

City Commission meetings are broadcast live on TV Fargo Channel 56 and online at [www.FargoND.gov/streaming](http://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](http://www.FargoND.gov/citycommission).

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, August 10, 2020).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

1. 2nd reading and final adoption of the following Ordinances; 1st reading, 8/10/20:
  - a. Rezoning Certain Parcels of Land Lying in Timber Parkway Fourth Addition, Timber Parkway Third Addition and Timber Parkway Second Addition.
  - b. Rezoning Certain Parcels of Land Lying in North Fargo Industrial Addition.
  - c. Annexing a Certain Parcel of Land Lying in the East Half of Section 15, Township 140 North, Range 49 West.
  - d. Rezoning Certain Parcels of Land Lying in the Proposed Sanford South Campus Addition.
  - e. Rezoning Certain Parcels of Land Lying in South Haven Subdivision.
2. Receive and file the Summons and Complaint relating to Alan C. Erickson vs. City of Fargo.
3. Findings, Conclusion and Order of the Board of City Commissioners of the City of Fargo regarding the License Violation of Northstar Hospitality, LLC d/b/a SouthTown PourHouse.
4. Applications for Games of Chance:
  - a. Fargo South High School for a calendar raffle from 9/3/20 to 2/28/21.
  - b. Nativity Church of Fargo for bingo and a raffle on 11/8/20.
  - c. Dakota Medical Foundation – Lend A Hand Up for a raffle and raffle board on 9/12/20.
  - d. Fargo Rotary Club for a raffle on 10/15/20.
5. Easement (Temporary Construction Easement) with the Park District of the City of Fargo (Project No. FM-19-B).
6. Purchase Agreement with Stanley and Patricia Ryland (Project No. FM-20-C1).
7. Memorandum of Understanding Regarding Right of Way Encroachment and Road Maintenance with Cass County (Project No. FM-16-A1).
8. 40th Avenue North Bridge repairs at an estimated cost of \$47,067.85.
9. TMH Properties Development Agreement and Amended Easement with TMH Properties, LLC.
10. Amendment (First) to Right of Way Agreement with Great Plains Mercantile Holdings, LLC.

11. Change Order No. 1 for an increase of \$2,650.00 and time extension to 10/1/20 for Project No. UR-19-E1.
12. Encroachment Agreement with Sterling Properties, LLLP.
13. Receive and file General Fund – Budget to Actual through July 2020 (unaudited).
14. Receive and file Financial Status Report Year to Date through 7/31/20 for majoring operating funds (unaudited).
15. Fargo Public Schools Department of Support Services Service Agreement for extended nursing care services for special education students.
16. Contract Agreement for Services with Dacotah Foundation.
17. Contract Agreement for Services with Southeast Human Service Center.
18. Amendment to Agreement for Services with Gia Rassier.
19. Amendment to Agreement for Services with Annie Wood.
20. Contract Agreement for Services with American Lung Association.
21. Resolution Approving Proposed Budget & Activities for COVID-19 Quarantine Support, Prevention, Preparation and Response.
22. Bid award for 2021 spring tree order (RFP20130).
23. Receive and file the Snow Emergency Route Designation Map.
24. Amendment No. 4 with KLJ, Inc. in the amount of \$6,478.57 for the GTC Improvement Project.
25. Structure Lease Agreement with New Cingular Wireless PCS, LLC, contingent upon Water Utility approval of final construction documents.
26. Bid award for Project No. WA2004.
27. Change Order No. 1 for an increase of \$2,450.00 for Project No. WA1906.
28. Change Order No. 2 for an increase of \$35,528.93 for Project No. WW1904.
29. Bills.
30. Change Order No. 1 for an increase of \$55,929.27 and associated time extension for Improvement District No. BN-20-C1.
31. Change Order No. 1 for an increase of \$13,896.45 and associated time extension for Improvement District No. BN-20-F1.
32. Change Order No. 3 for time extensions for Improvement District No. BR-20-E1.
33. Negative Final Balancing Change Order No. 5 in the amount of -\$120,397.08 for Improvement District No. BN-19-F1.

**REGULAR AGENDA:**

35. Presentation on the new Cass Clay Alerts System.
36. **\*Public Input Opportunity\* - PUBLIC HEARINGS - 5:15 pm:**
  - a. CONTINUE to 9/8/20 – Application filed by AdShark Ventures, LLC for a property tax exemption for a project located at 5601 34th Avenue South, which the applicant will use in the operation of their operation of ecommerce services, utilizing online user-data, internet based platforms, website development and conversion rate optimization to drive sales and new customer growth.
  - b. WITHDRAWN - Application filed by Access Point Technologies EP, Inc. for an exemption of property and/or income tax for a project located at 4837 Amber Valley Parkway, which the applicant will use in the operation of developing medical devices for the electrophysiology market.
  - c. Northern Sheyenne Land Third Addition (1805, 1810, 1820, 1821, 1840 and 1841 Sheyenne Loop North):
    1. Zoning Change from GI, General Industrial to LI, Limited Industrial.
    2. 1st reading of rezoning Ordinance.
    3. Plat of Northern Sheyenne Land Third Addition.
  - d. Amendments to the 2019 Action Plan Community Development Block Grant (CDBG).
  - e. Special Assessment of unpaid utility bills.
  - f. Special Assessments for maintenance of skyway system.
  - g. Special Assessment of nuisance abatement fees.
37. Appointments to the Arts and Culture Commission.
38. Recommendation from the Police Chief Selection Committee.
39. Recommendation to extend the Resolution Extending the Moratorium Pertaining to the Retail Sale of Alcoholic Beverages Approved June 1, 2020 to November 30, 2020.
40. **\*PUBLIC INPUT OPPORTUNITY\*** - Request from the Downtown Community Partnership to discuss the downtown Fargo business environment.
  - a. Communication from Josie Danz regarding the benches in the Downtown Area.
41. **RESIDENT COMMENTS (each Fargo resident will be offered 2.5 minutes for comment with a maximum of 30 minutes total for all resident comments).**

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](http://www.FargoND.gov/citycommission).

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_



1                   AN ORDINANCE REZONING CERTAIN PARCELS OF LAND  
2                   LYING IN TIMBER PARKWAY FOURTH ADDITION, TIMBER PARKWAY THIRD  
3                   ADDITION AND TIMBER PARKWAY SECOND ADDITION  
4                   TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

5                   WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the  
6                   City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain  
7                   parcels of land lying in Timber Parkway Fourth Addition, Timber Parkway Third Addition and  
8                   Timber Parkway Second Addition to the City of Fargo, Cass County, North Dakota; and,

9                   WHEREAS, the Fargo Planning Commission recommended approval of the rezoning  
10                  request on July 8, 2020; and,

11                  WHEREAS, the rezoning changes were approved by the City Commission on August 10,  
12                  2020,

13                  NOW, THEREFORE,

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

15                  Section 1. The following described property:

16                  Lots One (1) through Seven (7), Block One (1) of Timber Parkway Fourth Addition  
17                  to the City of Fargo, Cass County, North Dakota;

18                  Lot Three (3), Block One (1) of Timber Parkway Third Addition to the City of  
19                  Fargo, Cass County, North Dakota;

20                  and

21                  Lot One (1), Block One (1) of Timber Parkway Second Addition to the City of  
22                  Fargo, Cass County, North Dakota;

23                  is hereby rezoned to retain the base zoning district for said property of a "GC", General Commercial  
                    Zoning District and to repeal the existing "C-O", Conditional Overlay, District and to re-establish



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

the “C-O”, Conditional Overlay, District as follows:

1       A. Description: This C-O, Conditional Overlay, district is primarily intended to encourage  
2       high-quality, durable, and long-lasting investments.

3       B. Design Standards

4       a. Building Massing

- 5           i. All buildings shall have architectural interest and variety to avoid the  
6           effect of a single, long or massive wall, and buildings shall include  
7           variation in size and shape.
- 8           ii. All building elevations or façades facing or viewable from any right-of-  
9           way or parking lot that are greater than two-hundred (200) feet in length,  
10          measured horizontally from vertical edge to vertical edge, shall  
11          incorporate wall plane projections or recesses. Each projection or recess  
12          shall have a depth of at least five (5) feet, and the cumulative total  
13          horizontal width of all projections or recesses within a façade shall equate  
14          to at least an accumulated total of twenty (20) percent of the overall  
15          horizontal length of the façade. No uninterrupted length of any façade  
16          shall exceed two-hundred (200) horizontal lengths.
- 17          iii. Ground floor façades that are within two hundred (200) feet of the right-of-  
18          way, measured from the exterior wall, shall have arcades, display windows,  
19          entry areas, awnings, spandrel glass, ground level landscaping or other such  
20          features along no less than sixty (60) percent of its horizontal length. If the  
21          façade facing the right-of-way is not the front, it shall include the same  
22          features and/or landscaping in scale with the façade.
- 23          iv. All building elevations or façades facing or viewable from any right-of-  
24          way or parking lot shall be designed with a similar level of design detail,  
25          respective to building massing and building materials.

26       b. Building Materials

- 27           i. All primary buildings shall be constructed or clad with materials that are  
28           durable, economically-maintained, and of a quality that will retain their  
29           appearance over time, including but not limited to natural or synthetic  
30           stone; brick; stucco; integrally-colored textured or glazed concrete  
31           masonry units; high-quality pre-stressed concrete systems; EIFS; glass;

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

1 metal panels (similar to Aluco Bond) and synthetic panels (similar to  
2 Trespa). Natural, but durable synthetic materials with the appearance of  
3 wood, may be used. Horizontal metal lap siding and vertical metal batten  
4 shall be allowed on residential and commercial structures but shall not  
5 exceed seventy-five (75) percent of the building elevation for residential  
6 structures and fifty (50) percent of the building elevation for commercial  
7 structures.

8 c. Screening of Dumpsters/Refuse Containers and Loading Areas

9 i. Dumpsters

- 10 1. Loading and or service areas shall be located at the side or rear of  
11 buildings and screened from public streets by structure and or  
12 landscaping, with a minimum capacity of fifty (50) percent.  
13 2. Dumpsters and outdoor storage areas must be completely screened  
14 from view. Collection area enclosures shall contain a six (6) foot  
15 high permanent wall in height on at least three (3) sides. The  
16 fourth side shall incorporate a metal gate to visually screen the  
17 dumpster or compactor; however, if the service side does not face  
18 any public right-of-way or residentially zoned property the metal  
19 gate shall not be required.

20 d. Screening of Rooftop and Ground Level Mechanical Equipment

- 21 i. Rooftop mechanical equipment shall be fifty (50) percent concealed from  
22 public view, when viewing angle is from the Finish Floor elevation,  
23 measured at one hundred and fifty (150) feet from the exterior wall.  
ii. All ground level HVAC units and utility boxes shall be screened from  
view by a structure, wall, fence or landscaping.

e. Parking Lot Landscaping

- i. A minimum of ten (10) percent of the internal surface area of the parking  
lot shall be landscaped with plantings, but shall be allowed to be reduced  
to five (5) percent with approved landscape buffer as outlined in  
subparagraph B.(f)(i).

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

f. Landscape Buffer

- 1           i. A fifty (50) foot landscape easement was dedicated in March 2014 by  
2           Document Number 1412948 on file with the Cass County Recorder's  
3           Office along the north side of the development. The developer shall be  
4           required to submit a landscape plan for this easement area which shall  
5           include a combination of trees and landscaped berms. The Zoning  
6           Administrator shall have the authority to approve or disapprove the  
7           landscape plan. The buffer is intended to provide a high-quality transition  
8           between residential and commercial properties while also providing an  
9           added aesthetic element to the development. If, in the opinion of the  
10          Zoning Administrator, the proposed landscape plan meets the intended  
11          objective and is reflective of high-quality design and materials, the  
12          requirement for landscaping internal to parking lots as contemplated under  
13          subparagraph 2.(f)(ii) of Ordinance Number 4908 shall be reduced from  
14          ten (10) percent to five (5) percent. The landscaping plan shall be  
15          implemented within the easement area within twelve (12) months  
16          following issuance of any building permit as described in Ordinance  
17          Number 4908. Trees shall be of minimum two (2) inch caliper.

12          C. The following uses are prohibited:

- 13           a. Within the Use Category for Retail Sales/Service and Office, sales and leasing of  
14           consumer vehicles including passenger vehicles, light/medium trucks and other  
15           recreational vehicles that includes outdoor storage/display/sales;  
16           b. Detention Facilities;  
17           c. Adult Entertainment Center;  
18           d. Self-Service Storage;  
19           e. Vehicle Repair (excluding tire sales and vehicle service, limited);  
20           f. Industrial Service;  
21           g. Manufacturing and Production;  
22           h. Warehouse and Freight Movement, (excluding furniture/appliance stores);  
23           i. Wholesale Sales; and  
            j. Aviation/Surface Transportation.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

D. Site Design

- a. Separate vehicular and pedestrian circulation systems shall be provided. An on-site system of pedestrian walkways shall be provided between building entrances and the following:
- i. Any public sidewalk system along the perimeter streets adjacent to the development, or along the perimeter of the lot;
  - ii. Primary entrances of other buildings on the site; and
  - iii. Adjacent pedestrian origins and destinations – including but not limited to transit stops, residential development, office buildings, and retail buildings – where deemed practical and appropriate by the Zoning Administrator.

E. Signage

- a. Off-premise signs and digital billboards shall be prohibited.
- b. Advertising of businesses within said development is not considered off-premise advertising.
- c. Unless otherwise specified above, all other provisions within the Sign Code shall remain in full force and effect.

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.

Section 3. 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:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

16

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND  
LYING IN NORTH FARGO INDUSTRIAL 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 North Fargo Industrial Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on August 4, 2020; and,

WHEREAS, the rezoning changes were approved by the City Commission on August 10, 2020,

NOW, THEREFORE,

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

Section 1. The following described property:

All of the North Fargo Industrial Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "LI", Limited Industrial, 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.



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

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

3  
4  
5  
6 (SEAL)

7 Attest:

8  
9  
10 \_\_\_\_\_  
Steven Sprague, City Auditor

\_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

10

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ANNEXING A CERTAIN PARCEL OF LAND  
LYING IN THE EAST HALF OF SECTION 15, TOWNSHIP 140 NORTH, RANGE 49 WEST,  
IN CASS COUNTY, NORTH DAKOTA

WHEREAS, A Petition for Annexation has been submitted by the owners of not less than three-fourths in assessed value of the property described in said Petition for Annexation to the City of Fargo, Cass County, North Dakota, in accordance with Section 40-51.2-03 N.D.C.C.; and,

WHEREAS, Public notice of the submission of such Petition has been given by publication in The Forum as required by Section 40-51.2-05 N.D.C.C.; and,

WHEREAS, Said Section 40-51.2-03 N.D.C.C. requires that such annexation be accomplished by ordinance,

NOW, THEREFORE,

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

Section 1. The following described property located in the East Half of Section 15, Township 140 North, Range 49 West, of the Fifth Principal Meridian, Cass County North Dakota, is hereby annexed to the City of Fargo, Cass County, North Dakota:

Commencing at the southeast corner of said Section 15; thence North 02 degrees 55 minutes 01 seconds West, assumed bearing along the east line of the Southeast Quarter of said Section 15, a distance of 2650.49 feet to the point of beginning; thence South 87 degrees 55 minutes 36 seconds West, along the north line of said Southeast Quarter, also being the north line of the Fargo City Limits per Document No. 1359928, a distance of 150.02 feet; thence South 02 degrees 55 minutes 01 seconds East, 150.00 feet distant and parallel to the east line of said Southeast Quarter, also being the west line of the Fargo City Limits per Document No. 1359928, a distance of 1126.17 feet; thence South 87 degrees 58 minutes 41 seconds West, departing Fargo City Limits per Document No. 1359928, a distance of 1565.10 feet; thence 310.11 feet along a tangential curve concave to the southeast with a radius of 340.00 feet and a central angle of 52 degrees 15 minutes 30 seconds; thence South 35 degrees 43 minutes 11 seconds West, tangent to last described curve, a distance of 52.10 feet to the Northeasterly Right of Way line of U.S. Highway 81; thence northwesterly, and along said Northeasterly Right of Way, a distance of 654.74 feet along a non-tangential curve concave to the northeast with a radius of 1332.69 feet, a central angle of 28 degrees 08 minutes 56 seconds, and a chord which bears North 43

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

degrees 10 minutes 32 seconds West; thence North 29 degrees 06 minutes 04 seconds West, continuing along said Northeasterly Right of Way and tangent to last described curve, a distance of 208.50 feet; thence South 60 degrees 53 minutes 56 seconds West, and along said Right of Way, a distance of 40.00 feet; thence North 29 degrees 06 minutes 04 seconds West, and along said Right of Way, a distance of 168.47 feet; thence North 02 degrees 45 minutes 09 seconds West, a distance of 1235.96 feet; thence North 87 degrees 14 minutes 51 seconds East, a distance of 243.04 feet; thence North 79 degrees 58 minutes 30 seconds East, a distance of 315.98 feet; thence North 87 degrees 14 minutes 51 seconds East, a distance of 2079.30 feet; thence South 02 degrees 55 minutes 01 seconds East, a distance of 815.78 feet to the point of beginning.

Said tract contains 110.23 acres, more or less.

Section 2. Effective Date.

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

CITY OF FARGO

By \_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

ATTEST

\_\_\_\_\_  
Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_



AN ORDINANCE REZONING CERTAIN PARCELS OF LAND  
LYING IN THE PROPOSED SANFORD SOUTH CAMPUS 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 the proposed Sanford South Campus Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on June 2, 2020; and,

WHEREAS, the rezoning changes were approved by the City Commission on August 10, 2020,

NOW, THEREFORE,

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

Section 1. The following described property:

All of Sanford South Campus Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "SR-2", Single-Dwelling Residential, District and "GC", General Commercial, District to "GC", General Commercial, District with a "C-O", Conditional Overlay, District as follows:

1. A nine (9) foot parking buffer shall be required along 17<sup>th</sup> Avenue South, 11<sup>th</sup> Street South, and 18<sup>th</sup> Avenue South consisting of one (1) tree and six (6) shrubs every twenty-five (25) linear feet with a 3:1 berm intermittent through the buffer.
2. Five (5) percent of the interior parking lot shall be landscaped. The five (5) percent may consist of the required open space landscaping requirements (three (3) plant units per every one-thousand (1000) square feet of lot), however, the majority of the parking lot landscaping

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

must be made up of shade trees.

3. No more than three (3) drive entrances are allowed onto 11<sup>th</sup> Street South. The north and south drive entrances shall be a minimum of one-hundred (100) feet from the block corner. The third drive entrance shall be located at mid-block.

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.

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

(SEAL)

\_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

Attest:

\_\_\_\_\_  
Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

ORDINANCE NO. \_\_\_\_\_

(16)

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND  
LYING IN SOUTH HAVEN SUBDIVISION  
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 the South Haven Subdivision to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on July 8, 2020; and,

WHEREAS, the rezoning changes were approved by the City Commission on August 10, 2020,

NOW, THEREFORE,

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

Section 1. The property situate in the city of Fargo, County of Cass, State of North Dakota, described as follows:

Lots Twenty-five (25) through Thirty-two (32) of South Haven Subdivision to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "SR-2", Single-Dwelling Residential, District to "SR-3", Single-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.

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.

(SEAL)

Attest:

\_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

\_\_\_\_\_  
Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:



②

**Office of the City Attorney**

**City Attorney**  
Erik R. Johnson

**Assistant City Attorney**  
Nancy J. Morris

August 20, 2020

Board of City Commissioners  
City Hall  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

**RE: Alan C. Erickson vs. City of Fargo**

Dear Commissioners,

Please find attached for receive and file a Summons and Complaint in the Alan C. Erickson vs. City of Fargo litigation matter.

**SUGGESTED MOTION:** I move to receive and file the following Summons and Complaint relating to Alan C. Erickson vs. City of Fargo.

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

Sincerely,

Nancy J. Morris  
Assistant City Attorney

NJM/al  
Enclosures



IN DISTRICT COURT      COUNTY OF CASS      STATE OF NORTH DAKOTA

Alan C. Erickson,	)	Civil No:
	)	
Plaintiff	)	SUMMONS
vs.	)	
	)	
City of Fargo,	)	
	)	
Defendant	)	

THE STATE OF NORTH DAKOTA TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to appear and defend against the complaint in this action, which is herewith served upon you, by serving upon the undersigned an answer or other proper response within twenty-one (21) days after the service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Dated July 30, 2020.

