD form or equivalent) to be in force as long as this Agreement remains in effect, naming the city of Fargo as an additional insured, and providing that said insurance will not be canceled or its limits reduced by endorsement without at least 30 days prior written notice to City.

F. **Excess/Umbrella Coverage.** Engineer shall secure Excess/Umbrella coverage, naming the city of Fargo as an additional insured, as follow:
\$2,000,000 Umbrella/Excess

G. Engineer may meet the levels of insurance required by Section VII. B, Worker's Compensation Insurance Coverage B, and Sections VII. C and D. through a combination of Primary and Excess/Umbrella coverage.

VIII. Compensation.

City will pay to Engineer compensation for the Services as set forth in Exhibit A.

Engineer shall submit itemized monthly statements for such compensation equal to the value of the Services completed throughout the preceding month, as such value is determined in accordance with the then current Schedule of Charges. All such invoices shall become due and payable by City within 45 days of the date of receipt of any such invoice. City shall notify Engineer in writing, within 15 days of the date of the invoice, if City objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. City shall pay a finance charge fee of 1.5% per month, but not exceeding the maximum amount allowed by law, for all unpaid amounts 45 days or older. Upon receipt of each payment, Engineer shall furnish a mechanic's lien waiver reflecting all sums paid to Engineer.

IX. Changes and Adjustments.

City may issue changes consisting of additions, deletions or other revisions, with corresponding adjustments to the compensation to Engineer and the schedule. All such changes in the Services shall be authorized by written Amendment. An adjustment to the compensation to Engineer resulting from a change in the Services shall be determined by mutual acceptance of a lump sum amount, application of hourly billing rates as set forth in the current Schedule of Charges, or in such other manner as is mutually agreed upon by Engineer and City. If Engineer believes it is entitled to additional compensation or time for performing additional Services that are beyond the scope of the Task Order or Amendment, Engineer shall immediately notify City thereof and secure City's approval prior to performing such additional Services. Engineer shall not be entitled to additional compensation if additional work is the result of its errors.

X. Location of Underground Facilities.

Engineer will contact North Dakota One Call and request they notify the appropriate utility vendors to clear the underground utilities. City or its authorized representative will notify Engineer immediately of the presence and location of any underground objects or private utilities that are not the responsibility of public agencies.

XI. Third Party Reliance.

This Agreement and the Services provided are for Engineer's and City's sole benefit and exclusive use, with no third party beneficiaries intended.

XII. Conflict of Interest.

Engineer represents and warrants that it has no conflict of interest which would prevent Engineer from acting in the City's best interests, and that Engineer will guard against a conflict of interest arising or existing during the term of this Agreement.

XIII. Entire Agreement.

The terms and conditions set forth herein constitute the entire understanding of the parties relating to the provision of Services by Engineer to City. This Agreement may be amended only by a written instrument signed by both parties.

XIV. Hazardous Materials.

Engineer is responsible for compliance with any requirements regarding hazardous materials. If Engineer encounters a hazardous material or substance and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from the material defined as toxic or hazardous pursuant to federal or state statutes or regulations, encountered on the site by Engineer, Engineer shall immediately stop work in the affected area and report the condition to City.

XV. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

XVI. Assignment.

This Agreement may not be assigned by Engineer or City without the prior written consent of the other party.

XVII. Independence.

In performing all Services under this Agreement, Engineer shall be and remain an independent Engineer in fact and in law. City shall have no control, or right of control over the manner or means of Engineer performing its work. Engineer shall be solely responsible for the compensation, benefits, contributions and taxes, if any, of its employees, subconsultants and agents.

XVIII. Consequential Damages.

A. To the extent allowed under North Dakota Law, neither City nor the Engineer shall be responsible or held liable to the other for any indirect, incidental, special or consequential damages of any nature whatsoever, including without limitation, liability for the loss of use of

property, loss of profits, or other revenue, interest, loss of product, increased expenses or business interruption, however the same may be caused.

B. This waiver shall not apply to any liability for any type of damage or loss to the extent that such loss or damages are covered by the proceeds of insurance required to be carried pursuant to this Agreement.

XVIII. Dispute Resolution.

Engineer and City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution procedure. Nothing prevents the parties from pursuing litigation in the appropriate State or Federal court.

XIX. Force Majeure.

Neither party shall be liable for damages or deemed in default of this Agreement and any Authorization for Services hereunder to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

XX. Severability.

Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

XXI. Right in Work Product.

The specific work product of Engineer for which it is reimbursed by City, including all data, documents, results, ideas, developments, and inventions that Engineer conceives or reduces to practice during the course of its performance under this Agreement, shall be the property of City, but Engineer may reuse such information in the normal course of its business and retains its rights in any standard details or drawings. City acknowledges that the work product is provided for a specific purpose and any unauthorized use, use other than for the specific purpose intended or modification of the work product by the City will be at the City's sole risk and without liability or legal exposure to Engineer.

XXII. Digital Data. Engineer shall submit reports electronically, in PDF format.

XXIII. Publication, Reproduction and Use of Material.

No custom material produced in whole or in part under the Contract shall be subject to copyright in the United States or in any country. The Federal Transit Administration shall have authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom material prepared under this Agreement.

XXIV. Applicable State and Local Clauses.

The Engineer shall comply with all Federal, State, and local licensing, training, testing and/or regulatory requirements (including permits).

The Engineer shall be appropriately licensed for the work required. The cost for any required licenses or permits shall be the responsibility of the Engineer. Engineer is liable for any and all taxes due as a result of the contract.

XXV. Applicable Federal Clauses: The Applicable Federal Clauses under this section XXV. shall apply to this agreement as noted in Exhibit B attached hereto.

XXVI. Binding

This Agreement shall be binding on the assignees, transferees, successors, heirs, trustees, executors and administrators of the parties hereto.

XXVII. Notice

All notices hereunder and communications with respect to this Agreement shall be effected upon the mailing thereof registered or certified mail return receipt requested or by Federal Express and addressed as follows:

To ENGINEER

KLJ
4585 Coleman Street
Bismarck, ND 58503

To CITY

City of Fargo
225 4th Street North
Fargo, ND 58102
Attn: Mayor City of Fargo

XXVII. Termination

Termination may be by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

XXVIII. Indemnification

To the fullest extent permitted by Laws and Regulations, Engineer and City shall indemnify and hold each other harmless from losses, damages, and judgments arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission.

XXIX. Contract Components

This Contract consists of the following component parts, all of which are fully made a part of this Contract as if herein set out verbatim, or if not attached, as if hereto attached, to wit:

1. Advertisement for Proposals
2. Request for Proposals Scope of Work for Transit
3. All Addendums and Attachments identified in the Request for Proposal (not specified below)
4. Engineer Proposal
5. This Contract
6. Federal Contract Clauses
7. Debarment and Suspension Certification (signed by Contractor)
8. Lobbying Certification (signed by Contractor)

Dated this 9th day of April, 2019.

KADRMAS, LEE & JACKSON, INC., A NORTH DAKOTA CORPORATION

By: 

Printed Name: Mark Anderson

Dated this _____ day of _____, 2019.

CITY OF FARGO, A NORTH DAKOTA MUNICIPAL CORPORATION

By _____
Timothy J. Mahoney, M.D., Mayor

ATTEST:

By _____
Steve Sprague, City Auditor



**Architectural/Engineering Services
GTC Jefferson Ticketing/Storage Counter
GTC Design Bid Build
Fargo, ND**

Engineer's Services

I. Jefferson Ticketing/Storage Counter

A. Construction Documents

1. Meet with MATBUS and Jefferson Lines at the onset of the project in conjunction with PDT (Project Design Team) Meeting #1 to finalize preliminary layouts identified by our team in the MATBUS Transit Facility Analysis Study completed in 2018. A preferred layout will be selected during the meeting. The schedule will also be finalized at this time.
2. Review existing plans prepared for the GTC and review the site to become familiar with existing conditions as it relates to the proposed changes associated with this phase of the project.
3. Prepare 60% plans and specifications for review with MATBUS and Jefferson Lines.
4. Prepare 90% plans and specifications for review with MATBUS and Jefferson Lines.
5. Prepare final plans and specifications stamped and signed by design professionals licensed in the State of North Dakota. Deliver one electronic set of documents and one original signed set of documents to MATBUS.
6. Team responsibilities:
 - a. KLJ - Project Management, structural design, bidding assistance, and construction administration
 - b. Foss Architecture + Interiors - Architecture/Interiors, bidding assistance and construction administration
 - c. Vareberg Engineering - Electrical design, bidding assistance and construction administration
 - d. KFI Engineers - Mechanical design, bidding assistance and construction administration

B. Bidding Assistance

1. Provide front end specifications to be used for bidding purposes, including construction contracts and supplemental conditions. It is assumed the project will be bid with prime contracts for general construction, mechanical construction and electrical construction.
2. Prepare advertisement for bids to be coordinated with MATBUS.
3. Assemble bid documents and upload them to the appropriate plan rooms and builder's exchanges.
4. Issue addendums and field questions regarding changes or additional information to supplement project drawings and specifications.
5. Attend pre-bid meeting to be held at the GTC.
6. Attend the bid opening.
7. Compile a list of all bidders according to prime contracts for MATBUS and recommend those to be awarded contracts.



- 8. Issue Notice of Award to the bidders selected by MATBUS.
- 9. Assist MATBUS with setting up contract documents as required for each prime contract.
- 10. Issue Notice to Proceed with construction to the prime bidders awarded contracts.

C. Construction Administration:

- 1. Answer questions and issue RFI's as necessary to clarify drawings or specifications.
- 2. Davis-Bacon wage rate interviews and submittals.
- 3. Shop drawing review.
- 4. Review of pay requests, preparation of change orders, and response to RFI's.
- 5. Attendance & administration of construction meetings. Construction meetings are anticipated to be held weekly for a maximum of two (2) months.
- 6. Periodic site visits during construction to review progress.
- 7. Preparation of a punch list prior to substantial completion.
- 8. Final walkthrough.
- 9. Project Closeout.

II. Anticipated Project Schedule

| | |
|--|--------------------|
| Contract Execution/Notice to Proceed | March 25, 2019 |
| Preliminary Design | April - May 2019 |
| Construction Documents | May - June 2019 |
| Bidding Assistance..... | June - July 2019 |
| Construction Administration..... | July - August 2019 |

III. Services Not Included

These services can be provided upon request and will be negotiated at the time services are rendered and will be address in an amendment to the contract.

- A. Low-priority repairs included in KLJ's 2016 report.
- B. Preparation of multiple bid packages for any tasks or re-bidding a bid package.
- C. Preparation of as-built drawings.
- D. Additional services, tasks, and meetings not described in tasks outlined above.
- E. Extended construction administration for construction duration in excess of the timelines included in the tasks outlined above.



ENGINEERING FEES

| GTC - JEFFERSON TICKETING/STORAGE COUNTER | | | | | | | | |
|---|---|-------|---|------|---|--------------|-------------|---------------------|
| 1. | Direct Labor | Hours | X | Rate | = | Project Cost | Total | |
| | Project Assistant | 24 | X | 24 | = | \$ 576.00 | \$ 576.00 | |
| | Structural Engineer IV | 100 | X | 58 | = | \$ 5,800.00 | \$ 5,800.00 | |
| | Structural Engineer II | 6 | X | 33 | = | \$ 198.00 | \$ 198.00 | |
| | Planner IV | 8 | X | 60 | = | \$ 480.00 | \$ 480.00 | |
| | CADD Tech II | 8 | X | 27 | = | \$ 216.00 | \$ 216.00 | |
| | | | X | | = | \$ - | \$ - | |
| | Subtotal | | | | = | \$ 7,270.00 | \$ 7,270.00 | |
| 2. | Overhead/Indirect Cost (expressed as indirect rate x direct labor) | | | | | | 185.39% | \$ 13,477.85 |
| 3. | Subcontractor Costs | | | | | \$ | 12,000.00 | \$ 12,000.00 |
| 4. | Materials and Supplies Costs | | | | | \$ | 750.00 | \$ 750.00 |
| 5. | Travel Costs | | | | | \$ | - | \$ - |
| 6. | Fixed Fee | | | | | | 12% | \$ 2,489.74 |
| 7. | Miscellaneous Costs | | | | | \$ | - | \$ - |
| | Total Cost | | | | | = | | \$ 35,987.60 |

By entering into a sale with the City of Fargo, ND, the supplier is agreeing to be bound by the following federal clauses and certifications as applicable:

XX 1. **No Government Obligation to Third Parties:** *Applies to all third party contracts that are federally funded.*

- a) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XX 2. **Program Fraud & False or Fraudulent Statements & Related Acts:** *Applies to all third party contracts that are federally funded.*

- a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XX 3. **Access to Records and Reports:** *Applies to all contracts funded in whole or in part with FTA funds.*

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases,

subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

- b) **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

XX 4. **Federal Changes:** *Applies to all contracts.*

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, and they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

XX 5. **Civil Rights and Equal Opportunity:** *Applies to all contracts.*

The KLJ, Inc. is an Equal Opportunity Employer. As such, the KLJ, Inc. agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the KLJ, Inc. agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a) **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42

Exhibit B

U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c) Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

XX 6.

Termination Provisions: *Applies to all contracts in excess of \$10,000. Those contracts must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.*

- a) The CITY reserves the right to cancel any contract for cause upon written notice to the Contractor. Cause for cancellation will be documented failure(s) of the contractor to provide services in the quantity and/or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Contractor without additional harm to the participants or the CITY.
- b) The CITY may cancel or reduce the amount of service to be rendered if there is, in the opinion of the City Council, a significant increase in local costs; or, in the opinion of the City Council, insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the City will notify Contractor in writing ninety (90) days in advance of the date such actions are to be implemented.

CONTRACTOR is hereby notified that the CITY Transit system pursuant to this agreement is dependent upon the necessary receipt of local, state and federal funding.

In the event of any termination, the CITY shall pay the agreed rate only for services delivered up to the date of termination. The CITY has no obligation to Contractor, of any kind, after the date of termination. Contractor shall deliver all records, equipment and materials to the CITY within 24 hours of the date of termination.

XX 7.

Disadvantaged and Small Business Enterprise: *Applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.*

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a) Withholding monthly progress payments;
- b) Assessing sanctions;
- c) Liquidated damages; and/or
- d) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 471.425 subd. 4a) from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

In connection with the performance of this service, the Contractor will cooperate with the CITY in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by CITY for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the CITY with the necessary certification and records for reporting purposes. When the majority of the contract is labor,

which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The CONTRACTOR will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The contractor must promptly notify the CITY whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the CITY.

Fostering Small Business Participation

The CITY has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the CITY. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

XX 8.

Incorporation of FTA Terms: *Applies to all contracts.*

The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause the CITY to be in violation of the FTA terms and conditions.

XX 9.

Debarment, Suspension, Ineligibility and Voluntary Exclusion: *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate

in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by KLJ, Inc. If it is later determined by KLJ, Inc. that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to KLJ, Inc., the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

XX 10.

Buy America: *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

XX 11.

Breach of Contract and Dispute Resolution: *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.*

- a) Disputes will be presented in writing to the Fargo Transit Director. City personnel and the Contractor will attempt to resolve any dispute arising in the performance of the Contract.

If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission – it is the sole responsibility of the Contractor to schedule a hearing with the Fargo City Commission. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

The decision of the Fargo City Commission shall be binding upon the Contractor and the Contractor shall abide by the decision.

- b) Unless otherwise directed by the City of Fargo, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- c) Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- d) Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Fargo and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.

XX 12. **Lobbying Restrictions:** *Applies to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

The undersigned certifies (*Note: A separate certification will be required to be signed if the contract meets this criteria*), to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a

prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- XX 13. **Clean Air and Federal Water Pollution Control Act:** *Applies to each contract and subcontract exceeding \$150,000. The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.*

The Contractor agrees:

- a) It will not use any violating facilities;
- b) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- c) It will report violations of use of prohibited facilities to FTA; and
- d) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

- XX 14. **Contract Work Hours & Safety Standards Act:** *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*

- a) *Contract Work Hours and Safety Standards*
 - i. *Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38*
 - ii. *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*

a) For construction contracts:

- i. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
- ii. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the

Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

- iii. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
 - iv. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.
- b) For Awards Not Involving Construction – NOT APPLICABLE FOR THIS AGREEMENT**
- i. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.
 - ii. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
 - iii. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.
 - iv. The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

15. **Transit Employee Protective Arrangements:** *Applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.*

NOT APPLICABLE FOR THIS AGREEMENT

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a) **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- b) **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- c) **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

16. **Charter Service:** ***NOT APPLICABLE FOR THIS AGREEMENT***

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b) FTA regulations, "Charter Service," 49 C.F.R. part 604;
- c) Any other federal Charter Service regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a) Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
- b) Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
- c) Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

17. **School Bus Service Operations:** ***NOT APPLICABLE FOR THIS AGREEMENT.***

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b) FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c) Any other Federal School Bus regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

- a) Bar the Contractor from receiving Federal assistance for public transportation; or
- b) Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

xx 18.

Substance Abuse Requirements: Drug & Alcohol Testing: *Applies to third party contractors who perform safety-sensitive functions. Contractors must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:*

- a) *Operating a revenue service vehicle, including when not in revenue service;*
- b) *Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- c) *Controlling dispatch or movement of a revenue service vehicle;*
- d) *Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;*
- e) *Carrying a firearm for security purposes.*

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota and/or Minnesota, or the Cities of Fargo/Moorhead, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager

and City of Fargo Transit Director. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

xx 19. **Cargo Preference:** *Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.*

The contractor agrees:

- a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

xx 20. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:** *Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*

- a) **Prevailing Wage Requirements**
 - i. *Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");*
 - ii. *The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and*
 - iii. *U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.*
- b) **"Anti-Kickback" Prohibitions**
 - i. *Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;*
 - ii. *Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and*
 - iii. *U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the

Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

- XX 21. **Energy Conservation:** *Applies to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.*

Contractor shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

- XX 22. **Construction—Special Requirements:** *Applies to FTA assisted construction projects:*

- a) **Bonding.** The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (exceeding \$150,000. *Minnesota State Statute 574.26 limit is \$100,000*) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:
- i. **Bid Guarantee.** Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.
 - ii. **Performance Bond.** Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third party contract.
 - iii. **Payment Bond.** The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for 100 percent of the contract price. A "payment bond" is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:
 - **Less Than \$1 Million.** Fifty percent of the contract price if the contract price is not more than \$1 million,

- More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million, or
 - More Than \$5 Million. Two and one half million dollars if the contract price is more than \$5 million.
- iv. Acceptable Sureties. The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, "Surety Companies Doing Business with the United States," 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury's Listing of Approved Sureties (Department Circular 570), <http://fms.treas.gov/c570/c570.html>. FTA encourages each governmental recipient to require similarly acceptable sureties.
- v. Reduced Bonding. FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in this subparagraph 2.h(1) of this Chapter. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.
- vi. Excessive Bonding. Compliance with State and local bonding policies that are greater than FTA's bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor's bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient's "excessive bonding" requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient's bonding policies far exceed those described in this subsection; FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

23. **Bus Testing: NOT APPLICABLE FOR THIS AGREEMENT**

Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the

operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

XX 24. **Fly America:** *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

a) *Definitions.* As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

(End of statement)

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

 25. **Patent Rights and Rights in Data:** *NOT APPLICABLE FOR THIS AGREEMENT*
Applies when entering into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award. The recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, “Rights to

Exhibit B

Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:

- a) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and*
- b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.*

Intellectual Property Rights: This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- a) The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - i. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b) Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed

under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- c) Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- d) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e) Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
- f) The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

26. **Pre-Award and Post-Delivery Audits of Rolling Stock Purchases: NOT APPLICABLE FOR THIS AGREEMENT**

Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663.

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

- XX 27. **Recycled Products:** *Applies to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000. Applies to States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.*

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA),

"Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

- XX 28. **Safe Operation of Motor Vehicles:** *Applies to all federally funded third party contracts.*

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

- XX 29. **Seismic Safety:** *Applies only to contracts for the construction of new buildings or additions to existing buildings.*

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

Note: Information on clauses was obtained from the FTA Best Practices Procurement and Lessons Learned Manual, and Circular FTA C 4220.1F Third Party Contracting Guidance.

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>

<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

**AGREEMENT
BETWEEN**

**CITY OF FARGO
And
KADRMAS, LEE & JACKSON, INC.**

This agreement is made and entered into effective by and between the **CITY OF FARGO, NORTH DAKOTA**, a North Dakota Municipal Corporation, hereinafter referred to as "City" and **KADRMAS, LEE & JACKSON, INC.**, a North Dakota Corporation, hereinafter referred to as "Engineer".

WITNESSETH

WHEREAS, the City has determined that it requires architectural and engineering services to undertake a remodel of the Ground Transportation Center (GTC) located at 502 NP Avenue, Fargo, ND; and

WHEREAS, Engineer has represented that it has the necessary expertise and personnel and is qualified to perform such services.

NOW, THEREFORE, for good and valuable consideration hereby acknowledged, it is mutually understood and agreed as follows:

I. Complete Agreement

This Agreement and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the Agreement between the City and the Engineer and it supersedes all prior representations, understanding and communications. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. City's failure to insist in one or more instances upon performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of City's right to such performance by the Engineer.

II. City and Engineer Designees

The City Administrator, or his Designee, shall have the authority to act for and exercise any of the rights of City as set forth in the herein Agreement, subsequent to the authorization by the City Commission of the City.

The Engineer or his/her Designee, shall have the authority to act and exercise any of the rights of Engineer as set forth in the herein Agreement.

III. Employment of the Engineer

City hereby engages the Engineer and the Engineer agrees to perform the services, hereinafter described in the connection with the condition and assessment services, design services, bidding and contracting services, as provided for in Exhibit A attached hereto.

City and Engineer agree that Engineer may engage such subconsultants as necessary from time to time, with the consent of City, to provide the services provided for hereunder. For purposes of this Agreement, all references to Engineer shall encompass Engineer's approved use of subconsultants to perform the services.

IV. Engineer's Employees

The personnel performing services under this Agreement shall at all times be under Engineer's exclusive direction and control and shall be employees of Engineer and not employees of City. Engineer shall pay all wages, salaries and other amounts due its employees in connection with the Agreement and shall be responsible for social security, income tax withholding, unemployment compensation, worker compensation insurance and similar matters.

V. Scope of Work

Engineer shall provide services in accordance with Exhibit A to this Agreement attached hereto and by reference incorporated herein, during the entire term of the Agreement.

VI. Amendment- Changes in Scope of Work

It is understood and agreed by City and Engineer that it may be necessary, from time to time during the term of this Agreement, to modify its provisions or to revise the scope. In each such instance, City and Engineer shall consult with each other and shall come to a mutually acceptable agreement as to the nature of the required modification or revision desired. Each modification or revision required shall be reduced to writing and when appropriately executed by both parties, shall constitute an amendment to this Agreement. Each amendment will be identified and sequentially numbered as "Amendment No. 1" and so forth, shall be subject to all the other applicable provisions of the Agreement, and shall be attached to the Agreement. Until an amendment has been approved in the foregoing manner, it shall have no force or effect.

Add Alternative Services as described in Exhibit A shall be agreed to by the parties and based on the estimated distribution of compensation as provided in Exhibit A attached hereto.

VII. Insurance

Engineer shall keep and maintain the following insurance coverages:

A. Professional Liability Insurance. Engineer shall maintain in full force and effect until at least three years subsequent to completion of the Agreement professional liability insurance covering the performance of the Services. Such insurance shall be on a "claims made" basis and in the amount of at least \$1,000,000/\$1,000,000 aggregate..

B. Workers Compensation Insurance. Engineer shall maintain workers compensation insurance with following limits or with the minimum limits required by law, if greater:

Coverage A: Statutory

Coverage B: \$1,000,000 Bodily Injury by accident Each accident

\$1,000,000 Bodily Injury by disease Policy limit

\$1,000,000 Bodily Injury by disease Each employee

C. General Liability Insurance. Engineer shall maintain general liability insurance with coverage to include: Premises/Operations, Completed Operations and Contractual Liability (to cover the indemnification provision in paragraph 2.1 of the Agreement). Limits of coverage shall not be less than:

\$1,000,000 Per occurrence
\$2,000,000 Aggregate

D. **Automobile Insurance.** Engineer shall maintain automobile liability insurance to include all owned autos (private passenger and other than private passenger), hired and non-owned vehicles. Limits of coverage shall not be less than:

\$1,000,000 Per accident

E. **Evidence of Insurance.** The above insurance shall be maintained in companies lawfully authorized to do business in North Dakota and which are reasonably acceptable to City. Consultant shall furnish City with certificates reflecting such insurance (ACORD form or equivalent) to be in force as long as this Agreement remains in effect, naming the city of Fargo as an additional insured, and providing that said insurance will not be canceled or its limits reduced by endorsement without at least 30 days prior written notice to City.

F. **Excess/Umbrella Coverage.** Engineer shall secure Excess/Umbrella coverage, naming the city of Fargo as an additional insured, as follow:

\$2,000,000 Umbrella/Excess

G. Engineer may meet the levels of insurance required by Section VII. B, Worker's Compensation Insurance Coverage B, and Sections VII. C and D. through a combination of Primary and Excess/Umbrella coverage.

VIII. Compensation.

City will pay to Engineer compensation for the Services as set forth in Exhibit A. Engineer shall submit itemized monthly statements for such compensation equal to the value of the Services completed throughout the preceding month, as such value is determined in accordance with the then current Schedule of Charges. All such invoices shall become due and payable by City within 45 days of the date of receipt of any such invoice. City shall notify Engineer in writing, within 15 days of the date of the invoice, if City objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. City shall pay a finance charge fee of 1.5% per month, but not exceeding the maximum amount allowed by law, for all unpaid amounts 45 days or older. Upon receipt of each payment, Engineer shall furnish a mechanic's lien waiver reflecting all sums paid to Engineer.

IX. Changes and Adjustments.

City may issue changes consisting of additions, deletions or other revisions, with corresponding adjustments to the compensation to Engineer and the schedule. All such changes in the Services shall be authorized by written Amendment. An adjustment to the compensation to Engineer resulting from a change in the Services shall be determined by mutual acceptance of a lump sum amount, application of hourly billing rates as set forth in the current Schedule of Charges, or in such other manner as is mutually agreed upon by Engineer and City. If Engineer believes it is entitled to additional compensation or time for performing additional Services that are beyond the scope of the Task Order or Amendment, Engineer shall immediately notify City thereof and secure City's approval prior to performing such additional Services. Engineer shall not be entitled to additional compensation if additional work is the result of its errors.

X. Location of Underground Facilities.

Engineer will contact North Dakota One Call and request they notify the appropriate utility vendors to clear the underground utilities. City or its authorized representative will notify Engineer immediately of the presence and location of any underground objects or private utilities that are not the responsibility of public agencies.

XI. Third Party Reliance.

This Agreement and the Services provided are for Engineer's and City's sole benefit and exclusive use, with no third party beneficiaries intended.

XII. Conflict of Interest.

Engineer represents and warrants that it has no conflict of interest which would prevent Engineer from acting in the City's best interests, and that Engineer will guard against a conflict of interest arising or existing during the term of this Agreement.

XIII. Entire Agreement.

The terms and conditions set forth herein constitute the entire understanding of the parties relating to the provision of Services by Engineer to City. This Agreement may be amended only by a written instrument signed by both parties.

XIV. Hazardous Materials.

Engineer is responsible for compliance with any requirements regarding hazardous materials. If Engineer encounters a hazardous material or substance and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from the material defined as toxic or hazardous pursuant to federal or state statutes or regulations, encountered on the site by Engineer, Engineer shall immediately stop work in the affected area and report the condition to City.

XV. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

XVI. Assignment.

This Agreement may not be assigned by Engineer or City without the prior written consent of the other party.

XVII. Independence.

In performing all Services under this Agreement, Engineer shall be and remain an independent Engineer in fact and in law. City shall have no control, or right of control over the manner or means of Engineer performing its work. Engineer shall be solely responsible for the compensation, benefits, contributions and taxes, if any, of its employees, subconsultants and agents.

XVIII. Consequential Damages.

A. To the extent allowed under North Dakota Law, neither City nor the Engineer shall be responsible or held liable to the other for any indirect, incidental, special or consequential damages of any nature whatsoever, including without limitation, liability for the loss of use of property, loss of profits, or other revenue, interest, loss of product, increased expenses or business interruption, however the same may be caused.

B. This waiver shall not apply to any liability for any type of damage or loss to the extent that such loss or damages are covered by the proceeds of insurance required to be carried pursuant to this Agreement.

XVIII. Dispute Resolution.

Engineer and City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution procedure. Nothing prevents the parties from pursuing litigation in the appropriate State or Federal court.

XIX. Force Majeure.

Neither party shall be liable for damages or deemed in default of this Agreement and any Authorization for Services hereunder to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

XX. Severability.

Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

XXI. Right in Work Product.

The specific work product of Engineer for which it is reimbursed by City, including all data, documents, results, ideas, developments, and inventions that Engineer conceives or reduces to practice during the course of its performance under this Agreement, shall be the property of City, but Engineer may reuse such information in the normal course of its business and retains its rights in any standard details or drawings. City acknowledges that the work product is provided for a specific purpose and any unauthorized use, use other than for the specific purpose intended or modification of the work product by the City will be at the City's sole risk and without liability or legal exposure to Engineer.

XXII. Digital Data. Engineer shall submit reports electronically, in PDF format.

XXIII. Publication, Reproduction and Use of Material.

No custom material produced in whole or in part under the Contract shall be subject to copyright in the United States or in any country. The Federal Transit Administration shall have authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom material prepared under this Agreement.

XXIV. Applicable State and Local Clauses.

The Engineer shall comply with all Federal, State, and local licensing, training, testing and/or regulatory requirements (including permits).

The Engineer shall be appropriately licensed for the work required. The cost for any required licenses or permits shall be the responsibility of the Engineer. Engineer is liable for any and all taxes due as a result of the contract.

XXV. Applicable Federal Clauses: The Applicable Federal Clauses under this section XXV. shall apply to this agreement as noted in Exhibit B attached hereto.

XXVI. Binding

This Agreement shall be binding on the assignees, transferees, successors, heirs, trustees, executors and administrators of the parties hereto.

XXVII. Notice

All notices hereunder and communications with respect to this Agreement shall be effected upon the mailing thereof registered or certified mail return receipt requested or by Federal Express and addressed as follows:

To ENGINEER

KLJ
4585 Coleman Street
Bismarck, ND 58503

To CITY

City of Fargo
225 4th Street North
Fargo, ND 58102
Attn: Mayor City of Fargo

XXVII. Termination

Termination may be by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

XXVIII. Indemnification

To the fullest extent permitted by Laws and Regulations, Engineer and City shall indemnify and hold each other harmless from losses, damages, and judgments arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission.

XXIX. Contract Components

This Contract consists of the following component parts, all of which are fully made a part of this Contract as if herein set out verbatim, or if not attached, as if hereto attached, to wit:

1. Advertisement for Proposals
2. Request for Proposals Scope of Work for Transit
3. All Addendums and Attachments identified in the Request for Proposal (not specified below)
4. Engineer Proposal
5. This Contract
6. Federal Contract Clauses
7. Debarment and Suspension Certification (signed by Contractor)
8. Lobbying Certification (signed by Contractor)

Dated this 9th day of April, 2019.

KADRMAS, LEE & JACKSON, INC., A NORTH DAKOTA CORPORATION

By: 

Printed Name: Mark Anderson

Dated this _____ day of _____, 2019.

CITY OF FARGO, A NORTH DAKOTA MUNICIPAL CORPORATION

By _____
Timothy J. Mahoney, M.D., Mayor

ATTEST:

By _____
Steve Sprague, City Auditor



**Architectural/Engineering Services
GTC Remodel
GTC Design Bid Build
Fargo, ND**

Engineer's Services

I. GTC Remodel

A. Preliminary Design

1. Meet with MATBUS and PDT (Project Design Team) at the onset of the project (PDT Meeting #1) to review preliminary layouts identified by our team in the MATBUS Transit Facility Analysis Study completed in 2018. The schedule will also be finalized at this time.
2. Assemble recommendations from PDT Meeting #1 and prepare preliminary plans, including construction phasing, for review with PDT during PDT Meeting #2.
3. Update preliminary plans with comments from PDT Meeting #2 and prepare updated plans for review with PDT during PDT Meeting #3.
4. Review existing plans prepared for the GTC and review the site to become familiar with existing conditions as it relates to the proposed changes associated with this phase of the project.
5. Consult with NDDOT and FTA on the class of action for the environmental assessment and document. It is anticipated the project will be classified as a Categorical Exclusion (CATEX) to secure NEPA approvals for the construction of the project. KLJ will prepare environmental documentation.
6. Scope of renovations to be considered are as follows:
 - a. Provide recommendations for replacement of GTC flooring with a stylish and durable flooring with the MATBUS logo embedded into the new floor finish.
 - b. Relocate the dispatch office to the southeast corner of the GTC. The new office shall be ADA-compliant and provide maximum visibility to the GTC lobby and bus lot.
 - c. Relocate public restrooms adjacent to the lobby and visible to the new dispatch office.
 - d. Renovate and enlarge the administrative area to include offices, conference rooms, breakrooms, lockers, toilets, and storage. This will include renovation of the existing storage, break/locker room, administrative area and restrooms.
 - e. Exterior improvements to the GTC building will include removal of exterior canopies, re-roofing of the existing roof, and replacement of exterior fascia where canopies have been removed. This will include incorporation of exterior lighting that highlights the building and improves visibility.
 - f. The GTC deck layout will be modified to reflect Concept 4 layout prepared in the MATBUS Transit Facility Analysis Study completed in 2018. This will include installation of new canopies over the bus parking and passenger boarding areas.
 - g. Evaluate two options to relocate and/or lower the air intake structures located on the north side of the GTC.



7. Provide an evaluation of the deck surface, expansion joints, and deck reinforcing (post-tension concrete anchors) to determine if additional repairs to the deck are necessary to maintain the integrity of the GTC facility. If repairs of these items are deemed necessary, they will be incorporated into the scope of services via a contract amendment.
8. Obtain supplemental topographic survey for the GTC site to verify existing conditions, ground topography, and utilities to assist with the renovations.
9. Team responsibilities:
 - a. KLJ - Project Management, environmental planning, structural/survey/civil design, bidding assistance, and construction administration
 - b. Foss Architecture + Interiors - Architecture/Interiors, bidding assistance and construction administration
 - c. Vareberg Engineering - Electrical design, bidding assistance and construction administration
 - d. KFI Engineers - Mechanical design, bidding assistance and construction administration
 - e. Kimley-Horn - Transit/structural design, bidding assistance and construction administration

B. Construction Documents

1. Upon completion of PDT Meeting #3, final recommendations will be moved forward into final design to prepare construction documents including plans and specifications for bidding and construction.
2. Prepare 60% plans and specifications for review with MATBUS.
3. Prepare 90% plans and specifications for review with MATBUS.
4. Prepare final plans and specifications stamped and signed by design professionals licensed in the State of North Dakota. Deliver one electronic set of documents and one original signed set of documents to MATBUS.

C. Bidding Assistance

1. Provide front end specifications to be used for bidding purposes, including construction contracts and supplemental conditions. It is assumed the project will be bid with prime contracts for general construction, mechanical construction and electrical construction.
2. Prepare advertisement for bids to be coordinated with MATBUS.
3. Assemble bid documents and upload them to the appropriate plan rooms and builder's exchanges.
4. Issue addendums and field questions regarding changes or additional information to supplement project drawings and specifications.
5. Attend pre-bid meeting to be held at the GTC.
6. Attend the bid opening.
7. Compile a list of all bidders according to prime contracts for MATBUS and recommend those to be awarded contracts.
8. Issue Notice of Award to the bidders selected by MATBUS.
9. Assist MATBUS with setting up contract documents as required for each prime contract.



10. Issue Notice to Proceed with construction to the prime bidders awarded contracts.

D. Construction Administration:

1. Answer questions and issue RFI's as necessary to clarify drawings or specifications.
2. Davis-Bacon wage rate interviews and submittals.
3. Shop drawing review.
4. Review of pay requests, preparation of change orders, and response to RFI's.
5. Attendance & administration of construction meetings. Construction meetings are anticipated to be held weekly for a maximum of nine (9) months.
6. Periodic site visits during construction to review progress.
7. Preparation of a punch list prior to substantial completion.
8. Final walkthrough.
9. Project Closeout.

II. Anticipated Project Schedule

| | |
|--|--------------------------|
| Contract Execution/Notice to Proceed | March 25, 2019 |
| Preliminary Design | April - June 2019 |
| Construction Documents | June - September 2019 |
| Bidding Assistance..... | September - October 2019 |
| Construction Administration..... | October 2019 - May 2020 |

III. Services Not Included

These services can be provided upon request and will be negotiated at the time services are rendered and will be address in an amendment to the contract.

- A. Repair post-tension anchorage if damage is discovered during evaluation of deck.
- B. Repairs to deck slab, including cracks, expansion joints, and latex overlay if damage is discovered during evaluation of deck.
- C. Repair/replace ventilation system in garage.
- D. Low-priority repairs included in KLJ's 2016 report.
- E. Parking analysis or studies associated with Phase 2 of the deck renovations.
- F. Preparation of multiple bid packages for any tasks or re-bidding a bid package.
- G. Preparation of as-built drawings.
- H. Additional services, tasks, and meetings not described in tasks outlined above.
- I. Extended construction administration for construction duration in excess of the timelines included in the tasks outlined above.



ENGINEERING FEES

| GTC REMODEL | | | | | | | | |
|-------------|---|-------|---|------|---|--------------|--------------|----------------------|
| 1. | Direct Labor | Hours | X | Rate | = | Project Cost | Total | |
| | Project Assistant | 31 | X | 24 | = | \$ 744.00 | \$ 744.00 | |
| | Structural Engineer IV | 212 | X | 58 | = | \$ 12,296.00 | \$ 12,296.00 | |
| | Structural Engineer III | 16 | X | 43 | = | \$ 688.00 | \$ 688.00 | |
| | Structural Engineer II | 92 | X | 33 | = | \$ 3,036.00 | \$ 3,036.00 | |
| | Environmental Planner II | 80 | X | 30 | = | \$ 2,400.00 | \$ 2,400.00 | |
| | Planner IV | 28 | X | 60 | = | \$ 1,680.00 | \$ 1,680.00 | |
| | Engineer III | 40 | X | 45 | = | \$ 1,800.00 | \$ 1,800.00 | |
| | CADD Tech II | 84 | X | 27 | = | \$ 2,268.00 | \$ 2,268.00 | |
| | Surveyor IV-PM | 3 | X | 55 | = | \$ 165.00 | \$ 165.00 | |
| | Surveyor IV | 31 | X | 44 | = | \$ 1,364.00 | \$ 1,364.00 | |
| | Surveyor II | 34 | X | 30 | = | \$ 1,020.00 | \$ 1,020.00 | |
| | Surveyor I | 34 | X | 26 | = | \$ 884.00 | \$ 884.00 | |
| | | | X | | = | \$ - | \$ - | |
| | Subtotal | | | | = | \$ 28,345.00 | \$ 28,345.00 | |
| 2. | Overhead/Indirect Cost (expressed as indirect rate x direct labor) | | | | | | 185.39% | \$ 52,548.80 |
| 3. | Subcontractor Costs | | | | | \$ | 239,139.03 | \$ 239,139.03 |
| 4. | Materials and Supplies Costs | | | | | \$ | 3,000.00 | \$ 3,000.00 |
| 5. | Travel Costs | | | | | \$ | - | \$ - |
| 6. | Fixed Fee | | | | | | 12% | \$ 9,707.26 |
| 7. | Miscellaneous Costs | | | | | \$ | - | \$ - |
| | Total Cost | | | | | = | | \$ 332,740.08 |

By entering into a sale with the City of Fargo, ND, the supplier is agreeing to be bound by the following federal clauses and certifications as applicable:

xx 1. **No Government Obligation to Third Parties:** *Applies to all third party contracts that are federally funded.*

- a) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

xx 2. **Program Fraud & False or Fraudulent Statements & Related Acts:** *Applies to all third party contracts that are federally funded.*

- a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

xx 3. **Access to Records and Reports:** *Applies to all contracts funded in whole or in part with FTA funds.*

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases,

subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

- b) **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

XX 4. **Federal Changes:** *Applies to all contracts.*

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, and they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

XX 5. **Civil Rights and Equal Opportunity:** *Applies to all contracts.*

The KLJ, Inc. is an Equal Opportunity Employer. As such, the KLJ, Inc. agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the KLJ, Inc. agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a) **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42

U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c) Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

XX 6.

Termination Provisions: *Applies to all contracts in excess of \$10,000. Those contracts must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.*

- a) The CITY reserves the right to cancel any contract for cause upon written notice to the Contractor. Cause for cancellation will be documented failure(s) of the contractor to provide services in the quantity and/or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Contractor without additional harm to the participants or the CITY.
- b) The CITY may cancel or reduce the amount of service to be rendered if there is, in the opinion of the City Council, a significant increase in local costs; or, in the opinion of the City Council, insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the City will notify Contractor in writing ninety (90) days in advance of the date such actions are to be implemented.

CONTRACTOR is hereby notified that the CITY Transit system pursuant to this agreement is dependent upon the necessary receipt of local, state and federal funding.

In the event of any termination, the CITY shall pay the agreed rate only for services delivered up to the date of termination. The CITY has no obligation to Contractor, of any kind, after the date of termination. Contractor shall deliver all records, equipment and materials to the CITY within 24 hours of the date of termination.

XX 7.

Disadvantaged and Small Business Enterprise: *Applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.*

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a) Withholding monthly progress payments;
- b) Assessing sanctions;
- c) Liquidated damages; and/or
- d) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 471.425 subd. 4a) from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

In connection with the performance of this service, the Contractor will cooperate with the CITY in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by CITY for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the CITY with the necessary certification and records for reporting purposes. When the majority of the contract is labor,

which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The CONTRACTOR will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The contractor must promptly notify the CITY whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the CITY.

Fostering Small Business Participation

The CITY has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the CITY. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

XX 8.

Incorporation of FTA Terms: *Applies to all contracts.*

The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause the CITY to be in violation of the FTA terms and conditions.

XX 9.

Debarment, Suspension, Ineligibility and Voluntary Exclusion: *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate

Exhibit B

in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by KLJ, Inc. If it is later determined by KLJ, Inc. that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to KLJ, Inc., the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

XX 10.

Buy America: *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

XX 11.

Breach of Contract and Dispute Resolution: *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.*

- a) Disputes will be presented in writing to the Fargo Transit Director. City personnel and the Contractor will attempt to resolve any dispute arising in the performance of the Contract.

If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission – it is the sole responsibility of the Contractor to schedule a hearing with the Fargo City Commission. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

Exhibit B

The decision of the Fargo City Commission shall be binding upon the Contractor and the Contractor shall abide by the decision.

- b) Unless otherwise directed by the City of Fargo, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- c) Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.
- d) Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Fargo and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.

xx 12. **Lobbying Restrictions:** *Applies to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

The undersigned certifies (*Note: A separate certification will be required to be signed if the contract meets this criteria*), to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a

Exhibit B

prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- XX 13. **Clean Air and Federal Water Pollution Control Act:** *Applies to each contract and subcontract exceeding \$150,000. The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.*

The Contractor agrees:

- a) It will not use any violating facilities;
- b) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- c) It will report violations of use of prohibited facilities to FTA; and
- d) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

- XX 14. **Contract Work Hours & Safety Standards Act:** *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*

- a) *Contract Work Hours and Safety Standards*
 - i. *Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38*
 - ii. *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*

a) For construction contracts:

- i. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
- ii. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the

Exhibit B

Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

- iii. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
 - iv. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.
- b) For Awards Not Involving Construction – NOT APPLICABLE FOR THIS AGREEMENT**
- i. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
 - ii. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
 - iii. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.
 - iv. The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

15. **Transit Employee Protective Arrangements:** *Applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.*

NOT APPLICABLE FOR THIS AGREEMENT

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a) **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- b) **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- c) **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

16. **Charter Service:** ***NOT APPLICABLE FOR THIS AGREEMENT***

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b) FTA regulations, "Charter Service," 49 C.F.R. part 604;
- c) Any other federal Charter Service regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a) Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
- b) Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
- c) Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

17. **School Bus Service Operations:** ***NOT APPLICABLE FOR THIS AGREEMENT.***

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The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b) FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c) Any other Federal School Bus regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

- a) Bar the Contractor from receiving Federal assistance for public transportation; or
- b) Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

xx 18.

Substance Abuse Requirements: Drug & Alcohol Testing: *Applies to third party contractors who perform safety-sensitive functions. Contractors must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:*

- a) *Operating a revenue service vehicle, including when not in revenue service;*
- b) *Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- c) *Controlling dispatch or movement of a revenue service vehicle;*
- d) *Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;*
- e) *Carrying a firearm for security purposes.*

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota and/or Minnesota, or the Cities of Fargo/Moorhead, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager

and City of Fargo Transit Director. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

XX 19. **Cargo Preference:** *Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.*

The contractor agrees:

- a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XX 20. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:** *Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*

- a) **Prevailing Wage Requirements**
 - i. *Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");*
 - ii. *The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and*
 - iii. *U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.*
- b) **"Anti-Kickback" Prohibitions**
 - i. *Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;*
 - ii. *Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and*
 - iii. *U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the

Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

- XX 21. **Energy Conservation:** *Applies to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.*

Contractor shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

- XX 22. **Construction—Special Requirements:** *Applies to FTA assisted construction projects:*

- a) **Bonding.** The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (exceeding \$150,000. *Minnesota State Statute 574.26 limit is \$100,000*) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:
- i. **Bid Guarantee.** Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.
 - ii. **Performance Bond.** Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third party contract.
 - iii. **Payment Bond.** The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for 100 percent of the contract price. A "payment bond" is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:
 - **Less Than \$1 Million.** Fifty percent of the contract price if the contract price is not more than \$1 million,

Exhibit B

- More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million, or
 - More Than \$5 Million. Two and one half million dollars if the contract price is more than \$5 million.
- iv. Acceptable Sureties. The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, "Surety Companies Doing Business with the United States," 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury's Listing of Approved Sureties (Department Circular 570), <http://fms.treas.gov/c570/c570.html>. FTA encourages each governmental recipient to require similarly acceptable sureties.
- v. Reduced Bonding. FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in this subparagraph 2.h(1) of this Chapter. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.
- vi. Excessive Bonding. Compliance with State and local bonding policies that are greater than FTA's bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor's bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient's "excessive bonding" requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient's bonding policies far exceed those described in this subsection; FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

23. **Bus Testing: NOT APPLICABLE FOR THIS AGREEMENT**

Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the

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operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

XX 24. **Fly America:** *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

a) *Definitions.* As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

(End of statement)

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

 25. **Patent Rights and Rights in Data:** ***NOT APPLICABLE FOR THIS AGREEMENT***
Applies when entering into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award. The recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, “Rights to

Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:

- a) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and*
- b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.*

Intellectual Property Rights: This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- a) The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - i. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b) Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed

under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- c) Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- d) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e) Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
- f) The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

26. **Pre-Award and Post-Delivery Audits of Rolling Stock Purchases: NOT APPLICABLE FOR THIS AGREEMENT**

Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663.

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

- XX 27. **Recycled Products:** *Applies to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000. Applies to States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.*

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA),

“Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

- XX 28. **Safe Operation of Motor Vehicles:** *Applies to all federally funded third party contracts.*

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or AGENCY.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

- XX 29. **Seismic Safety:** *Applies only to contracts for the construction of new buildings or additions to existing buildings.*

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

Note: Information on clauses was obtained from the FTA Best Practices Procurement and Lessons Learned Manual, and Circular FTA C 4220.1F Third Party Contracting Guidance.

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>

<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

**AGREEMENT
BETWEEN**

**CITY OF FARGO
And
KADRMAS, LEE & JACKSON, INC.**

This agreement is made and entered into effective by and between the **CITY OF FARGO, NORTH DAKOTA**, a North Dakota Municipal Corporation, hereinafter referred to as "City" and **KADRMAS, LEE & JACKSON, INC.**, a North Dakota Corporation, hereinafter referred to as "Engineer".

WITNESSETH

WHEREAS, the City has determined that it requires architectural and engineering services to undertake a repairs and reconstruction of the Ground Transportation Center (GTC) underground parking facility located at 502 NP Avenue, Fargo, ND; and

WHEREAS, Engineer has represented that it has the necessary expertise and personnel and is qualified to perform such services.

NOW, THEREFORE, for good and valuable consideration hereby acknowledged, it is mutually understood and agreed as follows:

I. Complete Agreement

This Agreement and the attachments and documents incorporated herein constitute the complete and exclusive statement of the terms of the Agreement between the City and the Engineer and it supersedes all prior representations, understanding and communications. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. City's failure to insist in one or more instances upon performance of any term or terms of this Agreement shall not be construed as a waiver or relinquishment of City's right to such performance by the Engineer.

II. City and Engineer Designees

The City Administrator, or his Designee, shall have the authority to act for and exercise any of the rights of City as set forth in the herein Agreement, subsequent to the authorization by the City Commission of the City.

The Engineer or his/her Designee, shall have the authority to act and exercise any of the rights of Engineer as set forth in the herein Agreement.

III. Employment of the Engineer

City hereby engages the Engineer and the Engineer agrees to perform the services, hereinafter described in the connection with the condition and assessment services, design services, bidding and contracting services, as provided for in Exhibit A attached hereto.

City and Engineer agree that Engineer may engage such subconsultants as necessary from time to time, with the consent of City, to provide the services provided for hereunder. For purposes of this Agreement, all references to Engineer shall encompass Engineer's approved use of subconsultants to perform the services.

IV. Engineer's Employees

The personnel performing services under this Agreement shall at all times be under Engineer's exclusive direction and control and shall be employees of Engineer and not employees of City. Engineer shall pay all wages, salaries and other amounts due its employees in connection with the Agreement and shall be responsible for social security, income tax withholding, unemployment compensation, worker compensation insurance and similar matters.

V. Scope of Work

Engineer shall provide services in accordance with Exhibit A to this Agreement attached hereto and by reference incorporated herein, during the entire term of the Agreement.

VI. Amendment- Changes in Scope of Work

It is understood and agreed by City and Engineer that it may be necessary, from time to time during the term of this Agreement, to modify its provisions or to revise the scope. In each such instance, City and Engineer shall consult with each other and shall come to a mutually acceptable agreement as to the nature of the required modification or revision desired. Each modification or revision required shall be reduced to writing and when appropriately executed by both parties, shall constitute an amendment to this Agreement. Each amendment will be identified and sequentially numbered as "Amendment No. 1" and so forth, shall be subject to all the other applicable provisions of the Agreement, and shall be attached to the Agreement. Until an amendment has been approved in the foregoing manner, it shall have no force or effect.

Add Alternative Services as described in Exhibit A shall be agreed to by the parties and based on the estimated distribution of compensation as provided in Exhibit A attached hereto.

VII. Insurance

Engineer shall keep and maintain the following insurance coverages:

A. **Professional Liability Insurance.** Engineer shall maintain in full force and effect until at least three years subsequent to completion of the Agreement professional liability insurance covering the performance of the Services. Such insurance shall be on a "claims made" basis and in the amount of at least \$1,000,000/\$1,000,000 aggregate..

B. **Workers Compensation Insurance.** Engineer shall maintain workers compensation insurance with following limits or with the minimum limits required by law, if greater:

Coverage A: Statutory

| | | | |
|-------------|-------------|---------------------------|---------------|
| Coverage B: | \$1,000,000 | Bodily Injury by accident | Each accident |
| | \$1,000,000 | Bodily Injury by disease | Policy limit |
| | \$1,000,000 | Bodily Injury by disease | Each employee |

C. **General Liability Insurance.** Engineer shall maintain general liability insurance with coverage to include: Premises/Operations, Completed Operations and Contractual Liability (to cover the indemnification provision in paragraph 2.1 of the Agreement). Limits of coverage shall not be less than:

\$1,000,000 Per occurrence
\$2,000,000 Aggregate

D. **Automobile Insurance.** Engineer shall maintain automobile liability insurance to include all owned autos (private passenger and other than private passenger), hired and non-owned vehicles. Limits of coverage shall not be less than:
\$1,000,000 Per accident

E. **Evidence of Insurance.** The above insurance shall be maintained in companies lawfully authorized to do business in North Dakota and which are reasonably acceptable to City. Consultant shall furnish City with certificates reflecting such insurance (ACORD form or equivalent) to be in force as long as this Agreement remains in effect, naming the city of Fargo as an additional insured, and providing that said insurance will not be canceled or its limits reduced by endorsement without at least 30 days prior written notice to City.

F. **Excess/Umbrella Coverage.** Engineer shall secure Excess/Umbrella coverage, naming the city of Fargo as an additional insured, as follow:
\$2,000,000 Umbrella/Excess

G. Engineer may meet the levels of insurance required by Section VII. B, Worker's Compensation Insurance Coverage B, and Sections VII. C and D. through a combination of Primary and Excess/Umbrella coverage.

VIII. Compensation.

City will pay to Engineer compensation for the Services as set forth in Exhibit A. Engineer shall submit itemized monthly statements for such compensation equal to the value of the Services completed throughout the preceding month, as such value is determined in accordance with the then current Schedule of Charges. All such invoices shall become due and payable by City within 45 days of the date of receipt of any such invoice. City shall notify Engineer in writing, within 15 days of the date of the invoice, if City objects to any portion of the charges on the invoice, and shall promptly pay the undisputed portion. City shall pay a finance charge fee of 1.5% per month, but not exceeding the maximum amount allowed by law, for all unpaid amounts 45 days or older. Upon receipt of each payment, Engineer shall furnish a mechanic's lien waiver reflecting all sums paid to Engineer.