/s/ Alan C. Erickson – pro se  
Alan C. Erickson (ND # 03384)  
P.O. Box 1447  
Fargo, ND 58107-1447  
Phone: (701) 237-0393  
alan.erickson@midco.net

REC-11  
BY 11/13/20  
7/30

IN DISTRICT COURT      COUNTY OF CASS      STATE OF NORTH DAKOTA

Alan C. Erickson,	)	Civil No:
	)	
Plaintiff	)	COMPLAINT
vs.	)	
	)	
City of Fargo,	)	
	)	
Defendant	)	

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For his causes of action against the defendant, plaintiff states to the court:

[¶1] The named parties and causes of action are subject to jurisdiction of this court, with plaintiff's injuries and defendant's liabilities for injury taking place in this county and state on or about August 10, 2018, at a location of approximately 45<sup>th</sup> St. S. and Drain 39, Fargo, North Dakota, upon a designated public right of way.

[¶2] Plaintiff, proceeding normally and carefully, prudently jogged west away from 42<sup>nd</sup> St. upon a well used sidewalk running along the north side of Drain 39, intending to not cross 45<sup>th</sup> St. by instead turning left so as to cross upon the drain platform bridge to proceed south to 40<sup>th</sup> Ave., intending there to then proceed back east to 42<sup>nd</sup> St. S. At the time and place stated above, this deck crossing above Drain 39 was at its north-side connection to the sidewalk much higher than the level of the sidewalk, such that the toe of plaintiff's right shoe as planted became momentarily stuck behind the ridge, causing a rapid fall forward face down onto the deck surface. The hard impact broke a bow on the



glasses being worn, with cuts and abrasion to plaintiff's face, hands and knees. The primary injury was to the right hand, particularly breaking of the small right finger (pinky) below a dislocated middle knuckle and injury to the right palm.

[¶3] Plaintiff seasonably provided to the defendant, for public safety and benefit, a Notice of Claim to alert and encourage the correction of this dangerous condition, and which was then properly and efficiently corrected upon removal of the deck edge and height difference down to a level with the sidewalk, promoting normal and safe public passage. The cause of all injuries to plaintiff was this uneven deck edge height, and a return to its level setting with the sidewalk completely eliminated this defect. As a designated public pathway, the deck edge, drain crossing and sidewalk are openly and well known public uses, establishing a clear and reasonable basic standard of care.

[¶4] Plaintiff incurred permanent injuries to the right hand and finger, including both economic loss, non-economic loss, and general damages, all proximately caused by the basic negligent maintenance reasonably determined according to a known and obvious standard of care for public use. Plaintiff incurred medical care and expense, past and future economic losses, pain and suffering, disability and disfigurement, with past and future non-economic losses in a reasonable sum in excess of Fifty Thousand (\$50,000) Dollars.

[¶5] WHEREFORE, plaintiff prays for judgment against defendant as follows:

1. For the just and reasonable sums in actual and general damages, for economic losses incurred past and future, and for non-economic losses past and future in excess of Fifty Thousand (\$50,000) Dollars.

2. For plaintiff's costs, fees, disbursements, expenses and lawful interest upon all sums incurred, together with such further relief as is deemed just and proper.

Dated July 30, 2020.

/s/ Alan C. Erickson – pro se  
Alan C. Erickson (ND # 03384)  
P.O. Box 1447  
Fargo, ND 58107-1447  
Phone: (701) 237-0393  
alan.erickson@midco.net

IN DISTRICT COURT      COUNTY OF CASS      STATE OF NORTH DAKOTA

Alan C. Erickson,	)	Civil No:
	)	
Plaintiff	)	INTERROGATORIES TO DEFENDANT
vs.	)	(SET ONE)
	)	
City of Fargo,	)	
	)	
Defendant	)	

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TO: ABOVE NAMED DEFENDANT AND ATTORNEYS FOR DEFENDANT

[¶1] Plaintiff serves the following interrogatories pursuant to North Dakota Rules of Civil Procedure providing for responses under oath. Please note a discovery obligation exists to supplement pursuant to these rules, making these interrogatories continuing in nature. The obligation for responses includes information possessed by defendant, its attorneys, agents and employees, including for production and identification set forth.

1. Please provide with your answers, and with document productions which accompany your answers, the following information regarding the premise location and alleged injuries of the complaint, with regard to all insurance coverage.

a. Does this location identified in the complaint at 45<sup>th</sup> St. S. and Drain 39 have relevant insurance coverage, identifying the named insureds and coverages available, including a premises liability or a medical care coverage that may not depend upon a determination of liability or upon a percentage of the liability assessment.

b. If location of injury set forth is in any manner relevant to available insurance, set forth each relevant basis and explanation of coverage relevant to location.

c. Provide a copy set of applicable insurance coverage.

d. If reports or documents have been provided to defendant setting forth basis for the insurer to not cover the alleged injury and losses of the complaint, attach a copy of the reports or documents justifying or supporting denial of coverages.

e. If any aspect of the loss or damage alleged in the complaint can be within a "self-insured" coverage by City of Fargo, provide a statement or detail that coverage.

2. Do you have and are you aware of the existence of photographs, video, plats, drawings, documentary and demonstrative evidence and exhibits which may relate to premise locations of the complaint or to an issue of this case, and if so set forth:

a. Describe each and produce appropriate copies, or permit inspection by plaintiff at an agreed upon time and place.

b. As to those persons from whom documents, papers or statements have been prepared, or from whom reports were provided, state their names and addresses, their employment position and produce a copy set of each report and statement.

NOTE: A duty to seasonably supplement responses herein up to date of trial of this case is intended as provided by the North Dakota Rules of Evidence and Rules of Civil Procedure, including for consideration of the exclusion of evidence that is not supplemented according to common interpretation and application of the rules.

Dated July 30, 2020.

/s/ Alan C. Erickson – pro se  
Alan C. Erickson (ND # 03384)  
P.O. Box 1447  
Fargo, ND 58107-1447  
Phone: (701) 237-0393  
alan.erickson@midco.net



3

Office of the City Attorney

City Attorney  
Erik R. Johnson

Assistant City Attorney  
Nancy J. Morris

August 20, 2020

Board of City Commissioners  
City Hall  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

Dear Commissioners,

Please find attached for your review and approval the Proposed Findings, Conclusions and Order in accordance with the Board of City Commissioners' unanimous vote in favor of finding a violation of the liquor license requirements by Northstar Hospitality, LLC d/b/a Southtown Pourhouse.

**Suggested Motion:** I move to approve the Findings of Fact, Conclusions and Order finding a violation of the food sales requirement of the Class FA license Northstar Hospitality, LLC d/b/a/ Southtown Pourhouse, and that this be a first violation, with the associated penalty.

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

Regards,

Nancy J. Morris  
Assistant City Attorney

Enclosure





**Findings, Conclusions and Order of the Board of City Commissioners of the city of Fargo regarding the License Violation of Northstar Hospitality, LLC d/b/a Southtown Pourhouse**

A hearing was held before the Board of City Commissioners of the city of Fargo on July 27, 2020 regarding the Class FA liquor license held by Northstar Hospitality, LLC d/b/a/ Southtown Pourhouse ("Southtown").

Steve Sprague, City Auditor, presented the factual basis to the Board of City Commissioners recommending a finding of an audit violation in accordance with Fargo Municipal Code §25-1512 (F), as concluded by the Liquor Control Board of the city of Fargo on May 20, 2020. The Board of Commissioners heard the testimony offered by attorney James M. Cailao, appearing on behalf of Southtown, attorney Mark Hanson, appearing on behalf of licensee Dave Erickson, and Jeff Thomas, owner of Frank's Lounge. The Board of Commissioners further considered the submitted documents, the finding of the Liquor Control Board and documents presented to the Liquor Control Board.

The Board of City Commissioners hereby makes the following Findings of Fact, Conclusions and Order in accordance with Fargo Municipal Code §25-1512(G).

1. Southtown has been granted a Class FA liquor license, as defined in Fargo Municipal Code § 25-1506(J):

J. Class FA.—A Class "FA" license shall authorize the licensee to sell "on-sale" only, subject to the following restrictions and conditions:

1. A Class "FA" licensee may sell alcoholic beverages in a restaurant which holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code and which derives 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages.

2. A Class "FA" license shall authorize the licensee to sell "on-sale" only and no licensee hereunder may conduct any "off-sale" liquor sales.

3. A restaurant under the provisions of this title shall provide adequate off-street parking within the discretion of and subject to the approval of the commission. Membership in the Fargo Park'N Shop program may be considered as compliance with this provision.

4. A restaurant shall mean an establishment providing multi-course meals of steak, fish, seafood and other similarly menued main courses, as well as hors d'oeuvres and desserts. Main course menu items shall be fully prepared and cooked on the premises and shall not be primarily pre-packaged, pre-processed, or pre-prepared food products intended for fast or convenient service. The hours within which sales of alcoholic beverages may be made shall coincide with the hours permitted by the state of North Dakota for the sale of alcoholic beverages and shall also be additionally limited as set forth herein. When the kitchen is not in full operation and a full menu service is not being offered to patrons, the sale and consumption of alcoholic beverages shall be discontinued within one hour after the cessation of full kitchen operation and the offering of a full menu service. It is the intention of this restriction that the purpose of an "FA" license is to allow the sale of alcoholic beverages as an adjunct to the restaurant operation and not that of operating a full-time liquor establishment. A recipient of an "FA" license shall provide a full and complete kitchen adequate for the preparation of food as required by this ordinance. Such kitchen shall be subject to approval by the commission.

5. In addition to the foregoing, the Class "FA" license shall be governed by all the provisions of this article applicable to Class "A" licensees and in addition, said licensee shall hold a restaurant license or permit pursuant to article 13-04 of the Fargo Municipal Code relating to restaurants.

6. As part of the licensee's obligation that the licensee derive fifty (50%) or more of its annual gross receipts from the sale of prepared meals than from the sale of alcoholic beverages, as discussed in section 25-1504.2, the licensee shall retain and keep appropriate business records concerning purchase of food and alcoholic beverages and sales receipts for food and alcoholic beverages. Such business records shall be organized and maintained according to standard business practices and in such form as to be auditable for purposes of confirming that the licensee satisfies the sales ratio of food to alcoholic beverages. A licensee who fails to maintain the business records required by this section, or to otherwise make such records available to the City upon reasonable request to do so, is subject to the penalties listed in 25-1512(F).

2. A complaint was made to the City Auditor in early April 2019 regarding the business practices of Southtown. In particular, the complainant questioned the use of Duane's House of Pizza, Inc. ("Duane's") pizza sales by Southtown in its food sales calculations to

accomplish the 50% food sales requirement of the FA License category. At that time it was determined that the percentage food sales was an audit matter and that the issue would be flagged in the annual audit for further inquiry.

3. In accordance with Fargo Municipal Code §25-1512(F) Southtown was subject to audit in the first year of operation:

F. For those businesses with liquor licenses requiring a food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio), there shall be an audit at least once every three (3) years (one-third of the licensees each year) provided, however, that subject businesses obtaining a new license and businesses that transfer an existing license to new owners shall be subject to an audit 12 months after obtaining or transferring of the license.

4. On February 25, 2020, the audit completed by Brady, Martz and Associates, P.C. (“Brady Martz”), reflected a food to alcohol sales ratio of 53% food/47% alcohol. The food sales information provided by Southtown to Brady Martz specifically identified Duane’s pizza sales separate from other food sales. Brady Martz was asked to evaluate the Southtown food/alcohol sales ratio excluding the Duane’s pizza sales. The result was a sales ratio of 42% food/58% alcohol. The result of less than 50% food sales as required by the FA license terms prompted further investigation.

5. The City Auditor inquired of Southtown owner Chad Klimek as to the relationship between Southtown and Duane’s. In response, Klimek provided a copy of a Product Sales and Facility Use Agreement between Northstar Hospitality, LLC and Duane’s House of Pizza, Inc (“Agreement”). This Agreement provides, in part:

¶5 Facility Use. The Premises includes two kitchen facilities: one for the exclusive use by Duane’s and the other for the use by Northstar in its food operations.” “Duane’s shall be deemed to lease said kitchen facilities during the term of this Agreement.”

6. This Agreement further outlines the compensation terms between the two parties. Specifically, Duane's is obligated to pay a monthly rent for the use of the separate kitchen space, and that Northstar shall compensate Duane's for 90% of the retail price of the pizza served on the Southtown premises. Duane's is responsible for determining the retail price of the pizza on the Southtown menu.

7. The Agreement further provides that Duane's is responsible for the sales tax on all pizza's sold.

8. The Agreement provides that if the customer is not satisfied with the pizza, Duane's is responsible for addressing the customer complaint "in the form of Duane's gift cards, credit vouchers or the like, in the sole discretion of Duane's."

9. Liquor Control Board member Chris Ohman, Department of Public Health, informed the Liquor Control Board members that "in their (Public Health's) restaurant inspections, they (Duane's and Southtown) are two separate businesses with separate plan, separate owners, separate coolers. They have always been two separate businesses."

10. The Liquor Control Board, after hearing and discussion, determined that Duane's House of Pizza, Inc. and Northstar Hospitality, LLC d/b/a Southtown Pourhouse are two separate business entities, and further that the inclusion of the Duane's pizza sales in the food sales requirement of the Class FA license held by Southtown is not in compliance with the license terms.

11. The Liquor Control Board voted unanimously in favor of finding that Southtown was "in violation of the food sales requirement and that this be considered a first violation."

12. Fargo Municipal Code §25-1512 (F) provides for the penalty for an audit violation, as follows:

F. For those businesses with liquor licenses requiring a food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio), there shall be an audit at least once every three (3) years (one-third of the licensees each year) provided, however, that subject businesses obtaining a new license and businesses that transfer an existing license to new owners shall be subject to an audit 12 months after obtaining or transferring of the license. The city of Fargo shall pay the cost of the audit if the business is in compliance with the required food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio). The liquor licensee shall, however, pay for the cost of the audit if the business is not in compliance with the required food-to-alcohol sales ratio (or in the case of an FA-ENTERTAINMENT or RZ-V licensee, a food and business income to alcohol sales ratio).

1. First offense - six month probationary period to come into compliance to be followed by a second audit establishing compliance. Sale and consumption of alcoholic beverages shall be discontinued at 1:00 a.m. for such time as the length of any probationary period. Yearly audits for the next two years to be paid for by the liquor licensee.
2. Second offense - thirty days suspension of liquor license not requiring closure of the business which may remain open for food sales. Yearly audits for the next two years to be paid for by the liquor licensee.
3. Third offense - revocation of license.

13. Notice of the Finding of Violation was served on Southtown in accordance with Fargo Municipal Code §25-1512 (G).

14. Southtown timely appealed to the Board of City Commissioners for review of the Liquor Control Board findings.

15. After hearing and discussion, the Board of City Commissioners voted unanimously to deny Southtown's appeal from the Liquor Control Board and uphold the license violation for failing to meet the required 50% food sales.

### CONCLUSIONS AND ORDER

Based on the foregoing Findings of Fact, it is the Board of City Commissioners' Conclusions that the Duane's House of Pizza, Inc. pizza sales is not properly included in the food sales for liquor licensee Northstar Hospitality, LLC d/b/a Southtown Pourhouse, and that Northstar Hospitality, LLC. d/b/a Southtown Pourhouse failed to meet the required food to alcohol ratio required by its Class FA license.

It is hereby **ORDERED** that Northstar Hospitality, LLC d/b/a Southtown Pourhouse is in violation of the terms of the Class FA License for failing to meet the food sales requirement, and further that this be considered a first violation. The penalty for the failed audit shall be in accordance with Fargo Municipal Code §25-1512 (F):

1. First Offense- six month probationary period to come into compliance to be followed by a second audit establishing compliance. Sale and consumption of alcoholic beverages shall be discontinued at 1:00 a.m. for such time as the length of any probationary period. Yearly audits for the next two years to be paid for by the liquor licensee.

DATED this \_\_\_\_ day of August, 2020.

BOARD of CITY COMMISSIONERS of the CITY  
OF FARGO, a North Dakota Municipal Corporation

By \_\_\_\_\_  
Timothy J. Mahoney, M.D., Mayor

ATTEST:

\_\_\_\_\_  
Steven Sprague, City Auditor



cc  
\$25.00  
8-10-20



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

Name of Non-profit Organization <i>Fargo South High School</i>		Date(s) of Activity <i>9-3-20 to 2-28-21</i>		For a raffle, provide drawing date(s): <i>attached</i>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <i>Dwilla Sloan</i>		Title <i>Bookkeeper</i>		Business Phone Number <i>701-446-2022</i>	
Business Address <i>1840 15th Ave. S.</i>		City <i>Fargo</i>		State <i>ND</i>	Zip Code <i>58103</i>
Mailing Address (if different) <i>same</i>		City		State	Zip Code
Name of Site Where Game(s) will be Conducted <i>Fargo South High School</i>		Site Address <i>1840 15th Ave. So.</i>			
City <i>Fargo</i>		State <i>ND</i>	Zip Code <i>58103</i>	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 checked="" type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *					

[illegible]

	(Linnit \$12,000 per year)
Total:	\$ 1750.00

Intended uses of gaming proceeds: Student travel needs

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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 1-800-325-9240.

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>Todd D. Belsch</i>	Date <i>8/10/20</i>	Title <i>Principal</i>	Business Phone Number <i>701-446-2000</i>
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**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: Nativity Church of Fargo  
 Date(s) of Activity: 11-8-20 to 11-8-20  
 For a raffle, provide drawing date(s): 11-8-20  
 Person Responsible for the Gaming Operation and Disbursement of Net Income: Karen L. Donahue  
 Title: Treasurer  
 Business Phone Number: 701-232-2414  
 Business Address: 1825 11th Street S.  
 City: Fargo  
 State: ND  
 Zip Code: 58103  
 Mailing Address (if different):  
 City:  
 State:  
 Zip Code:  
 Name of Site Where Game(s) will be Conducted: Nativity Church  
 Site Address: 1825 11th 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.  
☒ Bingo    ☒ Raffle    ☐ Raffle Board    ☐ Calendar Raffle    ☐ Sports Pool    ☐ Poker \*    ☐ Twenty-one \*    ☐ Paddlewheels \*

**DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED**

Game Type	Description of Prize	Retail Value of Prize
Raffle	Cash	\$500.00
"	"	500.00
"	"	100.00
"	"	100.00
"	"	100.00
"	"	100.00
"	"	50.00
"	"	50.00
"	"	50.00

Game Type	Description of Prize	Retail Value of Prize
Raffle	Cash	\$50.00
"	"	50.00
"	"	50.00
Bingo	Cash/Gift Cards	350.00
Total:		(Limit \$12,000 per year) \$ 2050.00

Intended uses of gaming proceeds: Charitable Causes & Facility Needs

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: Karen L. Donahue  
 Date: 8-7-2020  
 Title: Fall Festival Treasurer  
 Business Phone Number: 701-361-4263





**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
**OFFICE OF ATTORNEY GENERAL**  
 SFN 9338 (08/2019)

Application for: ☒ Local Permit      \* ☐ Restricted Event Permit (one event per year)

Name of Nonprofit Organization or group of people permit is issued to <b>Dakota Medical Foundation - Lend A Hand Up</b>		Date(s) of Activity <b>9</b>		For a raffle, provide drawing date(s): <b>9/12/2020</b>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <b>Mary Moen</b>		Title <b>Ambassador</b>		Business Phone Number <b>(701) 271-0263</b>	
Business Address <b>4141 28th Ave S</b>		City <b>Fargo</b>		State <b>ND</b>	Zip Code <b>58104-0000</b>
Mailing Address (if different)		City		State	Zip Code
Name of Site Where Game(s) will be Conducted <b>El Zagal</b>		Site Address <b>1429 3rd St N</b>			
City <b>Fargo</b>		State <b>ND</b>	Zip Code <b>58102-0000</b>	County <b>Cass</b>	
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event Permit.					
<input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input checked="" 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 board	Corn Hole Game	\$250.00	Raffle	Artwork	\$655.00
Raffle	Beauty products	\$585.00	Raffle	Spa Certificate	\$300.00
Raffle	Lemongrass Bskt	\$100.00	Raffle	Automotive GC	\$100.00
Raffle	Woodworking	\$300.00	Raffle	Sunglasses	\$98.00
Raffle	Fire bowls	\$150.00	Raffle	Gift Cards	\$580.00
Raffle	MN Vikings Autog	\$75.00	Raffle	Movie tickets	\$221.00
Raffle	Quilt	\$250.00	Raffle	Alcohol	\$150.00
Raffle	Candy/Food	\$275.00	Raffle	Kids Baskets	\$230.00
Raffle	Apparel	\$150.00			
			Total: \$ 4,469.00		

(Limit \$40,000 per year)

Intended uses of gaming proceeds: Proceeds from the raffle will be donated to Lend A Hand Up Families in Need

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

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? ☐ No    ☒ Yes-If "Yes," the organization or group does not qualify for a local permit or restricted event permit.

Has the organization or group received a local permit from any city or county for the fiscal year July 1-June 30? ☒ No    as-If "Yes," indicate the total value of all prizes previously awarded: \$ . . . This amount is part of the total prize limit of \$40,000 per year.

Signature of Organization or Group's Top Official <i>Mary Moen</i>	Date <b>8/17/2020</b>	Title <b>Executive Director</b>	Business Phone Number <b>(701) 271-0263</b>
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**APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT**  
 OFFICE OF ATTORNEY GENERAL  
 SFN 9338 (08/2019)

Application for: ☒ Local Permit      \* ☐ Restricted Event Permit (one event per year)

Name of Nonprofit Organization or group of people permit is issued to <b>Fargo Rotary Club (PO 1053)</b>		Date(s) of Activity <b>10/15/20</b>		For a raffle, provide drawing date(s): <b>10/15/20</b>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <b>James Hand</b>		Title <b>Service Chair</b>		Business Phone Number <b>(701) 212-8963</b>	
Business Address <b>35-4th Street N, Suite 202</b>		City <b>Fargo</b>		State <b>ND</b>	Zip Code <b>58102-4831</b>
Mailing Address (if different)		City		State	Zip Code
Name of Site Where Game(s) will be Conducted <b>Scheels</b>		Site Address <b>1551 45th St. S</b>			
City <b>Fargo</b>		State <b>ND</b>	Zip Code <b>58103</b>	County <b>Cass</b>	
Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Restricted Event 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	Gift Certificate	\$1000 <sup>00</sup>			
Raffle	Gift Certificate	\$300 <sup>00</sup>			
Raffle	Gift Certificate	\$200 <sup>00</sup>			
Total:					(Limit \$40,000 per year) \$ 1,500 <sup>00</sup>

Intended uses of gaming proceeds: Donation to Motherland Health, a North Dakota nonprofit corporation

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

Has the organization or group received a restricted event permit from any city or county for the fiscal year July 1-June 30? ☒ No    ☐ Yes-If "Yes," the organization or group does not qualify for a local permit or restricted event permit.

Has the organization or group received a local permit from any city or county for the fiscal year July 1-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 \$40,000 per year.

Signature of Organization or Group's Top Official 	Date <b>8/19/20</b>	Title <b>Local Service Chair</b>	Business Phone Number <b>701-212-8963</b>
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5

August 17, 2020

Board of City Commissioners  
City of Fargo  
200 North Third Street  
Fargo, ND 58102

Re: Temporary Construction Easement  
Flood Mitigation Project #FM-19-B

Dear Commissioners:

Accompanying for City Commission review and approval is a temporary construction easement from the Park District of the City of Fargo in association with Flood Mitigation Project #FM-19-B.

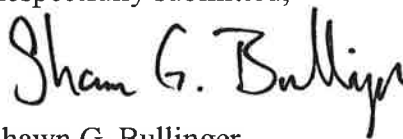
3800 Broadway N – Park District of the City of Fargo

RECOMMENDED MOTION:

Approve the temporary construction easement from the Park District of the City of Fargo and instruct the Mayor to sign the temporary construction 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: Rob Hasey

**EASEMENT**  
**(Temporary Construction Easement)**

**KNOW ALL MEN BY THESE PRESENTS** that **PARK DISTRICT OF THE CITY OF FARGO**, 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, CASS COUNTY, NORTH DAKOTA**, a 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:

A tract of land in an unplatted portion of the Northeast Quarter of Section 19, Township 140, Range 48 West of the Fifth Principal Meridian, Cass County, North Dakota described as follows:

That portion of said Northeast Quarter bounded on the south by the north lines of BROADWAY NORTH THIRD ADDITION, document number 890486, and VRT ADDITION, document number 1077307, both on record at the Cass County Recorder's Office, also bounded on the west, north, and east by the following described line; beginning at the northwest corner of Lot 3, Block 1 of said BROADWAY NORTH THIRD ADDITION; thence North 00°00'00" East a distance of 94.52 feet; thence North 70°24'57" East a distance of 135.68 feet; thence South 54°12'49" East a distance of 43.67 feet; thence South 88°49'08" East a distance of 43.34 feet to the west line of a permanent street easement; thence South 01°10'52" West, along said west line of a permanent street easement, a distance of 20.00 feet to the northeast corner of said VRT ADDITION; said line there terminating.

Said tract contains 13035 square feet, more or less.

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 on October 31, 2021.

(Signatures on following page.)

IN WITNESS WHEREOF, Grantor set its hand and caused this instrument to be executed  
this 17<sup>th</sup> day of August, 2020.

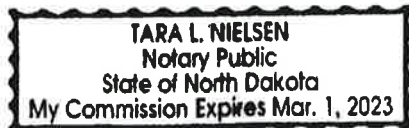
GRANTOR:  
Park District of the City of Fargo

By: *Dave Leker*  
Its: Executive Director

STATE OF North Dakota )  
COUNTY OF Cass ) ss.

On this 17<sup>th</sup> day of August, 2020, before me, a notary public in and for  
said county and state, personally appeared Dave Leker, to me known to be the Executive  
Director of the Park District of the City of Fargo, described in and who has executed the within and  
foregoing instrument, and acknowledged to me that he executed the same.

(SEAL)



*Tara L. Nielsen*  
Notary Public  
Cass County, North Dakota

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 \_\_\_\_\_, 2020, 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:  
City of Fargo, Engineering Department  
225 4th 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





August 20, 2020

Board of City Commissioners  
City of Fargo  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

**Re: Purchase Agreement - Project #FM-20-C1**

Dear Commissioners:

Enclosed and delivered to the City Commission office is an original Purchase Agreement document for the acquisition of property in association with Project FM-20-C1. 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 the purchase agreement with Stanley and Patricia Ryland in association with Project #FM-20-C1.

Please return a copy of the signed original.

Respectfully submitted,

Shawn G. Bullinger  
Land Acquisition Specialist

C: Brenda Derrig  
Jody Bertrand  
Nancy J. Morris



**PURCHASE AGREEMENT**

**THIS AGREEMENT**, made and entered into by and between **STANLEY AND PATRICIA RYLAND**, hereinafter "Seller", whether one or more, and the **CITY OF FARGO**, a North Dakota municipal 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:

That part of the North Half of the North Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1986.12 feet to the southwest corner of said North Half of the North Half of the Southeast Quarter; thence North 89 degrees 05 minutes 36 seconds East along the south line of said North Half of the North Half of the Southeast Quarter for a distance of 131.64 feet to the point of beginning; thence North 10 degrees 56 minutes 47 seconds West for a distance of 324.38 feet; thence 347.44 feet northerly on a tangential curve concave to the east, having a radius of 675.00 feet and a central angle of 29 degrees 29 minutes 29 seconds to the north line of said Southeast Quarter; thence North 89 degrees 05 minutes 56 seconds East along the north line of said Southeast Quarter for a distance of 98.28 feet to the westerly line of Cass County Drain No. 53 according to Quit Claim Deed Document No. 1287139, recorded January 29, 2010, on file and of record in the office of the Recorder, said County; thence 366.39 feet southerly along the westerly line of said Cass County Drain No. 53 on a non-tangential curve concave to the east, having a radius of 622.96 feet, a central angle of 33 degrees 41 minutes 55 seconds and a chord bearing of South 05 degrees 10 minutes 16 seconds West; thence South 11 degrees 40 minutes 42 seconds East, tangent to said curve, continuing along the westerly line of said Cass County Drain No. 53 for a distance of 308.18 feet to the south line of said North Half of the North Half of the Southeast Quarter; thence South 89 degrees 05 minutes 36 seconds West along the south line of said North Half of the North Half of the Southeast Quarter for a distance of 89.28 feet

to the point of beginning.

Said tract contains 1.35 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

AND

That part of the North Half of the North Half of the Southeast Quarter of Section 11, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, described as follows:

Commencing at a found iron monument which designates the southwest corner of said Southeast Quarter; thence North 02 degrees 09 minutes 40 seconds West on an assumed bearing along the west line of said Southeast Quarter for a distance of 1986.12 feet to the southwest corner of said North Half of the North Half of the Southeast Quarter, the point of beginning; thence North 89 degrees 05 minutes 36 seconds East along the south line of said North Half of the North Half of the Southeast Quarter for a distance of 131.64 feet; thence North 10 degrees 56 minutes 47 seconds West for a distance of 324.38 feet; thence 347.44 feet northerly on a tangential curve concave to the east, having a radius of 675.00 feet and a central angle of 29 degrees 29 minutes 29 seconds to the north line of said Southeast Quarter; thence South 89 degrees 05 minutes 56 seconds West along the north line of said Southeast Quarter for a distance of 117.77 feet to the northwest corner of said Southeast Quarter; thence South 02 degrees 09 minutes 40 seconds East along the west line of said Southeast Quarter for a distance of 662.04 feet to the point of beginning.

Said tract contains 1.45 acres, more or less, and is subject to all easements, restrictions, reservations and rights of way of record, if any.

**WHEREAS**, Owner desires to sell, and the Buyer is willing to purchase Owner's property;  
and

**WHEREAS**, Seller and Buyer have reached an agreement to purchase the property in accordance with the terms herein.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and agreements of the parties, it is hereby agreed as follows:

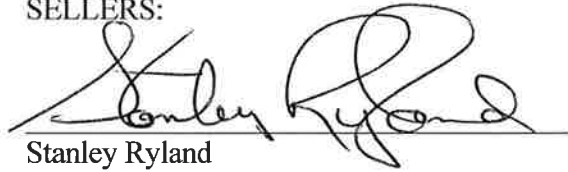
1. Subject Matter. The subject matter of this agreement is the real estate described.

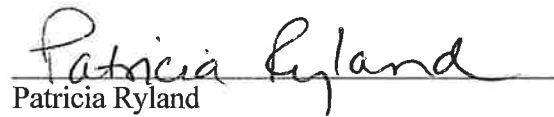
2. Purchase Price. The purchase price for the Property is \$42,000.
3. Payment of Purchase Price. Buyer shall present a certified check at the time of closing for the full amount of the purchase price.
4. Abstract. ~~Seller shall furnish Buyer an abstract of title to the subject property and~~ Buyer shall pay for the cost of continuation of said abstract to a recent date. Said abstract must show good and marketable title in Seller free and clear of all liens and encumbrances (other than those that will be handled at closing). Buyer shall pay all costs associated with closing, including deed preparation and recordation.
5. Taxes and Utilities. ~~Taxes and installments of special assessments for the year of closing shall be prorated between the parties to the date of closing based upon current total true value as calculated by the County of Cass, ND, as of the date of closing. Prior year taxes and assessments must be paid by Seller in advance of closing.~~
6. Closing Date and Transfer of Possession. Closing shall take place as soon as possible. Buyer shall take possession of the real estate on the day of closing. The property is currently vacant.
7. Warranty. Seller will convey the Subject Property by Warranty Deed.

(Signatures on following page.)

DATED this 6 day of August, 2020.

SELLERS:

  
Stanley Ryland

  
Patricia Ryland

DATED this \_\_\_\_ day of \_\_\_\_\_, 2019.

BUYER:

City of Fargo, a North Dakota  
municipal corporation

\_\_\_\_\_  
Dr. Timothy J. Mahoney M.D., Mayor

ATTEST:

\_\_\_\_\_  
Steve Sprague, City Auditor

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(7)

Project No. FM-16-A1

Type: Memorandum of Understanding

Location: 45<sup>th</sup> St & 64<sup>th</sup> Ave N

Date of Hearing: 8/3/2020

RoutingDate

City Commission

8/24/2020

PWPEC File

X

Project File

Roger Kluck

The Committee reviewed a communication from Civil Engineer, Roger Kluck, regarding a Memorandum of Understanding with Cass County for flood control features that will be within County Highway right of way to allow for the construction, operation, and maintenance of a flood control levee.

Staff is recommending approval of the Memorandum of Understanding to allow the North Side Flood Risk Management project to proceed.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of the Memorandum of Understanding with Cass County.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Memorandum of Understanding with Cass County for the construction, operation, and maintenance of a flood control levee.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

Yes No

Developer meets City policy for payment of delinquent specials

N/A

Agreement for payment of specials required of developer

N/A

Letter of Credit required (per policy approved 5-28-13)

N/ACOMMITTEE

Present Yes No Unanimous

☒

Tim Mahoney, Mayor

☒☒☐

Nicole Crutchfield, Director of Planning

☒☒☐

Mark Williams

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

☒☒☐

ATTEST:

*Brenda E. Derrig*  
Brenda E. Derrig, P.E.  
City Engineer

*for Brenda Derrig*

## Memorandum

**To:** Members of PWPEC  
**From:** Roger Kluck, PE CFM, Civil Engineer II, Storm Sewer/Floodplain  
**Date:** July 28, 2020  
**Re:** Project No. FM-16-A1 – Cass County Memorandum of Understanding

---

### **Background:**

The City is finalizing the plans to construct a North Side Flood Risk Management Project that will include an earthen levee and a pump station/control structure on Cass County Drain 10. As part of the project advancement, the City needs to have a Memorandum of Understanding with Cass County for flood control features that will be within County Highway right of way to allow for the construction, operation, and maintenance of a flood control levee. The proposed Memorandum of Understanding is attached. The memorandum of agreement will go to the County Commission for review August 3, 2020.

Staff is recommending approval of the Memorandum of Understanding to allow the North Side Flood Risk Management project to proceed.

### **Recommended Motion:**

Approve the Memorandum of Understanding to allow the North Side Flood Risk Management project to proceed.

REK/klo  
Attachments

**Worden, Heather**

---

**Subject:** City of Fargo MOU for Northside Flood Risk Management Levee  
**Attachments:** Fargo Northside Flood Risk Management Levee MOU.pdf

**From:** Worden, Heather  
**Sent:** Tuesday, August 18, 2020 10:33 AM  
**To:** Roger Kluck <rkluck@FargoND.gov>  
**Cc:** Jody Bertrand <JBertrand@FargoND.gov>; Benson, Jason <BensonJ@casscountynd.gov>  
**Subject:** RE: County Commission Meeting

Roger,

Attached is a copy of the signed MOU. I will mail the original today. If you could please email me a copy back after it has been signed by the City of Fargo that would be much appreciated!



**Heather Worden**  
Administrative Assistant  
Cass County Commission Office  
211 9<sup>th</sup> Street South  
PO Box 2806  
Fargo ND 58108-2806  
[wordenh@casscountynd.gov](mailto:wordenh@casscountynd.gov)  
D: 701-241-5609

**From:** Roger Kluck <[rkluck@FargoND.gov](mailto:rkluck@FargoND.gov)>  
**Sent:** Monday, August 17, 2020 4:25 PM  
**To:** Worden, Heather <[WordenH@casscountynd.gov](mailto:WordenH@casscountynd.gov)>  
**Cc:** Jody Bertrand <[JBertrand@FargoND.gov](mailto:JBertrand@FargoND.gov)>; Benson, Jason <[BensonJ@casscountynd.gov](mailto:BensonJ@casscountynd.gov)>  
**Subject:** RE: County Commission Meeting

**CAUTION: EXTERNAL EMAIL**

Heather if you could send me a PDF of the signed agreement I would appreciate it so I can have the item added to our commission meeting for next Monday. That will allow time for your mailing to reach us for the mayor to sign.

**Roger E. Kluck, PE, CFM**  
Engineer II Storm Water & Floodplain  
City of Fargo  
225 4<sup>th</sup> St N  
Fargo, ND 58102-4817

701- 241-1537(work)  
701-361-5354 (cell)  
[rkluck@FargoND.gov](mailto:rkluck@FargoND.gov)



**MEMORANDUM OF UNDERSTANDING  
REGARDING RIGHT OF WAY ENCROACHMENT AND ROAD MAINTENANCE**

This Memorandum of Understanding ("MOU") is entered into between the City of Fargo, a North Dakota municipal corporation whose address is 225 Fourth Street North, Fargo, North Dakota 58102 ("City" or "Fargo"), and Cass County, North Dakota, a North Dakota political subdivision, whose address is 211 9th Street South Fargo, North Dakota 58103 ("Cass County").

WHEREAS, North Dakota Century Code § 40-05.1-6 and Article 3 of Fargo's Home Rule Charter authorizes Fargo to enter into contracts; and

WHEREAS, North Dakota Century Code § 11-09.1-05 and Article 2 of Cass County's Home Rule Charter authorizes the Cass County to enter into contracts; and

WHEREAS, Fargo is undertaking a flood mitigation project to protect its infrastructure from flood waters and the project will impact portions of the right of way of Cass County Highways 31 (CR 31) and 81 (CR 81); and

WHEREAS, Cass County currently owns and maintains both CR 31 and CR 81 and pursuant to the terms of this MOU will allow Fargo to enter into the right of way of both highways for the construction of a levee. The following are the planned flood mitigation project impacts within the CR 31 and CR 81 right of ways:

**CR 31:** The levee will enter into the CR 31 right of way approximately 100-feet south of the intersection of CR 31 and 48<sup>th</sup> Avenue N. The levee will cross the entire width of the right of way perpendicular and will require the reconstruction of approximately 26-feet of the CR 31 pavement surface for the inclusion of a concrete sleeper slab. The sleeper slab will produce levee continuity through the right of way crossing to enable levee certification.

**CR 81:** The levee will perpendicularly enter into CR 81 right of way approximately 1,200 feet south of the intersection of CR 81 and 64<sup>th</sup> Avenue N. The levee will tie into the existing east shoulder of CR 81 at an elevation of 892.0 (NAVD88), at which point the new levee construction will terminate and not require the removal of any existing road pavement. However, the line of protection created by the levee will utilize the CR81 embankment south of the connection point of 892.0 (NAVD88) down to 40<sup>th</sup> Avenue N.

Within the CR 81 right of way from the levee tie in point down to 40<sup>th</sup> Avenue N, there are six storm water culverts that are crossing underneath CR 81. Three of the existing culverts are corrugated steel pipe material that will be replaced with reinforced concrete pipe. These culverts will be replaced by the City as part of the flood mitigation project. The replacement culverts will match the existing culverts diameters and invert elevations. The City will install sluice (slide) gates on the west end of all 6 culverts, which Fargo will close during a flood event; and



WHEREAS, Fargo will participate in a before and after project construction inspection of CR 31 and CR 81 with Cass County to determine any areas damaged by said project construction, and City shall make any necessary repairs to restore said highways, CR 31 and CR 81, to pre-construction condition, before returning the highways back to Cass County.

NOW THEREFORE, in consideration of the mutual terms, covenants, conditions, and agreements contained herein, it is hereby agreed by and between the parties as follows:

1. Highways. The parties agree that once the levee project is complete, future maintenance and reconstruction of CR 31 and 81 will be the responsibility of Cass County. Cass County shall coordinate with the City for any maintenance or reconstruction activities that may impact the flood mitigation improvements the City has constructed within the CR 31 and CR 81 right of ways. Cass County will not remove, modify, or lower any of the flood mitigation improvements without prior written consent from Fargo. Cass County shall also not lower the CR 81 road surface south of the flood mitigation levee tie-in point below an elevation of 892.0 (NAVD88) without prior written approval from Fargo.