IX. Changes and Adjustments.

City may issue changes consisting of additions, deletions or other revisions, with corresponding adjustments to the compensation to Engineer and the schedule. All such changes in the Services shall be authorized by written Amendment. An adjustment to the compensation to Engineer resulting from a change in the Services shall be determined by mutual acceptance of a lump sum amount, application of hourly billing rates as set forth in the current Schedule of Charges, or in such other manner as is mutually agreed upon by Engineer and City. If Engineer believes it is entitled to additional compensation or time for performing additional Services that are beyond the scope of the Task Order or Amendment, Engineer shall immediately notify City thereof and secure City's approval prior to performing such additional Services. Engineer shall not be entitled to additional compensation if additional work is the result of its errors.

X. Location of Underground Facilities.

Engineer will contact North Dakota One Call and request they notify the appropriate utility vendors to clear the underground utilities. City or its authorized representative will notify Engineer immediately of the presence and location of any underground objects or private utilities that are not the responsibility of public agencies.

XI. Third Party Reliance.

This Agreement and the Services provided are for Engineer's and City's sole benefit and exclusive use, with no third party beneficiaries intended.

XII. Conflict of Interest.

Engineer represents and warrants that it has no conflict of interest which would prevent Engineer from acting in the City's best interests, and that Engineer will guard against a conflict of interest arising or existing during the term of this Agreement.

XIII. Entire Agreement.

The terms and conditions set forth herein constitute the entire understanding of the parties relating to the provision of Services by Engineer to City. This Agreement may be amended only by a written instrument signed by both parties.

XIV. Hazardous Materials.

Engineer is responsible for compliance with any requirements regarding hazardous materials. If Engineer encounters a hazardous material or substance and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from the material defined as toxic or hazardous pursuant to federal or state statutes or regulations, encountered on the site by Engineer, Engineer shall immediately stop work in the affected area and report the condition to City.

XV. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

XVI. Assignment.

This Agreement may not be assigned by Engineer or City without the prior written consent of the other party.

XVII. Independence.

In performing all Services under this Agreement, Engineer shall be and remain an independent Engineer in fact and in law. City shall have no control, or right of control over the manner or means of Engineer performing its work. Engineer shall be solely responsible for the compensation, benefits, contributions and taxes, if any, of its employees, subconsultants and agents.

XVIII. Consequential Damages.

A. To the extent allowed under North Dakota Law, neither City nor the Engineer shall be responsible or held liable to the other for any indirect, incidental, special or consequential damages of any nature whatsoever, including without limitation, liability for the loss of use of property, loss of profits, or other revenue, interest, loss of product, increased expenses or business interruption, however the same may be caused.

B. This waiver shall not apply to any liability for any type of damage or loss to the extent that such loss or damages are covered by the proceeds of insurance required to be carried pursuant to this Agreement.

XVIII. Dispute Resolution.

Engineer and City will exercise good faith efforts to resolve disputes through a mutually acceptable Alternative Dispute Resolution procedure. Nothing prevents the parties from pursuing litigation in the appropriate State or Federal court.

XIX. Force Majeure.

Neither party shall be liable for damages or deemed in default of this Agreement and any Authorization for Services hereunder to the extent that any delay or failure in the performance of its obligations (other than the payment of money) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, union activity, strikes or lock-outs, and changes in laws, statutes, regulations, or ordinances.

XX. Severability.

Should a court of law determine that any clause or section of this Agreement is invalid, all other clauses or sections shall remain in effect.

XXI. Right in Work Product.

The specific work product of Engineer for which it is reimbursed by City, including all data, documents, results, ideas, developments, and inventions that Engineer conceives or reduces to practice during the course of its performance under this Agreement, shall be the property of City, but Engineer may reuse such information in the normal course of its business and retains its rights in any standard details or drawings. City acknowledges that the work product is provided for a specific purpose and any unauthorized use, use other than for the specific purpose intended or modification of the work product by the City will be at the City's sole risk and without liability or legal exposure to Engineer.

XXII. Digital Data. Engineer shall submit reports electronically, in PDF format.

XXIII. Publication, Reproduction and Use of Material.

No custom material produced in whole or in part under the Contract shall be subject to copyright in the United States or in any country. The Federal Transit Administration shall have authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom material prepared under this Agreement.

XXIV. Applicable State and Local Clauses.

The Engineer shall comply with all Federal, State, and local licensing, training, testing and/or regulatory requirements (including permits).

The Engineer shall be appropriately licensed for the work required. The cost for any required licenses or permits shall be the responsibility of the Engineer. Engineer is liable for any and all taxes due as a result of the contract.

XXV. Applicable Federal Clauses: The Applicable Federal Clauses under this section XXV. shall apply to this agreement as noted in Exhibit B attached hereto.

XXVI. Binding

This Agreement shall be binding on the assignees, transferees, successors, heirs, trustees, executors and administrators of the parties hereto.

XXVII. Notice

All notices hereunder and communications with respect to this Agreement shall be effected upon the mailing thereof registered or certified mail return receipt requested or by Federal Express and addressed as follows:

To ENGINEER

To CITY

KLJ
4585 Coleman Street
Bismarck, ND 58503

City of Fargo
225 4th Street North
Fargo, ND 58102
Attn: Mayor City of Fargo

XXVII. Termination

Termination may be by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

XXVIII. Indemnification

To the fullest extent permitted by Laws and Regulations, Engineer and City shall indemnify and hold each other harmless from losses, damages, and judgments arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission.

XXIX. Contract Components

This Contract consists of the following component parts, all of which are fully made a part of this Contract as if herein set out verbatim, or if not attached, as if hereto attached, to wit:

1. Advertisement for Proposals
2. Request for Proposals Scope of Work for Transit
3. All Addendums and Attachments identified in the Request for Proposal (not specified below)
4. Engineer Proposal
5. This Contract
6. Federal Contract Clauses
7. Debarment and Suspension Certification (signed by Contractor)
8. Lobbying Certification (signed by Contractor)

Dated this 9th day of April, 2019.

KADRMAS, LEE & JACKSON, INC., A NORTH DAKOTA CORPORATION

By: 

Printed Name: Mark Anderson

Dated this ____ day of _____, 2019.

CITY OF FARGO, A NORTH DAKOTA MUNICIPAL CORPORATION

By _____
Timothy J. Mahoney, M.D., Mayor

ATTEST:

By _____
Steve Sprague, City Auditor



**Architectural/Engineering Services
GTC Design Bid Build
GTC Underground Parking Facility
Fargo, ND**

Engineer's Services

- I. GTC Underground Parking Facility
 - A. Preliminary Design
 1. Meet with PDT (Project Design Team) at the onset of the project (PDT Meeting #1) to review preliminary repairs outlined by our team in the Structural/Mechanical Assessment report completed in 2016. The schedule will also be finalized at this time.
 2. Assemble recommendations from PDT Meeting #1 and prepare preliminary plans, including construction phasing, for review with PDT during PDT Meeting #2.
 3. Update preliminary plans with comments from PDT Meeting #2 and prepare updated plans for review with PDT during PDT Meeting #3.
 4. Review existing plans and reports prepared for the GTC and review the site to become familiar with existing conditions as it relates to the proposed changes associated with this phase of the project.
 5. Scope of renovations to be considered are as follows:
 - a. Repairing beam/wall connection.
 - b. Install drain tile around perimeter of garage.
 - c. Repair cracks in concrete columns.
 - d. Repair spalled concrete beams, walls and slabs.
 - e. Repair cracks in slab on grade.
 6. Team responsibilities:
 - a. KLJ - Project Management, structural/civil design, bidding assistance, and construction administration
 - b. Foss Architecture + Interiors - Architecture, bidding assistance and construction administration
 - c. Kimley-Horn - Structural design, bidding assistance and construction administration
 - d. Brierley - Trenchless drain tile design, bidding assistance and construction administration
 - B. Construction Documents
 1. Upon completion of PDT Meeting #3, final recommendations will be moved forward into final design to prepare construction documents including plans and specifications for bidding and construction.
 2. Prepare 60% plans and specifications for review with City of Fargo.
 3. Prepare 90% plans and specifications for review with City of Fargo.
 4. Prepare final plans and specifications stamped and signed by design professionals licensed in the State of North Dakota. Deliver one electronic set of documents and one original signed set of documents to City of Fargo.



C. Bidding Assistance

1. Provide front end specifications to be used for bidding purposes, including construction contracts and supplemental conditions. It is assumed the project will be bid with prime contracts for general construction, mechanical construction and electrical construction.
2. Prepare advertisement for bids to be coordinated with City of Fargo.
3. Assemble bid documents and upload them to the appropriate plan rooms and builder's exchanges.
4. Issue addendums and field questions regarding changes or additional information to supplement project drawings and specifications.
5. Attend pre-bid meeting to be held at the GTC.
6. Attend the bid opening.
7. Compile a list of all bidders according to prime contracts for City of Fargo and recommend those to be awarded contracts.
8. Issue Notice of Award to the bidders selected by City of Fargo.
9. Assist City of Fargo with setting up contract documents as required for each prime contract.
10. Issue Notice to Proceed with construction to the prime bidders awarded contracts.

D. Construction Administration:

1. Answer questions and issue RFI's as necessary to clarify drawings or specifications.
2. Shop drawing review.
3. Review of pay requests, preparation of change orders, and response to RFI's.
4. Attendance & administration of construction meetings. Construction meetings are anticipated to be held weekly for a maximum of seven (7) months.
5. Periodic site visits during construction to review progress.
6. Preparation of a punch list prior to substantial completion.
7. Final walkthrough.
8. Project closeout.

II. Anticipated Project Schedule

| | |
|--|---------------------------|
| Contract Execution/Notice to Proceed | March 25, 2019 |
| Preliminary Design | April - June 2019 |
| Construction Documents | June - September 2019 |
| Bidding Assistance..... | September - October 2019 |
| Construction Administration..... | October 2019 - March 2020 |

III. Services Not Included

These services can be provided upon request and will be negotiated at the time services are rendered and will be address in an amendment to the contract.

- A. Repair post-tension anchorage if damage is discovered during evaluation of deck.
- B. Repairs to deck slab, including cracks, expansion joints, and latex overlay if damage is discovered during evaluation of deck.
- C. Repair to CMU walls in garage.
- D. Repair of drainage issues at bottom of garage ramp.
- E. Repair/replace ventilation system in garage.



- F. Low-priority repairs included in KLJ's 2016 report.
- G. Preparation of multiple bid packages for any tasks or re-bidding a bid package.
- H. Preparation of as-built drawings.
- I. Additional services, tasks, and meetings not described in tasks outlined above.
- J. Extended construction administration for construction duration in excess of the timelines included in the tasks outlined above.



ENGINEERING FEES

| GTC UNDERGROUND PARKING FACILITY | | | | | | | |
|----------------------------------|---|-------|---|------|---|--------------|------------------------|
| 1. | Direct Labor | Hours | X | Rate | = | Project Cost | Total |
| | Project Assistant | 28 | X | 24 | = | \$ 672.00 | \$ 672.00 |
| | Structural Engineer IV | 244 | X | 58 | = | \$ 14,152.00 | \$ 14,152.00 |
| | Structural Engineer II | 68 | X | 33 | = | \$ 2,244.00 | \$ 2,244.00 |
| | Planner IV | 24 | X | 60 | = | \$ 1,440.00 | \$ 1,440.00 |
| | Engineer III | 60 | X | 45 | = | \$ 2,700.00 | \$ 2,700.00 |
| | Engineer I | 24 | X | 31 | = | \$ 744.00 | \$ 744.00 |
| | CADD Tech II | 60 | X | 27 | = | \$ 1,620.00 | \$ 1,620.00 |
| | | | X | | = | \$ - | \$ - |
| | Subtotal | | | | = | \$ 23,572.00 | \$ 23,572.00 |
| 2. | Overhead/Indirect Cost (expressed as indirect rate x direct labor) | | | | | | 185.39% \$ 43,700.13 |
| 3. | Subcontractor Costs | | | | | \$ | 78,086.61 \$ 78,086.61 |
| 4. | Materials and Supplies Costs | | | | | \$ | 2,500.00 \$ 2,500.00 |
| 5. | Travel Costs | | | | | \$ | - \$ - |
| 6. | Fixed Fee | | | | | | 12% \$ 8,072.66 |
| 7. | Miscellaneous Costs | | | | | \$ | - \$ - |
| | Total Cost | | | | = | | \$ 155,931.40 |

By entering into a sale with the City of Fargo, ND, the supplier is agreeing to be bound by the following federal clauses and certifications as applicable:

XX 1. **No Government Obligation to Third Parties:** *Applies to all third party contracts that are federally funded.*

- a) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

XX 2. **Program Fraud & False or Fraudulent Statements & Related Acts:** *Applies to all third party contracts that are federally funded.*

- a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XX 3. **Access to Records and Reports:** *Applies to all contracts funded in whole or in part with FTA funds.*

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases,

subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

- b) **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

XX 4. **Federal Changes:** *Applies to all contracts.*

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, and they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

XX 5. **Civil Rights and Equal Opportunity:** *Applies to all contracts.*

The KLJ, Inc. is an Equal Opportunity Employer. As such, the KLJ, Inc. agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the KLJ, Inc. agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a) **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42

U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c) Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

XX 6.

Termination Provisions: *Applies to all contracts in excess of \$10,000. Those contracts must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.*

- a) The CITY reserves the right to cancel any contract for cause upon written notice to the Contractor. Cause for cancellation will be documented failure(s) of the contractor to provide services in the quantity and/or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Contractor without additional harm to the participants or the CITY.
- b) The CITY may cancel or reduce the amount of service to be rendered if there is, in the opinion of the City Council, a significant increase in local costs; or, in the opinion of the City Council, insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the City will notify Contractor in writing ninety (90) days in advance of the date such actions are to be implemented.

CONTRACTOR is hereby notified that the CITY Transit system pursuant to this agreement is dependent upon the necessary receipt of local, state and federal funding.

In the event of any termination, the CITY shall pay the agreed rate only for services delivered up to the date of termination. The CITY has no obligation to Contractor, of any kind, after the date of termination. Contractor shall deliver all records, equipment and materials to the CITY within 24 hours of the date of termination.

XX 7.

Disadvantaged and Small Business Enterprise: *Applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.*

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a) Withholding monthly progress payments;
- b) Assessing sanctions;
- c) Liquidated damages; and/or
- d) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 471.425 subd. 4a) from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

In connection with the performance of this service, the Contractor will cooperate with the CITY in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by CITY for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the CITY with the necessary certification and records for reporting purposes. When the majority of the contract is labor,

which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The CONTRACTOR will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The contractor must promptly notify the CITY whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the CITY.

Fostering Small Business Participation

The CITY has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the CITY. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

XX 8.

Incorporation of FTA Terms: *Applies to all contracts.*

The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause the CITY to be in violation of the FTA terms and conditions.

XX 9.

Debarment, Suspension, Ineligibility and Voluntary Exclusion: *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate

in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by KLJ, Inc. If it is later determined by KLJ, Inc. that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to KLJ, Inc., the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- XX 10. **Buy America:** *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

- XX 11. **Breach of Contract and Dispute Resolution:** *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.*

- a) Disputes will be presented in writing to the Fargo Transit Director. City personnel and the Contractor will attempt to resolve any dispute arising in the performance of the Contract.

If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission – it is the sole responsibility of the Contractor to schedule a hearing with the Fargo City Commission. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

The decision of the Fargo City Commission shall be binding upon the Contractor and the Contractor shall abide by the decision.

- b) Unless otherwise directed by the City of Fargo, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- c) Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- d) Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Fargo and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.

- XX 12. **Lobbying Restrictions:** *Applies to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

The undersigned certifies (*Note: A separate certification will be required to be signed if the contract meets this criteria*), to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a

prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- XX 13. **Clean Air and Federal Water Pollution Control Act:** *Applies to each contract and subcontract exceeding \$150,000. The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.*

The Contractor agrees:

- a) It will not use any violating facilities;
- b) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- c) It will report violations of use of prohibited facilities to FTA; and
- d) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

- XX 14. **Contract Work Hours & Safety Standards Act:** *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*

- a) *Contract Work Hours and Safety Standards*
 - i. *Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38*
 - ii. *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*

a) For construction contracts:

- i. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.
- ii. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the

Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

- iii. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
 - iv. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.
- b) For Awards Not Involving Construction – NOT APPLICABLE FOR THIS AGREEMENT**
- i. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.
 - ii. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
 - iii. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.
 - iv. The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

15. **Transit Employee Protective Arrangements:** *Applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.*

NOT APPLICABLE FOR THIS AGREEMENT

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a) **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- b) **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- c) **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

16. **Charter Service:** ***NOT APPLICABLE FOR THIS AGREEMENT***

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b) FTA regulations, "Charter Service," 49 C.F.R. part 604;
- c) Any other federal Charter Service regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a) Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
- b) Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
- c) Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

17. **School Bus Service Operations:** ***NOT APPLICABLE FOR THIS AGREEMENT.***

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b) FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c) Any other Federal School Bus regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

- a) Bar the Contractor from receiving Federal assistance for public transportation; or
- b) Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

xx 18.

Substance Abuse Requirements: Drug & Alcohol Testing: *Applies to third party contractors who perform safety-sensitive functions. Contractors must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:*

- a) *Operating a revenue service vehicle, including when not in revenue service;*
- b) *Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- c) *Controlling dispatch or movement of a revenue service vehicle;*
- d) *Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;*
- e) *Carrying a firearm for security purposes.*

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota and/or Minnesota, or the Cities of Fargo/Moorhead, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager

and City of Fargo Transit Director. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

XX 19. **Cargo Preference:** *Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.*

The contractor agrees:

- a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XX 20. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:** *Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*

- a) **Prevailing Wage Requirements**
 - i. *Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");*
 - ii. *The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and*
 - iii. *U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.*
- b) **"Anti-Kickback" Prohibitions**
 - i. *Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;*
 - ii. *Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and*
 - iii. *U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the

Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

- XX 21. **Energy Conservation:** *Applies to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.*

Contractor shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

- XX 22. **Construction—Special Requirements:** *Applies to FTA assisted construction projects:*

- a) **Bonding.** The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (exceeding \$150,000. *Minnesota State Statute 574.26 limit is \$100,000*) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:
- i. **Bid Guarantee.** Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.
 - ii. **Performance Bond.** Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third party contract.
 - iii. **Payment Bond.** The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for 100 percent of the contract price. A "payment bond" is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA's interest and will accept a local bonding policy that meets the following minimums:
 - **Less Than \$1 Million.** Fifty percent of the contract price if the contract price is not more than \$1 million,

- More Than \$1 Million but Less Than \$5 Million. Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million, or
 - More Than \$5 Million. Two and one half million dollars if the contract price is more than \$5 million.
- iv. Acceptable Sureties. The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, "Surety Companies Doing Business with the United States," 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury's Listing of Approved Sureties (Department Circular 570), <http://fins.treas.gov/c570/c570.html>. FTA encourages each governmental recipient to require similarly acceptable sureties.
- v. Reduced Bonding. FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in this subparagraph 2.h(1) of this Chapter. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.
- vi. Excessive Bonding. Compliance with State and local bonding policies that are greater than FTA's bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor's bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient's "excessive bonding" requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient's bonding policies far exceed those described in this subsection; FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

23. **Bus Testing: NOT APPLICABLE FOR THIS AGREEMENT**

Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the

operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

XX 24.

Fly America: *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

a) *Definitions.* As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

(End of statement)

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

25.

Patent Rights and Rights in Data: NOT APPLICABLE FOR THIS AGREEMENT

Applies when entering into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award. The recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, “Rights to

Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Except in the case of an “other agreement” in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:

- a) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and*
- b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.*

Intellectual Property Rights: This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term “subject data” means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of “subject data” include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- a) The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for “Federal Government Purposes,” any subject data or copyright described below. For “Federal Government Purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
 - i. Any subject data developed under the Contract, whether or not a copyright has been obtained; and
 - ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b) Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed

under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.

- c) Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- d) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e) Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
- f) The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

26. **Pre-Award and Post-Delivery Audits of Rolling Stock Purchases: NOT APPLICABLE FOR THIS AGREEMENT**

Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663.

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

- XX 27. **Recycled Products:** *Applies to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000. Applies to States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.*

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA),

“Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

- XX 28. **Safe Operation of Motor Vehicles:** *Applies to all federally funded third party contracts.*

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or AGENCY.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

- XX 29. **Seismic Safety:** *Applies only to contracts for the construction of new buildings or additions to existing buildings.*

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

Note: Information on clauses was obtained from the FTA Best Practices Procurement and Lessons Learned Manual, and Circular FTA C 4220.1F Third Party Contracting Guidance.

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>

<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

14

April 22, 2019

Board of City Commissioners
Fargo City Hall
200 North Third Street
Fargo, ND 58102

Dear Commissioners:

Through a competitive grant process, the State of North Dakota Department of Transportation (ND DOT) has awarded the City of Fargo \$961,851 in capital 5339 funds to purchase three replacement 35-foot buses. The State amount is matched locally with 20%, which equals \$1,202,313.75; with each bus costing approximately \$500K each, the total local match for the contract award is \$538,149. The grant application request was approved December 18, 2018 by the Commission.

ND DOT Contract No. 38190306, CFDA No. 20.526 is attached.

The requested motion is to approve ND DOT Contract No. 38190306.

Thank you.

Sincerely,



Julie Bommelman
Transit Director
City of Fargo

\Attachment



North Dakota Department of Transportation

Thomas K. Sorel
Director

Doug Burgum
Governor

March 26, 2019

Julie Bommelman, Director
Fargo MatBus
650 23rd Street North
Fargo, ND 58102

FY2019 5339 (b) Funds

Thank you for submitting a 5339 (b) grant application vehicles. We are pleased to inform you we are able to provide capital funding for your transit agency. The award amount is \$961,851 for 3 buses. Please see Attachment A for the funding breakdown.

The committee awarded funding to purchase 3 buses to replace your 2007 35ft New Flyer buses with ending VIN #2361, 2362 & 2363. The required procurement process must be followed to purchase these buses. If the required procurement guidelines are not followed the Transit Section cannot reimburse your agency for the procured items. Contact the Transit Section for approval prior to beginning the procurement process.

The committee was not able to fund your total request due to lack of available funds and the Paratransit vehicles requested have not met Useful Life Standards in year or miles. The committee recommends that you apply to replace these vehicles in a future grant.

Enclosed is the Contract Agreement. In order to begin the funding process, please:

1. Have your organization's president or chairman sign and date the agreement (under Contractor)—this signature **must be an authorized signatory** for your project,
2. Have a witness sign and date the agreement (under Witness),
3. Complete pages 17 and 19 of the Additional Federal Clauses,
4. Complete the local match designation, and
5. Complete the Certification of Restrictions on Lobbying.
6. Return it to the address listed below at your earliest convenience.

NDDOT/Local Government Division
Attn: Transit Office
608 East Boulevard Avenue
Bismarck, ND 58505-0700

If you have any questions or need assistance, please call the Transit Office at (701) 328-2542.

Sincerely,

A handwritten signature in cursive script that reads "Becky Hanson". The signature is written in black ink and is positioned above the printed name.

Becky Hanson, Transit Program Manager

Attachment

cc: Kevin Hanson, Chairman, Metro Area Transit Board

Dan Farnsworth, Transportation Planner, FM Metro COG

**North Dakota Department of Transportation
SECTION 5339 TRANSIT GRANT AGREEMENT**

Federal Award Information – To be provided by NDDOT

CFDA No.: 20.526

CFDA Title: Federal Transit Capital Investment

Award Name: Federal Transit Capital Investment Grants Awarding Fed. Agency: FTA

NDDOT Program Mgr.: Becky Hanson Telephone: 701-328-2542

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.

WHEREAS, Section 5339 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, provides for grants for the specific purpose of assisting in financing capital projects that will benefit the country's transit projects.

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds to finance capital projects such as rolling stock, equipment, and/or capital improvements that will benefit transit projects that serve the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this agreement is to provide grant funds to finance rolling stock, equipment, and/or capital improvements, hereinafter referred to as the project. The grant amount is \$961,851.

Section 2. Project Obligation. The Contractor shall undertake and complete the project as described in the attached Project Description and Budget (Attachment A), and as described in the Contractor's approved grant application, on file with NDDOT.

Section 3. Period of Performance. This agreement shall begin on April 1, 2019, and terminate on June 30, 2021.

Section 4. Project Participation. Participation in the project costs shall be as indicated in the attached Project Description and Budget. The Contractor will provide sufficient non-federal funds which together with the grant will pay the project costs. In the event that the actual project costs



are less than what is shown in the project budget or if a rebate is given, this reduction in cost shall be applied to the Contractor and NDDOT in proportion to the participation rates of each.

Section 5. Purchase of Project Equipment. The purchase of all project equipment financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and 49 CFR 18 (Common Rule).

Section 6. Use of Project Equipment. The Contractor agrees that the project equipment shall be used for providing transportation service in accordance with the project description in the grant application. Such equipment shall be used for the duration of its useful life. If any project equipment is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition.

Section 7. Subcontracting. The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

Section 8. Assignments. Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or equipment and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

Section 9. Subcontract Provisions. The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

"This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

Section 10. Records and Reports.

- a. The Contractor shall submit project operational data and information as requested by NDDOT.
- b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.
- c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.
- d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

Section 11. Audit and Inspection. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such



audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

Section 12. Termination. NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

Section 13. Action Upon Termination. The Contractor agrees to dispose of the project equipment in accordance with 49 CFR 18.32 (Common Rule) and NDDOT's program policy, copies of which will be made available by NDDOT upon request.

Section 14. Contract Changes. All modifications of this agreement shall be made in writing and agreed upon by both parties.

Section 15. Prohibited Interest. No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

Section 16. Civil Rights. The following requirements apply to this contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to this contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees



to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Section 17. Disadvantaged Business Enterprise. The Contractor will comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et. seq.).

The Contractor will include the following paragraph verbatim in any subcontracts they sign relative to this project:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NDDOT deems appropriate.

Section 18. Other Provisions. The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them:

Safety Jurisdiction. FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from any private nonprofit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

Section 19. Statement of Financial Assistance. This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

Section 20. Government-Wide Suspension and Debarment. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.



The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Section 21. Nondiscrimination – Compliance with Laws. The Contractor agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

Section 22. Applicable Law. Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and conduct its activities so as not to endanger any person or property.

Section 23. Charter Service Operations. The Contractor agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

Section 24. School Transportation Operations. The recipients agree that neither it nor any transit operator performing work in connection with the project will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as qualified under specified exemptions permitted by 49 USC 5323(f) and FTA regulations, "School Bus Operations" 49 CFR Part 605 and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the grant agreement or cooperative agreement. When operating exclusive school bus service under an allowable exemption, federally funded equipment, vehicles, or facilities may not be used.