2. Drainage. Both parties agree that during and after construction of the flood protection project, Fargo will design and construct storm water drainage to maintain pre-project conditions during periods of normal river levels. The parties further agree that during periods of high water on the river, Fargo may need to close the sluice gates installed on all of the replaced culverts that cross underneath CR 81, to block the existing drainage pattern until the river levels recede. Fargo shall notify Cass County a minimum of three calendar days of when the sluice gates are closed and reopened. Fargo shall be responsible for all, inspection, operation and maintenance of the sluice gates, including replacement if any should become inoperable.

If Cass County shall become aware of any damage to a sluice gate, they shall notify Fargo within 30 days of awareness. Cass County will not be responsible for annual inspections of sluice gates. Cass County shall be responsible for the operation and maintenance of the replaced storm water culverts.

3. General Maintenance of Flood Protection Components and Right of Entry. The parties agree that future maintenance and repairs of the levees and sleeper slab within the CR 31 and 81 right of ways will be the responsibility of Fargo and Fargo shall have the ability to enter into Cass County rights of way at any time to complete required maintenance, repairs and inspections.

4. Dispute Resolution.

- a. Fargo and Cass County will each designate a representative who will be the party's representative with respect to any matters relating to the repair and/or maintenance of the elements identified in this MOU, including the flood protection measures, which may be in dispute or requiring agreement under the terms of this Agreement. Such representative may be changed from time to time. The representatives will be responsible for resolving any dispute between the parties concerning this Agreement and for the scheduling of maintenance and repairs.

- b. If the designated representatives cannot agree with respect to any matter requiring agreement or with respect to any dispute concerning this Agreement, the parties will submit the matter to their respective Boards (or a committee established by the Board) to resolve the dispute.

8. Easements. Each party will grant to the other party any and all necessary easements to enable the other party to perform their obligations under the terms of this Agreement.

9. Term. The term of this Agreement will be twenty (20) years, with an expiration date of December 31, 2040. This Agreement will automatically renew for successive periods of twenty (20) years unless terminated by any party. Any party may terminate this Agreement by providing one (1) year written notice to the other party.

10. Release and Waiver. In consideration of the mutual promises of the parties and to the fullest extent permitted by law, each party assumes all risk of personal injury or death and property damage or loss from whatever causes arising while that party, its agents, employees or designees are conducting work pursuant to this MOU and each party releases the other party, its officers, employees, agents or designees relating to or arising out of that parties', agents, employees or designees work pursuant to this MOU, whether known or unknown, foreseen or unforeseen, liquidated, unliquidated, fixed, contingent, material or immaterial, disputed or undisputed, suspected or unsuspected, asserted or unasserted, direct or indirect, at law or in equity, from the beginning of time, and each party understands and acknowledges the significance of such release and waiver and hereby assumes full responsibility for any injuries, damages or losses that it may incur as a result of its execution of this MOU.

11. Notice. Any notice or election required or permitted to be given or served by any party to this MOU upon any other will be deemed given or served in accordance with the provisions of this MOU if said notice or election is (a) delivered personally, or (b) mailed by United States certified mail, return receipt requested, postage prepaid, and in any case properly addressed as follows:

If to Fargo:

City of Fargo  
ATTN: City Auditor  
Fargo City Hall  
225 Fourth Street North  
Fargo, ND 58102

If to Cass County:

Cass County  
ATTN: Board of County Commissioners  
211 9<sup>th</sup> Street South  
Fargo, ND 58103

Each such mailed notice or communication will be deemed to have been given on the date the same is deposited in the United States mail. Each such delivered notice or communication will be deemed to have been given upon the delivery. Any party may change its address for service of notice in the manner specified in this MOU.

12. Time is of the Essence. Time is of the essence of each provision of this entire MOU and of all the conditions thereof.

13. Entire Agreement. This MOU constitutes the entire and complete agreement between the parties and supersedes any prior oral or written agreements between the parties. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions set forth herein, and that no modification of this MOU and no waiver of any of its terms and conditions will be effective unless in writing and duly executed by the parties.

14. Amendments. No amendment, modification, or waiver of any condition, provision or term will be valid or of any effect unless made in writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification or waiver.

15. No Forbearance. The failure or delay of any party to insist on the performance of any of the terms of this MOU, or the waiver of any breach of any of the terms of this MOU, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this MOU, or the right to enforce each and every term of this MOU.

16. Remedies. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties under and pursuant to this MOU.

17. Binding Effect. All covenants, agreements, warranties and provisions of this MOU will be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns.

18. Governing Law. This MOU has been made and entered into under the laws of the State of North Dakota, and said laws will control its interpretation. Any litigation arising out of this MOU will be venued in State District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.

19. Rules of Construction. The parties acknowledge that they have had the opportunity to review this MOU, and that they have an equal bargaining position in this transaction. No rule of construction that would cause any ambiguity in any provision to be construed against the drafter of this document will be operative against any party to this MOU.

20. Representation. The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this MOU, and agree they have not been influenced by any representations or statements made by any other parties.

21. Headings. Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

(Signatures appear on the following pages)

Dated this \_\_\_\_\_ day of August, 2020.

CITY OF FARGO, NORTH DAKOTA, a  
municipal corporation

By:

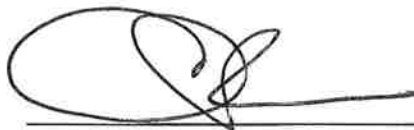
\_\_\_\_\_  
Dr. Timothy J. Mahoney, M.D., Mayor

ATTEST:

\_\_\_\_\_  
Steve Sprague, City Auditor

Dated this 17<sup>th</sup> day of August, 2020.

CASS COUNTY, NORTH DAKOTA

A handwritten signature in black ink, appearing to read 'Chad M. Peterson', written over a horizontal line.

Chad M. Peterson, Board Chairman

ATTEST:

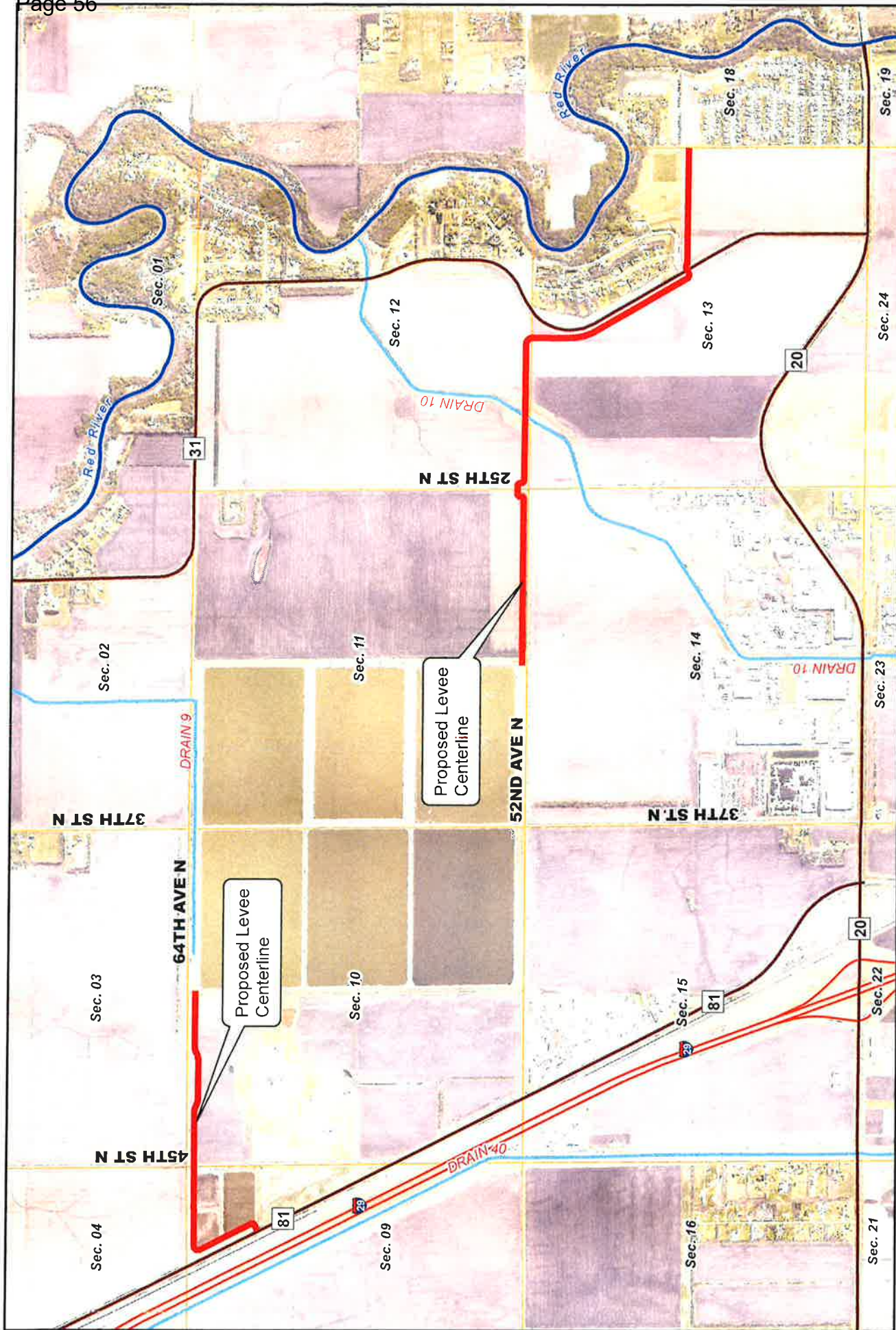
A handwritten signature in black ink, appearing to read 'Mike Montplaisir', written over a horizontal line.  
Mike Montplaisir, Finance Director

Exhibit "A"

Aerial View and Depiction of  
North Side Flood Protection Project

[See Attached]





**EXHIBIT**

**ALIGNMENT**

**FARGO, NORTH DAKOTA**

Created By: MMW Date Created: 08/18/20 Date Saved: 07/26/20  
 Filmed By: KKK Date Created: 08/18/20 Date Saved: 07/26/20  
 Horizontal Datum: Fargo Ground Coordinate System Vertical Datum: NAVD1980  
 T:\Projects\191001\19189A19189A\_Alignment\_Exhibit.mxd

**moore**  
engineering, inc.

**M**

0 1,000 2,000 4,000 Feet  
1 in = 2,000 feet

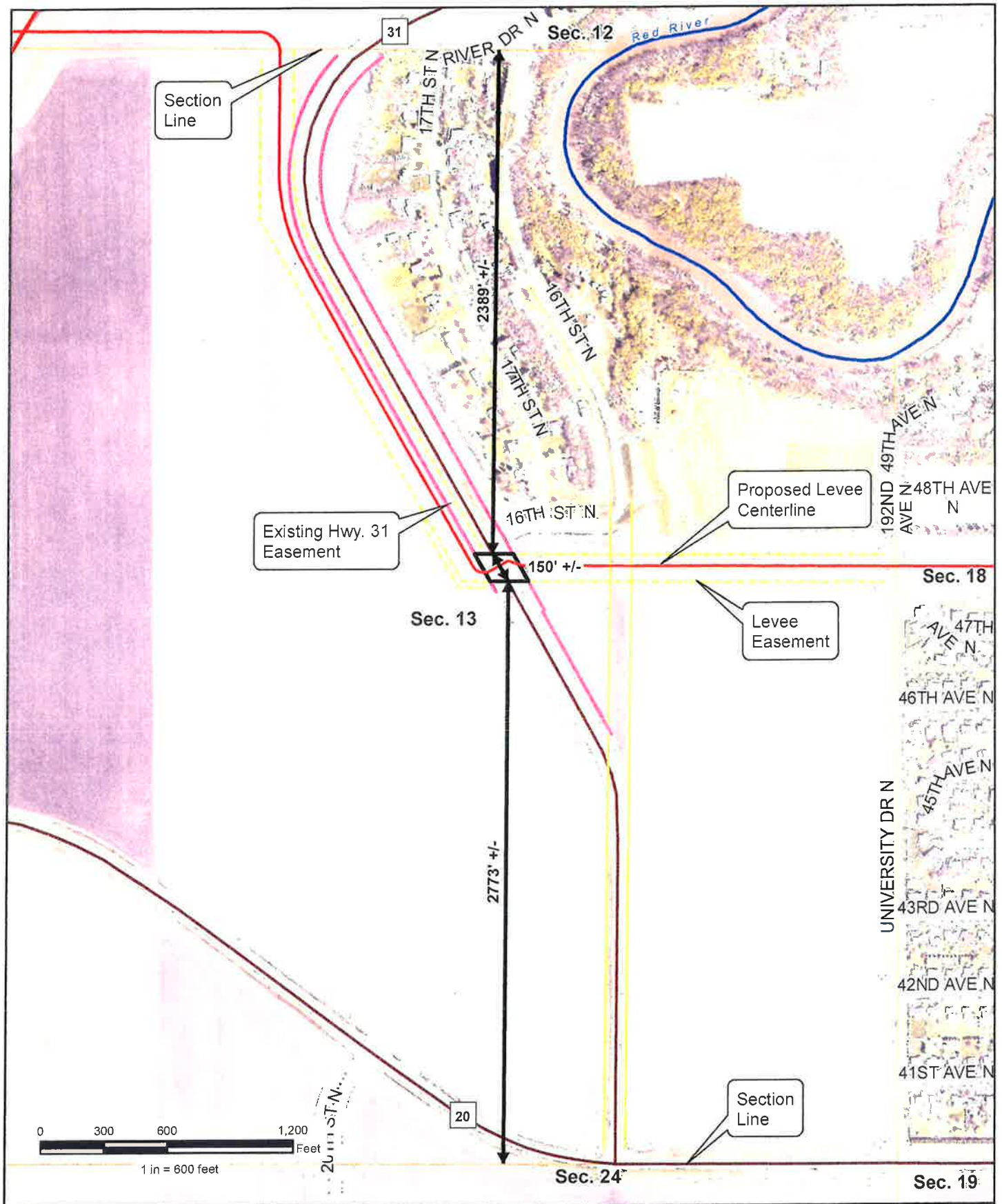
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Exhibit "B"

Aerial View and Depiction of  
North Side Flood Protection Project CR 31 crossing

[See Attached]



**EXHIBIT**  
**COUNTY HIGHWAY 31**  
**FARGO, NORTH DAKOTA**

Created By: KMV Date Created: 06/18/20 Date Saved: 06/18/20 Date Exported: 06/18/20  
 Plotted By: kyle voik Parcel Date: N/A Aerial Image: 2017 SIDS Elevation Data: N/A  
 Horizontal Datum: Fargo Ground Coordinate System Vertical Datum: NAVD1988  
 T:\Projects\19100\19189A\19189A\_Hwy31\_Exhibit.mxd

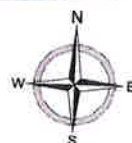
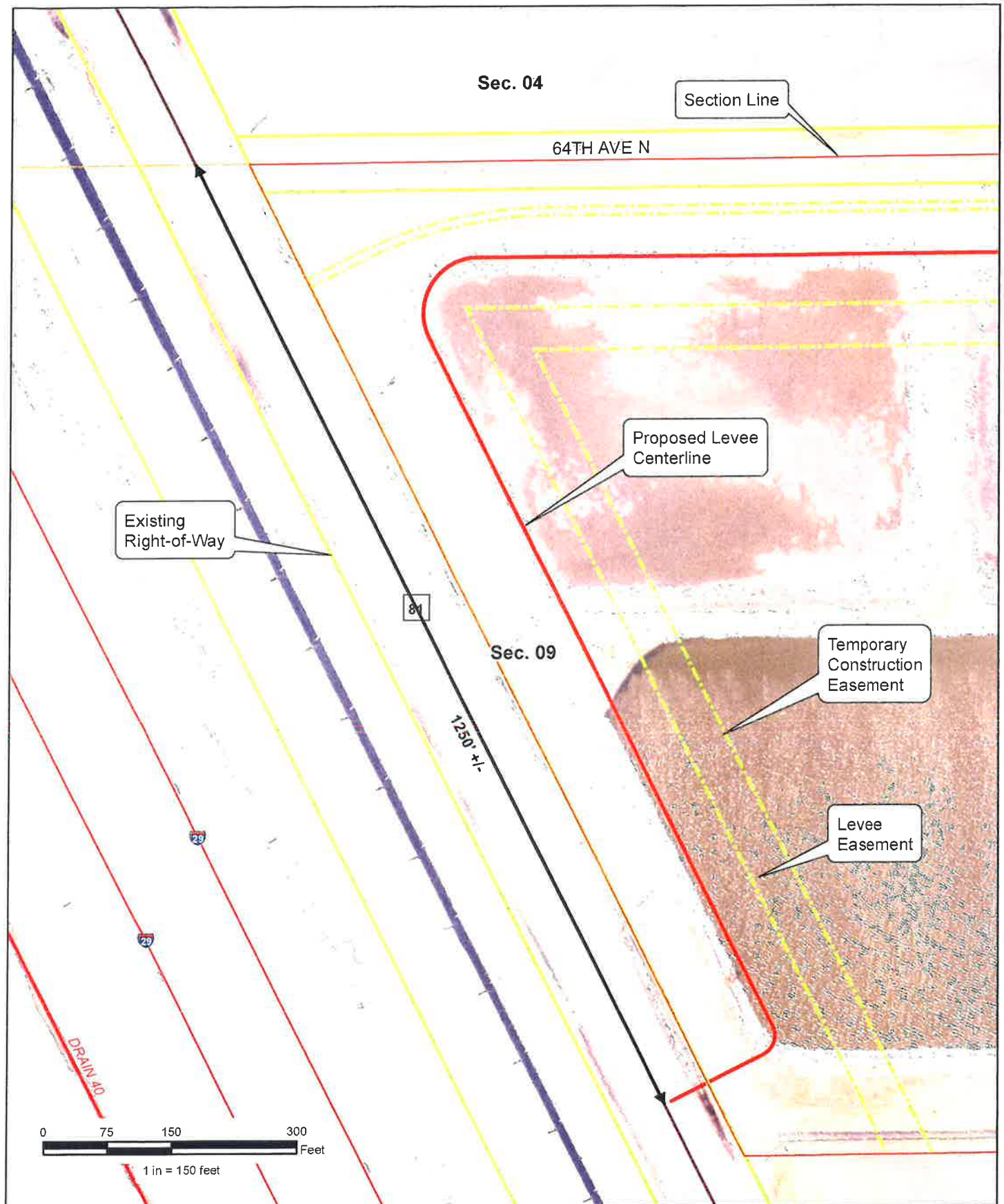


Exhibit "C"

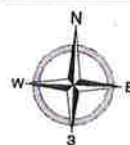
Aerial View and Depiction of  
North Side Flood Protection Project CR 81 Levee

[See Attached]



**EXHIBIT  
COUNTY HIGHWAY 81  
FARGO, NORTH DAKOTA**

Created By: KMW Date Created: 06/18/20 Date Saved: 07/24/20 Date Exported: 07/24/20  
 Plotted By: kyle.volk Parcel Date: N/A Aerial Image: 2017 SIDS Elevation Date: N/A  
 Horizontal Datum: Fargo Ground Coordinate System Vertical Datum: NAVD83  
 T:\Projects\19100\19189A\19189A\_Hwy81\_Updated\_Align\_Exhibit.mxd





## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Bridge Repair Work

8

Location: 40<sup>th</sup> Avenue North Bridge

Date of Hearing: 8/17/2020

<u>Routing</u>	<u>Date</u>
City Commission	8/24/2020
PWPEC File	X
Project File	Jeremy Gorden

The Committee reviewed a communication from Division Engineer, Jeremy Gorden, regarding a concurrence with the Clay County Proposal for 40<sup>th</sup> Avenue North (Cass County 20) Bridge Repair work.

Engineering is seeking approval of the proposal submitted by Clay County for Alternative #3 with the City of Fargo share being \$47,067.85. Per our 2015 "Bridge Maintenance Agreement" with Moorhead, Clay County and the Fargo Park District, Clay County is the lead political entity for this repair work. The City of Fargo is responsible for payment of the other one-half of the cost of the repair or maintenance actions.

Staff is recommending approval of the 40<sup>th</sup> Avenue North Bridge repairs at an estimated cost of \$47,067.85.