Section 25. Buy America. (Applies only if purchase is over \$100,000.) The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15-passenger vans and 15-passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

Section 26. Energy Conservation. 42 USC 6321 and 49 CFR Part 18. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Section 27. Bus Testing. In the purchase of rolling stock the Contractor (manufacturer) agrees to comply with 49 USC 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the bus testing requirements set forth therein.

Section 28. Pre-Award and Post-Delivery Audit Requirements. The recipient agrees to comply with requirements of 49 USC 5323(m) and FTA regulations "Pre-Award and Post-Delivery Audits" of rolling stock purchases 49 CFR Part 663 and any revision thereto.



Section 29. Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et. seq.]. Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 40 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Section 30. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement (from FTA MA (2) dated October 1995) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 31. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§7401 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

Section 32. Clean Water. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et. seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

Section 34. Disputes. 49 CFR Part 18, FTA Cir. 4220.1E. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision



of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Section 35. Merger and Waiver. This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Section 36. No Obligation by the Federal Government. The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Section 37. Insurance. The Contractor shall maintain insurance coverage on the project equipment in an amount adequate to protect the fair market value of the equipment throughout the duration of this agreement.

Section 38. Labor Protection. The Contractor stipulates it has read and agrees to abide by the provision of the labor protection warranty issued under Section 13C para. 1609 of the Transportation Act of 1964 and the National (Model) Agreement referenced therein.

Section 39. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Section 40. Davis-Bacon And Copeland Anti-Kickback Acts. The Contractor agrees to comply with the requirements of 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5) for any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for



purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

Section 41. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.



Section 42. Risk Management. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

STEVE SPRAGUE, Auditor
NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

Timothy J. MAHONEY
NAME (TYPE OR PRINT)

SIGNATURE

MAYOR
TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

**NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 1073 (Div. 38)
L.D. Approved 9-8-08, 8-15



CERTIFICATION OF LOCAL MATCH

It is hereby certified that City of Fargo will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided for Transit Provider. Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

Source: FARES, VENDING, ADVERTISING, GENERAL FUND

Executed at _____, North Dakota, the last date below signed.

WITNESS:

STEVE SPRAGUE, Auditor
SIGNATURE

DATE

APPROVED:

Timothy J. Mathoney
NAME (TYPE OR PRINT)

SIGNATURE

* MAYOR
TITLE

DATE

*Director or President of Transit Board

CLA 1073 (Div. 38)
L.D. Approved 9-8-08, 8-15



Risk Management Appendix

Routine* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: State – State of North Dakota, its agencies, officers and employees

Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees

Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability insurance** – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation insurance** meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 5-09



Attachment A

Project Name

MatBus

SFY 2019 (April 1, 2019 - June 30, 2021)

| | Local match percentage | Funding Source Section | TOTAL Federal Share | Local Share | Total |
|--|------------------------|------------------------|---------------------|----------------|------------------|
| Funding Category | | | | | |
| Replacement Bus 35 ft -- Replaces VIN 7C032361 | 20 | 5339 | 320,617 | 80,154 | 400,771 |
| Replacement Bus 35 ft -- Replaces VIN 7C032362 | 20 | 5339 | 320,617 | 80,154 | 400,771 |
| Replacement Bus 35 ft -- Replaces VIN 7C032363 | 20 | 5339 | 320,617 | 80,154 | 400,771 |
| | | | | | |
| TOTALS | | | 961,851 | 240,462 | 1,202,313 |

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

| CFDA Title | CFDA No. | Title 49 USC Chapter 53 Section | Award Name |
|--|----------------|---------------------------------|--------------------------------|
| Capital Assistance Program | CFDA No 20.526 | 5339 | Bus and Bus Facilities Formula |
| Section 5339 provides for capital grants to private nonprofit corporations and associations for the specific purpose of providing mass transportation services | | | |

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, City of Fargo, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Mayor Timothy J. Mahoney Name and Title of Contractor's Authorized Official

Date

Fly America Requirements

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Buy America Requirements (Rolling Stock)

Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000)

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11 and as amended by Map-21 (5325). Rolling stock must be manufactured in the US and have a minimum 60% domestic content and adhere to contract term limitations. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Cargo Preference

Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000).

Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

Energy Conservation

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water

Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable

standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

Bus Testing

Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665, to the extent they are consistent with 49 U.S.C. § 5318(e), as amended; and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

Pre-Award & Post Delivery Audit Requirements

Pre-Award & Post-Delivery Audit Requirements - Applicability – Rolling Stock/Turnkey

Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

- 1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:
 - A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
 - B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
 - C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
 - D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

Lobbying

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$150,000

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports

Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)
Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Clean Air

Applicability – All contracts over \$150,000.

- 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- 2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Contract Work Hours & Safety Standards Act

Applicability – Contracts over \$150,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

No Government Obligation to Third Parties

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination

Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from

contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government Wide Debarment and Suspension (Non Procurement)

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as

adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <http://https.www.sam.gov,.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <http://https.www.sam.gov,.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):
- (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d)

National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c)

Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

(2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including:

(a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations,

"Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Breaches and Dispute Resolution

All contracts over \$150,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disadvantaged Business Enterprise

Contracts over \$3,500 awarded on the basis of a bid or proposal offering to use DBEs

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Prompt payment

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

Page 250 The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms

All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000) The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements

The following requirements are not federal clauses.

Full and Open Competition

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance with Federal Regulations

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by FAST Act, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract.

Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1)

Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws,

Environmental Protections

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Organizational Conflicts of Interest

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

Veterans Preference

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

CFDA number for the Federal Transportation Administration

Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

I, _____, hereby certify
(Name and title of official)

On behalf of _____ that:
(Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name City of Fargo

Type or print name Mayor Timothy J. Mahoney

Signature of authorized representative _____ Date / /

Signature of notary and SEAL _____

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- (1) It will comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180,
- (2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 - (1) Debarred,
 - (2) Suspended,
 - (3) Proposed for debarment,
 - (4) Declared ineligible,
 - (5) Voluntarily excluded, or
 - (6) Disqualified,
 - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 - (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
 - (2) Violation of any Federal or State antitrust statute, or
 - (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
 - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,

- f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
 - (1) Equals or exceeds \$25,000,
 - (2) Is for audit services, or
 - (3) Requires the consent of a Federal official, and

- g. It will require that each covered lower tier contractor and subcontractor:
 - (1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 - (2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and

3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor City OF FARGO

Signature of Authorized Official _____ Date / /

Name and Title of Contractor's Authorized Official
MAYOR Timothy J. MATHONEY

15

April 22, 2019

Board of City Commissioners
 City Hall - 225 N 4th Street
 Fargo, ND 58102

Dear Commissioners:

The City of Fargo Transit Department respectfully requests approval to enter into a contract with RouteMatch software for their amble product.

Routematch is our current demand response scheduling software. Amble is a product created by RouteMatch to integrate via a web or mobile phone interface allowing passengers to manage their demand response rides for future dates or immediately. The software will be purchased using a current grant where local match was already approved.

Routematch

ORDER FORM

| Software Licenses | | | |
|---|----------------|--|-----------------|
| Product | Quantity | Invoiced | Fees |
| Amble - Mobile App & Web Portal for Paratransit | 1 Site License | Once, when the mobile application is made publicly available ("Go Live") | \$25,000 |
| Subtotal | | | \$25,000 |
| Professional Services | | | |
| Product | Hours | Invoiced | Fees |
| Project Management | 80 Hours | Immediately | \$8,800 |
| Subtotal | | | \$8,800 |
| First Year Total | | | \$33,800 |
| Ongoing Fees, beginning Year 2 | | | |
| Support and Maintenance | 1 year | Annually, 60 days in advance, to be prorated at the second year with Client's existing Demand Response Support and Maintenance invoice | \$5,000 |
| Ongoing Total | | | \$5,000 |

The requested motion is to approve the contract and allow the Transit Department to being implementation with RouteMatch.

Sincerely,



Matthew G. Peterson
 Assistant Transit Director
 City of Fargo

For Schedule Information: 701-232-7500

Routematch

ORDER FORM

| Software Licenses | | | |
|---|----------------|--|-----------------|
| Product | Quantity | Invoiced | Fees |
| Amble - Mobile App & Web Portal for Paratransit | 1 Site License | Once, when the mobile application is made publicly available ("Go Live") | \$25,000 |
| Subtotal | | | \$25,000 |
| Professional Services | | | |
| Product | Hours | Invoiced | Fees |
| Project Management | 80 Hours | Immediately | \$8,800 |
| Subtotal | | | \$8,800 |
| First Year Total | | | \$33,800 |
| Ongoing Fees, beginning Year 2 | | | |
| Support and Maintenance | 1 year | Annually, 60 days in advance, to be prorated at the second year with Client's existing Demand Response Support and Maintenance invoice | \$5,000 |
| Ongoing Total | | | \$5,000 |
| Routematch Software, Inc. | | The City of Fargo, North Dakota | |
| Signature: | | Signature: | |
| Name: | | Name: By: Timothy J. Mahoney, M.D., Mayor | |
| | | Attest: | |
| | | Name: Steve Sprague, City Auditor | |

Terms and Conditions

- 1. Integration.** This Order Form is entered into on April 22, 2019 ("**Effective Date**") and is expressly incorporated into and governed by terms of the Software License and Services Agreement between The City of Fargo, North Dakota ("**Client**") and Routematch Software, Inc. ("**Company**") dated August 21, 2009 and any and all prior amendments, change orders or addendums thereto ("**Agreement**"). In the event of any conflict between the terms of this Order Form, any Client purchase order, and the Agreement, the terms of this Order Form shall prevail.
- 2. Modifications.** The deliverables are subject to modifications, enhancements, additions and subtractions of functionalities, features and display form and formats, from time to time ("**Modifications**") at Company's sole discretion. Such Modifications shall not materially diminish the functionality of the Deliverables provided, and the Deliverables shall continue to perform according to the description of the Deliverables agreed to in a Request for Proposal in all material aspects.
- 3. Fees and Payment.** First year and Ongoing totals represent only the products and services purchased above. Any future orders may affect the First Year or Ongoing Totals. Fees may increase annually after the first year of the Term no more than 4.5%. Pricing is valid for 90 days. Payment terms are net 30 days from date of invoice.
- 4. Professional Services.** The professional services provided by Company detailed herein shall be performed: (a) in a diligent, professional and workmanlike manner in accordance with best applicable industry practices; (b) in accordance with this Order Form; (c) by experienced and qualified personnel with the proper expertise, skills, training; and (d) in accordance with all applicable laws and regulations. No duties or responsibilities are assumed by Company other than those specifically set forth in this Order Form.

5. Feedback. From time to time, Client may submit feedback to Company respecting its use of and interaction with the Software, in the course of its use of the Software, or while receiving hardware installation, support and maintenance, or professional services ("**Feedback**"). Client grants Company a perpetual, royalty-free and irrevocable right and license to freely use, reproduce, modify, adapt, publish, copy, disclose, sublicense, transmit, distribute, create derivative works from, sell and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise. No Feedback will be considered Client's Confidential Information, and nothing in this Agreement shall limit Company's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

6. Publicity. Client grants Company the right to use its company name and logo as a reference for marketing or promotional purposes on the Company website and in other public or private communications with existing or potential customers, subject to Client's standard trademark usage guidelines as provided to us from time-to-time.

7. License to Client Data. Client hereby grants Company a non-exclusive, non-transferable, royalty-free, worldwide right to use the electronic data of Client, its customers, and its users, that is submitted or imported by it into the Software in connection with its use of the Software (collectively, "**Client Data**") solely and only as necessary for the limited purpose of the Software performing the services. Client shall own and retain all right, title and interest in and to the Client Data.

8. License to Resulting Data. Company may collect and store analytical and usage data arising out Client's use of the Software ("**Analytic Data**"). Client grants to Company a limited, non-exclusive, perpetual, worldwide, royalty-free license to use, copy, transmit, sub-license, index, model, aggregate (including with other customers' data), publish, display and distribute any anonymous information derived from Analytic Data collected during the term of the Agreement solely for (i) purposes of providing services to Client (including providing to third parties, as necessary), and (ii) benchmarking, analysis, improvement, reporting on, promotion of and further development of the Software. Company shall not use or disclose the Analytic Data in a manner which would identify Client without its advance written permission. Company shall store all collected data in compliance with all applicable laws.

9. Confidentiality. To the greatest extent possible under applicable state law, Client shall treat the pricing information contained in this Order Form as confidential and protect it from release to the public.

SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

Company shall provide customer support and maintenance services as purchased in an applicable Order Form, as follows:

1. Live Support.

- (a) Toll-free technical support by phone and email, twenty-four (24) hours a day, seven (7) days a week.
- (b) Customer Support personnel shall be available for live consultation from 6:00 AM – 8:00 PM (EST) and shall, within two (2) hours:
 - (i) return all calls made to Company's support line, (866) 653-3629; (ii) provide a response to all emails to support@routematch.com; and (iii) respond to all cases submitted to the "Report a Case" functionality in my.Routematch.com.
- (c) Two (2) Customer Support team members shall be available from 8:00 PM – 6:00 AM for after-hours phone, email, and my.Routematch.com support. During such times, an available Customer Support team member shall be informed of incoming calls, emails, and my.Routematch.com cases via the team member's mobile device. Within two (2) hours after an Authorized User has left a message, a Customer Support team member shall initiate a support event and email an alert notification to Client containing a unique tracking identification number.

2. Updates. All Updates to the Deliverables, if any, free of charge during including all software patches, documentation updates, user manual updates and other updates to the Documentation, which shall be delivered to Client via electronic transmission or other mutually agreed to means.

3. Customer Support Website. Access through a unique, secure password to Company's customer support website located at my.Routematch.com. This website is maintained for Clients only and contains information regarding the Software, Services, and other helpful information. It provides access to the most up-to-date documentation, new case submittal forms, and available releases. Clients submitting cases or requests through my.Routematch.com receive confirmation of receipt within one (1) business hour of submittal.

4. User Groups. Access to participate, free of charge, in regional user groups for Client's region, if available.

5. On-Line Training Sessions. Authorized Users may jointly participate in up to five (5) web-based, on-line training sessions to be held on up to five (5) separate occasions per year. Upon Client's request, Company shall host the five (5) afore-mentioned training sessions on the subject matter requested by Client at a mutually agreed upon date and time.

6. Scheduled Web Training Classes. Invitation and access for Client's Authorized Users may jointly participate in all regularly scheduled Web-training classes that Company conducts each year of the Term. Company shall routinely publish a schedule of available training classes and subjects on the CSW. Premium Technical Support & Maintenance customers may purchase additional classes at the then applicable rate.

7. Annual User Conference. Invitation and access to Company's annual users conference ("User Conference") at a site selected annually by Company. Company encourages Clients to participate in this exciting and informative event. Client is responsible for all individual expenses and costs associated with attendance at the User Conference (including, without limitation, travel, lodging, meals, and entertainment costs).

8. Upgrades. Routematch shall provide upgrades and patches delivered via electronic transmission free of charge during the period in which Licensee is current on payments for Support & Maintenance.

AMBLE MOBILE APPLICATION AND WEB PORTALS FOR DEMAND RESPONSE TERMS AND CONDITIONS

Term of Platform Right. Client shall appear as a transit agency in the Amble Mobile Application that is publicly available to end users, and if purchased in the applicable Order Form, have the right to use the facility, customer and agency web portals (collectively, the "Platform Right"), for so long as Client is paying for its Support and Maintenance fees attributable to this product (the "Term").

Functionality. Both the rider-facing mobile application and the publicly available website shall enable transit riders in Client's system to:

- Request trips;
- View previous and upcoming trips;
- View account info;
- Fully Integrates into Client's Routematch Reservation and Self-Service Center;
- 24x7x365 Access to Client's System.

Client Obligations.

- Approve individual trips through self-service management console;
- Schedule the trip to a vehicle;
- Provide all required information for the System Design document;
- Market the mobile application and web portals to its rider base;
- Refrain from transmittal of: (i) any communication that would violate any federal, state or local law, court order or regulation; (ii) any material that is harassing, defamatory, libelous, abusive, threatening, obscene, coercive or objectionable, including material that is false, misleading or inaccurate; and (iii) any material that that violates the rights of any person or company protected by copyright, trade secret, patent or other intellectual property or similar laws or regulations.

Company Obligations. Company shall be responsible for:

- Hosting of the source code for the mobile application;
- Procurement of the domain name for the customer web portal;
- Hosting of the source code for the customer and administration web portals;
- Providing the Terms of Use and Privacy Policy for the mobile application;
- Hosting the mobile application in it Google Play and iTunes stores;
- So long as Client is paying for ongoing Support and Maintenance, provide all updates, bug fixes, patches, and upgrades to the mobile application and web portals.

Amazon Web Services Terms. The Amble Mobile Application is hosted by Company on Amazon Web Services cloud platform. Client's use of the Amble Mobile Application is subject to the applicable product-specific terms and conditions provided by Amazon Web Services, Inc. at <https://aws.amazon.com/service-terms/>, as may be modified by Amazon from time to time.

SOFTWARE LICENSE

1. License. Company grants Client a non-exclusive, non-transferable, limited, revocable, right and license to make the Company's commercially available mobile application and web portals ("**Software**") purchased by Client available for use by the general public via the internet, Google Play and iTunes app stores, and have its own employees and Company authorized subcontractors access and use the Software for its own internal business use, in strict accordance with this Agreement (the "**License**"). Any other re-sale, sublicense, distribution in whole or in part is prohibited. The Software is made available on a limited license basis, and no ownership right is conveyed to Client, irrespective of the use of terms such as "purchase" or "sale". Company has and retains all right, title and interest, including all intellectual property rights, in and to the Software and Documentation. Except as set forth above, nothing contained in this Agreement shall be construed as conferring buy implication, estoppel or otherwise any license or right under any trade secret, patent, trademark, copyright or other intellectual property right of Company. All licenses not expressly granted by Company are reserved.

2. Documentation. Company grants Client a non-exclusive, non-transferable, limited, revocable, internal right and license to Client to access and use the Company's user manuals, user guides, flip books, pocket guides, videos, web training, checklists, presentations and all other product documentation and instructions made available to Client relating to its use of the Software (collectively, the "**Documentation**"). Client may make and distribute copies of the Documentation for use by its employees and authorized subcontractors in connection with use of Deliverables in accordance with this Agreement, but no more than the amount reasonably necessary. Any permitted copy of the Documentation must contain the same copyright and other proprietary notices that appear in the Documentation.

3. Rights and Obligations.

(a) Client has the right to:

- (1) access and use the Software, via the internet from a Company hosted server using computers and software that meet the system requirements appearing herein;
- (2) make copies of the Documentation, but no more than the amount reasonably necessary for internal reference in connection with Clients Authorized Users use of the Software.

(b) Client shall not:

- (1) Otherwise copy, change, disassemble, decompile, reverse engineer, sublicense, assign, timeshare, sell, give away, loan, rent, lease, transfer (electronically or otherwise), display, disclose, or provide any third party with access to or use of, the Software or Documentation;
- (2) directly or indirectly create or attempt to create software that emulates the Software; prepare derivative works of the Software or Documentation: or separate the components of the Software or Documentation;
- (3) copy or provide any third party with access to or use of any of the Software or Documentation without the prior written consent of Company;
- (4) Remove any trademark notice, copyright, or other restrictive legend from any material contained in or on the Software or Documentation
- (5) except as may be required by law or any governmental or quasi-governmental authority, publish or disclose to any third party any reports or the results of any benchmark tests run on the Software or its components; or
- (6) use any trademarks, service marks, or logos of Company without advance, written permission.
- (7) transfer any of Client's rights or obligations under this Agreement without the advance, written consent of an officer of Company. In the case of such an assignment, Client shall:
 - i. keeps no copies of the Software or Documentation;
 - ii. transfers Client's entire rights and obligations under this Agreement;
 - iii. ensure the transferee agrees in writing to the terms and conditions of this Agreement.

After any assignment in compliance with this section, after which time Client shall no longer have the right to use the Software or documentation. Any attempted transfer or assignment of any of Client's rights or obligations under this Agreement without Company's advance written consent shall be null and void.

4. Hardware Requirements. Client is responsible for providing all necessary hardware and software required to access and use the Software, consistent with the specifications provided to it from time to time. Future versions of the software may require increased processing capacity and updated operating systems. Client is responsible for complying with the then current technical requirements.

5. Limited Warranty.

(a) Company warrants that the Software (the "**Warranty Period**") shall substantially conform in all material respects to the specifications set forth in the Order Form for the duration of the Term.

(b) This limited warranty does not apply to: (i) Software that has been repaired, installed, maintained or modified by persons other than Company or its authorized agents; (ii) Software that has been damaged as a result of any misuse, accident, Client negligence, use within any application or system for which the Software was not designed or intended, or any other cause other than ordinary use;

(iii) Software that has been damaged due to improper environment, excessive or inadequate heating or air conditioning, electrical power failures, surges, other irregularities or water damage, and Software that has been subjected to abnormal physical or electrical stress; or (iv) Software that has been damaged by third party software or software drivers. This limited warranty is conditioned upon the proper use of the Software in accordance with the terms and conditions of this Agreement and the Documentation in an operating environment in compliance with the specifications and requirements.

- (c) Client's sole and exclusive remedy for breach of this warranty and Company's entire obligation hereunder shall be to repair or replace any nonconformities in the Software. Company's obligation to do so shall only arise if Client has notified Company of such conformity in writing within the Warranty Period and the nonconformity can be verified. In the event that Company does not correct a material nonconformity after it has made an economically reasonable effort to do so, or if Company determines that it is not economically reasonable to make such correction, Client's exclusive remedy shall be a reduction in the license fee paid by Client for the nonconforming Software proportionate to the impact on the operation of the Software.
- (d) EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "WITH ALL FAULTS BASIS", AND COMPANY AND ITS THIRD PARTY SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, MERCHANTABILITY, OR SATISFACTORY QUALITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY. NO ORAL OR WRITTEN ADVICE OR INFORMATION PROVIDED BY COMPANY OR ANY OF ITS AGENTS, EMPLOYEES OR THIRD-PARTY PROVIDERS SHALL CREATE A WARRANTY, AND CLIENT IS NOT ENTITLED TO RELY ON ANY SUCH ADVICE OR INFORMATION. CLIENT MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. COMPANY SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF COMPANY. EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT, NEITHER COMPANY NOR ANY OF ITS THIRD PARTY SUPPLIERS MAKES ANY REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY PRODUCTS OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY PRODUCTS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE PRODUCTS WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, APPLICATIONS, UTILITIES, MEMORY RESIDENT PROGRAMS, OR DATA; (C) THE PRODUCTS AND ANY SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY CLIENT WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS; (D) ANY STORED DATA WILL BE ACCURATE OR RELIABLE OR THAT ANY STORED DATA WILL NOT BE LOST OR CORRUPTED; (E) ERRORS OR DEFECTS WILL BE CORRECTED; OR (F) THE PRODUCTS (OR ANY SERVER(S) THAT MAKE A SERVICE AVAILABLE) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THIS DISCLAIMER OF WARRANTIES IS AN ESSENTIAL CONDITION OF THE AGREEMENT.
- (e) Company assumes no responsibility for the use of superseded, outdated, modified, combined or uncorrected versions of the Software. The warranty stated in this section does not apply should the Client reject or not use any previously provided Software corrections, updates, patches, or modifications supplied or made available to it.

6. Proprietary Rights and Restrictions. The Software and Documentation is the sole property of Company and contains copyrighted, confidential and trade secret information which may not be disclosed to any third parties absent advance, written consent of Company. Client shall keep the Software and Documentation free and clear of all claims, liens and encumbrances of any nature whatsoever. Client shall take all reasonable measures necessary to protect and maintain the confidential and proprietary character of the confidential information, Software and Documentation.

7. Further Restrictions. Client may not use the software to: (i) provide competitive information about Routematch or its third-party suppliers to anyone; (ii) create or assist in the creation of a digital map database of any kind; (iii) assist or use in in-flight navigation.

8. Intellectual Property Infringement. If a third party claims that the Software, or Documentation infringe any patent, copyright, trade secret, or any similar intellectual property right, Company shall indemnify, defend, save and hold harmless Client against such claim at Company's expense and shall pay all damages that a court finally awards, provided that Client promptly notifies Company in writing of the claim, cooperates fully with Company in the defense of any such claims, and allows Company to control the defense thereof and/or any related settlement negotiations. If such a claim is made or appears possible, Company will, at its sole option and expense, either: (1) procure for Client the right to continue using the Software Users Manuals, and/or Deliverables; (2) replace or modify the Software Users Manuals, or Deliverables so that it becomes non-infringing; or, (3) if it is not possible or in Company's sole discretion is not economically feasible for Company to so procure such right or so replace or modify the Software, require the return of the Software and upon such return repay to Client the unused portion of the applicable license fee and any annual technical support fees paid by Client for the remainder of the then current Term for such technical support services. Company shall have no obligation for any claim based on Client's modification of the Software or Client's unauthorized use of the Software, including, but not limited to, the combination, operation or use of the Software with any product, data or apparatus not specified or provided by Company. The provisions of this Section shall survive any termination or expiration of this Agreement. THIS PARAGRAPH STATES COMPANY'S ENTIRE OBLIGATION TO CLIENT WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

9. License to Client Data. Client hereby grants Company a non-exclusive, non-transferable, royalty-free right to use the electronic

data of Client, its customers, and its users, that is submitted or imported by it into the Software in connection with its use of the Software (collectively, "Client Data") solely and only as necessary for the limited purpose of the Software performing the services. Client shall own and retain all right, title and interest in and to the Client Data. Such Client Data shall be deemed Confidential Information as defined under the Supplemental Terms and Conditions and subject at all times to the confidentiality obligations contained therein, including, without limitation, the obligation by Company not to use such Client Data or disclose such Client Data to any third parties.

10. License to Resulting Data. Company may collect and store analytical and usage data arising out of Client's use of the Software ("Analytic Data"). Client grants to Company a limited, non-exclusive, perpetual, worldwide, royalty-free license to use, use, copy, transmit, sub-license, index, model, aggregate (including with other customers' data), publish, display and distribute any de-identified and anonymized information derived from Analytic Data collected during the term of the Agreement solely for (i) purposes of providing services to Client (including providing to third parties, as necessary), and (ii) benchmarking, analysis, improvement, reporting on, promotion of and further development of the Software. Company shall not use or disclose the Analytic Data in a manner which would identify Client without its advance written permission. Client will never be identified without its advance written permission in its sole discretion. Company shall store all collected data in compliance with all applicable laws.

11. Export Control Laws. The Client shall not export or re-export the Software, any part thereof, to any country, person or entity subject to United States export restrictions. Furthermore, Client agrees to comply with all of the export and re-export restrictions and regulations imposed by the governments of the United States and/or any country to which the Software is shipped.

12. Modifications. The Software is subject to modifications, enhancements, additions and subtractions of functionalities, features and display form and formats, from time to time ("Modifications") at Company's sole discretion. Such Modifications shall not materially diminish the functionality of the Deliverables provided, and the Deliverables shall continue to perform according to the description of the Deliverables agreed to in a Request for Proposal in all material aspects.

13. Government Entity Rights. When applicable, use, duplication or disclosure of the Software and Documentation by certain Federal Government Clients is subject to rights and restrictions set forth in DFARS 252.227-7013, FAR and 48 CFR 52.227-19. In case of conflict between any of the FAR and/or DFARS that may apply to the Licensed Product, the construction that provides greater limitations on the Government's rights shall control. Manufacturer of certain components of the Software is TomTom North America, Inc., 11 Lafayette Street, Lebanon, NH 03766-1445. Phone: 603.643. 0330. The Licensed Products are © 2006-2017 by TomTom. ALL RIGHTS RESERVED. For purpose of any public disclosure provision under any federal, state or local law, it is agreed that the Software is a trade secret and a proprietary commercial product and not subject to disclosure. If Client is an agency, department, or other entity of any State government, the United States Government or any other public entity or funded in whole or in part by the United States Government, then Client hereby agrees to protect the Software from public disclosure and to consider the Software exempt from any statute, law, regulation, or code, including any Sunshine Act, Public Records Act, Freedom of Information Act, or equivalent, which permits public access and/or reproduction or use of the Software. If such exemption is challenged under any such laws, this agreement shall be considered breached and any and all right to retain any copies or to use of the Software shall be terminated and considered immediately null and void. Any copies of the Software held by Client shall immediately be destroyed. If any court of competent jurisdiction considers this clause void and unenforceable, in whole or in part, for any reason, this agreement shall be considered terminated and null and void, in its entirety, and any and all copies of the Software shall immediately be destroyed.

14. Included open source components. Portions of the Software may use or contain open source software components and programs. In such cases, the use of the Software shall be additionally governed by the terms of any open source licenses embedded therein. The list of open source software and license terms is available at https://www.routematch.com/RM_3rd_Party.pdf.

By entering into a sale with the City of Fargo, ND, and/or the City of Moorhead, MN, doing business as MATBUS, the supplier is agreeing to be bound by the following federal clauses and certifications as applicable:

X

1. **No Government Obligation to Third Parties:** *Applies to all third party contracts that are federally funded.*

- a) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

X

2. **Program Fraud & False or Fraudulent Statements & Related Acts:** *Applies to all third party contracts that are federally funded.*

- a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

X

3. **Access to Records and Reports:** *Applies to all contracts funded in whole or in part with FTA funds.*

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases,

subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.

- b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

X 4. **Federal Changes:** *Applies to all contracts.*

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, and they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

X 5. **Civil Rights and Equal Opportunity:** *Applies to all contracts.*

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a) **Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) **Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42

U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c) Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

X

6.

Termination Provisions: *Applies to all contracts in excess of \$10,000. Those contracts must address termination for cause and for convenience, including the manner by which it will be effected and the basis for settlement.*

- a) The CITY reserves the right to cancel any contract for cause upon written notice to the Contractor. Cause for cancellation will be documented failure(s) of the contractor to provide services in the quantity and/or quality required. Notice of such cancellation will be given with sufficient time to allow for the orderly withdrawal of the Contractor without additional harm to the participants or the CITY.
- b) The CITY may cancel or reduce the amount of service to be rendered if there is, in the opinion of the City Council, a significant increase in local costs; or, in the opinion of the City Council, insufficient state or federal funding available for the service, thereby terminating the contract or reducing the compensation to be paid under the contract. In such event, the CITY will notify Contractor in writing ninety (90) days in advance of the date such actions are to be implemented.

CONTRACTOR is hereby notified that the CITY Transit system pursuant to this agreement is dependent upon the necessary receipt of local, state and federal funding.

In the event of any termination, the CITY shall pay the agreed rate only for services delivered up to the date of termination. The CITY has no obligation to Contractor, of any kind, after the date of termination. Contractor shall deliver all records, equipment and materials to the CITY within 24 hours of the date of termination.

7. **Disadvantaged and Small Business Enterprise:** *Applies to FTA recipients receiving planning, capital and/or operating assistance that will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year.*

For all DOT-assisted contracts, each FTA recipient must include assurances that third party contractors will comply with the DBE program requirements of 49 C.F.R. part 26, when applicable. The following contract clause is required in all DOT-assisted prime and subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a) Withholding monthly progress payments;
- b) Assessing sanctions;
- c) Liquidated damages; and/or
- d) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days (payment required within 10 days or paying interest at 1 ½ percent per Minnesota State Statute 471.425 subd. 4a) from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

In connection with the performance of this service, the Contractor will cooperate with the CITY in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by CITY for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the CITY with the necessary certification and records for reporting purposes. When the majority of the contract is labor,

which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The CONTRACTOR will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The contractor must promptly notify the CITY whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the CITY.

Fostering Small Business Participation

The CITY has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the CITY. This program is race- and gender- neutral, however SBEs can also count towards DBE goals.

X 8. **Incorporation of FTA Terms:** *Applies to all contracts.*

The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause the CITY to be in violation of the FTA terms and conditions.

X 9. **Debarment, Suspension, Ineligibility and Voluntary Exclusion:** *Applies to contracts in an amount expected to equal or exceed \$25,000 or a contract award at any tier for a federally required audit (irrespective of the contract amount) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180. Recipients, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person; or (c) adding a clause or condition to the contract or subcontract.*

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate

in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. **Buy America:** *Applies to projects that involve the purchase of more than \$150,000 of iron, steel, manufactured goods, or rolling stock to be delivered to the recipient to be used in an FTA assisted project.*

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

11. **Breach of Contract and Dispute Resolution:** *Applies to all contracts in excess of the Simplified Acquisition Threshold (currently set at \$150,000) and those contracts shall contain administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.*

- a) Disputes will be presented in writing to the appropriate City personnel – in Fargo, the Fargo Transit Director, in Moorhead, the Moorhead Transit Manager. City personnel and the Contractor will attempt to resolve any dispute arising in the performance of the Contract.

Fargo: If the Transit Director and Contractor cannot resolve the dispute, the issue will be presented in writing to the Fargo City Administrator within ten [10] working days of dispute. If the dispute cannot be resolved by the City Administrator, it will be submitted in writing within ten [10] working days of the Fargo City Administrator's decision to the Fargo City Commission – it is the sole responsibility of the Contractor to schedule a

hearing with the Fargo City Commission. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

Moorhead: If the Transit Manager and Contractor cannot resolve the dispute, the issue will be presented in writing to the Moorhead City Manager within ten [10] working days of the dispute. If the dispute cannot be resolved by the City Manager, it will be submitted in writing within ten [10] working days of the Moorhead City Manager's decision to the Moorhead City Council – it is the sole responsibility of the Contractor to schedule a hearing with the Moorhead City Council. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at the hearing.

The decision of the Fargo City Commission or Moorhead City Council shall be binding upon the Contractor and the Contractor shall abide by the decision.

- b) Unless otherwise directed by the Cities of Fargo/Moorhead, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
- c) Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
- d) Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Cities of Fargo and/or Moorhead and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the applicable state.

12. **Lobbying Restrictions:** *Applies to all contracts and subcontracts of \$100,000 or more at any tier under a Federal grant. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this agreement, the payor must complete and submit the Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.*

49 C.F.R. part 20, Appendices A and B provide specific language for inclusion in FTA funded third party contracts as follows:

The undersigned certifies (*Note: A separate certification will be required to be signed if the contract meets this criteria*), to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

13. **Clean Air and Federal Water Pollution Control Act:** *Applies to each contract and subcontract exceeding \$150,000. The Clean Air Act and Federal Water Pollution Control Act requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier.*

The Contractor agrees:

- a) It will not use any violating facilities;
- b) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- c) It will report violations of use of prohibited facilities to FTA; and
- d) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

14. **Contract Work Hours & Safety Standards Act:** *Applies to all FTA funded contracts in excess of \$100,000 that involve the employment of mechanics or laborers. Certain employee protections apply to all FTA funded contracts with particular emphasis on construction related projects. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*

- a) *Contract Work Hours and Safety Standards*
 - i. *Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38*
 - ii. *U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926.*

a) For construction contracts:

- i. For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part

5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

- ii. In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.
- iii. The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.
- iv. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

b) For Awards Not Involving Construction

- i. The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
- ii. The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the

contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

- iii. Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.
- iv. The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

15. **Transit Employee Protective Arrangements:** *Applies to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator.*

The Contractor agrees to comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):

- a) **U.S. DOL Certification.** Under this Contract or any Amendments thereto that involve public transportation operations that are supported with federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
- b) **Special Warranty.** When the Contract involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The U.S. DOL Special Warranty is a condition of the Contract.
- c) **Special Arrangements.** The conditions of 49 U.S.C. § 5333(b) do not apply to Contractors providing public transportation operations pursuant to 49 U.S.C. § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

16. **Charter Service:** *Applies to contracts for operating public transportation service.*

The contractor agrees to comply with 49 U.S.C. 5323(d), 5323(r), and 49 C.F.R. part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(d);
- b) FTA regulations, "Charter Service," 49 C.F.R. part 604;
- c) Any other federal Charter Service regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

The contractor agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

- a) Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
- b) Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
- c) Any other appropriate remedy that may apply.

The contractor should also include the substance of this clause in each subcontract that may involve operating public transit services.

17. **School Bus Service Operations:** *Applies to contracts for operating public transportation service.*

The contractor agrees to comply with 49 U.S.C. 5323(f), and 49 C.F.R. part 604, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

- a) Federal transit laws, specifically 49 U.S.C. § 5323(f);
- b) FTA regulations, "School Bus Operations," 49 C.F.R. part 605;
- c) Any other Federal School Bus regulations; or
- d) Federal guidance, except as FTA determines otherwise in writing.

If Contractor violates this School Bus Agreement, FTA may:

- a) Bar the Contractor from receiving Federal assistance for public transportation; or
- b) Require the contractor to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Contractor should include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

18. **Substance Abuse Requirements: Drug & Alcohol Testing:** *Applies to third party contractors who perform safety-sensitive functions. Contractors must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, Safety-sensitive function means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:*

- a) *Operating a revenue service vehicle, including when not in revenue service;*
- b) *Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;*
- c) *Controlling dispatch or movement of a revenue service vehicle;*
- d) *Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;*
- e) *Carrying a firearm for security purposes.*

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota and/or Minnesota, or the Cities of Fargo/Moorhead, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before February 1 and to submit the Management Information System (MIS) reports before February 1 to the City of Moorhead Transit Manager and City of Fargo Transit Director. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

19. **Cargo Preference:** *Applies to all contracts involving equipment, materials, or commodities that may be transported by ocean vessels.*

The contractor agrees:

- a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and
- c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

20. **Davis-Bacon Act and Copeland Act – Prevailing Wage and Anti-Kickback:** *Applies to all FTA funded contracts for all prime construction, alteration or repair contracts in excess of \$2,000. The recipient will ensure that each third party contractor complies with all federal laws, regulations, and requirements, including:*

a) **Prevailing Wage Requirements**

- i. *Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");*
- ii. *The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and*
- iii. *U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.*

b) **"Anti-Kickback" Prohibitions**

- i. *Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;*
- ii. *Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and*

- iii. *U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3.*

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

- X 21. **Energy Conservation:** *Applies to all contracts. The Recipient agrees to, and assures that its subrecipients, if any, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6201 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance as required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. part 622, subpart C.*

Contractor shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

22. **Construction—Special Requirements:** *Applies to FTA assisted construction projects:*

- a) **Bonding.** The Common Grant Rules require bonds for all construction contracts exceeding the simplified acquisition threshold (exceeding \$150,000. *Minnesota State Statute 574.26 limit is \$100,000*) unless FTA determines that other arrangements adequately protect the Federal interest. FTA's bonding policies are as follows:
- i. **Bid Guarantee.** Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.
 - ii. **Performance Bond.** Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A "performance bond" is obtained to ensure completion of the obligations under the third party contract.

- iii. **Payment Bond.** The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for 100 percent of the contract price. A “payment bond” is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:
- **Less Than \$1 Million.** Fifty percent of the contract price if the contract price is not more than \$1 million,
 - **More Than \$1 Million but Less Than \$5 Million.** Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million, or
 - **More Than \$5 Million.** Two and one half million dollars if the contract price is more than \$5 million.
- iv. **Acceptable Sureties.** The Common Grant Rule for non-governmental recipients requires the non-governmental recipient to obtain construction bonds from companies holding certificates of authority as acceptable sureties under Department of the Treasury regulations, “Surety Companies Doing Business with the United States,” 31 CFR Part 223. For a current list of approved sureties, see Department of the Treasury’s Listing of Approved Sureties (Department Circular 570), <http://fms.treas.gov/c570/c570.html>. FTA encourages each governmental recipient to require similarly acceptable sureties.
- v. **Reduced Bonding.** FTA recognizes that bonding costs can be expensive. FTA will accept a local bonding policy that conforms to the minimums described in this subparagraph 2.h(1) of this Chapter. FTA reserves the right to approve bonding amounts that do not conform to these minimums if the local bonding policy adequately protects the Federal interest. A recipient that wishes to adopt less stringent bonding requirements, for a specific class of projects, or for a particular project should submit its policy and rationale to the Regional Administrator for the region administering the project.
- vi. **Excessive Bonding.** Compliance with State and local bonding policies that are greater than FTA’s bonding requirements do not require FTA approval. FTA recognizes that in some situations bond requirements can be useful if the recipient has a material risk of loss because of a failure of the prospective contractor. This is particularly so if the risk results from the likelihood of the contractor’s bankruptcy or financial failure when the work is partially completed. Nevertheless, if the recipient’s “excessive bonding” requirements would violate the Common Grant Rules as restrictive of competition, FTA will not provide Federal assistance for procurements encumbered by those requirements. Consequently, if the recipient’s bonding policies far exceed those described in this subsection; FTA reminds the recipient that it may find it useful to submit its policy and rationale to the Regional Administrator for the region administering the project.

23. **Bus Testing:** *Applies only to the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by FTA. Recipients are responsible for determining whether a vehicle to be acquired requires full or partial testing or has already satisfied the bus testing requirements by achieving a passing test score in*

accordance with 49 C.F.R. part 665. Recipients must certify compliance with FTA's bus testing requirements in all grant applications for FTA funding for bus procurements.

The Contractor [Manufacturer] agrees to comply with the Bus Testing requirements under 49 U.S.C. 5318(e) and FTA's implementing regulation at 49 C.F.R. part 665 to ensure that the requisite testing is performed for all new bus models or any bus model with a major change in configuration or components, and that the bus model has achieved a passing score. Upon completion of the testing, the contractor shall obtain a copy of the bus testing reports from the operator of the testing facility and make that report(s) publicly available prior to final acceptance of the first vehicle by the recipient.

X 24. **Fly America:** *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

a) *Definitions.* As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. *[State reasons]:*

(End of statement)

e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

25. **Patent Rights and Rights in Data:** *Applies when entering into a contract (or subcontract) with a small business firm or nonprofit organization for the performance of experimental, developmental, or research work under the FTA award. The recipient or subrecipient must comply with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency. Except in the case of an "other agreement" in which the Federal Government has agreed to take more limited rights, the Federal Government is entitled to a non-exclusive, royalty free license to use the resulting invention, or patent the invention for Federal Government purposes. The FTA has the right to:*
- a) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and*
 - b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.*

Intellectual Property Rights: This Project is funded through a Federal award with FTA for experimental, developmental, or research work purposes. As such, certain Patent Rights and Data Rights apply to all subject data first produced in the performance of this Contract. The Contractor shall grant the AGENCY intellectual property access and licenses deemed necessary for the work performed under this Agreement and in accordance with the requirements of 37 C.F.R. part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by FTA or U.S. DOT. The terms of an intellectual property agreement and software license rights will be finalized prior to execution of this Agreement and shall, at a minimum, include the following restrictions: Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of FTA, until such time as FTA may have either released or approved the release of such data to the public. This restriction on publication, however, does not apply to any contract with an academic institution. For purposes of this agreement, the term "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Contract. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the Contract.

- a) The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Federal Government Purposes," any subject data or copyright described below. For "Federal Government Purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 - i. Any subject data developed under the Contract, whether or not a copyright has been obtained; and

- ii. Any rights of copyright purchased by the Contractor using Federal assistance in whole or in part by the FTA.
- b) Unless FTA determines otherwise, the Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of this Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Federal Government may direct.
- c) Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. The Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
- d) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- e) Data developed by the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that the Contractor identifies those data in writing at the time of delivery of the Contract work.
- f) The Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance.

26. **Pre-Award and Post-Delivery Audits of Rolling Stock Purchases:** *Applies to the purchase of revenue service rolling stock with FTA funds and must comply with the pre-award and post-delivery audit requirements set forth in 49 U.S.C. 5323(m) and supplemented by 49 C.F.R. part 663.*

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

27. **Recycled Products:** *Applies to all third party contractors and their contracts at every tier and subrecipients and their subcontracts at every tier where the value of an EPA designated item exceeds \$10,000. Applies to States and local governmental authorities to provide a competitive preference to products and services that conserve natural resources, protect the environment, and are energy efficient. Recipients are required to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of*

the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), “Comprehensive Procurement Guideline for Products Containing Recovered Materials,” 40 C.F.R. part 247.

- _____ 28. **Safe Operation of Motor Vehicles:** *Applies to all federally funded third party contracts.*

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or AGENCY.

Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

- _____ 29. **Seismic Safety:** *Applies only to contracts for the construction of new buildings or additions to existing buildings.*

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

Note: Information on clauses was obtained from the FTA Best Practices Procurement and Lessons Learned Manual, and Circular FTA C 4220.1F Third Party Contracting Guidance.

<https://www.transit.dot.gov/funding/procurement/third-party-procurement/best-practices-procurement-manual>

<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance>

16

April 18, 2019

Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

Dear Commissioners:

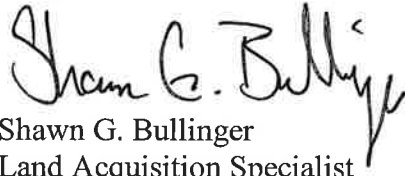
Enclosed and delivered to the City Commission office for review and approval please find a Purchase Agreement with LHS, Investments, LLC for purchase of City property located at 2 6th Ave N.

RECOMMENDED MOTION:

I/we hereby move to approve and authorize the sale of land located at 2 6th Ave N. to LHS Investments, LLC and that the Mayor and City Auditor be instructed to execute the Purchase Agreement on behalf of the City of Fargo.

Please return a signed copy.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Brenda Derrig
Nathan Boerboom
Nancy Morris

Attachments

PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this 18th day of April, 2019, by and between **CITY OF FARGO, NORTH DAKOTA**, a North Dakota municipal corporation, hereinafter "City" or "Seller", and LHS, Investments, LLC, a North Dakota Limited Liability Corporation hereinafter "Buyer",

WITNESSETH:

WHEREAS, Seller is the owner of real estate situated in the County of Cass and State of North Dakota described as follows:

A tract of land in Keeney and Devitt's Second Addition to the City of Fargo, Cass County, North Dakota more particularly described as:

The east 40.00 feet of Lots 5, 6, & 7, Block 28 of said Keeney and Devitt's Second Addition, together with one-half of adjacent vacated Elm Street, except the east 30.00 feet thereof.

Street Address: 2 6th Avenue North, Fargo, North Dakota.

WHEREAS, Buyer sought to purchase the real estate in accordance with the terms stated herein; and

WHEREAS, the city of Fargo has indicated a willingness to sell the real estate.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements of the parties, it is hereby agreed as follows:

1. Subject Matter. The subject matter of this agreement is the real estate described.
2. Purchase Price. The purchase price for the real property identified is as follows: Two Thousand Dollars (\$2,000).
3. Payment of Purchase Price. Buyer shall present a certified check at the time of closing for the full amount of the purchase price.
4. Deed. Seller shall sign a Quitclaim deed. Buyer will take title as follows: LHS Investments, LLC.
5. Closing Date and Transfer of Possession. Closing shall take place on or before May 31, 2019. Buyer shall take possession of the real estate on the day of closing.
6. Contingency. Buyer agrees to grant Seller an Easement for the existing City

Infrastructure located on the Property, to be contemporaneously recorded with the Quitclaim Deed. Buyer shall have access to the adjacent city property to complete the work. Seller agrees to release said easement upon Buyer's completion of the following:

Buyer shall remove all of the existing 12 inch and 24 inch storm sewer pipe thru the levee and remove of the Gate Well structure. Once all of the pipe and concrete including bedding and rock rip rap materials, if present, have been removed the hole shall be re-filled with impervious clay material and the site graded to allow for proper surface drainage. The impervious clay fill shall be placed and compacted uniformly to a compaction density of 95% of standard proctor density as outlined in City of Fargo Standard Specifications 3600. Buyer shall take tests of the in place clay and the results provided to the city. The clay will be placed to within 6 inches of existing grades. Clean topsoil shall be placed over all disturbed areas a minimum of 6 inches thick. All disturbed shall receive Seeding Type A in accordance with City of Fargo Standard Specifications 3100. Once re-seeding using hydro-mulch is completed all disturbed areas shall receive erosion control fabric and shall be watered until growth of grass occurs. Buyer shall notify the City of Fargo two (2) days prior to the start of construction so an inspector may be onsite during construction.

7. Warranty. Seller provides no express of implied warranties on the subject property.

DATED this 18th day of April, 2019.

BUYER:

LHS INVESTMENTS, LLC, A
NORTH DAKOTA LIMITED LIABILITY
COMPANY



LHS Investments, LLC

DATED this _____ day of _____, 2019.

SELLER:

CITY OF FARGO, NORTH DAKOTA
a municipal corporation

Dr. Timothy Mahoney, M.D., Mayor

ATTEST:

Steve Sprague, City Auditor

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Sale of City Property

Location: 2 6th Avenue North

Date of Hearing: 3/18/2019

| | |
|-----------------|------------------------|
| <u>Routing</u> | <u>Date</u> |
| City Commission | <u>3/25/2019</u> |
| PWPEC File | <u>X</u> |
| Project File | <u>Shawn Bullinger</u> |

The Committee reviewed the accompanying correspondence from Land Acquisition Specialist, Shawn Bullinger, related to excess land located at 2 6th Avenue North. In an effort to reduce maintenance costs, staff is recommending the lot be split and the remainder be sold. Currently, the lot has flood protection along the eastern portion and this would need to be retained. Additionally, the buyer would need to remove the existing gateway well and storm sewer and fill in the existing pond area.

The property has an assessed value of \$4,000.00. According to a preliminary estimate, the cost to remove the gateway well, storm sewer, and fill the pond is \$60,000.00 - \$70,000.00.

Staff is recommending approval.

On a motion by Ben Dow, seconded by Steve Dirksen, the Committee voted to recommend approval of the sale of 2 6th Avenue North, with the condition that the buyer would remove the gateway well and storm sewer and would fill the existing pond.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Engineering's request to move forward with a lot split and to sell the excess land located at 2 6th Avenue North with the condition that the buyer will remove the existing gate well, storm sewer and fill in the existing pond.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: _____

Developer meets City policy for payment of delinquent specials
 Agreement for payment of specials required of developer
 50% escrow deposit required

| | | |
|--|------------|------------|
| | <u>Yes</u> | <u>No</u> |
| | <u>N/A</u> | <u>N/A</u> |
| | <u>N/A</u> | <u>N/A</u> |
| | <u>N/A</u> | <u>N/A</u> |


COMMITTEE

Tim Mahoney, Mayor
 Nicole Crutchfield, Director of Planning
 Steve Dirksen, Fire Chief
 Bruce Grubb, City Administrator
 Ben Dow, Director of Operations
 Steve Sprague, City Auditor
 Brenda Derrig, City Engineer
 Kent Costin, Finance Director

| | | | |
|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| <u>Present</u> | <u>Yes</u> | <u>No</u> | <u>Unanimous</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Mike Redlinger |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Tom Knakmuhs |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |

ATTEST:

C: Kristi Olson


 Tom Knakmuhs, PE
 Assistant City Engineer

Memorandum

To: Members of PWPEC
From: Shawn G. Bullinger, Land Acquisition Specialist
Date: March 6, 2019
Re: Sale of City Property – 2 6th Avenue South

Background:

Engineering staff has identified a portion of the property located at 2 6th Avenue South as excess land. In an effort to reduce maintenance costs, staff is recommending a lot split and selling off the remainder of this lot. The City currently has flood protection along the eastern portion, which would need to be retained. On the remainder of the property exists a gate well, pond and storm sewer. As a condition of the sale, the buyer would need to remove the existing gate well, associated storm sewer and fill in the existing pond area.

The property currently has an assessed value of \$4,000.00 due to the existing levee, gate well, storm sewer and pond area. According to a Preliminary Engineers Estimate, the cost to remove the gate well, storm sewer and fill the existing pond is \$60,000.00 - \$70,000.00.

Recommended Motion:

Approve Engineering's request to move forward with a lot split and to sell the excess land located at 2 6th Avenue South with the condition that the buyer will remove the existing gate well, storm sewer and fill in the existing pond area.

SGB/klb

Attachments



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for

2 6th Ave S - City Lot

1:1,128

3/7/2019 9:35:15 AM



CITY OF FARGO



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

| | |
|---|---------------------|
| <h2>2 6th Ave S - City Lot</h2> | |
| 1:1,128 | 3/7/2019 9:38:09 AM |
| <small>These data are not a substitute for a professional field survey or for locating actual property lines and any adjacent features.</small> | |



April 16, 2019

17

Board of City Commissioners
City of Fargo
200 North Third Street
Fargo, ND 58102

**Re: Memorandum of Offer to Landowner
Temporary Easement
Project #FM-14-71**

Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Memorandum of Offer to Landowner document for the acquisition of a temporary easement in association with project #FM-14-71. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of a temporary easement from **Foxtail Creek Limited Partnership** in association with Project #FM-14-71 and that the Mayor and City Auditor be instructed to execute the Memorandum of Offer to Landowner and temporary easement on behalf of the City of Fargo.

Please return a copy of the signed original.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Jody Bertrand
Nancy J. Morris

| | | |
|---|----------------|-----------------|
| Project FM-14-71 | County Cass | Parcel(s) 1A |
| Landowner Foxtail Creek Limited Partnership | | |
| Mailing Address 210 11th St. N. - Suite 202 Fargo, ND 58102 | | |

The following-described real property and/or related temporary easement areas are being acquired for project purposes:

See attached exhibit(s).