On a motion by Bruce Grubb, seconded by Steve Sprague, the Committee voted to recommend approval of the 40<sup>th</sup> Avenue North Bridge repairs at an estimated cost of \$47,067.85.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the 40<sup>th</sup> Avenue North Bridge repairs at an estimated cost of \$47,067.85.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax

Yes	No
N/A	
N/A	
N/A	

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

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

Present	Yes	No	Unanimous
			<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tom Knakmuhs
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

  
 Tom Knakmuhs, P.E.  
 Assistant City Engineer

C: Kristi Olson



## Memorandum

**To:** Members of PWPEC

**From:** Jeremy M. Gorden, PE, PTOED  
Division Engineer - Transportation

**Date:** August 12, 2020

**Re:** Concurrence with Clay County Proposal for 40<sup>th</sup> Avenue North (Cass County 20) Bridge Repair Work (Grinding, Sealing, Striping)  
No City of Fargo Project Number

---

I am requesting approval to spend \$47,067.85 for repairs to the 40<sup>th</sup> Avenue North Bridge. The expenditure is necessary to grind the bridge deck, seal with crack sealant, and stripe the bridge deck and approaches.

Attached is a cover letter (email) from Justin Sorum, Assistant Clay County Engineer, with cost estimates for three alternative repair actions. The first two items on the cost estimates; Bridge Deck Planing and Pavix Deck Sealant, are equal cost in all three alternatives. The third item, striping, is the where the cost difference lies with Alternative #1 being the least costly and Alternative #3 being the most costly. We are requesting approval of Alternative #3.

The requirement for these actions was brought up by the Clay County Engineers in early July of this year and verified by a July 16<sup>th</sup> site visit. The bridge deck has numerous hairline cracks in the deck that require sealing. In addition to this, the deck will be ground to provide a rougher surface, designed to reduce sliding in wet/winter conditions. Lastly, the bridge striping will be re-accomplished with reflective epoxy paint.

Per our 2015 "Bridge Maintenance Agreement" with Moorhead, Clay County, and the Fargo Park District, Clay County is the lead political entity for this repair work. As such, they are responsible for the contracting and completion of any needed repair actions, and payment of one-half the cost. The City of Fargo is responsible for payment of the other one-half the cost of the repair or maintenance actions. The amount requested for approval is one-half the estimated cost of the repair work.

**Recommended Motion:**

Approval of 40<sup>th</sup> Avenue North Bridge repairs at an estimated cost of \$47,067.85.

Attachments

## Ron Solberg

---

**From:** Justin Sorum <Justin.Sorum@co.clay.mn.us>  
**Sent:** Tuesday, August 11, 2020 7:57 AM  
**To:** Ron Solberg; Jeremy Gorden  
**Cc:** David Overbo  
**Subject:** Wall Street Bridge Grinding and Deck Sealing  
**Attachments:** Cost Estimate.pdf

**CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Ron/Jeremy,

See attached cost estimate for grinding, sealing, and striping the Wall Street Bridge. DSI would be doing the grinding, clay county sealing the deck, and northstar striping it. There are 3 options attached and they differ in the striping, epoxy, epoxy wet reflective, and epoxy wet reflective ground in. Let me know your guys thoughts, we would be providing the flagging for DSI, and potentially renting a sprayer for the sealant.

Thanks,

*Justin Sorum, PE*  
*Assistant County Engineer*  
*Clay County Highway Department*  
*Phone: 218-299-5099*  
*d*



*This email (including any attachments) is intended for the exclusive use of the individual to whom it is addressed. The information contained thereafter may be confidential. If you are not the intended recipient, please notify the sender by email of the mistake and delete this email and any attachments immediately. Disclosure is prohibited.*



# 1

<b>Wall Street Bridge Deck Sealing Cost Estimate with Epoxy</b>				
<b>Item</b>	<b>Unit</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Total</b>
<b>Bridge Deck Planing</b>				
Mobilization	L.S.	1	\$3,615.00	\$3,615.00
Bridge Deck Planing	S.F.	45000	\$1.11	\$49,950.00
Clay County Labor	Hours	20	\$35.00	\$700.00
				\$54,265.00
<b>Pavix Deck Sealant</b>				
Pavix Deck Sealant	Gal	275	\$65.10	\$17,902.50
Clay County Labor	Hour	80	\$35.00	\$2,800.00
Rental Equipment	L.S.	1	\$1,500.00	\$1,500.00
				\$22,202.50
<b>Striping</b>				
Mobilization	L.S.	1	\$880.00	\$880.00
24" Solid Line Yellow- Epoxy	L.F.	208	\$9.44	\$1,963.52
6" Solid Line White- Epoxy	L.F.	1990	\$1.61	\$3,203.90
4" Double Solid Line Yellow- Epoxy	L.F.	1804	\$1.96	\$3,535.84
				\$9,583.26
<b>Project Total</b>				\$86,050.76
<b>Clay County Share</b>				\$43,025.38
<b>City Of Fargo Share</b>				\$43,025.38

Wall Street Bridge Deck Sealing Cost Estimate with Epoxy WR				
Item	Unit	Quantity	Unit Price	Total
<b>Bridge Deck Planing</b>				
Mobilization	L.S.	1	\$3,615.00	\$3,615.00
Bridge Deck Planing	S.F.	45000	\$1.11	\$49,950.00
Clay County Labor	Hours	20	\$35.00	\$700.00
				\$54,265.00
<b>Pavix Deck Sealant</b>				
Pavix Deck Sealant	Gal	275	\$65.10	\$17,902.50
Clay County Labor	Hour	80	\$35.00	\$2,800.00
Rental Equipment	L.S.	1	\$1,500.00	\$1,500.00
				\$22,202.50
<b>Striping</b>				
Mobilization	L.S.	1	\$880.00	\$880.00
24" Solid Line Yellow- Epoxy Wet Reflective	L.F.	208	\$10.55	\$2,194.40
6" Solid Line White- Epoxy Wet Reflective	L.F.	1990	\$2.12	\$4,218.80
4" Double Solid Line Yellow- Epoxy Wet Reflective	L.F.	1804	\$2.59	\$4,672.36
				\$11,965.56
<b>Project Total</b>				\$88,433.06
<b>Clay County Share</b>				\$44,216.53
<b>City Of Fargo Share</b>				\$44,216.53

# 3

Wall Street Bridge Deck Sealing Cost Estimate with Epoxy WR GI				
Item	Unit	Quantity	Unit Price	Total
<b>Bridge Deck Planing</b>				
Mobilization	L.S.	1	\$3,615.00	\$3,615.00
Bridge Deck Planing	S.F.	45000	\$1.11	\$49,950.00
Clay County Labor	Hours	20	\$35.00	\$700.00
				\$54,265.00
<b>Pavix Deck Sealant</b>				
Pavix Deck Sealant	Gal	275	\$65.10	\$17,902.50
Clay County Labor	Hour	80	\$35.00	\$2,800.00
Rental Equipment	L.S.	1	\$1,500.00	\$1,500.00
				\$22,202.50
<b>Striping</b>				
Mobilization	L.S.	1	\$1,700.00	\$1,700.00
24" Solid Line Yellow- Epoxy Wet Reflective Ground In	L.F.	208	\$15.20	\$3,161.60
6" Solid Line White- Epoxy Wet Reflective Ground In	L.F.	1990	\$2.90	\$5,771.00
4" Double Solid Line Yellow- Epoxy Wet Reflective Ground In	L.F.	1804	\$3.90	\$7,035.60
				\$17,668.20
<b>Project Total</b>				\$94,135.70
<b>Clay County Share</b>				\$47,067.85
<b>City Of Fargo Share</b>				\$47,067.85

# PAVIX®

By Chem-Crete



**PAVIX® is a unique, patented, dual crystalline, penetrating product that provides superior protection of on-grade concrete and masonry substrates.** When applied, this proven technology protects against the harmful delamination caused by water and moisture penetration. Freeze & thaw effects, chlorides, ASR (Alkali Silica Reaction), thermal cracking and pop-outs, are all reduced or eliminated with a single, long-lasting application.

- Long-lasting Internal Waterproofing and Moisture Blocking for Slab-on-grade Concrete
- Environmentally Friendly (No VOCs)
- Reduces or Eliminates Surface Scaling
- Resists Many Aggressive Chemicals (Caustics, Jet Fuels, Oil and Most Acids)
- Protects Reinforcing Steel Against Corrosion
- Enhances and Protects the Adhesion Properties of Joint Sealants and Road Markers
- Reduces Alkali Silica Reactions (ASR), and Eliminates Silicate Dusting
- Prevents Penetration of Chloride Ions from Solid and Liquid De-Icing Agents
- Eliminates or Reduces Damage Caused by Repeated Freezing and Thawing Cycles
- Seals and Protects Cracks up to 1/16 in. (1.5 mm)
- Meets USDA Requirements for Incidental Food Contact
- Meets or Exceeds ASTM Testing
- Made in the U.S.A.

Manufactured By  
International Chem-Crete  
Established 1969  
[chem-crete.com](http://chem-crete.com)







# CHEM-CRETE PaviX<sup>®</sup> CCC100

**Concrete Moisture Protection System For Airport,  
Highway & Bridge Structures**

## PRODUCT DESCRIPTION

**Chem-Crete PaviX CCC100** is a unique water-based chemical product for the moisture protection of large-scale concrete substrates against temperature and water associated problems such as thermal cracking, damage caused by repeated freeze and thaw cycles, chloride ion penetration, as well as alkali silica reactions.

Chem-Crete PaviX CCC100 keeps treated concrete reasonably dry, thus helping to eliminate most water and moisture associated problems. Chem-Crete PaviX CCC100 provides three effective mechanisms for concrete protection in all weather conditions by formation of two types of crystals and water repellency. In the presence of moisture, one type of the crystals present in the product swells, therefore, blocking the pores completely. The second type of crystals absorbs the extra moisture on the surface of the first crystal preventing surface moisture on that crystal from diffusion to the concrete. These hydrophilic and hygroscopic properties provide double and durable protection against moisture penetration in concrete.



## ADVANTAGES & BENEFITS

- ❑ Provides long lasting internal waterproofing and moisture blocking from positive and negative sides.
- ❑ Excellent repelling property preventing water, jet fuel and oil penetration intrusion from the surface.
- ❑ Resists aggressive chemicals such as acids, caustics Jet fuels and oil.
- ❑ Protects reinforcing steel bars against corrosion without any negative effect on existing steel cathodic protection.
- ❑ Increases joint sealant adhesion by preventing moisture intrusion through the joint material bond line.
- ❑ Reduces Alkali Silica Reactions (ASR), and eliminates silicate dusting.
- ❑ Prevents penetration of chloride ions from de-icing salts.
- ❑ Eliminates damage caused by repeated freezing and thawing cycles.
- ❑ Prevents concrete scaling.
- ❑ Seals and protects cracks up to 1/16<sup>th</sup> inch (1.5 mm).
- ❑ Repair cracks greater than 1/16" and seal joints prior to applying PaviX CCC100.

## FIELDS OF APPLICATION

Chem-Crete PaviX CCC100 can be used as a treatment and protection against water and moisture associated problems for all concrete and cementitious structures.

- ❑ Airport Runways
- ❑ Aircraft Parking
- ❑ Tunnels
- ❑ Parking Lots
- ❑ Sea Ports
- ❑ Airport Taxiways
- ❑ Bridges
- ❑ Concrete Roads-Highways
- ❑ Buildings
- ❑ Walkways

## PACKAGING

Product	Packaging
CHEM-CRETE PAVIX CCC100	1 GAL (3.785 LITER) JUG
	5 GAL (18.925 LITER) PAIL
	55 GAL (208 LITER) DRUM

## TECHNICAL SPECIFICATIONS

### Physical Properties:

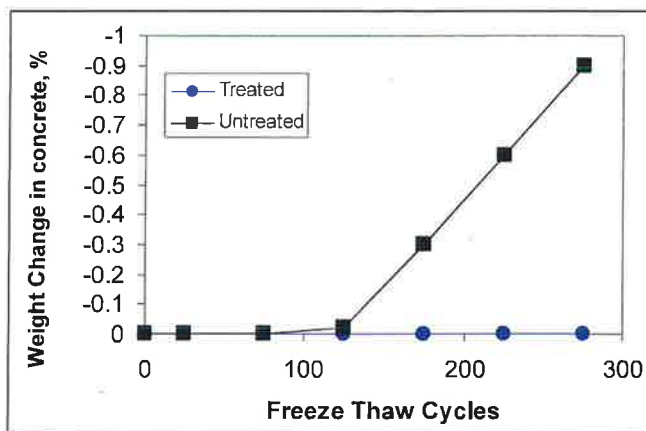
Specific Gravity	1.1
Viscosity	2.4 centipoises
Freezing Point	28°F (-4°C)
Boiling Point	219°F (104 °C)
Environmental Hazards	None
Color	Clear
Odor	None
Toxicity	None
Fumes	None
Flammability	None

**Product Performance:** Chem-Crete PaviX CCC100 complies with the following standards:

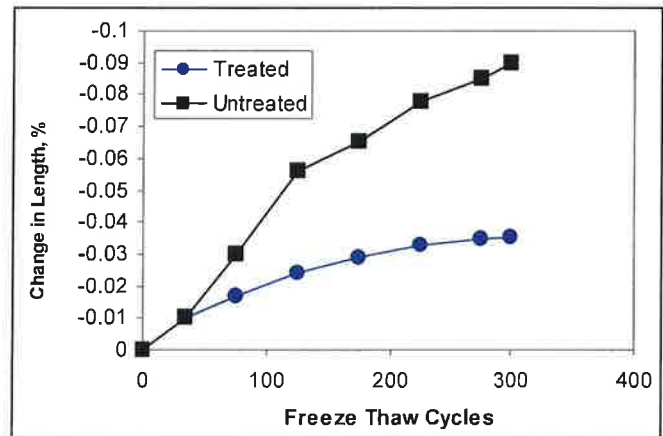
### ASTM STANDARDS:

- ❑ ASTM C666-97 Standard Test Method for Resistance of Concrete to Rapid Freezing & Thawing.
- ❑ ASTM C 1262-98 Standard Test Method for Evaluating the Freeze Thaw Durability of Manufactured Concrete Masonry Units and Related Concrete Units.

- ❑ ASTM C 672-98 Standard Test Method for Scaling Resistance of Concrete Surfaces Exposed to Deicing Chemicals.
- ❑ ASTM C1218 Standard Test Method for Water-Soluble Chloride in Mortar and Concrete.
- ❑ ASTM C1202-97 Standard Test Method for Electrical Indication of Concrete's Ability to Resist Chloride Ion Penetration.
- ❑ ASTM D6489-99 Standard Test Method for Determining the Water Absorption of Hardened Concrete Treated With a Water Repelling Coating.
- ❑ ASTM C944-99 Standard Test Method for Abrasion Resistance of Concrete or Mortar Surfaces by the Rotating-Cutter Method.
- ❑ ASTM D4541-95 Standard Test Method for Pull-Off Strength of Coatings Using Portable Adhesion Testers.
- ❑ ASTM F609-96 Standard Test Method for Measuring Static Slip Resistance of Footwear Sole, Heel or Related Materials Using a Horizontal Pull Slipmeter (HPS).
- ❑ ASTM E303-93 Standard Test Method for Measuring Surface Frictional Properties Using the British Pendulum Tester.
- ❑ ASTM C 642-97 Standard Test Method for Density, Absorption, and Voids in Hardened Concrete.
- ❑ ASTM C 457-98 Standard Test Method for Microscopical Determination of Parameters of the Air Void System in Hardened Concrete.
- ❑ AASHTO T259-00 Resistance of Concrete to Chloride Ion Penetration.

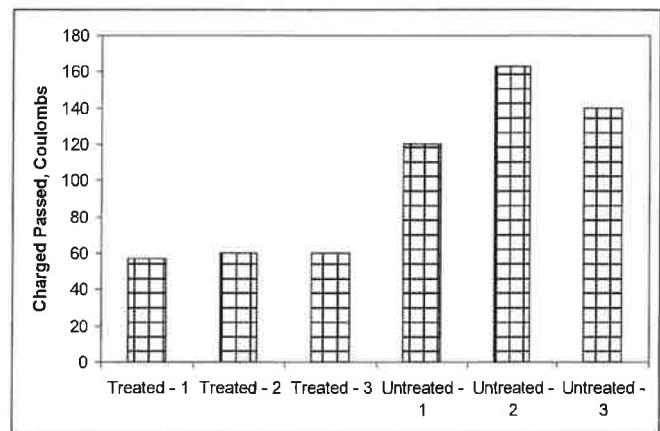


ASTM C-666-97



Freezing &amp; Thawing effect on treated &amp; untreated concrete samples

ASTM C666-97



Chloride Ion Penetration tests on treated &amp; untreated concrete samples

ASTM C1202-91 &amp; AASHTO T259

### Other Standards

ISO 2812-2:1993	Paints and varnishes -- Determination of resistance to liquids -- Part 2: Water immersion method
CSN 73 2578	Test for Water-tightness of Surface Finishes of Building Materials
CSN 73 1326 Method B	Determination of resistance to de-icing salts
GOST 12730.5-84	Concretes. Method for the determination of water tightness
GOST 10060-87	Concretes. Methods of frost resistance determination

### APPLICATION

Concrete surfaces must be clean and sound prior to application of the product. Proper cleaning will open the surface pores and capillaries in order to enhance the

penetration process. Compressed air can be used to remove dust and loose particles from the surface. Flushing the area to be treated with water can improve the cleaning process, however for heavily contaminated areas; special concrete cleaning agents such as Chem-Crete CONCLEAN CCC060 can be used to remove dirt especially those contaminated with oil.

For large-scale applications, such as airport runways, it is recommended to spray the product using a heavy-duty commercial sprayer.

**Coverage:**

It is recommended to apply Chem-Crete PaviX CCC100 at an average rate of 150 to 200 ft<sup>2</sup>/gal (3.7 to 4.9 m<sup>2</sup> / lit) in one coat.

**Limitations:**

Do not apply Chem-Crete PaviX CCC100 in the following cases:

- ☐ If temperature falls below 40°F (5°C).
- ☐ Do Not Allow Product to Freeze.
- ☐ To areas previously treated with sealing agents unless these sealers are removed by chemical or mechanical means.

**STORAGE**

Chem-Crete PaviX CCC100 must be stored under room temperature. Cold temperatures may cause the product to crystallize. Shelf life is ONE YEAR in its original unopened packaging.

**Do Not Allow Product to Freeze.**

**SAFETY PRECAUTIONS**

As with all construction chemical products, adequate precautions and care must be taken during usage and storage. Avoid direct contact with foodstuff, eyes, skin, and mouth. Any direct contact with skin, eyes, etc. should be washed thoroughly with clean running water and soap.

**Always wear protective goggles and gloves. In case of eye contact, flush for 15 minutes with warm water. Keep out of reach of children.**

**TECHNICAL ASSISTANCE**

Please contact International Chem-Crete Corporation for Technical Personnel.

**WARRANTY**

**LIMITED WARRANTY:** International Chem-Crete Inc. warrants that, at the time and place we make shipment, our materials will be of good quality and will conform to our published specifications in force on the date of acceptance of the order.

**DISCLAIMER:** The information contained herein is included for illustrative purposes only and, to the best of our knowledge, is accurate and reliable. International chem-crete Inc. is not under any circumstances liable to connection with the use of information. As International Chem-Crete Inc. has no control over the use to which others may put its products, it is recommended that the products be tested to determine the suitability for specific applications and/or our information is valid in particular circumstances. Responsibility remains with the architect or engineer, contractor and owner of the design, application and proper installation of each product. Specifier and user shall determine the suitability of the product for specific application and assume all responsibility in connection therewith. AM0617

**Manufactured By:**



International Chem-Crete Inc., 800 Security Row, Richardson, TX 75081, U.S.A

Tel: (972) 671-6477, Fax: (972) 238-0307

[contactus@chem-crete.com](mailto:contactus@chem-crete.com)

[www.chem-crete.com](http://www.chem-crete.com)



## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(9)

Type: Easement Amendment and ROW Use Agreement

Location: TMH Properties (3030 36<sup>th</sup> Ave S)

Date of Hearing: 7/6/2020

RoutingDate

City Commission

8/24/2020

PWPEC File

X

Project File

Kevin Gorder

The Committee reviewed a communication from Division Engineer, Kevin Gorder, regarding an Easement Amendment and ROW Use Agreement requested by TMH Properties for an indoor climate controlled storage facility at 3030 36<sup>th</sup> Avenue South.