I, as right of way agent for the City of Fargo, Engineering Department, am hereby authorized to offer the following amount of \$ 843.60 as full compensation for the fee and/or temporary taking of the foresaid parcels and all damages incidental thereto. The offer set forth has been established through one of the following, Basic Data Book, Certified Appraisal, City of Fargo Minimum Payment Policy. A breakdown of this offer is as follows:

| | | |
|-------------------------------|----|---------------|
| Land | \$ | _____ |
| Easement and Access Control | \$ | <u>843.60</u> |
| Improvements on Right of Way* | \$ | _____ |
| Damages to Remainder | \$ | _____ |
| Total Offer | \$ | <u>843.60</u> |

*Description of Damages to Remainder are as follows:

Foxtail Creek Limited Partnership
 Owner Signature
 Signature hereby constitutes acceptance of offer as presented above.
By Steve Stone
 General partner

Shawn G. Bullinger
 Shawn G. Bullinger
 Land Acquisition Specialist, City of Fargo

Owner Signature
 Signature hereby constitutes acceptance of offer as presented above.

Fargo City Commission has considered the offer and approves the same:



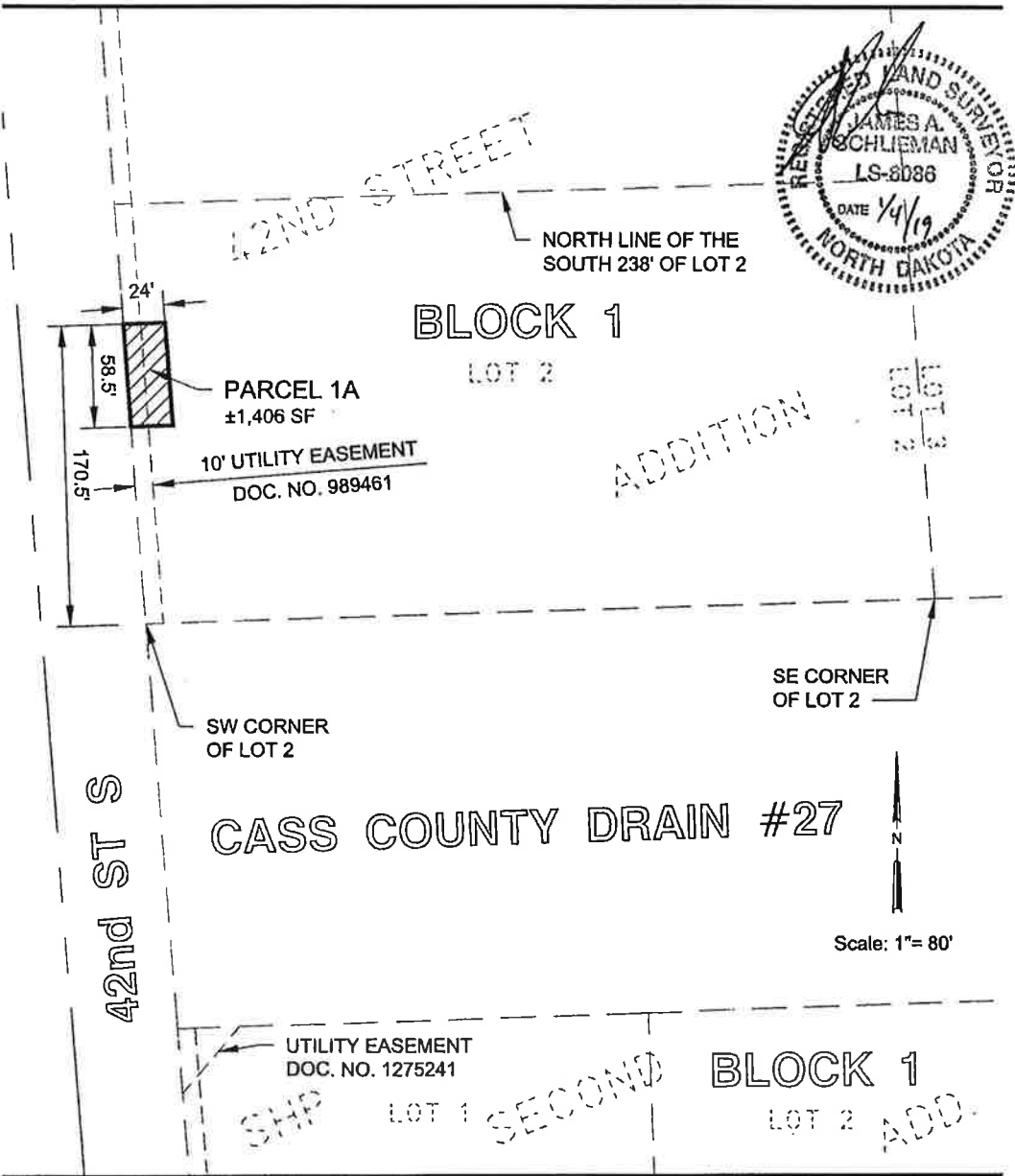
Timothy J. Mahoney
 MAYOR

 SIGNATURE

 DATE

PARCEL 1A
 PART OF LOT 2, BLOCK 1
 42ND STREET ADDITION
 CITY OF FARGO, CASS COUNTY
 STATE OF NORTH DAKOTA

OWNER: FOXTAIL CREEK LTD PARTNERSHIP



H:\Fargo\UBN\8000\805913_6059_0621-Phase 01\CAD\Exhibits\Proposed Easements- North Side.dwg-att1-2/22/2019 2:57 PM-(schlieman)

| | |
|---------------------|---------------|
| IRON MONUMENT FOUND | • |
| MEASURED BEARING | S59°27'46"E |
| MEASURED DISTANCE | 105.00' |
| PLAT BEARING | (N57°00'00"W) |
| PLAT DISTANCE | (105.00') |
| TEMPORARY EASEMENT | |

NOTE: ALL BEARINGS GIVEN ARE
 BASED ON THE CITY OF
 FARGO GIS COORDINATE
 SYSTEM.



EASEMENT EXHIBIT

| | | |
|-------------------------|---|-----------------|
| PROJECT NO. 6059-062 | DRAIN 27 - I29 TO 42ND STREET FLOOD MITIGATION 42ND STREET ADDITION, CITY OF FARGO, CASS CO., ND | SHEET 1 OF 2 |
|-------------------------|---|-----------------|

PARCEL 1A
PART OF LOT 2, BLOCK 1
42ND STREET ADDITION
CITY OF FARGO, CASS COUNTY
STATE OF NORTH DAKOTA

OWNER: FOXTAIL CREEK LTD PARTNERSHIP

Description - Parcel 1A (Temporary Construction Easement)

The West 24.00 feet of the North 58.50 feet of the South 170.50 feet of Lot 2, Block 1, 42nd Street Addition in the City of Fargo, Cass County, North Dakota.

Said parcel contains 1,406 square feet, more or less.



EASEMENT EXHIBIT

PROJECT NO.
6059-062

**DRAIN 27 - I29 TO 42ND STREET FLOOD MITIGATION
42ND STREET ADDITION, CITY OF FARGO, CASS CO., ND**

**SHEET
2 OF 2**

H:\Fargo\UBN\60006059\13_6059_062\1-Phase 010\CAD\Exhibits\Proposed Easements- North Side.dwg-ah2-2/22/2019 2:59 PM-(jschlieman)

EASEMENT
(Temporary Construction Easement)

KNOW ALL MEN BY THESE PRESENTS that **FOXTAIL CREEK LIMITED PARTNERSHIP**, a North Dakota limited partnership, hereinafter referred to as "Grantor", for and in consideration of the sum of One Dollar and other valuable consideration (\$1.00), to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO THE CITY OF FARGO**, a North Dakota municipal corporation, its successors and assigns, hereinafter referred to as "Grantee", a temporary construction easement over, upon and in land hereinafter described for the purpose of flood protection measures construction and activities appurtenant thereto, said land being more fully described, to-wit:

The West 24.00 feet of the North 58.50 feet of the South 170.50 feet of Lot 2, Block 1, 42nd Street Addition in the City of Fargo, Cass County, North Dakota.

Said parcel contains 1,406 square feet, more or less.

Said parcel is pictorially represented on Exhibit "A" attached hereto and incorporated herein by reference.

Grantor, its successors and assigns, hereby covenants to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times, when necessary or convenient to do so, go over and upon said above-described parcel of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

Grantor, its successors and assigns, further agrees that they will not disturb, injure, molest or in any manner interfere with said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project and Grantor expressly warrants and states that no buildings, trees, shrubs or other obstacles of any kind shall be placed or located upon the

parcel so as to interfere in any manner with the said parcel to be used for the storage of dirt and all other construction activities during the construction phase of said project. Grantee, at its own expense, shall refill any excavation it makes and level the ground thereafter, leaving the premises in as good condition as it was prior to the time of storage of dirt and all other construction activities was begun.

This easement shall terminate at the completion of construction of the project, or on June 30, 2020, whichever occurs later.

IN WITNESS WHEREOF, Grantor set his hand and caused this instrument to be executed this 27 day of March, 2019.

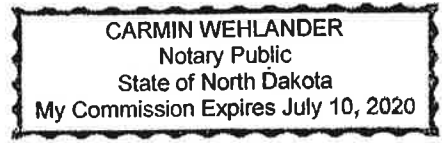
GRANTOR:

Foxtail Creek, a North Dakota Limited Partnership

By: *Steve Stoner*

Its: Co-Managing General Partner

STATE OF ND)
) ss.
COUNTY OF Cass)



On this 27 day of March, 2019, before me, a notary public in and for said county and state, personally appeared Steve Stoner, the General Partner of **Foxtail Creek, a North Dakota Limited Partnership**. to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

Carmin Wehlender
Notary Public
County, _____

(SEAL)

GRANTEE:

City of Fargo, a North Dakota municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steve Sprague, City Auditor

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this ____ day of _____, 2019, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the City of Fargo, Cass County, North Dakota, the municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

(SEAL)

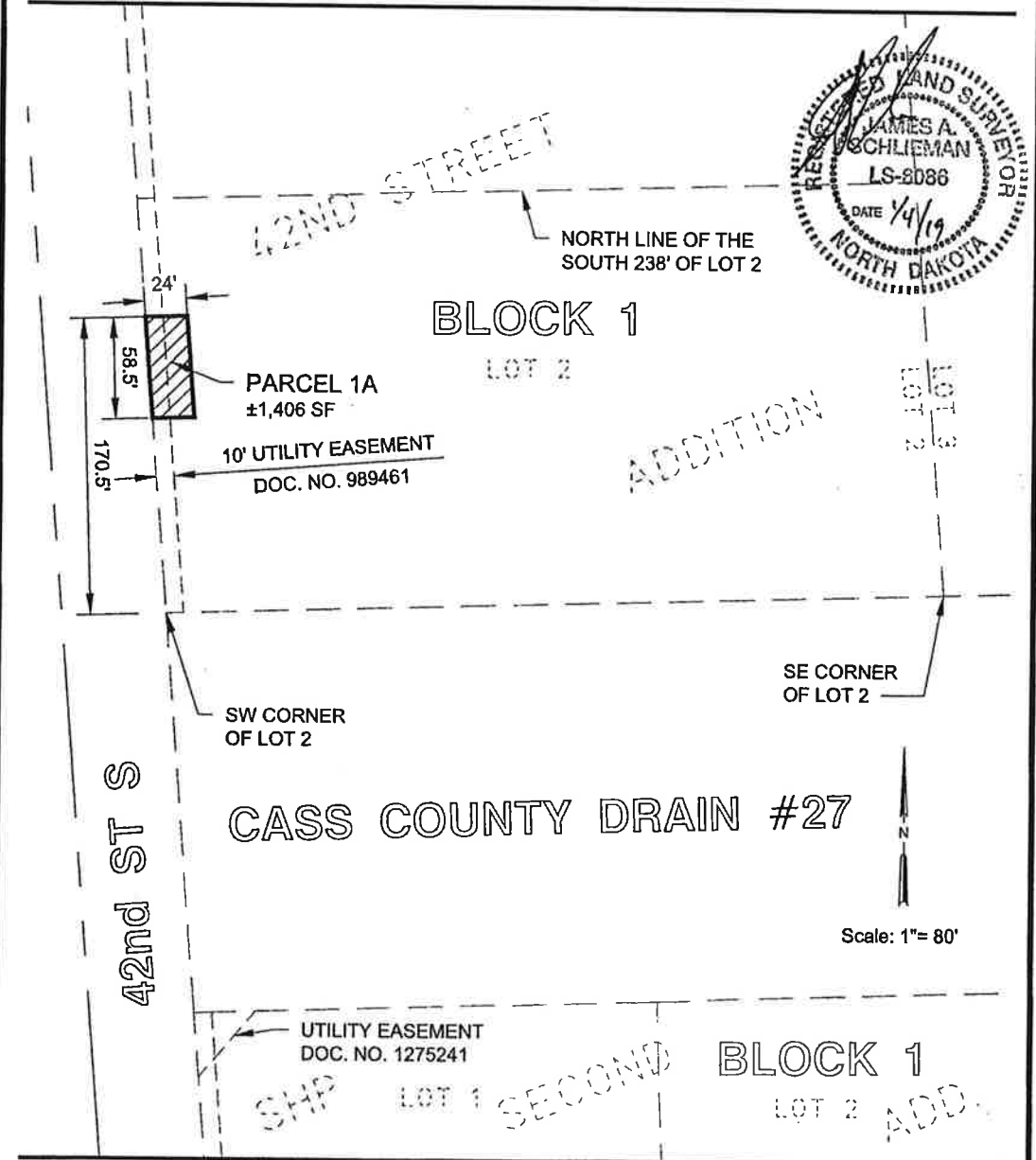
Notary Public
Cass County, ND
My Commission expires:

The legal description was prepared by:
Houston Engineering, Inc.
1401 21st Avenue North
Fargo, ND 58102
701-237-5065

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
701-280-1901
nmorris@lawfargo.com

PARCEL 1A
 PART OF LOT 2, BLOCK 1
 42ND STREET ADDITION
 CITY OF FARGO, CASS COUNTY
 STATE OF NORTH DAKOTA

OWNER: FOXTAIL CREEK LTD PARTNERSHIP



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IRON MONUMENT FOUND
 MEASURED BEARING S59°27'46"E
 MEASURED DISTANCE 105.00'
 PLAT BEARING (N57°00'00"W)
 PLAT DISTANCE (105.00')
 TEMPORARY EASEMENT

NOTE: ALL BEARINGS GIVEN ARE
 BASED ON THE CITY OF
 FARGO GIS COORDINATE
 SYSTEM.



EASEMENT EXHIBIT

| | | |
|-------------------------|---|-----------------|
| PROJECT NO. 6059-062 | DRAIN 27 - I29 TO 42ND STREET FLOOD MITIGATION 42ND STREET ADDITION, CITY OF FARGO, CASS CO., ND | SHEET 1 OF 2 |
|-------------------------|---|-----------------|

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 PART OF LOT 2, BLOCK 1
 42ND STREET ADDITION
 CITY OF FARGO, CASS COUNTY
 STATE OF NORTH DAKOTA

OWNER: FOXTAIL CREEK LTD PARTNERSHIP

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H:\Fargo\UBN60006059113_6059_0621-Phase 010\CAD\Exhibits\Proposed Easements- North_Slida.dwg-sht2-2/22/2019 2:58 PM (jschlieman)



EASEMENT EXHIBIT

| | | |
|-------------------------|---|-----------------|
| PROJECT NO. 6059-062 | DRAIN 27 - I29 TO 42ND STREET FLOOD MITIGATION 42ND STREET ADDITION, CITY OF FARGO, CASS CO., ND | SHEET 2 OF 2 |
|-------------------------|---|-----------------|

18

April 17, 2019

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Project No. TR-19-A1

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, April 17, 2019, for Traffic Signal & Street Light Maintenance & Incidentals, Project No. TR-19-A1, located at 45th Street South at 17th Avenue South, 13th Avenue South and Page Drive.

The bids were as follows:

| | |
|-----------------------------|--------------|
| Strata Corporation | \$238,105.00 |
| Moorhead Electric | \$276,695.00 |
| Fargo Electric Construction | \$325,502.00 |

| | |
|---------------------|--------------|
| Engineer's Estimate | \$279,526.00 |
|---------------------|--------------|

The special assessment escrow is not required.

This office recommends award of the contract to Strata Corporation in the amount of \$238,105.00 as the lowest and best bid.

Sincerely,



Tom Knakmuhs
Assistant City Engineer

TAK/klb

ENGINEER'S STATEMENT OF ESTIMATED COST

PROJECT # TR-19-A1

Traffic Signal & Street Light Maintenance & Incidentals

45 Street South at 17 Avenue South, 13th Avenue South, and Page Drive South..

WHEREAS, bids have been opened and filed for the above described Project for City of Fargo, North Dakota; and WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

That I am the Assistant City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

Traffic Signal & Street Light Maintenance & Incidentals Project # TR-19-A1 of the City of Fargo, North Dakota.

| Line Description | Unit | Quantity | Unit Price (\$) | Amount (\$) |
|---|------|--|-----------------|-------------------|
| Traffic Signal | | | | |
| 1 Rem & Repl Traffic Signal LED | EA | 434.00 | 85.00 | 36,890.00 |
| 2 F&I Emerg Veh Pre-emption Components | LS | 26.00 | 100.00 | 2,600.00 |
| 3 Modify Traffic Signal System | LS | 2.00 | 5,000.00 | 10,000.00 |
| 4 F&I Head 4 Sect w/12" LED Post Mtd | EA | 2.00 | 1,000.00 | 2,000.00 |
| 5 F&I Head 4 Sect w/12" LED MA Mtd | EA | 4.00 | 1,200.00 | 4,800.00 |
| 6 F&I Signal Cable AWG 14/20 | LF | 1,296.00 | 5.00 | 6,480.00 |
| 7 F&I Detection - Video System | EA | 1.00 | 12,000.00 | 12,000.00 |
| 8 F&I Signal Cable Twisted Pair Video Det | LF | 308.00 | 1.50 | 462.00 |
| 9 F&I Signal Cable AWG 14/7 | LF | 230.00 | 2.50 | 575.00 |
| 10 F&I Conduit 2" Dia | LF | 106.00 | 8.00 | 848.00 |
| 11 F&I High Intensity Prismatic | SF | 20.00 | 35.00 | 700.00 |
| 12 Salvage Traffic Signal Equipment | LS | 1.00 | 500.00 | 500.00 |
| 13 F&I Sign Assembly | EA | 4.00 | 350.00 | 1,400.00 |
| | | Traffic Signal Total | | 79,255.00 |
| Street Lighting | | | | |
| 14 F&I Luminaire Type B | EA | 229.00 | 650.00 | 148,850.00 |
| 15 F&I Feed Point | EA | 1.00 | 10,000.00 | 10,000.00 |
| | | Street Lighting Total | | 158,850.00 |
| | | Total Construction in \$ | | 238,105.00 |
| | | Engineering | 6.00 % | 14,286.30 |
| | | Legal & Misc | 3.00 % | 7,143.15 |
| | | Contingencies | 10.00 % | 23,810.50 |
| | | Interest | 4.00 % | 9,524.20 |
| | | Total Estimated Costs | | 292,869.15 |
| | | Sales Tax Funds - Infrastructure - 420 | | 190,864.15 |
| | | Utility Funds - Street Lights - 528 | | 102,005.00 |
| | | Unfunded Costs | | 0.00 |

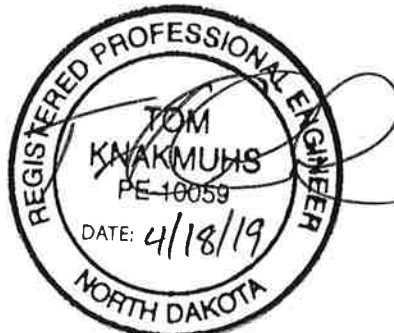
IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 04/17/2019



Tom Knakmuhs

Assistant City Engineer



19

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. SN-19-A1 Type: Change Order #1 & Time Extension
 Location: Citywide Date of Hearing: 4/15/2019

| | |
|-----------------|-----------------------|
| <u>Routing</u> | <u>Date</u> |
| City Commission | <u>4/22/2019</u> |
| PWPEC File | <u>X</u> |
| Project File | <u>Kristy Schmidt</u> |

The Committee reviewed the accompanying correspondence from Project Manager, Kristy Schmidt, regarding Change Order #1 & time extension requested by Key Contracting. This Change Order & time extension is for emergency work to evaluate the Ground Transportation Centers parking structure. A 14-day time extension has been requested due to additional work items being added to the project.

Staff is recommending approval of Change Order #1, in the amount of \$69,970.00, and a 14-day time extension adjusting the Substantial Completion Date to September 20, 2019 and the Final Completion Date to October 11, 2019.

On a motion by Bruce Grubb, seconded by Mark Williams, the Committee voted to recommend approval of Change Order #1 & time extension to Key Contracting.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #1 in the amount of \$69,970.00, bringing the total contract amount to \$437,020.00 and the time extension to the Substantial and Final Completion Dates.

PROJECT FINANCING INFORMATION:


Recommended source of funding for project: Transit Local Share

| | | |
|--|------------|-----------------|
| | Yes | No |
| Developer meets City policy for payment of delinquent specials | <u>N/A</u> | <u> </u> |
| Agreement for payment of specials required of developer | <u>N/A</u> | <u> </u> |
| 50% escrow deposit required | <u>N/A</u> | <u> </u> |

COMMITTEE

| | <u>Present</u> | <u>Yes</u> | <u>No</u> | <u>Unanimous</u> |
|--|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Tim Mahoney, Mayor | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Nicole Crutchfield, Director of Planning | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Mark Williams</u> |
| Steve Dirksen, Fire Chief | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Bruce Grubb, City Administrator | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Ben Dow, Director of Operations | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Steve Sprague, City Auditor | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Brenda Derrig, City Engineer | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Kent Costin, Finance Director | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |

ATTEST:


 Brenda E. Derrig, P.E.
 City Engineer

C: Kristi Olson

Memorandum

To: Members of PWPEC
From: Kristy Schmidt, Project Engineer
Date: April 15, 2019
Re: Project #SN-19-A1 (New Construction of City Sidewalk) – Change Order #1 and Time Extension

Background:

Project #SN-19-A1 is for New Construction of City Order Sidewalks and Incidentals. This is emergency work for the GTC to evaluate their parking structure.

The attached Change Order in the amount of \$69,970.00, which increases the total contract amount to \$437,020.00, is for additional work as shown on Change Order #1. A description of the additional work can be seen on the attached change order.

Key Contracting is also requesting a time extension of the substantial completion to September 20, 2019.

This Project is funded by sales tax and special assessment.

Recommended Motion:

Approve Change Order # 1 in the amount of \$69,970.00 with a 14-day time extension for this work.

| Original Completion Dates | Revised Previously | Revised This Memo |
|--|--------------------|--|
| Substantial – September 06, 2019 Final – September 27, 2019 | - - | Substantial – September 20, 2019 Final – October 11, 2019 |

KLS/jmg
 Attachment

C: Brenda Derrig



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Project No SN-19-A1 Change Order No 1
 Project Name New Construction of City Order Sidewalks
 Date Entered 4/15/2019 For Key Contracting Inc

This change is made under the terms of or is supplemental to your present contract , if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE: GTC Emergency Repair
 Ground Transportation Center Emergency Repair

| Section | Line No | Item Description | Unit | Orig Cont Qty | Prev C/O Qty | Prev Cont Qty | Curr C/O Qty | Tot Cont Qty | Unit Price (\$) | C/O Ext Price (\$) |
|---|---------|------------------|------|---------------|--------------|---------------|--------------|--------------|-----------------|--------------------|
| Section 2 City Cost | 22 | Extra - Paving | LS | 0.00 | 0.00 | 0.00 | 1.00 | 1.00 | 69,970.00 | 69,970.00 |
| Section 2 City Cost Sub Total (\$) | | | | | | | | | | 69,970.00 |

Summary

Source Of Funding Sales Tax Funds - Infrastructure - 420
 Net Amount Change Order # 1 (\$) 69,970.00
 Previous Change Orders (\$) 0.00
 Original Contract Amount (\$) 367,050.00
 Total Contract Amount (\$) 437,020.00

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

CONTRACT TIME

| Current Substantial Completion Date | Current Final Completion Date | Additional Days Substantial Completion | Additional Days Final Completion | New Substantial Completion Date | New Final Completion Date |
|-------------------------------------|-------------------------------|--|----------------------------------|---------------------------------|---------------------------|
| 09/06/2019 | 09/27/2019 | 14.00 | 14.00 | 09/20/2019 | 10/11/2019 |

Description
 APPROVED *Steve Carr*
 For Contractor *VP*

APPROVED DATE
 Department Head *B. E. D.*



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Title

Mayor

Attest



728 East Beaton Drive, Suite 101
 West Fargo, ND 58078-2650
 701 232 5353
 KLJENG.COM

Memorandum

Date: 4/4/2019
To: Julie Bommelman, City of Fargo Transit Director
Copy to: Michael Redlinger (City), Brenda Derig (City), Jeremy Gorden (City), Nathan Boerboom (City), Wade Kline (KLJ), Matthew Peterson (MATBUS), Jordan Smith (MATBUS), Jerry Pertzsch (KH)
From: Cassie McNames, PE
RE: Ground Transportation Center Parking Garage and Deck – Post Tension Anchorage and Tendon Exploration

Remarks

As part of KLJ's contract to provide design, bidding and construction services to renovate and repair the Ground Transportation Center at 502 NP Avenue in Fargo, ND, we have been tasked with completing a structural assessment for the underground parking garage and deck. KLJ has subcontracted with Kimley-Horn to complete this assessment.

On Monday, April 1, 2019 Kimley-Horn's lead structural engineer, Jerry Pertzsch was onsite to review the existing conditions. In addition to previous concerns noted in KLJ's assessment report prepared in 2016, Kimley-Horn discovered one of the post-tension tendons in the concrete deck had broken loose from its anchorage point. It appears to have happened recently as it was not present during the pre-bd walkthrough held for the project in February.