TMH Properties has requested City Services be installed across from the easement to serve the facility and they would like to place a small parking lot on the easement. The Easement Amendment allows for this development and minimizes the City's involvement in any sanitary sewer repairs or replacements.

In addition, a ROW Use Agreement has been requested to fill in the ditch between 36<sup>th</sup> St and their property line. The ROW Use Agreement work items include storm sewer inlet/manhole modifications, gate valve modifications, fire hydrant modifications, and filling in the ditch. The ditch would still be graded to allow for drainage.

Staff is recommending approval of the Easement Amendment and the ROW Use Agreement.

On a motion by Bruce Grubb, seconded by Steve Dirksen, the Committee voted to recommend approval of the Easement Amendment and ROW Use Agreement.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Easement Amendment and ROW Use Agreement with TMH Properties.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

Yes No

N/AN/AN/ACOMMITTEE

Present Yes No Unanimous

✓

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

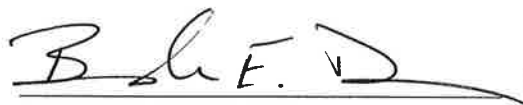
✓✓✓

Kent Costin, Finance Director

✓✓✓

ATTEST:

C: Kristi Olson



Brenda E. Derrig, P.E.  
City Engineer

# Memorandum

**To:** Members of PWPEC

**From:** Kevin Gorder, Division Engineer

**Date:** July 1, 2020

**Re:** TMH Properties Easement Amendment and ROW Use Agreement  
3030 36<sup>th</sup> Avenue South

---

## **Background:**

TMH Properties is building an indoor climate controlled storage facility at 3030 36<sup>th</sup> Avenue South in Fargo. The City obtained a sanitary sewer easement in 2009. As part of their project, TMH Properties has requested City Services be installed across the easement to serve this facility and they would like to place a small parking lot on the easement. An Easement Amendment has been attached to facilitate this development and minimize City involvement if the sanitary sewer needs repair or replacement.

TMH Properties would like to fill in the ditch between 36<sup>th</sup> Street (interstate frontage road) and their property line. A ROW Use agreement is attached outlining the requirements to complete this work. Work items include storm sewer inlet/manhole modifications, gate valve modifications, fire hydrant modifications, and filling in the ditch. The ditch would still be graded to allow for drainage but would be filled in to make it look more like an urban section.

## **Recommended Motion:**

Approve the Easement Amendment and ROW Use Agreement.

KOG/klb

Attachments

### **TMH Properties Development Agreement**

This agreement, made and entered into between TMH Properties LLC, a North Dakota Limited Liability Company, "Developer" and the City of Fargo, a North Dakota municipal corporation, "City" for the purpose of modifying drainage and filling in the frontage road ditch at 3030 36<sup>th</sup> Ave S in Fargo including modification of public improvements. The area is between the east side of the frontage road (36<sup>th</sup> Street) and the property at 3030 35<sup>th</sup> Ave S in Fargo. The adjacent property, described as follows, is situated within the City of Fargo, County of Cass, and State of North Dakota.

Lot Four (4), Block One (1), VIRGIL MONTPLAISIR SECOND SUBDIVISION

Developer holds all right, title and interest in the Development Property.

1. Developer intends to privately fund installation of certain public improvements, namely surface drainage modifications, storm sewer modifications, fire hydrant modifications, and gate valve modifications. ("Infrastructure Improvements"). See Exhibit A.
2. Developer shall be permitted use of the Right of Way in such a manner as described in attached Exhibit A, as modified from time to time by written agreement of the parties hereto. Specifically, Developer shall be permitted to exercise control over the Right of Way under certain terms and conditions as stated herein. Developer shall be responsible for ensuring all construction in the Right of Way complies with all City Construction Standards and Specifications, which can be found at:  
  
<https://fargond.gov/city-government/departments/engineering/design-construction/construction-specifications>
3. All barricades and traffic control measures shall comply with the latest edition of the Manual on Uniform Traffic Control Devices, which can be found at:  
  
[http://mutcd.fhwa.dot.gov/pdfs/2009/pdf\\_index.htm](http://mutcd.fhwa.dot.gov/pdfs/2009/pdf_index.htm)
4. Developer hereby gives City and those parties' officers, employees, agents, representatives and contractors, license and right of entry and access upon, over, across and through the Development Property for the purposes stated herein, at all times, until such time as the stated purpose is completed.

5. Developer will directly contract for engineering and construction services for the Infrastructure Improvements, and will make direct payment for the services. Developer's contractor(s) and engineer (s) must be licensed under the laws of the State of North Dakota, and otherwise be responsible bidders as determined by City.
6. Developer shall be responsible for compliance with all City construction standards and specifications, including but not limited to compliance with the City of Fargo Requirements for Engineering Services on Public Construction Projects, dated April 2015, as modified from time to time by the City Engineering. Developer will be required to have a qualified engineering firm on site to inspect the work in the right of way to ensure compliance with all applicable specifications.
7. City shall have no obligation, liability, or responsibility for any payment arising from Developer's work under this Agreement. In no event will City be responsible for any payments, including payments for additional work or payments for costs occasioned by unforeseen or changed conditions encountered during the work.
8. TMH Properties shall protect the City Infrastructure during construction of the Infrastructure Improvements and ensure the sewer trunk line is not damaged during construction. Construction shall stay at least 5' away from the sewer and follow all One Call requirements.
9. TMH Properties and the City of Fargo have agreed to amend the existing sanitary sewer easement that will allow TMH Properties to place surface improvements and provides protection of city infrastructure in the easement.
10. City agrees it will assume all operation and maintenance requirements in public right of way for sanitary sewers, storm sewer, and water main only upon final acceptance by the City. The Developer will continue to be responsible for service connections after construction.
11. City agrees to accept the Infrastructure Improvements located within the public right of way and or easements provided design and construction are compliant with all terms, conditions and limitations set forth herein.
12. Developer agrees to provide the City as built drawings within 60 days of project acceptance.
13. Developer agrees to follow the current Infrastructure Funding Policy and pay the City 4% of the actual cost of the Infrastructure Improvements as an oversight fee

14. Developer understands and agrees that City shall have final approval for all Infrastructure Improvements, and sole discretion to accept the Infrastructure Improvements upon completion. Developer proceeds at its own risk that the Infrastructure Improvements may not be accepted by City. City will not accept any responsibility for the Infrastructure Improvements until final approval.
15. City reserves the right to reject the Infrastructure Improvements. City agrees to identify the deficiencies, and Developer agrees to correct and/or repair the Infrastructure Improvements to City's satisfaction within 90 days from City's notice of rejection, unless a longer time is agreed to in writing. City reserves the right to remedy the Infrastructure Improvements deficiencies and assess the Development Property for the cost, in accordance with the terms herein.
16. Developer agrees to submit plans to the City for Infrastructure Improvements for review prior to starting work. City shall review the plans for consistency and compliance with City Standard Specifications for Construction. City shall further make design suggestions as appropriate.
17. City will conduct inspections throughout the construction process to gage compliance with City Standard Specifications for Construction. Developer remains primarily responsible for inspection services.
18. Developer agrees to indemnify, release, and hold harmless City for any and all design and construction deficiencies, and any damages arising as result thereof, including consequential and foreseeable damages resulting from the City's rejection of the Infrastructure Improvements.
19. Developer shall require Developer's licensed contractor to name City as an additional insured, and shall provide City with proof of such insurance before commencing any construction activities.
20. Start of work. Developer's inspector shall notify the City Engineer no later than 48 hours prior to the commencement of work. The City shall further be notified 48 hours in advance of the commencement of underground utilities, and be provided the opportunity to inspect installations prior to backfilling occurring.
21. Hours of Work. Developer is directed to be cognizant of the noise level associated with construction activities, and encouraged to curtail especially loud construction activities before 7:00 a.m. and after 7:00 p.m.

22. Acceptance Procedures and Requirements of Final Acceptance. Upon completion of the Infrastructure Improvements, Developer shall submit a written final inspection request, indicating substantial completion. Developer shall include any changes to the approved plans and shall note any deficiencies and indicate intended course and timing of resolution.

City will schedule a final inspection. The Infrastructure Improvements shall be clean and free of debris at the time of inspection. Water valve boxes, curb stops, manholes and inlets shall be exposed.

23. Warranty. Contractor remains responsible for maintenance, repair, and deficiency corrections during the warranty period. Developer shall assign all warranties to City at the time of final acceptance.
24. Developer agrees that failure to secure acceptance from City of the Infrastructure Improvements may result in the establishment of a special assessment district for the purpose of financing the completion of the Infrastructure Improvements to City's approval standards. City will levy special assessments as per the current Infrastructure Funding Policy and the appropriate markups against the Development Property to recover all costs of the Project, in accordance with Chapter 40-22 of the North Dakota Century Code. Developer waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to North Dakota Century Code section 40-22-17, and specifically consents to the construction of the improvements and to the assessment of cost thereof to the Development Property. Developer further waives its right to protest the amount, benefit or any other assessment attribute related to the installation and construction of the Infrastructure Improvements. Project costs which may be assessed against the Development Property include all costs of completing the construction of the Infrastructure Improvements.
25. Developer expressly agrees to release, hold harmless, defend, and indemnify City, and those parties' officers, employees, agents, representatives, and contractors from any and all liability, losses, damages, claims, demands, actions, judgments, and executions in any way arising out of or regarding the Project, including the manner of the creation of the special assessment district. Developer's duties to release, hold harmless, defend, and indemnify City, and those parties' officers, employees, agents, representatives, and contractors as described above include, but are not limited to, any and all claims, damages, actions, causes of action, claims for relief for damages (compensatory, exemplary, or otherwise), costs, loss of services, expenses, or compensation for or on account of any damage, loss, or injury directly to the Developer, or Developer's officers,



agents, representatives, employees, or contractors and/or to claims, demands, actions, causes of action, or claims for relief for contribution and/or indemnity for injury alleged to the person or property of any other person or party, whether natural or not, other than the Developer. Developer agrees to reimburse City, and those parties' officers, employees, agents, representatives, and contractors for any costs or expenses, including reasonable attorneys' fees, expended or incurred in response to or in defense of any claim, demand, action, cause of action, or claim for relief made or asserted by any person or party, natural or not, for any alleged action or omission of City, or any those parties' officers, employees, agents, representatives, and contractors, or in any way arising out of or regarding the Project, the manner of the creation of the special assessment district described above, and including any costs, expenses, and attorneys' fees incurred in establishing the indemnification provided in this Agreement. The defense and indemnification provisions of this agreement do not apply to claims based upon the negligence of the City, its employees, contractors, subcontractors or agents.

26. Developer will not transfer or assign this Agreement or any of the Developer's rights or obligations under this Agreement without the express written consent of City, including upon any sale of the Development Property or any portion of the Development Property.
27. Governing Law. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.
28. No Forbearance. The failure or delay of City to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the City to enforce each and every term of this Agreement.
29. Survival of Agreement. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.
30. Time is of the Essence. Time is of the essence of all of the Developer's obligations under this Agreement.




31. Entire Agreement. This Agreement, together with any related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement.
32. Modifications. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

Signature Pages Follow

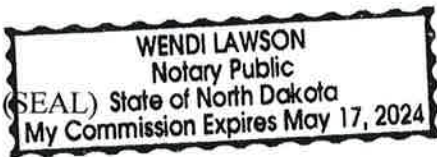
TMH Properties

Dated: 07/06/2020

  
By: BRENDAN MULDOON  
Its: Member/Boardman

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF CASS            )

On this 6th day of July, 2020, before me, a notary public in and for said county and state, personally appeared Brendan Muldoon, to me known to be the persons described in and that executed the within and foregoing instrument.



  
Notary Public  
Cass County, ND

City of Fargo, a North Dakota  
Municipal Corporation

Dated: \_\_\_\_\_

\_\_\_\_\_  
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.

\_\_\_\_\_  
Notary Public  
Cass County, ND  
My Commission expires:

(SEAL)

**AMENDED EASEMENT (Amends Document # 1281082)**

By Easement dated November 6, 2009, JP Everist, Sr, Marital Trust (hereinafter "Grantor") granted to the City of Fargo (hereinafter "City" or "Grantee") an Easement, described as follows, situated within the City of Fargo, County of Cass and State of North Dakota:

A Twenty Foot (20.00') strip of land located in Lot Four (4), Block One (1), VIRGIL MONTPLAISIR SECOND SUBDIVISION, Cass County, North Dakota, more particularly described as follows: Commencing at the Northwest corner of said Lot Four (4); thence N 88°00'14" E, assumed bearing on the North line of said Lot Four (4), a distance of Fifteen and Forty-six Hundredths Feet (15.46') to the Easterly line of a Fifteen Foot (15.00) wide existing utility easement and the true point of beginning; thence continuing N 88°00'14" E on said North line Twenty and Sixty-two Hundredths Feet (20.62') to a point which lies Thirty-five Feet (35.00') offset East of the West line of said Lot Four (4); thence S 16°02'34" E, parallel with and offset Thirty-five Feet (35.00') East of said West line, a distance of One Hundred Fifty-nine and Twenty-nine Hundredths Feet (159.29'); thence S 30°04'34" E, parallel with and offset Thirty-five Feet (35.00') East of said West line, a distance of Two Hundred Twenty-one and Fifty-seven Hundredths Feet (221.57') to the South line of said Lot Four (4); thence S 88°00'20" W, on said South line, a distance of Twenty-two and Sixty-seven Hundredths Feet (22.67') to a point which lies Fifteen Feet (15.00) offset East of the West line of said Lot Four (4) and at the Southeast corner of said Fifteen Foot (15.00) wide existing utility easement; thence N 30°04'34" W on the Easterly line of said existing utility easement, parallel with and offset Fifteen Feet (15.00) East of the West line of said Lot Four (4), a distance of Two Hundred Thirteen and Thirty-six Hundredths Feet (213.36'); thence N 16°02'34" W on the Easterly line of said existing utility easement, parallel with and offset Fifteen Feet (15.00) East of the West line of said Lot Four (4), a distance of One Hundred Sixty-six

and Seventy-six Hundredths Feet (166.76') to the North line of said Lot Four (4) and the point of beginning. Containing 7,610 square feet, more or less. Subject to all easements and rights of way of record (hereinafter "Easement Area").

By Trustee's Deed dated November 8, 2013, First National Bank in Sioux Falls, as Successor Trustee of the J.P. Everist, Sr. Marital Trust dated October 31, 1993, granted TMH Properties, LLC ("TMH Properties") the above described real property. TMH Properties desires to use the Easement Area in a manner inconsistent to the grant. City agrees to amend the easement for such use, under certain terms and conditions stated in this Amended Easement. Namely, TMH Properties intends to install a parking lot and driveway (hereinafter "Surface Improvements") and underground service connections for storm and water (hereinafter "Services") in the Easement Area.

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 tract of land and perform any and all acts necessary or convenient to carry into effect the purpose for which the grant is made.

For good and valuable consideration, hereby acknowledged, the parties hereto agree to amend the Easement (Document # 1281082) as follows:

1. TMH Properties shall be permitted to construct the Surface Improvements and Services provided herein, approved by City in advance of such installation. TMH Properties shall protect the City Infrastructure and ensure the sewer line is not damaged during construction. Construction shall stay at least 5' away from the sewer and follow all One Call requirements.
2. TMH Properties shall not use the Easement Area for parking or storage of any items unless it is located on the Surface Improvements.
3. TMH Properties shall be responsible for the cost of any repairs, removal or relocation to the City Infrastructure for which the grant was given, which may be damaged as a result of construction of the Surface Improvement and Services permitted herein.
4. City shall not be responsible for any damage or repairs to the Surface Improvements and Service permitted herein in the Easement Area.
5. City shall provide TMH Properties 30 days' Notice of any scheduled or necessary work in the Easement Area, except in the event of an emergency.
  - a. TMH Properties shall remove or protect the Surface Improvements and Services. City shall fill the excavation site, if necessary, and return the Easement Area to level surface. City shall have no responsibility for damage or destruction of the Surface Improvements and Services permitted herein.

- b. City shall have no responsibility for any delay costs or expenses due to a change in the construction methods of the permitted Surface Improvements or Services.

Signature Pages Follow

IN WITNESS WHEREOF, Grantor has set its hand and caused this instrument to be executed this

6 day of July, 2020.

Dated:

07/06/2020

TMH Properties



By:

BRENDAN MULDOON

Its:

MEMBER / GOVERNOR

STATE OF

North Dakota

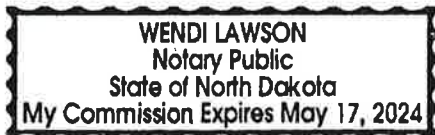
) ss.

COUNTY OF

Cass

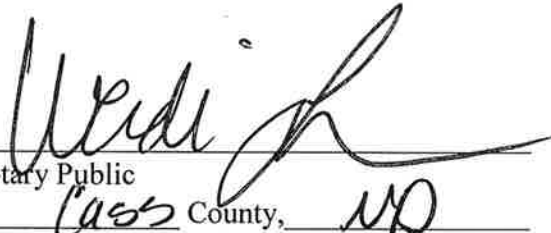
)

On this 6th day of July, 2020, before me, a notary public in and for said county and state, personally appeared Brendan Muldoon, the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.



(SEAL)

Notary Public



Cass County, ND

My Commission expires:



IN WITNESS WHEREOF, Grantee has set its hand and caused this instrument to be executed this  
\_\_\_\_ day of \_\_\_\_\_, 2020.

City of Fargo,  
North Dakota Municipal Corporation

Dated: \_\_\_\_\_

Dr. Timothy J. Mahoney M.D., Mayor

ATTEST

\_\_\_\_\_  
Steve Sprague, City Auditor

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF CASS                     )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, 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:  
City of Fargo Engineering  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

This document was prepared by:  
Nancy J. Morris  
Assistant City Attorney  
Erik R. Johnson & Associates, Ltd.  
505 North Broadway, Suite 206  
Fargo, ND 58102  
701-280-1901  
NMorris@lawfargo.com

## REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(110)

Type: Amendment #1 - Mercantile Right of Way Use Agreement

Location: 410 5<sup>th</sup> Street North

Date of Hearing: 8/17/2020

<u>Routing</u>	<u>Date</u>
City Commission	8/24/2020
PWPEC File	X
Project File	Kristy Schmidt

The Committee reviewed a communication from Civil Engineer, Kristy Schmidt, regarding Amendment #1 to the Right of Way Use Agreement for the Mercantile project.

The amendment is for a sidewalk closure request from Kilbourne Group. The closure is needed to get foundation pile caps installed. The sidewalk will be closed beginning August 25, 2020 for a duration of 28 days.

Staff is recommending approval Amendment #1 for the Right of Way Use Agreement.

On a motion by Steve Sprague, seconded by Ben Dow, the Committee voted to recommend approval of Amendment #1 to the Right of way Use Agreement with Great Plains Mercantile Holdings, LLC.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Amendment #1 to the Right of Way Use Agreement with Great Plains Mercantile Holdings, LLC for the work at 410 5<sup>th</sup> Street North.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: N/A

Developer meets City policy for payment of delinquent specials  
 Agreement for payment of specials required of developer  
 Letter of Credit required (per policy approved 5-28-13)

Yes	No
N/A	
N/A	
N/A	

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

Present	Yes	No	Unanimous
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ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 Assistant City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Kristy Schmidt, CE II  
**Date:** August 13, 2020  
**Re:** Amendment No. 1 to Right of Way Use Agreement for Mercantile

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### **Background:**

We have received a request for a sidewalk closure from the Kilbourne Group associated with the Mercantile Project. The closure is needed to get foundation pile caps installed. The sidewalk being closed is on the east side of Broadway between 4<sup>th</sup> and 5<sup>th</sup> Avenues North. The sidewalk will be closed beginning August 25, 2020, for a duration 28 days.

Staff is asking the Committee to review and approve the Amendment and then move forward to Commission for final approval.