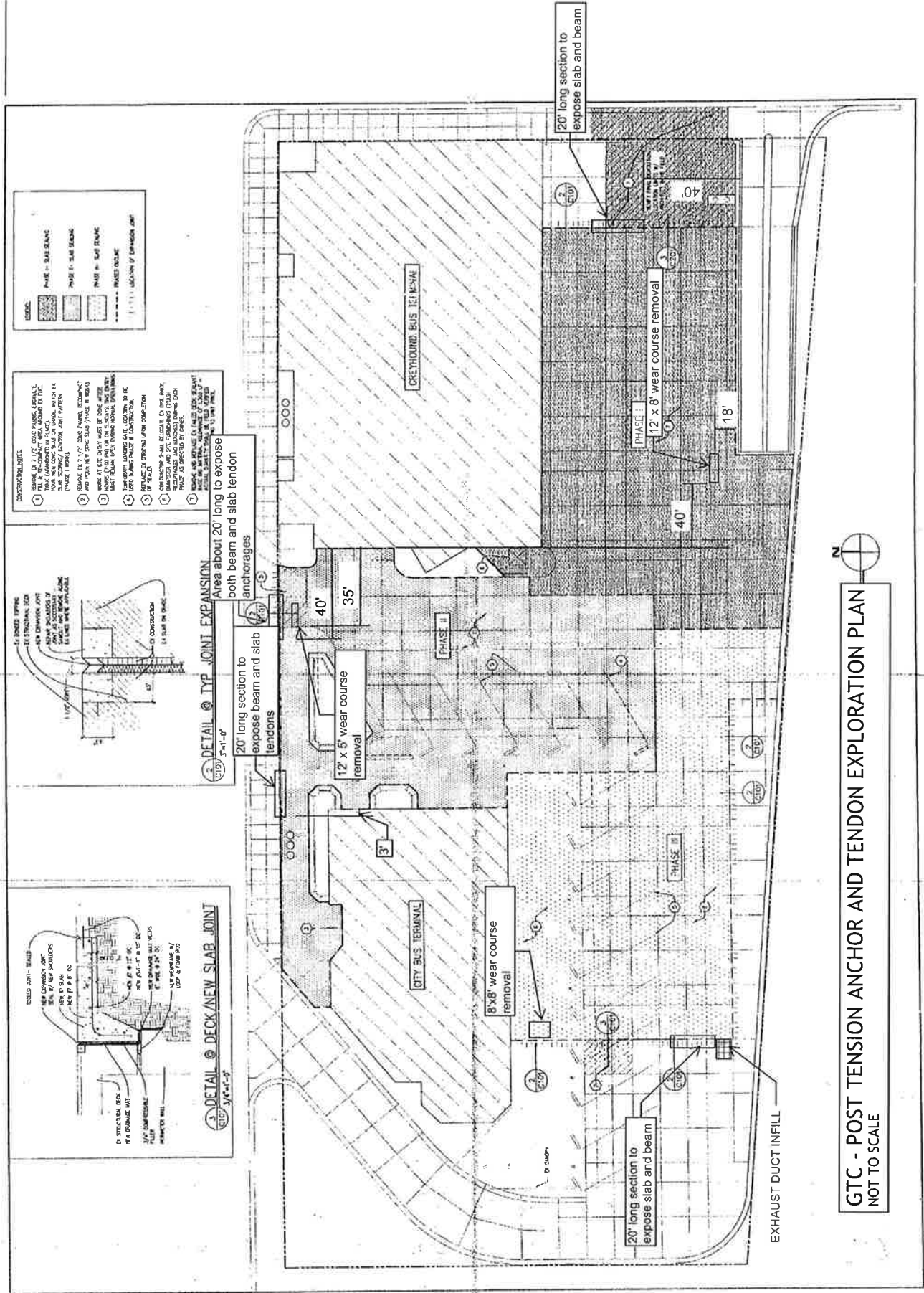
To fully evaluate the condition of the deck, areas of the top side of the deck and perimeter of the garage will need to be exposed to assess the condition of the deck. The proposed areas are as illustrated on the attached sketch titled "GTC – POST TENSION ANCHOR AND TENDON EXPLORATION PLAN". It is our understanding the city has a contractor available to assist with exposing the areas of the garage perimeter and the deck surface to assist with the evaluation. The anticipated scope of the contractor's work is listed below in addition to any addition provisions the city may require.

- Removal of approximately 220 square feet of 1-1/2" thick latex/concrete overlay in 3 locations identified on the surface of the deck. Contractor shall furnish and install new concrete overlay (refer to NDDOT Section 650 for standard specifications) upon completion of Kimley-Horn's review.
- Removal of concrete pavement (up to 7.5" thick) and soil adjacent to garage perimeter to expose the post-tension anchorage. The total depth of the excavation shall be 2'-6" and the width of the excavation to be approximately 5'-0". Contractor shall furnish and install compacted backfill and pavement per Section 2300 of the City of Fargo Standard specifications upon completion of Kimley-Horn's review.
- While evaluation is ongoing and until the finish work is complete, contractor shall provide necessary construction barriers and temporary covering (rated for AASHTO HS-20 loading).



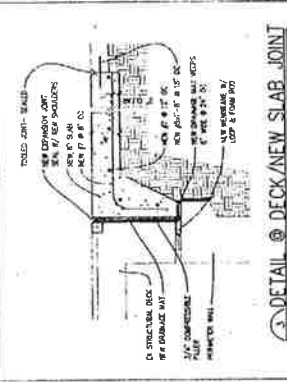
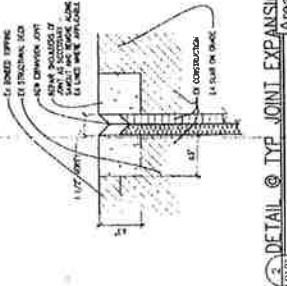
- All work shall comply with City of Fargo Standard Specifications, <http://fargond.gov/city-government/departments/engineering/design-construction/construction-specifications>.

We'd like to complete this evaluation as soon as possible, and we're anticipating one to two days of onsite evaluation. This work will need to be coordinated with Kimley-Horn's structural engineers, MATBUS, and the city. Please let us know the availability of the contractor, so we can begin the necessary coordination required to make this as seamless and efficient as possible.



- LEGEND
- PHASE 1 - SLAB SLUMP
 - PHASE 2 - SLAB SLUMP
 - PHASE 3 - SLAB SLUMP
 - PHASE 4 - SLAB SLUMP
 - PHASE 5 - SLUMP SLUMP

- CONSTRUCTION NOTES
1. REMOVE 3" TO 4" CONCRETE SURFACE EXPOSURE TO RE-CONCRETE WITH AREA 10' X 10' TO 15' X 15' TO BE LAPPED WITH 14# BARS. SEE DETAIL @ TYP. JOINT EXPANSION.
 2. CONCRETE TO BE PLACED IN PHASES. REMOVE 2" TO 3" CONCRETE SURFACE AND RE-CONCRETE WITH 10# BARS. SEE DETAIL @ DECK/NEW SLAB JOINT.
 3. REMOVE 2" TO 3" CONCRETE SURFACE AND RE-CONCRETE WITH 10# BARS. SEE DETAIL @ DECK/NEW SLAB JOINT.
 4. REMOVE 2" TO 3" CONCRETE SURFACE AND RE-CONCRETE WITH 10# BARS. SEE DETAIL @ DECK/NEW SLAB JOINT.
 5. REMOVE 2" TO 3" CONCRETE SURFACE AND RE-CONCRETE WITH 10# BARS. SEE DETAIL @ DECK/NEW SLAB JOINT.
 6. REMOVE 2" TO 3" CONCRETE SURFACE AND RE-CONCRETE WITH 10# BARS. SEE DETAIL @ DECK/NEW SLAB JOINT.



GTC - POST TENSION ANCHOR AND TENDON EXPLORATION PLAN
NOT TO SCALE

Key Contracting, Inc.
245 7th Avenue NE
West Fargo, ND 58078
Phone (701) 238-8192
Fax (701) 356-0166



GTC P/T Evaluation
 City of Fargo, North Dakota
 200 3rd Street No, Fargo, ND 58102
 Date: 4-12-19
Proposal

| Item No. | Description | Unit | Est. Quantity | Bid Unit Price | Bid Price |
|--------------------------------|---|-------|---------------|----------------|--------------------|
| 1 | Mobilization | L SUM | 1 | \$3,500.00 | \$3,500.00 |
| 2 | Traffic Control | L SUM | 1 | \$2,800.00 | \$2,800.00 |
| 3 | Class 1 Removal - Latex Overlay | SF | 220 | \$72.00 | \$15,840.00 |
| 4 | F&I-Overlay Concrete | SF | 220 | \$75.00 | \$16,500.00 |
| 5 | Expansion Joint - Temporary | LF | 120 | \$24.00 | \$2,880.00 |
| 6 | R&R Curb & Gutter - as per notes on plan | LF | 20 | \$200.00 | \$4,000.00 |
| 7 | Removal of Concrete Pavement - as per notes on plan | SF | 500 | \$30.00 | \$15,000.00 |
| 8 | F&I -AAE-3 Concrete | SF | 500 | \$24.50 | \$12,250.00 |
| TOTAL LUMP SUM BASE BID | | | | | \$66,470.00 |

ADDER

| | | | | | |
|---|-------------------|-------|---|------------|------------|
| 9 | Testing Allowance | L SUM | 1 | \$3,500.00 | \$3,500.00 |
|---|-------------------|-------|---|------------|------------|

Key Contracting
Steve Carr 701-371-1284

20

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-15-K1 Type: Change Order #6
 Location: Rosewood Addition Date of Hearing: 4/15/2019

| | |
|-----------------|--------------------|
| <u>Routing</u> | <u>Date</u> |
| City Commission | <u>4/22/2019</u> |
| PWPEC File | <u>X</u> |
| Project File | <u>Roger Kluck</u> |

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, for Change Order #6 in the amount of \$109,552.50 for plugging two existing abandoned water main to meet FEMA certification of levees.

Staff is recommending approval of Change Order #6 in the amount of \$109,552.50, bringing the total contract amount to \$3,753,000.49.

On a motion by Kent Costin, seconded by Steve Dirksen, the Committee voted to recommend approval of Change Order #6 to Industrial Builders, Inc.

RECOMMENDED MOTION

Approve Change Order #6 in the amount of \$109,552.50 to Industrial Builders, Inc.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax

Developer meets City policy for payment of delinquent specials
 Agreement for payment of specials required of developer
 50% escrow deposit required


| | |
|------------|------------|
| <u>Yes</u> | <u>No</u> |
| <u>N/A</u> | <u>N/A</u> |
| <u>N/A</u> | <u>N/A</u> |
| <u>N/A</u> | <u>N/A</u> |

COMMITTEE

Tim Mahoney, Mayor
 Nicole Crutchfield, Director of Planning
 Steve Dirksen, Fire Chief
 Bruce Grubb, City Administrator
 Ben Dow, Director of Operations
 Steve Sprague, City Auditor
 Brenda Derrig, City Engineer
 Kent Costin, Finance Director

| <u>Present</u> | <u>Yes</u> | <u>No</u> | <u>Unanimous</u> |
|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Mark Williams</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Michael Redlinger</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |

ATTEST:


 Brenda E. Derrig, P.E.
 City Engineer

C: Kristi Olson

Memorandum

To: PWPEC
From: Roger E Kluck, PE, CFM Civil Engineer II, Storm Water
Cc: Jody Bertrand, Brenda Derrig
Date: 4/11/2019
Re: Project #FM-15-K1 Rosewood Area Flood Risk Management - Change Order #6

Background:

Project FM-15-K1 bids were opened on May 30, 2018 and the project awarded by the City Commission to Industrial Builders on June 4, 2018. Construction began on June 25, 2018. This is a two-year project due to requirements to meet Federal Wetland Standards. The project completion date is October 18, 2019,

The project continues construction of flood control on the north side of Rose Coulee across the Rosewood neighborhood. In reviewing existing utility plans and recent Corps of Engineer's directives it was determined that two existing abandoned water mains lying under flood control levees needed to be plugged to meet the potential for FEMA certification of the levees. This requirement covers an XCEL gas line that was replaced as part of the project and will be filled this summer. The original change order price submittal was \$124,690.00 and after negotiation was reduced by Industrial Builders. The revised computation of the work costs and related correspondence are attached. The change order amount is \$109,552.50 and is being paid for with Flood Sales Tax Funds (460).

The requested change order item has been reviewed and is reasonable.

Recommended Motion:

To approve Change Order #6 in the amount of \$109,552.50.



Industrial Builders, Inc.

PAUL W. DIEDERICH, PRESIDENT
DONN O. DIEDERICH, EXECUTIVE VICE PRESIDENT

General Contractors

PHONE 701/282-4977 FAX 701/281-1409
P.O. BOX 406 FARGO, NORTH DAKOTA 58107-0406

January 7, 2019

KLJ
3203 32nd Ave S Suite 201
Fargo, ND 58103-6242

Attn: Brady Haussler

Re: Rosewood Flood Risk Mgmt FM-15-K1 – Waterline Abandonment (revised)

Dear Mr. Haussler,
Industrial Builders, Inc. proposes to supply labor, equipment, and material to flush and grout fill the abandoned waterlines per the sketch you provided for a lump sum price of \$109,550.00.

This price is based on the following:

- Grout filling of approx. 480 LF of 12" and 270 LF of 8" waterline at a depth of not more than 12' from existing grade.
- Capping of 6" hydrant lead
- Grout will be ready mix grout with the specified non-shrink additive.
- Removal of fittings, valves, or connections is not included.
- Access for removal will be through turfed areas only and will be located to avoid utilities.
- Removal and/or replacement of sidewalk curb and gutter, or pavement is not included.
- Traffic control is included. (Use of Southbound lane closure with an added Northbound lane closure and sidewalk closure)
- Seeding and mulch is included. (per project specifications)
- Work to be performed spring/summer 2019.

If any additional information is required, please call or email.

Sincerely,
INDUSTRIAL BUILDERS, INC.

A handwritten signature in black ink, appearing to read "Troy Erickson", is written over a horizontal line.

Troy Erickson
Vice President of Engineering

Cc: IBI Job File 18203
Matt Pollert



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Rosewood Abandoned Water Main fill

1:1,128

1/3/2019 11:26:18 AM



This map is not a substitute for appropriate field review of the local or aerial systems used and any adjacent features.



3203 32nd Avenue South, Suite 201
Fargo, ND 58103-6242
701 232 5353
KLJENG.COM

March 15, 2019

Roger Kluck
City of Fargo
225 4th Street North
Fargo, ND 58102

**Re: FM-15-K1 – Rosewood Addition Flood Risk Management Project
Plug Abandoned Watermain Change Order**

Dear Roger:

This letter is in response to the City of Fargo's request to completely plug abandoned watermain adjacent to University Drive just north of the referenced project. KLJ has received a quote from Industrial Builders, Inc. (IBI) for \$109,550 to complete this work. Please see the attached sheets for the location of the pipe to be filled along with IBI's proposal.

The procedures and specifications for sealing the pipe shall follow the US Army Corps of Engineers *Standard Operating Procedure to Abandon and Seal an Existing Pipe* (see attached). Because this is a PVC waterline, it is not anticipated that the pipe will require cleaning prior to the grouting.

IBI will complete the excavations to expose the waterline to facilitate their operations. Once those excavations are complete, IBI will allow the City of Fargo to televise the existing waterline to determine the condition and cleanliness of the line as well as to locate any cracks or separated joints. If the pipe requires cleaning or repair of any deficiencies, we will request a quote from IBI to complete that work.

KLJ is requesting a formal change order for this work to be completed. If you have any questions or require any additional information, please feel free to contact me at 701.271.4871 or scott.middaugh@kljeng.com.

Sincerely,

KLJ

Scott Middaugh
Project Manager

Enclosure(s): Project Location Map
Project #: 14415102
cc: Troy Erikson, IBI



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Project No FM-15-K1 **Change Order No** 6
Project Name Rosewood Area Flood Risk Management Project
Date Entered 4/11/2019 **For** Industrial Builders Inc

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes or alterations hereinafter described.

EXPLANATION OF CHANGE: Fill abandoned water main pipe under levee per Corps of Engineers

Fill with grout existing abandoned water main pipe under levee and parallel to University south of Rose Creek

| Section | Line No | Item Description | Unit | Orig Cont Qty | Prev C/O Qty | Prev Cont Qty | Curr C/O Qty | Tot Cont Qty | Unit Price (\$) | C/O Ext Price (\$) |
|----------------------------------|---------|-------------------|------|---------------|--------------|---------------|--------------|--------------|-----------------|--------------------|
| Water Main | 88 | Plug Pipe 12" Dia | EA | 0.00 | 0.00 | 0.00 | 480.00 | 480.00 | 146.07 | 70,113.60 |
| | 89 | Plug Pipe 8" Dia | EA | 0.00 | 0.00 | 0.00 | 270.00 | 270.00 | 146.07 | 39,438.90 |
| Water Main Sub Total (\$) | | | | | | | | | | 109,552.50 |

Summary

Source Of Funding Sales Tax Funds - Flood Control - 460

| | |
|---|--------------|
| Net Amount Change Order # 6 (\$) | 109,552.50 |
| Previous Change Orders (\$) | 193,754.09 |
| Original Contract Amount (\$) | 3,449,693.90 |
| Total Contract Amount (\$) | 3,753,000.49 |

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

CONTRACT TIME

| Current Substantial Completion Date | Current Final Completion Date | Additional Days Substantial Completion | Additional Days Final Completion | New Substantial Completion Date | New Final Completion Date |
|-------------------------------------|-------------------------------|--|----------------------------------|---------------------------------|---------------------------|
| 08/16/2019 | 10/01/2018 | 0.00 | 382.00 | 08/16/2019 | 10/18/2019 |

Description

APPROVED APPROVED DATE



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

For Contractor

Title

Vice President Engineering

Department Head

Mayor

Attest

4/18/19

CONSULTANT SELECTION COMMITTEE

CONSULTING ENGINEERING SERVICES

21

Date of Hearing: April 17, 2019

| <u>Routing</u> | <u>Date</u> |
|---------------------|-----------------------------|
| City Commission | <u>4/22/2019</u> |
| Consultant File | <u> </u> |
| Project File | <u>X</u> |
| Petitioners | <u> </u> |
| Selection Committee | <u>X</u> |

Proposals Received for:

| <u>Project</u> | <u>Location</u> |
|----------------|-----------------------|
| FM-19-A0 | Riverwood Addition |
| FM-19-B0 | Royal Oaks Drive Area |
| FM-19-C0 | Woodcrest Drive Area |
| FM-19-E0 | Elm Circle Area |
| FM-19-F0 | Oak Grove Area |

City staff solicited a request for proposals for the above referenced projects, which are for project development, design and construction administration of the additional 37-foot flow thru town flood mitigation projects necessary under the FM Metro Diversion Project. Due to the need for consistent messaging to all the affected property owners throughout the project development phases as well as the similarities of the project areas and efficiency that will be seen during design, the request for proposals was setup so that one consultant would be selected to complete the work under all five proposed projects.

As a result of the request for proposals, the City received five responses from the following consultants:

Houston Engineering
 KLJ
 Moore Engineering
 Stantec
 Ulteig

The Selection Committee evaluated proposals based on the criteria outlined within the RFP:

| | <u>Points</u> |
|---|---------------|
| 1. Understanding of Study Objectives | 10 |
| 2. Past Performance on Other Local Projects | 25 |
| 3. Experience with Similar Projects | 25 |
| 4. Cost Proposal | 15 |
| 5. Expertise of the Technical and Professional Staff Assigned to the Project & Availability | <u>25</u> |
| | 100 |

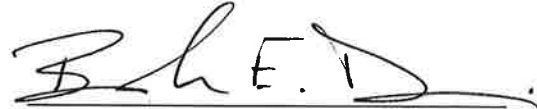
Following review of the proposals, the Selection Committee ranked the firms for selection of the preferred consultant.

The Committee then tabulated Committee member proposal rankings. Based on the tabulated ranking, the Committee selected Houston Engineering as the preferred consultant for each project.

RECOMMENDED MOTION:

Concur with consultant selection and recommend contract awards to Houston Engineering for consulting services for projects FM-19-A0 (contract value of \$250,000), FM-19-B0 (contract value of \$145,000), FM-19-C0 (contract value of \$335,000), FM-19-E0 (contract value of \$125,000) and FM-19-F0 (contract value of \$140,000).

| <u>COMMITTEE:</u> | <u>Present</u> | <u>Yes</u> | <u>No</u> | <u>Unanimous</u> |
|--|----------------|------------|-----------|------------------|
| | | | | <u>X</u> |
| | | | | <u>Proxy</u> |
| Brenda E. Derrig, City Engineer | <u>X</u> | <u>X</u> | | |
| Tom Knakmuhs, Division Engineer | <u>X</u> | <u>X</u> | | |
| Nathan Boerboom, FM Diversion Division Engineer | <u>X</u> | <u>X</u> | | |
| Jody Bertrand, Storm Sewer Utility Division Engineer | <u>X</u> | <u>X</u> | | |
| Rob Hasey, Storm Sewer Utility Engineer | <u>X</u> | <u>X</u> | | |



Brenda E. Derrig, PE
City Engineer

- C: Houston Engineering, Inc.
- KLJ
- Moore Engineering
- Stantec
- Ulteig

COVER SHEET
CITY OF FARGO PROJECTS

24a

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Improvement District as it will appear in the Contract:

SANITARY SEWER, WATER MAIN, STORM SEWER, PAVING, STREET LIGHTS &
INCIDENTALS

Improvement District No. BN-19-J

Call for Bids April 22, 2019

Advertise Dates April 29 & May 6, 2019

Bid Opening Date May 29, 2019

Substantial Completion Date September 15, 2019

Final Completion Date October 15, 2019

- PWPEC Report (Attach Copy)
- Engineer's Report (Attach Copy)
- Direct City Auditor to Advertise for Bids
- Bid Quantities (Attach Copy for Auditor's Office Only)
- Notice to Property Owners (Dan Eberhardt)

Project Engineer Scott Olson

Phone No. (701) 476 - 6628

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

- Create District (Attach Copy of Legal Description)
- Order Plans & Specifications
- Approve Plans & Specifications
- Adopt Resolution of Necessity
- Approve Escrow Agreement (Attach Copy for Commission Office Only)
- Assessment Map (Attach Copy for Auditor's Office Only)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-19-J1

Type: Infrastructure Request

Location: Fitzsimonds Addition

Date of Hearing: 4/15/2019

| | |
|-----------------|----------------------|
| <u>Routing</u> | <u>Date</u> |
| City Commission | <u>4/22/2019</u> |
| PWPEC File | X |
| Project File | <u>Brenda Derrig</u> |

The Committee reviewed a communication from City Engineer, Brenda Derrig, regarding an infrastructure request for Fitzsimonds Addition. There was a placeholder in the 2019 approved CIP for an additional project. This project will be inserted in that placeholder.

Engineering staff has reviewed the requirements for infrastructure requests and the Developer has met five of the seven requirements. The Developer will work with the Auditor regarding the execution of the Special Assessment Security Agreement and Letter of Credit.

Staff is recommending approval of the infrastructure request to be designed and bid contingent upon the execution of the Special Assessment Security Agreement and Letter of Credit.

On a motion by Steve Sprague, seconded by Tim Mahoney, the Committee voted to recommend approval of the infrastructure request contingent upon the execution of the Special Assessment Security Agreement and Letter of Credit.

RECOMMENDED MOTION

Approve the request for infrastructure contingent upon meeting the execution of the Special Assessment Security Agreement and letter of credit and direct Engineering to start design.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments

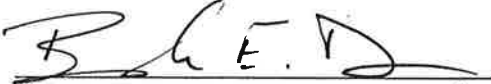
| | | |
|--|------------|-----------------|
| | Yes | No |
| Developer meets City policy for payment of delinquent specials | <u>N/A</u> | <u> </u> |
| Agreement for payment of specials required of developer | <u>N/A</u> | <u> </u> |
| Letter of Credit required (per policy approved 5-28-13) | <u>N/A</u> | <u> </u> |

COMMITTEE

| | Present | Yes | No | Unanimous |
|--|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Tim Mahoney, Mayor | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Nicole Crutchfield, Director of Planning | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Mark Williams</u> |
| Steve Dirksen, Fire Chief | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Bruce Grubb, City Administrator | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Ben Dow, Director of Operations | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Steve Sprague, City Auditor | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Brenda Derrig, City Engineer | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Kent Costin, Finance Director | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |

ATTEST:

C: Kristi Olson


 Brenda E. Derrig, P.E.
 City Engineer

ENGINEER'S REPORT

SANITARY SEWER, WATER MAIN, STORM SEWER,
PAVING, STREET LIGHTS & INCIDENTALS

IMPROVEMENT DISTRICT NO. BN-19-J

Nature & Scope

This project is for the new construction of underground utilities, concrete pavement, and street lights on 51st Avenue South.

Purpose

This project will provide public access and municipal utilities to the commercial development in the Fitzsimonds Addition.

Feasibility

The estimated cost of construction is \$838,531.55. The entire costs of the project will be assessed as follows:

| | |
|--|------------------------|
| <u>Estimated Construction Cost:</u> | \$ 838,531.55 |
| Engineering Fees (11%): | \$ 92,238.47 |
| Legal & Misc Fees (3%): | \$ 25,155.95 |
| Administrative Fees (6%): | \$ 50,311.89 |
| Interest Fees (4%): | \$ 33,541.26 |
| Total Estimated Assessed Cost: | \$ 1,039,779.12 |

The cost to property owners will be per City policy.

We believe this project to be cost effective.




Thomas Knakmuhs
Assistant City Engineer

CITY OF FARGO
ENGINEERING DEPARTMENT

LOCATION & COMPRISING

SANITARY SEWER, WATER MAIN, STORM SEWER, PAVING,
STREET LIGHTS & INCIDENTALS

IMPROVEMENT DISTRICT NO. BN-19-J

LOCATION:

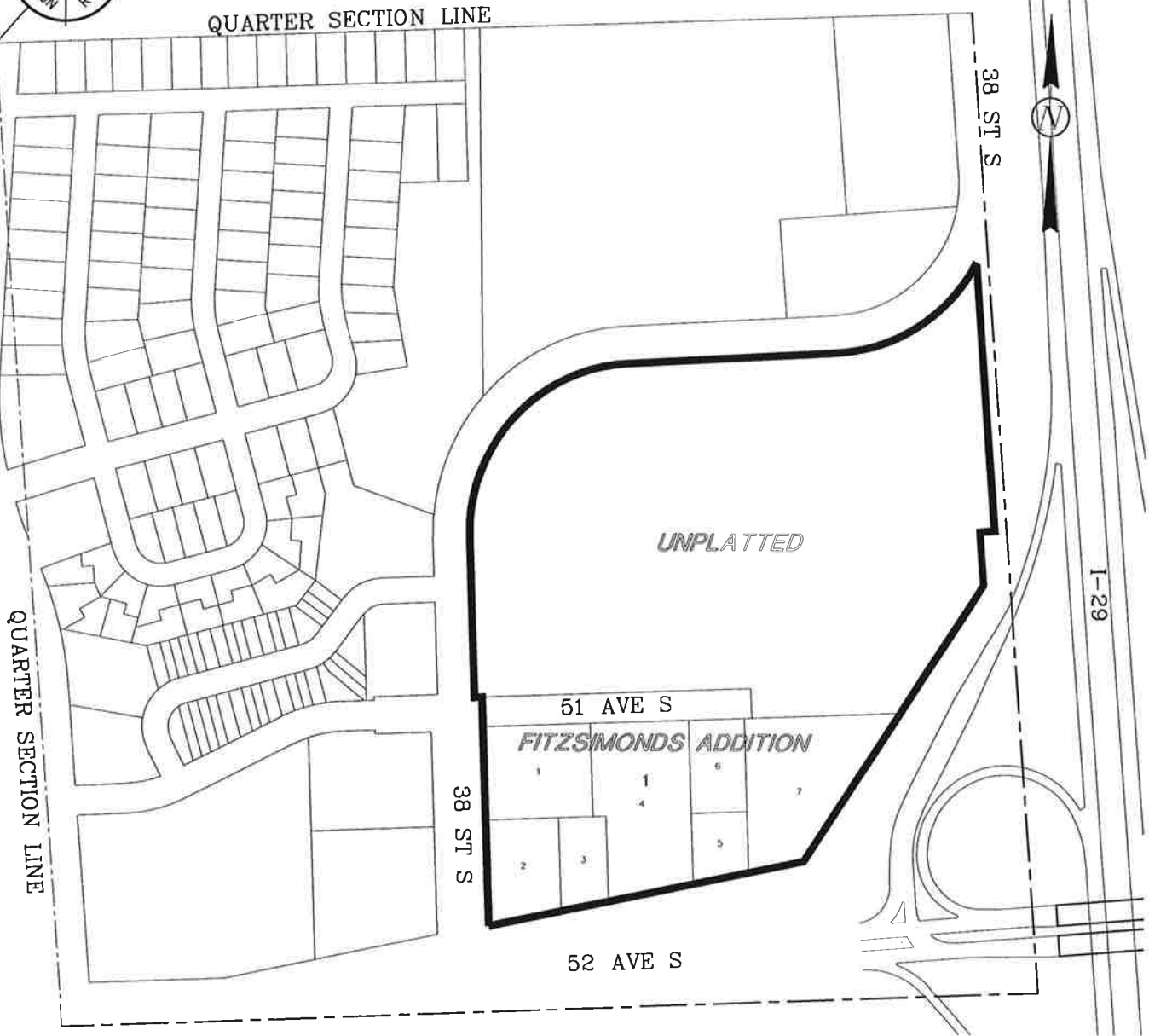
51st Avenue South from 38th Street to 738' east.

COMPRISING:

Lots 1 through 7, Block 1.
All platted in Fitzsimonds Addition.

All of the unplatted land in the Southeast Quarter of Section 34, Township 139 North, Range 49 West.

All of the foregoing located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO
ENGINEERING DEPARTMENT

LOCATION & ASSESSMENT AREA

SANITARY SEWER, WATER MAIN, STORM SEWER,
PAVING, STREET LIGHTS & INCIDENTALS

IMPROVEMENT DISTRICT NO. BN-19-J

COVER SHEET
CITY OF FARGO PROJECTS

246

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Improvement District as it will appear in the Contract:

Sanitary Sewer, Water Main, Storm Sewer, Site Grading, Concrete Curb & Gutter,
Asphalt Pavement & Incidentals

Improvement District No. BN-19-C

Call For Bids April 22, 2019

Advertise Dates April 29 & May 6, 2019

Bid Opening Date May 15, 2019

Substantial Completion Date September 15, 2019

Final Completion Date October 15, 2019

N/A PWPEC Report (Attach Copy) **Part of 2019 CIP**

X Engineer's Report (Attach Copy)

X Direct City Auditor to Advertise for Bids

X Bid Quantities (Attach Copy for Auditor's Office Only)

X Notice to Property Owners (Dan Eberhardt)

Project Engineer Jason Leonard

Phone No. (701) 241-1555

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

X Create District (Attach Copy of Legal Description)

X Order Plans & Specifications

X Approve Plans & Specifications

X Adopt Resolution of Necessity

N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)

X Assessment Map (Attach Copy for Auditor's Office Only)

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-19-C1

Type: Infrastructure Request

Location: Golden Valley 2nd Addition

Date of Hearing: 4/15/2019

| | |
|-----------------|----------------------|
| <u>Routing</u> | <u>Date</u> |
| City Commission | <u>4/22/2019</u> |
| PWPEC File | <u>X</u> |
| Project File | <u>Jason Leonard</u> |

The Committee reviewed a communication from City Engineer, Brenda Derrig, regarding an infrastructure request for Golden Valley 2nd Addition, which was included in the approved 2019 CIP. The Developer will be using a consultant to design the project and is asking that it be publicly bid and special assessed.

Engineering staff has reviewed the requirements for infrastructure requests and the Developer has met five of the seven requirements. The Developer will work with the Auditor regarding the execution of the Special Assessment Security Agreement and Letter of Credit. The Committee discussed that the Developer has a master letter of credit and therefore has met all the requirements.

Staff is recommending approval of the infrastructure request to be bid and project managed by Engineering.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of the infrastructure request.

RECOMMENDED MOTION

Approve the request for infrastructure and direct Engineering to publicly bid and provide construction management.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments

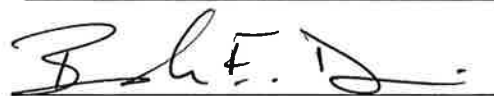
| | | |
|--|------------|-----------------|
| | <u>Yes</u> | <u>No</u> |
| Developer meets City policy for payment of delinquent specials | <u>N/A</u> | <u> </u> |
| Agreement for payment of specials required of developer | <u>N/A</u> | <u> </u> |
| Letter of Credit required (per policy approved 5-28-13) | <u>N/A</u> | <u> </u> |

COMMITTEE

| | <u>Present</u> | <u>Yes</u> | <u>No</u> | <u>Unanimous</u> |
|--|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Tim Mahoney, Mayor | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Nicole Crutchfield, Director of Planning | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Mark Williams</u> |
| Steve Dirksen, Fire Chief | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Bruce Grubb, City Administrator | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Ben Dow, Director of Operations | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| Steve Sprague, City Auditor | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Brenda Derrig, City Engineer | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |
| Kent Costin, Finance Director | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | |

ATTEST:

C: Kristi Olson


 Brenda E. Derrig, P.E.
 City Engineer

ENGINEER'S REPORT

SANITARY SEWER, WATER MAIN, STORM SEWER, SITE GRADING, CONCRETE CURB & GUTTER, ASPHALT PAVEMENT & INCIDENTALS

IMPROVEMENT DISTRICT NO. BN-19-C

Nature & Scope

This project is for the new construction of underground utilities, asphalt pavement, site grading and incidentals on Golden Lane South, 69th Avenue South and 26th Street South.

Purpose

This project will allow for development of the land within the Golden Valley 2nd Addition as requested by the Developer.

Feasibility

The estimated cost of construction is \$844,754.80.

The costs for the Improvement District are estimated as follows:

City of Fargo Special Assessed Costs

| | |
|--|----------------------|
| <u>Estimated Construction Cost:</u> | \$ 676,967.30 |
| Engineering Fees (7%): | \$ 47,387.71 |
| Legal & Misc Fees (3%): | \$ 20,309.02 |
| Administration Fees (6%): | \$ 40,618.04 |
| Interest Fees (4%): | \$ 27,078.69 |
| Total Estimated Assessed Cost: | \$ 812,360.76 |

Cass Rural Water Special Assessment Cost

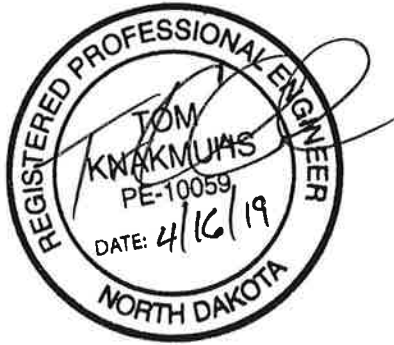
| | |
|--|----------------------|
| <u>Estimated Construction Cost:</u> | \$ 167,787.50 |
| Engineering Fees (7%): | \$ 11,745.13 |
| Legal & Misc Fees (3%): | \$ 5,033.63 |
| Administration Fees (6%): | \$ 10,067.25 |
| Interest Fees (4%): | \$ 6,711.50 |
| Total Estimated Assessed Cost: | \$ 201,345.01 |

Summary of Fees:

| | |
|------------------------------|----------------------|
| Engineering Fees | \$ 59,132.84 |
| Legal & Misc. Fees | \$ 25,342.64 |
| Administration Fees | \$ 50,685.29 |
| Interest Fees | \$ 33,790.19 |
| Total Estimated Fees: | \$ 168,950.96 |

Total Estimated Construction Cost with Fees: \$ 1,013,705.76

We believe this project to be cost effective.




Thomas Knakmuhs, P.E.
Assistant City Engineer

CITY OF FARGO
ENGINEERING DEPARTMENT

LOCATION & COMPRISING

SANITARY SEWER, WATER MAIN, STORM SEWER, SITE GRADING, CONCRETE
CURB & GUTTER, ASPHALT PAVEMENT & INCIDENTALS

IMPROVEMENT DISTRICT NO. BN-19-C

LOCATION:

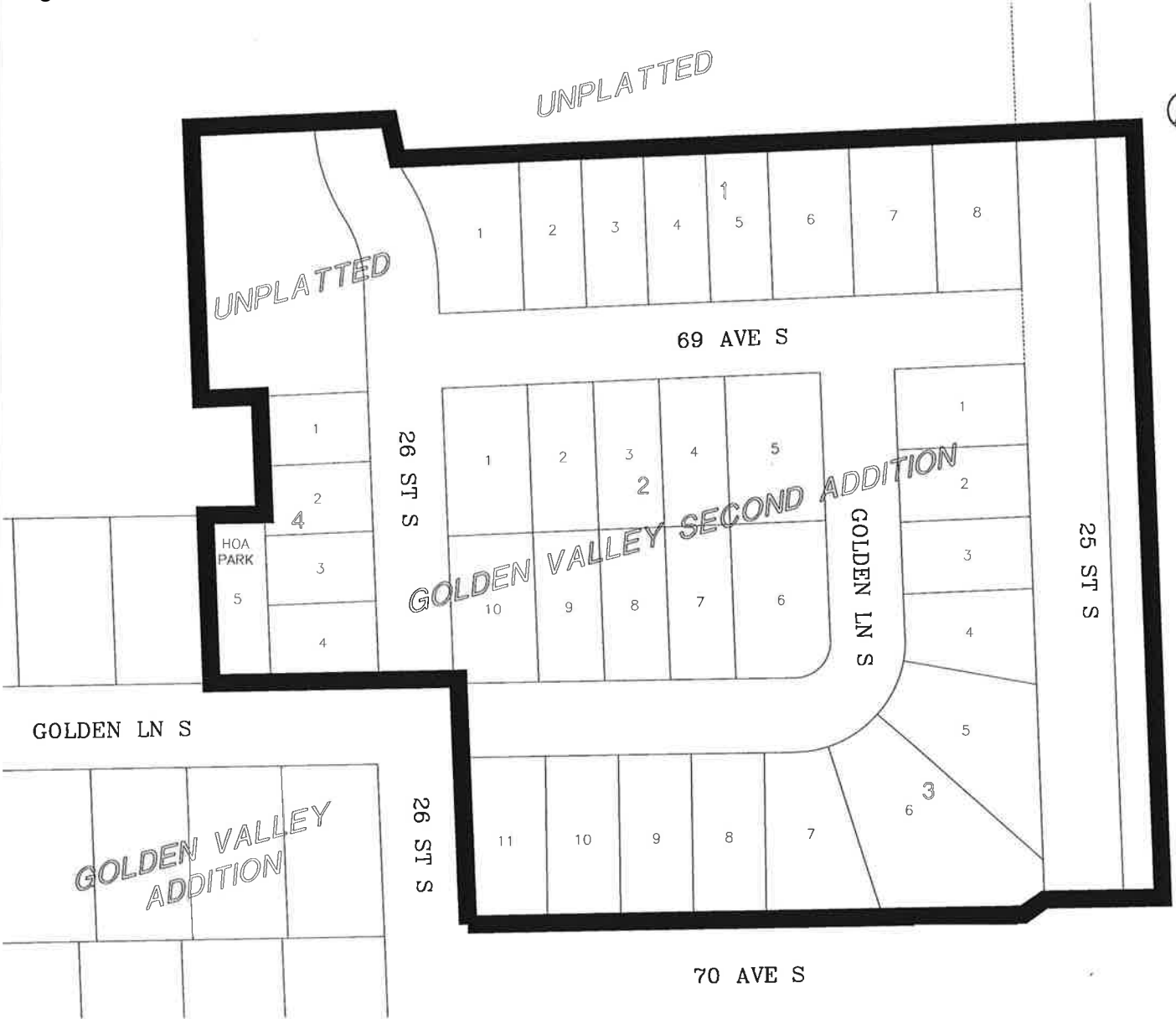
On 69th Avenue South between 25th Street South and 26th Street South.
On 26th Street South north of Golden Lane South.
On Golden Lane South between 26th Street South and 69th Avenue South.

COMPRISING:

Lots 1 through 8, inclusive, Block 1.
Lots 1 through 10, inclusive, Block 2.
Lots 1 through 11, inclusive, Block 3.
Lots 1 through 5, inclusive, Block 4.

To be platted in Golden Valley Second Addition, part of the unplatted land in the
northeast quarter section of T138N R49W Section 11.

All of the foregoing is located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO
ENGINEERING DEPARTMENT

LOCATION & ASSESSMENT AREA

SANITARY SEWER, WATER MAIN, STORM SEWER, SITE GRADING,
CONCRETE CURB & GUTTER, ASPHALT PAVEMENT & INCIDENTALS

IMPROVEMENT DISTRICT NO. BN-19-C

25

April 17, 2019

Honorable Board of City
Commissioners
City of Fargo
Fargo, ND

Re: Improvement District No. PR-19-G1

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, April 17, 2019, for Asphalt Mill & Overlay & Incidentals, Improvement District No. PR-19-G1, located at various locations in North Fargo.

The bids were as follows:

| | |
|----------------------------|----------------|
| Northern Improvement Co. | \$2,099,564.05 |
| Border States Paving, Inc. | \$2,136,747.35 |
| FM Asphalt LLC | \$2,149,551.20 |
| Central Specialties, Inc. | \$2,255,990.05 |

| | |
|---------------------|----------------|
| Engineer's Estimate | \$1,980,326.00 |
|---------------------|----------------|

The special assessment escrow is not required.

This office recommends award of the contract to Northern Improvement Co. in the amount of \$2,099,564.05 as the lowest and best bid. No protests have been received.

Sincerely,



Thomas Knakmuhs
Assistant City Engineer

TAK/klb

ENGINEER'S STATEMENT OF ESTIMATED COST**IMPROVEMENT DISTRICT # PR-19-G1****Asphalt Mill & Overlay & Incidentals**

Various Locations North Fargo

WHEREAS, bids have been opened and filed for the above described Improvement District for City of Fargo, North Dakota; and
 WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

That I am the Assistant City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

Asphalt Mill & Overlay & Incidentals Improvement District # PR-19-G1 of the City of Fargo, North Dakota.

| Line Description | Unit | Quantity | Unit Price (\$) | Amount (\$) |
|--|------|-----------|------------------------|-------------------|
| Section 1 | | | | |
| 1 Repair Inlet | EA | 5.00 | 475.00 | 2,375.00 |
| 2 F&I Repair Band 4" thru 12" Dia | EA | 5.00 | 835.00 | 4,175.00 |
| 3 Adjust Curb & Gutter - Mud/Sand Jack | LF | 5,000.00 | 9.40 | 47,000.00 |
| 4 Rem & Repl Curb & Gutter | LF | 4,000.00 | 45.70 | 182,800.00 |
| 5 F&I Sidewalk 4" Thick Reinf Conc | SY | 30.00 | 71.40 | 2,142.00 |
| 6 F&I Sidewalk 6" Thick Reinf Conc | SY | 203.00 | 86.10 | 17,478.30 |
| 7 Remove Sidewalk All Thicknesses All Types | SY | 234.00 | 29.35 | 6,867.90 |
| 8 Adjust Driveway - Mud/Sand Jack | SF | 3,000.00 | 3.15 | 9,450.00 |
| 9 Rem & Repl Driveway 6" Thick Reinf Conc | SY | 100.00 | 78.75 | 7,875.00 |
| 10 F&I Det Warn Panels Cast Iron | SF | 480.00 | 43.05 | 20,664.00 |
| 11 F&I Aggregate for Asph Pavement FAA 43 | TON | 3,342.00 | 36.25 | 121,147.50 |
| 12 F&I Asphalt Cement PG 58-28 | GAL | 40,417.00 | 2.30 | 92,959.10 |
| 13 F&I Casting - Std Manhole | EA | 2.00 | 780.00 | 1,560.00 |
| 14 Rem & Repl Casting - Inlet | EA | 3.00 | 1,365.00 | 4,095.00 |
| 15 Rem & Repl Casting - Self Leveling | EA | 27.00 | 1,465.00 | 39,555.00 |
| 16 Casting to Grade - no Conc | EA | 5.00 | 255.00 | 1,275.00 |
| 17 GV Box to Grade - no Conc | EA | 21.00 | 70.00 | 1,470.00 |
| 18 Rem & Repl Pavement 7" Thick Asph | SY | 500.00 | 48.00 | 24,000.00 |
| 19 Mill / Grind Asphalt Pvmnt 1" to 2" Thick | SY | 17,359.00 | 1.25 | 21,698.75 |
| 20 Mill / Grind Asphalt Pvmnt Along Curb | LF | 6,000.00 | 1.25 | 7,500.00 |
| 21 Sodding | SY | 700.00 | 18.90 | 13,230.00 |
| 22 Traffic Control - Type 1 | LS | 1.00 | 3,305.00 | 3,305.00 |
| | | | Section 1 Total | 632,622.55 |
| Section 2 | | | | |
| 23 Repair Inlet | EA | 15.00 | 475.00 | 7,125.00 |
| 24 F&I Repair Band 4" thru 12" Dia | EA | 10.00 | 835.00 | 8,350.00 |
| 25 Adjust Curb & Gutter - Mud/Sand Jack | LF | 8,000.00 | 9.40 | 75,200.00 |
| 26 Rem & Repl Curb & Gutter | LF | 6,500.00 | 45.15 | 293,475.00 |
| 27 F&I Valley Gutter Reinf Conc | SY | 22.00 | 85.05 | 1,871.10 |
| 28 Remove Valley Gutter Reinf Conc | SY | 22.00 | 30.45 | 669.90 |
| 29 F&I Sidewalk 4" Thick Reinf Conc | SY | 50.00 | 71.95 | 3,597.50 |
| 30 F&I Sidewalk 6" Thick Reinf Conc | SY | 465.00 | 81.85 | 38,060.25 |
| 31 Remove Sidewalk All Thicknesses All Types | SY | 520.00 | 29.35 | 15,262.00 |
| 32 Adjust Driveway - Mud/Sand Jack | SF | 5,000.00 | 3.15 | 15,750.00 |
| 33 Rem & Repl Driveway 6" Thick Reinf Conc | SY | 400.00 | 78.25 | 31,300.00 |
| 34 F&I Det Warn Panels Cast Iron | SF | 1,152.00 | 43.05 | 49,593.60 |
| 35 F&I Aggregate for Asph Pavement FAA 43 | TON | 7,965.00 | 35.65 | 283,952.25 |
| 36 F&I Asphalt Cement PG 58-28 | GAL | 96,322.00 | 2.30 | 221,540.60 |
| 37 Rem & Repl Casting - Inlet | EA | 4.00 | 1,365.00 | 5,460.00 |
| 38 Rem & Repl Casting - Self Leveling | EA | 25.00 | 1,465.00 | 36,625.00 |

ENGINEER'S STATEMENT OF ESTIMATED COST

IMPROVEMENT DISTRICT # PR-19-G1

Asphalt Mill & Overlay & Incidentals

| | | | | |
|--|----|-----------|----------|---------------------|
| 39 Casting to Grade - no Conc | EA | 10.00 | 255.00 | 2,550.00 |
| 40 GV Box to Grade - no Conc | EA | 33.00 | 70.00 | 2,310.00 |
| 41 Rem & Repl Pavement 7" Thick Asph | SY | 660.00 | 48.00 | 31,680.00 |
| 42 Mill / Grind Asphalt Pvmnt 1" to 2" Thick | SY | 65,830.00 | 1.25 | 82,287.50 |
| 43 Sodding | SY | 1,500.00 | 18.90 | 28,350.00 |
| 44 Paint Epoxy Line 24" Wide | LF | 294.00 | 18.00 | 5,292.00 |
| 45 Traffic Control - Type 1 | LS | 1.00 | 4,900.00 | 4,900.00 |
| 46 F&I Detection Preformed Loop | EA | 2.00 | 2,310.00 | 4,620.00 |
| Section 2 Total | | | | 1,249,821.70 |

Section 2 Replacement Area

| | | | | |
|--|-----|-----------|----------|-----------|
| 47 Remove Pavement All Thicknesses All Types | SY | 2,962.00 | 6.30 | 18,660.60 |
| 48 Repair Inlet | EA | 2.00 | 475.00 | 950.00 |
| 49 F&I Repair Band 4" thru 12" Dia | EA | 2.00 | 835.00 | 1,670.00 |
| 50 Connect Pipe to Exist Structure | EA | 10.00 | 230.00 | 2,300.00 |
| 51 Subgrade Preparation | SY | 2,962.00 | 2.10 | 6,220.20 |
| 52 F&I Woven Geotextile | SY | 2,962.00 | 1.15 | 3,406.30 |
| 53 F&I Class 5 Agg - 8" Thick | SY | 2,962.00 | 7.70 | 22,807.40 |
| 54 F&I Edge Drain 4" Dia PVC | LF | 2,000.00 | 6.15 | 12,300.00 |
| 55 Adjust Curb & Gutter - Mud/Sand Jack | LF | 500.00 | 9.40 | 4,700.00 |
| 56 Rem & Repl Curb & Gutter | LF | 500.00 | 46.20 | 23,100.00 |
| 57 F&I Sidewalk 4" Thick Reinf Conc | SY | 10.00 | 75.60 | 756.00 |
| 58 F&I Sidewalk 6" Thick Reinf Conc | SY | 42.00 | 84.00 | 3,528.00 |
| 59 Remove Sidewalk All Thicknesses All Types | SY | 50.00 | 29.40 | 1,470.00 |
| 60 Adjust Driveway - Mud/Sand Jack | SF | 500.00 | 3.15 | 1,575.00 |
| 61 Rem & Repl Driveway 6" Thick Reinf Conc | SY | 10.00 | 87.15 | 871.50 |
| 62 F&I Det Warn Panels Cast Iron | SF | 96.00 | 43.05 | 4,132.80 |
| 63 F&I Aggregate for Asph Pavement FAA 43 | TON | 1,254.00 | 44.00 | 55,176.00 |
| 64 F&I Asphalt Cement PG 58-34 | GAL | 15,165.00 | 2.80 | 42,462.00 |
| 65 Rem & Repl Casting - Inlet | EA | 2.00 | 1,365.00 | 2,730.00 |
| 66 Rem & Repl Casting - Self Leveling | EA | 2.00 | 1,465.00 | 2,930.00 |
| 67 GV Box to Grade - no Conc | EA | 2.00 | 70.00 | 140.00 |
| 68 Sodding | SY | 50.00 | 21.00 | 1,050.00 |
| 69 Paint Epoxy Line 24" Wide | LF | 168.00 | 18.00 | 3,024.00 |
| 70 Traffic Control - Type 1 | LS | 1.00 | 1,160.00 | 1,160.00 |

Section 2 Replacement Area Total 217,119.80

Total Construction in \$ 2,099,564.05

| | | |
|----------------|---------|------------|
| Engineering | 6.00 % | 125,973.84 |
| Legal & Misc | 3.00 % | 62,986.92 |
| Contingencies | 10.00 % | 209,956.40 |
| Administration | 3.12 % | 65,506.40 |
| Interest | 4.00 % | 83,982.56 |

Total Estimated Costs 2,647,970.18

Street Rehabilitation Funds - 401 1,236,311.26

Special Assessments 1,411,659.00

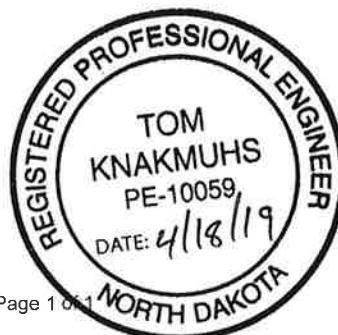
Unfunded Costs -0.08

IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 04/17/2019


Tom Knakmuhs

Assistant City Engineer



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April 18, 2019

Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

Dear Commissioners:

Accompanying for the City Commission review and approval is a Declaration of Easement document for City property, as described in the enclosed document, the dedication of property described therein is for storm sewer utilities associated with Improvement District #UR-19-A1.

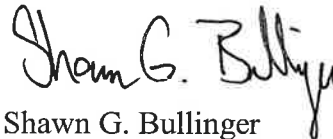
Declaration of Easement

RECOMMENDED MOTION:

Approve execution of enclosed Declaration of Easement document in association with Improvement District #UR-19-A1.

Please return signed copy.

Respectfully submitted,



Shawn G. Bullinger
Land Acquisition Specialist

C: Roger Kluck
Nancy Morris
Attachments

DECLARATION OF EASEMENT
(Storm Sewer)

The city of Fargo, a North Dakota municipal corporation, (the "Declarant"), is the owner of certain real property located in the city of Fargo, County of Cass, State of North Dakota. The Declarant does hereby declare a portion of such property for a permanent public utility easement, such property being more fully described as follows:

A tract of land over, under and across the Northeast Quarter of Section 1, Township 139 North, Range 49 West of the Fifth Principal Meridian, City of Fargo, Cass County, North Dakota described as follows:

Commencing at the northwest corner of Auditors Lot 6 of said Northeast Quarter on record as document 642144 at the Cass County Recorder's Office, said point also being on the southwesterly line of the BNSF railway right of way; thence South 64°43'06" East, along said southwesterly line of the BNSF railway right of way, a distance of 169.12 feet to the northeast corner of a parcel of land described in document 1373586, recorded at the Cass County Recorder's Office, also being the point of beginning; thence continuing South 64°43'06" East, along said southwesterly line of the BNSF railway, a distance of 204.00 feet; thence South 23°53'55" West a distance of 30.51 feet; thence North 66°06'05" West a distance of 186.42 feet to the east line of said parcel; thence North 02°24'10" West, along the east line of said parcel, a distance of 39.53 feet to the point of beginning.

Said tract contains 6414 square feet, more or less.

(Signatures on the following page)

IN WITNESS WHEREOF, Declarant has set its hand and caused this instrument to be executed this ____ day of _____, 2019.

City of Fargo, a North Dakota
Municipal Corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST

Steven Sprague

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF CASS)

On this ____ day of _____, 2019, before me, a notary public in and for said county and state, personally appeared **Timothy J. Mahoney, M.D.** and **Steven Sprague**, to me known to be the Mayor and Auditor, respectively, of the City of Fargo, described in and who have executed the within and foregoing instrument, and acknowledged to me that they executed the same.

(SEAL)

Notary Public
Cass County, North Dakota

The legal description was prepared by:
City of Fargo, Engineering Department
225 Forth Street North
Fargo, ND 58102
701-241-1545

This document was prepared by:
Nancy J. Morris
Assistant City Attorney
Erik R. Johnson & Associates, Ltd.
505 Broadway N., Ste. 206
Fargo, ND 58102
701-280-1901
nmorris@lawfargo.com