### **Recommended Motion:**

Approve Amendment No. 1 to the Right of Way Use Agreement for Mercantile for the closure of sidewalk on the east side of Broadway as stated above.

KLS/klb  
Attachment

C: Paul Romero, Kilbourne Group

**Amendment (First) to Right of Way Agreement**

This Amendment amends that Right of Way Use Agreement between Great Plains Mercantile Holdings, LLC, a North Dakota limited liability company ("Developer") and City of Fargo, a North Dakota Municipal Corporation ("City"), April 20, 2020 ("Right of Way Use Agreement"). For good and valuable consideration, hereby acknowledged, the parties agree as follow:

1. Paragraph #2 of the Right of Way Use Agreement shall be amended to include the attachments hereto, identified at Exhibit "A", amended Construction and Logistics Plan. Developer may be permitted to exercise control of the City right of way in conformance with the use and schedule provided in the attached Exhibit "A" for 28 days beginning August 25, 2020.
2. All other terms and conditions of Right of Way Use Agreement shall remain in full force in effect.

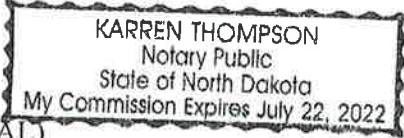
Dated this 17th day of August, 2020.


Great Plains Mercantile Holdings, LLC, a North  
Dakota Limited Liability Company

  
By: president  
Its: MIKE Almadigore

STATE OF North Dakota )  
 ) ss.  
COUNTY OF Cass )

On this 17th day of August, 2020, before me, a notary public in and for said county and state, personally appeared Mike Almadigore, President of Great Plains Mercantile Holdings, LLC, the person described in and that executed the within and foregoing instrument, and acknowledged to me that said person executed the same.

(SEAL)   
KARREN THOMPSON  
Notary Public  
State of North Dakota  
My Commission Expires July 22, 2022

  
Notary Public  
\_\_\_\_\_ County, \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

City of Fargo, a North Dakota municipal  
corporation

Dated: \_\_\_\_\_

\_\_\_\_\_  
Timothy J. Mahoney M.D., Mayor

ATTEST

\_\_\_\_\_  
Steve Sprague, City Auditor

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF CASS             )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, 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.

\_\_\_\_\_  
Notary Public  
Cass County, ND  
My Commission expires:



## EXHIBIT A



Kilbourne Construction Management  
210 Broadway, Suite 300  
Fargo, ND 58102  
p: (701) 355-6606  
e: info@kcmfargo.com

Kilbourne Construction Management

Cell: 575-770-7581

Enc: Exhibit A





**Kilbourne Construction Management**  
210 Broadway, Suite 300  
Fargo, ND 58102  
p: (701) 355-6606  
e: info@kcmfargo.com

August 12, 2020

Kristy Schmidt  
Civil Engineer II  
City of Fargo  
225 4<sup>th</sup> ST N  
Fargo, ND 58102

RE: Great Plains Mercantile ROW Use Agreement Date 4/13/2020

Kristy:

We are requesting to amend the above referenced ROW Use Agreement as follows:

Document:

Exhibit A:

We propose to eliminate pedestrian traffic along the east side of Broadway for a period of three weeks for removal and replacement of the sidewalk along the east side of Broadway.

Justification:

The approved ROW Use Agreement dated 4/13/2020 neglected to include this as part of the scope of work. The original work was to have started in spring of 2021 however due to excavation logistics for the pile caps we need to remove the remaining sidewalk on the SW corner of the lot. The construction fencing will need to move west allowing us to remove the existing sidewalk. This will allow excavation to happen safely while navigating existing underground power and fiber optic lines. The planter on the corner of Broadway and 4<sup>th</sup> Ave N does not give us sufficient space to flow pedestrian traffic through the existing jersey barriers we have in place now.

The impact is expected to last four weeks and is planned to begin August 25, 2020.

I am happy to answer any questions or meet on site.

Thank you,

Paul Romero  
Construction Project Manager

(11)

## REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. UR-19-E1

Type: Change Order #1 &amp; Time Extension

Location: Citywide

Date of Hearing: 8/17/2020

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/24/2020</u>
PWPEC File	<u>X</u>
Project File	<u>Scott Olson</u>

The Committee reviewed the accompanying correspondence from Project Manager, Scott Olson, for Change Order #1 in the amount of \$2,650.00, bringing the total contract amount to \$168,681.00, along with the associated time extension to the Substantial Completion Date.

Staff is recommending approval of Change Order #1 and the time extension adjusting the Substantial Completion Date from August 1, 2020 to October 1, 2020.

On a motion by Kent Costin, seconded by Steve Dirksen, the Committee voted to recommend approval of Change Order #1 and the time extension as described above to Witzel Construction.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Order #1 in the amount of \$2,650.00, bringing the total contract amount to \$168,861.00 and the associated time extension to the Substantial Completion Date.

PROJECT FINANCING INFORMATION:Recommended source of funding for project: Water Utility Funds & Sales Tax

	<u>Yes</u>	<u>No</u>
Developer meets City policy for payment of delinquent specials	<u>N/A</u>	<u>N/A</u>
Agreement for payment of specials required of developer	<u>N/A</u>	<u>N/A</u>
Letter of Credit required (per policy approved 5-28-13)	<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>
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<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tom Knakmuhs
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 Assistant City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Scott Olson, Project Engineer  
**Date:** August 13, 2020  
**Re:** UR-19-E1 – Change Order #1 & Time Extension

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**Background:**

Project #UR-19-E1 is for the lowering of specified water services that are shallow and prone to freezing to a minimum depth of 7.5' will help reduce future risk of freezing within the City right-of-way.

Witzel Construction (Witzel) is the prime contractor for the project.

**Additional Work at 911 19th Ave S**

In June of 2020 an item was brought to PWPEC to repair settlement issues from a previous project at 911 19th Ave S. Witzel Construction provided a quote of \$2,650 to repair the sidewalk and boulevard within the area settled and this was brought to PWPEC for approval on July 6, 2020. It was approved to add this property to the project as it was 100% City Funded.

**Extension of Sodding to Fall Planting Season**

The original completion date for the project was August 1, 2020. Witzel intended to have all properties where boulevards were disturbed to be completed at one time. The planting seasons as stated in the Standard Specifications is between May 1 - June 15 and September 1 to October 15.

All other work associated with the project was complete prior to the original substantial completion date. To complete the additional work at 911 19th Ave S and finish the sodding at each property within the planting season Engineering is recommending extending the substantial completion date for these two items to October 1, 2020. Until sodding can be installed, Witzel is responsible for providing each site with temporary soil stabilization measures at their expense.

**Recommended Motion:**

Approve Change Order #1 in the amount of \$2,650 and time extension for the additional work adjusting the substantial completion date to October 1, 2020.

Attachment

C: Thomas Knakmuhs



<b>Project No</b>	UR-19-E1	<b>Change Order No</b>	1
<b>Project Name</b>	Water Service Lowering	<b>For</b>	Witzel Construction
<b>Date Entered</b>	8/10/2020		

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:** Addition Work at New Residence and Sod Extension to Planting Season

Additional Work at 911 19th Ave S.

In June of 2020 an item was brought to PWPEC to repair settlement issues from a previous project at 911 19th Ave S. Witzel Construction provided a quote of \$2,650 to repair the sidewalk and boulevard within the area settled and this was brought to PWPEC for approval on July 6, 2020. It was approved to add this property to the project as it was 100% City Funded.

Extension of Sodding to Fall Planting Season

The original completion date for the project was August 1, 2020. Witzel intended to have all properties where boulevards were disturbed to be completed at one time. The planting seasons as stated in the Standard Specifications is between May 1 - June 15 and September 1 to October 15.

All other work associated with the project was complete prior to the original substantial completion date. To complete the additional work at 911 19th Ave S and finish the sodding at each property within the planting season Engineering is recommending extending the substantial completion date for these two items to October 1, 2020. Until sodding can be installed, Witzel is responsible for providing each site with temporary soil stabilization measures at their expense.

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 (\$)
Miscellaneous	13	Extra - Site Grading	LS	0.00	0.00	0.00	0.00	1.00	2,650.00	2,650.00
Miscellaneous Sub Total (\$)										2,650.00

**Summary**

Source Of Funding

Utility Funds - Water - 501

Net Amount Change Order # 1 (\$)

2,650.00

Previous Change Orders (\$)

0.00

Original Contract Amount (\$)

166,031.00



Total Contract Amount (\$)

168,681.00

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
-------------------------------------	-------------------------------	--	----------------------------------	---------------------------------	---------------------------

08/01/2020	61.00	60.00	10/01/2020
<b>Description</b>	<b>APPROVED</b>	<b>APPROVED DATE</b>	
For Contractor	8/13/20	Department Head	
Title	Witzel Construction LLC	Mayor	8/18/2020
Owner	Travis Witzel	Attest	
			



## REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(12)

Type: Encroachment

Location: 1920 Dakota Drive

Date of Hearing: 8/3/2020

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/24/2020</u>
PWPEC File	<u>X</u>
Project File	<u>Kristy Schmidt</u>

The Committee reviewed a communication from Civil Engineer, Kristy Schmidt, regarding an encroachment at 1920 Dakota Drive for an existing surface encroachment and requirements for the Land Development Code.

Staff is recommending to formalize the existing encroachment with the following stipulations:

- Hold the City harmless against any and all expenses, demands, claims or losses sustained by the City by use of the public right of way by the encroacher.
- Will be responsible for paying all costs above and beyond those the City would have incurred to return the area to a vegetated surface in association with future improvement districts.
- Application fee for the encroachment in the amount of \$500.
- An annual fee in the amount of \$1,246.50.
- Agreement expires upon sale or transfer of the property.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of the Encroachment Agreement contingent upon \$500 application fee, Annual Fee, Certificate of Insurance, and attorney review.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Encroachment Agreement.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: None

Developer meets City policy for payment of delinquent specials  
 Agreement for payment of specials required of developer  
 Letter of Credit required (per policy approved 5-28-13)

Yes	No
<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 checked="" type="checkbox"/>	<input checked="" 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"/>	
<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"/>	
<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, CE II  
**Date:** July 30, 2020  
**Re:** Encroachment Agreement for Sterling Properties, LLP at 1920 Dakota Drive

---

## **Background:**

We have received a site plan for an addition to the building at 1920 Dakota Drive. This has triggered us to formalize the existing surface encroachment and requirements for the Land Development Code. In the attached map, you will find the area of encroachment.

Staff is recommending to formalize the existing encroachment with the following stipulation:

- Hold the City harmless against any and all expenses, demands, claims or losses sustained by the City by use of the public right of way by the encroacher.
- Will be responsible for paying all costs above and beyond those the City would have incurred to return the area to a vegetated surface in association with future improvement districts.
- Application fee for the encroachment in the amount of \$500.
- An annual fee in the amount of \$1,246.50.
- Agreement expires upon sale or transfer of the property.

## **Recommended Motion:**

Approve the existing Encroachment Agreement at 1920 Dakota Drive contingent upon the Owner meeting the above criteria.

KLS/klb  
Attachments

C: Steve Schilke, Obernel Engineering  
Kylene Bagley, Planning Department





City of Fargo, ND

This 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.

# 1920 Dakota Dr Encroachment

1:2,257	7/30/2020 10:16:07 AM
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This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.





**ENCROACHMENT AGREEMENT**

**THIS AGREEMENT**, made and entered into by and between **STERLING PROPERTIES, LLLP**, a North Dakota Limited Liability Limited Partnership Company, hereinafter referred to as Sterling Properties and **THE CITY OF FARGO, NORTH DAKOTA**, a North Dakota municipal corporation, hereinafter referred to as "City",

**WITNESSETH:**

**WHEREAS**, Sterling Properties desires to encroach on a portion of right-of-way adjacent to Lots 7 thru 18, Great Northern 2<sup>nd</sup> Addition, in Fargo, North Dakota owned by the City; and,

**WHEREAS**, the purpose of such encroachment is to allow Sterling Properties to continue to use parking lot and landscaping required by Land Development Code for the benefit of Sterling Properties' property; and,

**WHEREAS**, Sterling Properties has requested permission to encroach on the portion of the right-of-way shown in Exhibit "A", which exhibit is attached hereto and incorporated herein by reference, thus allowing it to utilize City right-of-way for such purposes; and,

**WHEREAS**, the Public Works Projects Evaluation Committee has approved such

encroachment; and,

**WHEREAS**, the Board of City Commissioners of the City of Fargo has approved such encroachment; and,

**WHEREAS**, Sterling Properties has agreed to execute this agreement required by City to permit private facilities to encroach on public right-of-way.

**NOW, THEREFORE**, for good and valuable consideration hereby acknowledged, it is hereby agreed by and between the parties hereto as follows:

1. Sterling Properties owns all right title and interest in the property legally described as follows:

Lots Seven, Eight, Nine, Ten, Eleven, Twelve, Thirteen, Fourteen, Fifteen, Sixteen, Seventeen and Eighteen, Great Northern Second Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota ("Development Property").

2. Sterling Properties will be permitted to encroach and use a portion of the right-of-way of the above-mentioned, said encroachment being for continued use of parking lot and landscaping required by Land Development Code located as follows:

**TRACT 1 DESCRIPTION**

A tract of land situated in the Dakota Drive right-of-way and adjacent to Lots Seven, Eight and Nine of the Great Northern Second Addition to the City of Fargo, Cass County, North Dakota more particularly described as follows:

Commencing at the northwest corner of said Lot Seven; thence South 88 degrees 02 minutes 35 seconds East, along the south right-of-way line of Dakota Drive as dedicated in Kapaun's Addition to the City of Fargo and recorded in Book L of Plats on Page 15, for a distance of 46.72 feet to the point of beginning "A"; thence North 44 degrees 54 minutes 14 seconds East, 46.74 feet; thence South 46 degrees 17 minutes 15 seconds East, 18.60 feet; thence North 83 degrees 07 minutes 33 seconds East, 55.34 feet; thence South 14 degrees 08 minutes 28 seconds West, 31.02 feet to said south right-of-way line; thence North 88 degrees 02 minutes 35 seconds West along said south right-of-way line, 93.96 feet to the point of beginning "A".

Said tract contains 2,260 square feet, more or less.

TRACT 2 DESCRIPTION

A tract of land situated in the Dakota Drive right-of-way and adjacent to Lots Nine and Ten of the Great Northern Second Addition to the City of Fargo, Cass County, North Dakota more particularly described as follows:

Commencing at the northwest corner of Lot Seven of said Great Northern Second Addition; thence South 88 degrees 02 minutes 35 seconds East, along the south right-of-way line of Dakota Drive as dedicated in Kapaun's Addition to the City of Fargo and recorded in Book L of Plats on Page 15, for a distance of 181.50 feet to the point of beginning "B"; thence North 14 degrees 08 minutes 28 seconds East, 13.36 feet; thence South 45 degrees 52 minutes 38 seconds East, 16.14 feet; thence easterly parallel with said south right-of-way line, 54.58 feet, on an arc of a non-tangential curve, concave southerly, having a radius of 332.16 feet, a central angle of 9 degrees 24 minutes 54 seconds, and a long chord which bears South 81 degrees 56 minutes 36 seconds East, 54.52 feet; thence South 12 degrees 45 minutes 51 seconds West, 2.29 feet to said south right-of-way line; thence westerly along said south right-of-way line, 52.79 feet, on an arc of a non-tangential curve, concave southerly, having a radius of 350.42 feet, a central angle of 8 degrees 37 minutes 51 seconds, and a long chord which bears North 81 degrees 42 minutes 49 seconds East, 52.74 feet; thence North 88 degrees 02 minutes 35 seconds West along said south right-of-way line, 16.15 feet to the point of beginning "B".

Said tract contains 233 square feet, more or less.

Said encroachment is more particularly described and indicated in attached Exhibit "A" showing the property involved and the location of the parking lot. Exhibit "A" is attached hereto and incorporated herein by reference.

3. It is the intent of this agreement that Sterling Properties may utilize City right-of-way for the purpose of a use of parking lot and landscaping required by Land Development Code.

4. Sterling Properties agrees that it will, during any use of said public right-of-way, use due care to protect city streets, utilities and all other public property, minimize disruption to pedestrian travel, in accordance with MUTCD Standards and Specifications; and that upon discontinuance of use, Sterling Properties will restore and replace all public property to its vegetated surface. The parties



further understand and agree that the cost of any repairs to the public right of way occasioned by the encroachment permitted herewith shall be Owner's sole financial responsibility, and further understand and agree that the costs thereof shall be assessed directly to the Development Property following the Infrastructure Funding Policy in effect at the time of repairs. City will levy special assessments against the Development Property to recover all costs of the Project, in accordance with N.D.C.C. Chapter 40-22. Developer waives its right to protest the resolution of necessity for the improvements for which such resolutions are required pursuant to North Dakota Century Code section 40-22-17, and specifically consents to the construction of the improvements and to the assessment of all costs thereof to the Development Property. Developer further waives its right to protest the amount, benefit or any other assessment attribute related to the work completed by City. Project costs, which may be assessed against the Development Property, include all costs of completing the project, including engineering, fiscal agent's and attorney fees, and all other costs authorized by law.

5. Sterling Properties shall be solely responsible for the inspection, repair and maintenance of the encroachment during the period of time the encroachment remains in the City right-of-way.

6. To the fullest extent permitted by law, Sterling Properties agrees to further hold the City harmless against any and all expenses, demands, claims or suits for damages or injury of any kind that may be brought against the City, its officers, agents and employees, its property, streets, sidewalks, and any other municipal improvements arising from Sterling Properties' encroachment area by reason of the use of the public right-of-way as aforesaid. Sterling Properties further agrees to pay any and all costs the City incurs to enforce this indemnity provision, including attorney's fees. Sterling Properties also agrees to provide to City a certificate of insurance, naming the City

as an insured and indicating acceptance by its insurer of its obligation to defend and hold the City harmless as hereinabove stated.

7. This agreement is personal to Sterling Properties and shall terminate upon sale, transfer or assignment. Subsequent owners may request permission to encroach, and enter into a separate agreement with City. City shall not withhold permission to encroach under the terms herein without due cause. The non-transferability of this Agreement is intended to assure the existence of the necessary insurance by the responsible party.

8. It is understood and agreed by and between the parties that this Agreement and permission to encroach is given subject to any limitation on the authority of City to grant such permission, which may now or hereafter exist.

9. It is specifically understood and agreed that the City retains authority to operate and maintain existing above ground and underground municipal facilities in the encroachment area. It is further understood and agreed that within ninety (90) days' written notice from the City, Sterling Properties shall remove the encroaching private facilities as directed by City, allowing the City to re-take and to use the public rights-of-way. In the case of an emergency, as determined by City, the City may request the work be done immediately or within less than thirty (30) days. If Sterling Properties fails to remove, relocate or restore, or otherwise comply with the direction of the City Engineer regarding the encroachment, the City may cause the work to be done, and the costs thereof shall be a lien against the property. The City's request to remove, relocate, or restore the encroachment will be in the City's sole discretion, but shall not be arbitrary or without reason.

10. It is specifically agreed between the parties that a copy of this Encroachment Agreement may be recorded.

12. Sterling Properties agrees to pay City a \$500 processing fee.

13. Sterling Properties agrees to pay City a \$1,246.50 annual fee. City will invoice the Owner for the fees and the fees are payable within 30 days of invoice. If payment is not received within 30 days, interest will accrue on any unpaid amounts at a rate of 1 ½% per month, until paid in full.

14. It is understood and agreed by and between the parties that this Agreement and permission to encroach is given subject to any limitation on the authority of City to grant such permission, which may now or hereafter exist, provided City acknowledges that it is not aware of any current such limitations.

15. This Agreement will be construed and enforced in accordance with North Dakota law. The parties agree any litigation arising out of this Agreement will be venued in District Court in Cass County, North Dakota, and the parties waive any objection to personal jurisdiction.

16. The failure or delay of City to insist on the performance of any of the terms of this Agreement, or the waiver of any breach of any of the terms of this Agreement, will not be construed as a waiver of those terms, and those terms will continue and remain in full force and effect as if no forbearance or waiver had occurred and will not affect the validity of this Agreement, or the right of the City to enforce each and every term of this Agreement.

17. If any court of competent jurisdiction finds any provision or part of this Agreement is invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement, and all remaining terms and provisions of this Agreement will remain binding and enforceable, and the parties' obligations under this Agreement will remain binding and enforceable.

18. This Agreement, together with any related documents, as well as any amendments to those agreements and documents, constitutes the entire agreement between the parties regarding the matters described in this Agreement.

19. Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement.

20. It is specifically agreed between the parties that a copy of this Agreement may be recorded.

21. **EFFECTIVE DATE.** This Agreement shall be effective as of the date and year last signed by the parties below, as reflected by the date of acknowledgement thereof.

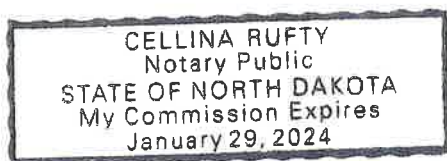
(Signatures on following pages)

By: San Chagha  
Its: CFO

STATE OF NORTH DAKOTA )  
 ) ss  
COUNTY OF CASS )

On this 10 day of August, 2020, before me, a notary public in and for said county and state, personally appeared Erica Chaffee, to me known to be the GFO of Sterling Properties, LLLP, the entity described in and who executed the within and foregoing instrument and acknowledged to me that said entity executed the same.

Colina Ralby  
Notary Public  
Cass County, North Dakota  
My Commission expires: January 29, 2024



Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**THE CITY OF FARGO, NORTH DAKOTA,**  
a municipal corporation

By Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steven Sprague, Auditor

STATE OF NORTH DAKOTA )  
 ) ss.  
COUNTY OF CASS )

On this \_\_\_\_ day of August, 2020, 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, Cass County, North Dakota, the North Dakota 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, North Dakota  
My commission expires:

The legal description was prepared by:  
Mead & Hunt  
8 Seventh Street N  
Fargo, ND 58102  
701-556-6450

This document was prepared by:  
Nancy J. Morris  
Assistant City Attorney  
Erik R. Johnson & Associates, Ltd.  
505 North Broadway, Suite 206  
Fargo, ND 58102  
701-280-1901  
nmorris@lawfargo.com



**EXHIBIT A****TRACT 1 DESCRIPTION**

A tract of land situated in the Dakota Drive right-of-way and adjacent to Lots Seven, Eight and Nine of the Great Northern Second Addition to the City of Fargo, Cass County, North Dakota more particularly described as follows:

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Said tract contains 2,260 square feet, more or less.

**TRACT 2 DESCRIPTION**

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Said tract contains 233 square feet, more or less.

**CERTIFICATION**

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly registered Professional Land Surveyor under the laws of the State of North Dakota.

*Gary A. Ness*

GARY A. NESS, PLS

REG. NO. LS-3461

DATE: 7/29/2020



**Mead  
& Hunt**

8 Seventh Street N  
Fargo, ND 58102  
Phone: 701-566-6450  
meadhunt.com

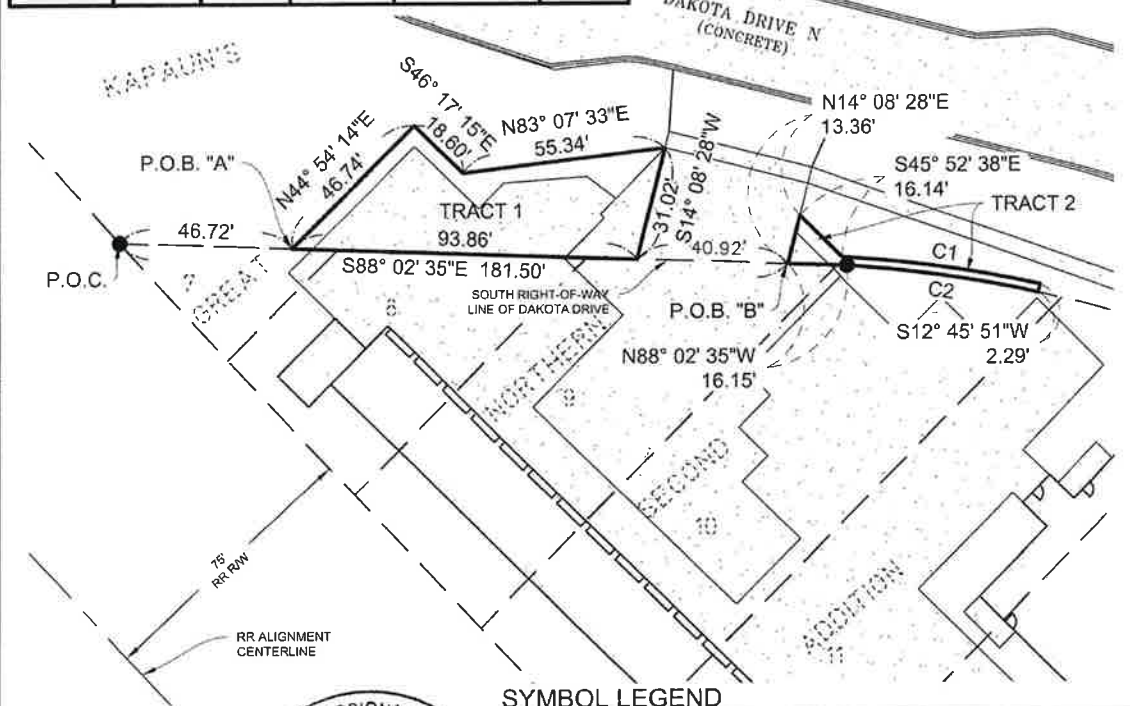
Drawn By: LSJ  
Checked By: GAN  
Approved By: GAN

**OBERNEL ENGINEERING**  
**THUNDER CREEK APARTMENT EXHIBIT**  
**1940 DAKOTA DRIVE NORTH**  
**FARGO, NORTH DAKOTA**

M&H NO.: 4422700-192461.01 DATE: 7-29-2020  
DWG NAME: 192461 EXHIBIT REV2.dwg SHEETS: 1 OF 2

## EXHIBIT

Curve Table					
Curve #	Length	Radius	Delta	Chord Bearing	Chord Length
C1	54.58'	332.16'	9°24'54"	S81°56'36"E	54.52'
C2	52.79'	350.42'	8°37'51"	N81°42'49"W	52.74'



## SYMBOL LEGEND

- MONUMENT IN PLACE
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT
- BOUNDARY LINE
- - - EXISTING LOT LINE
- - - RAILROAD ALIGNMENT CENTERLINE
- - - RIGHT OF WAY LINE
- - - EXISTING BUILDING
- - - EXISTING CONCRETE PAVEMENT
- - - EXISTING CURB & GUTTER

0 20 40  
SCALE IN FEET  
ORIENTATION OF THIS  
BEARING SYSTEM IS CITY  
OF FARGO 2007



**Mead  
& Hunt**

8 Seventh Street N  
Fargo, ND 58102  
Phone: 701-566-6450  
meadhunt.com

Drawn By: LSJ  
Checked By: GAN  
Approved By: GAN

OBERNEL ENGINEERING  
THUNDER CREEK APARTMENT EXHIBIT  
1940 DAKOTA DRIVE NORTH  
FARGO, NORTH DAKOTA

M&H NO.: 4422700-192461.01 DATE: 7-29-2020  
DWG NAME: 192461 EXHIBIT REV2.dwg SHEETS: 2 OF 2

(13)

**CITY OF FARGO**  
**GENERAL FUND - BUDGET TO ACTUAL**  
**THROUGH JULY 2020**  
**(UNAUDITED)**

	<b>2020 BUDGET</b>	<b>2020 ACTUAL</b>	<b>VARIANCE</b>
<b>REVENUES:</b>			
Taxes	\$ 29,949,217	\$ 30,443,204	\$ 493,987
Licenses & Permits	2,711,386	3,207,064	495,678
Fines & Traffic Tickets	1,274,265	781,271	(492,994)
Intergovernmental Revenue	13,029,704	11,039,430	(1,990,274)
Charges for Services	7,328,959	6,586,957	(742,002)
Interest	2,070,824	2,150,092	79,268
Miscellaneous Revenue	369,544	521,776	152,232
Transfers In	8,081,324	7,918,575	(162,749)
<b>Total Revenues</b>	<b>\$ 64,815,223</b>	<b>\$ 62,648,369</b>	<b>\$ (2,166,854)</b>
<b>EXPENDITURES:</b>			
City Administrator	\$ 4,816,444	\$ 4,513,914	\$ 302,530
Finance	4,791,248	3,993,913	797,335
Planning & Development	2,565,283	2,421,203	144,080
Transit	4,980,090	4,351,673	628,417
Public Works	9,889,281	10,087,239	(197,958)
Fire Department	7,370,711	7,109,805	260,906
Police	13,773,633	13,720,849	52,784
Health	6,817,188	6,637,200	179,988
Library	2,811,159	2,634,283	176,876
Commission	429,832	383,062	46,770
Civic Center	238,468	198,719	39,749
Social Services	297,798	111,896	185,902
Capital Outlay	280,178	126,071	154,107
Vehicle Replacement/IT	235,850	199,405	36,445
Contingency	(1,371,825)	(3,899)	(1,367,926)
Transfers Out	3,170,308	3,146,308	24,000
<b>Total Expenditures</b>	<b>\$ 61,095,646</b>	<b>\$ 59,631,641</b>	<b>\$ 1,464,005</b>
<b>Excess of Revenue Over (Under) Expenditures</b>	<b>\$ 3,719,577</b>	<b>\$ 3,016,728</b>	<b>\$ (702,849)</b>

(14)

**CITY OF FARGO, NORTH DAKOTA**  
**MAJOR OPERATING FUNDS FINANCIAL STATUS REPORT**  
**YEAR TO DATE THROUGH 7/31/2020**  
**BUDGET TO ACTUAL (Unaudited)**

<b>REVENUES:</b>	<b>Budget</b>	<b>Actual</b>	<b>Variance</b>	<b>Variance Percentage</b>	<b>Notes</b>
<b>General Fund</b>	<b>\$ 63,271,348</b>	<b>\$ 62,648,368</b>	<b>\$ (622,980)</b>	<b>-1.0%</b>	
<b>Enterprise Funds:</b>					
Water	12,922,000	12,486,000	(436,000)	-3.4%	
Solid Waste	9,702,000	9,406,000	(296,000)	-3.1%	
Wastewater	7,668,000	7,090,988	(577,012)	-7.5%	
Forestry	1,304,000	1,304,000	-	0.0%	
Street Lighting	1,931,000	1,930,000	(1,000)	-0.1%	
Storm Sewer	1,630,000	1,659,000	29,000	1.8%	
Vector Control	414,000	413,000	(1,000)	-0.2%	
<b>Total Enterprise Funds</b>	<b>35,571,000</b>	<b>34,288,988</b>	<b>(1,282,012)</b>	<b>-3.6%</b>	
<b>Total Operating Funds</b>	<b>\$ 98,842,348</b>	<b>\$ 96,937,356</b>	<b>\$ (1,904,992)</b>	<b>-1.9%</b>	

<b>EXPENDITURES:</b>	<b>Budget</b>	<b>Actual</b>	<b>Variance</b>	<b>Variance Percentage</b>	<b>Notes</b>
<b>General Fund</b>	<b>\$ 61,096,000</b>	<b>\$ 59,632,000</b>	<b>\$ 1,464,000</b>	<b>2.4%</b>	
<b>Enterprise Funds:</b>					
Water	18,325,000	14,740,000	3,585,000	19.6%	
Solid Waste	10,585,000	8,432,000	2,153,000	20.3%	(1)
Wastewater	10,338,669	10,041,000	297,669	2.9%	
Forestry	1,542,000	1,472,000	70,000	4.5%	
Street Lighting	2,068,000	1,896,000	172,000	8.3%	
Storm Sewer	1,759,000	1,348,000	411,000	23.4%	
Vector Control	477,000	342,000	135,000	28.3%	(1)
<b>Total Enterprise Funds</b>	<b>45,094,669</b>	<b>38,271,000</b>	<b>6,823,669</b>	<b>15.1%</b>	
<b>Total Operating Funds</b>	<b>\$ 106,190,669</b>	<b>\$ 97,903,000</b>	<b>\$ 8,287,669</b>	<b>7.8%</b>	

Reporting Basis: Approved Budget

**Footnotes:**


(1) Budgeted expenditures not seasonally adjusted by month



(15)

## MEMORANDUM

**TO:** BOARD OF CITY COMMISSIONERS

**FROM:** DESI FLEMING   
DIRECTOR OF PUBLIC HEALTH

**DATE:** AUGUST 19, 2020

**RE:** FARGO PUBLIC SCHOOLS CONTRACT FOR \$92,526.90

The attached contract of \$92,526.90 with Fargo Public Schools is for extended nursing care services for special education students with severe health related disabilities for 2020.

No budget adjustment is required for this contract.

If you have any questions please contact me at 241.1380.

**Suggested Motion:** Move to approve the Service Agreement with Fargo Public Schools for Special Education Nursing Services.

DF/lis  
Enclosure

**FARGO PUBLIC SCHOOLS**  
**Department of Support Services**  
**SERVICE AGREEMENT**

AGENCY/INDIVIDUAL OFFERING SERVICE: **FARGO CASS PUBLIC HEALTH DEPARTMENT**  
1240 25<sup>th</sup> STREET SOUTH, FARGO, ND 58103

GENERAL NATURE OF SERVICE TO BE PROVIDED: **EXTENDED NURSING CARE SERVICES FOR SPECIAL EDUCATION STUDENTS WITH SEVERE HEALTH RELATED DISABILITIES**

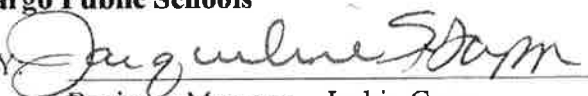
AGREEMENT DURATION PERIOD: **SEPTEMBER 2, 2020** THROUGH **JUNE 3, 2021**

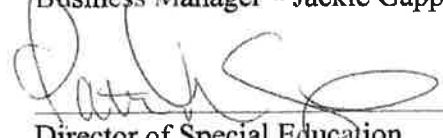
IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO, THAT:

- A. The agency identified above shall provide the following services:
1. Consultation, evaluation and patient services for special education students with unique health services identified as related special education nursing services in student Individual Education Plans.
  2. Upon request, assistance with the design of health protocols for specific special education students.
- B. The District shall reimburse the Agency identified above as follows for expenses associated with this agreement:
1. Time Period/Rate – The services requested shall be limited to 35 weeks. Service providers may vary depending upon individual student needs or changing needs. Total service provided shall be allocated as follows:
- |                          |  |             |
|--------------------------|--|-------------|
| Registered Nurse         | 34 hours per week for 35 weeks @ \$43.99/hour            | \$52,348.10 |
|                          | Additional 10 hours for staff development @ \$43.99/hour | \$ 439.90   |
| Licensed Practical Nurse | 34 hours per week for 35 weeks @ \$28.98/hour            | \$34,486.20 |
|                          | Additional 10 hours for staff development @ \$28.98/hour | \$ 289.80   |
| RN Administration        | 1 hour per week for 35 weeks @ \$1.44/hour               | \$ 1,800.40 |
| Mileage Estimate         | 5500 miles per year @ \$0.57.5 per mile                  | \$ 3,162.50 |
2. Service Cost – The maximum cost the services provided shall not exceed ..... \$92,526.90
  3. Payment Schedule – Payments shall be made to the Provider upon receipt of monthly billing statements which contain the names of eligible students served, dates, amount and type of service provided.
  4. Medicaid Claims – The District shall process all Medicaid claims for eligible students served through this agreement.
- C. The Provider agrees that all terms and conditions specified in an existing contract with the District shall be applicable to this service agreement.

APPROVED AND EXECUTED THIS 5<sup>th</sup> DAY OF AUGUST, 2020

**Fargo Public Schools**

BY:   
 Business Manager – Jackie Gapp

BY:   
 Director of Special Education  
 Patricia Cummings

**Fargo / Cass Public Health**

BY: \_\_\_\_\_  
 Mayor, City of Fargo Timothy J. Mahoney

BY:   
 Director of Public Health Desi Fleming






(16)

## MEMORANDUM

**TO:** BOARD OF CITY COMMISSIONERS

**FROM:** DESI FLEMING   
DIRECTOR OF PUBLIC HEALTH

**DATE:** AUGUST 20, 2020

**RE:** AGREEMENT FOR SERVICES WITH DACOTAH  
FOUNDATION FOR A MAXIMUM OF \$4,700

The attached Contract Agreement with Dacotah Foundation for working with FCPH to implement tobacco prevention, control and cessation activities.

No budget adjustment is required for this contract.

**Suggested Motion:** Move to approve the contract agreement for services with Dacotah Foundation.

DF/lls  
Enclosure



## CONTRACT AGREEMENT FOR SERVICES



**Public Health**  
Prevent. Promote. Protect.  
Fargo Cass Public Health

**THIS AGREEMENT**, effective the 31<sup>st</sup> day of August 2020, by and between Fargo Cass Public Health (FCPH); and Dacotah Foundation (Contractor).

**NOW, THEREFORE**, it is hereby agreed by and between the parties here to as follows:

- A. Term of Agreement:** The parties entered into a written agreement for the period of August 31, 2020 through June 14, 2021.
- B. Services to be provided by independent contractor:** Working in collaboration with FCPH, contractor will function as the Project Manager in implementing tobacco prevention, control, and cessation activities to reduce tobacco-related disparities and social norms among specific population groups. Duties will include: attend trainings to acquire relevant information and skills to properly dose nicotine replacement therapy and developing alternatives activities to reduce tobacco use.
- C. Reimbursement:** Contractor shall be reimbursed up to \$4,700. This includes \$2,500 for tobacco treatment specialist training with an additional \$2,200 to be made available for alternative activities after the successful completion of tobacco treatment specialist training. Invoices must be submitted monthly by the first Monday for the previous month. The final invoice being due on June 14, 2021.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.
- F. Progress Reports:** FCPH, shall throughout the effective dates of this Agreement, conduct ongoing evaluation of the Contractor's performance in carrying out their tobacco prevention, control, and cessation services. Such evaluation may include, but not be limited to, periodic visits by departmental representatives to review progress made by Contractor in accomplishing stated goal/objectives. Contractor will submit written reports and forms provided by FCPH. Progress reports shall be submitted by the first Monday of each month, with the final report due on June 14, 2021.

**Special Considerations:**

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this Service Agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by FCPH and the City of Fargo to receive payment for services will be completed as needed.

In Witness thereof, this Service Agreement has been executed between the Contractor and FCPH on the date-executed below.

Fargo Cass Public Health

By Desi Fleming  
Desi Fleming, Director of Public Health

Date 8-20-2020

By \_\_\_\_\_  
Timothy J. Mahoney, Mayor, City of Fargo

Date \_\_\_\_\_

Dacotah Foundation

By Preston Nesemeier C.O.O.  
Name:  
Title:

Date 8-20-2020


**OFFICE USE:**

Contract Originator: Preston Nesemeier  
Division: Health Protection and Promotion  
Sub Category: Tobacco

(17)

## MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: DESI FLEMING**   
**DIRECTOR OF PUBLIC HEALTH**

**DATE: AUGUST 20, 2020**

**RE: AGREEMENT FOR SERVICES WITH SOUTHEAST  
HUMAN SERVICE CENTER FOR A MAXIMUM OF \$34,300**

The attached Contract Agreement with Southeast Human Service Center is for working with FCPH to implement tobacco prevention, control and cessation activities.

No budget adjustment is required for this contract.

**Suggested Motion:** Move to approve the contract agreement for services with Southeast Human Service Center.

DF/lls  
Enclosure





## CONTRACT AGREEMENT FOR SERVICES



**Public Health**  
Prevent. Promote. Protect.  
Fargo Cass Public Health

**THIS AGREEMENT**, effective the 31<sup>st</sup> day of August 2020, by and between Fargo Cass Public Health (FCPH); and Southeast Human Service Center (Contractor).

**NOW, THEREFORE**, it is hereby agreed by and between the parties here to as follows:

- A. Term of Agreement:** The parties entered into a written agreement for the period of August 31, 2020 through June 14, 2021.
- B. Services to be provided by independent contractor:** Working in collaboration with FCPH, contractor will function as the Project Manager in implementing tobacco prevention, control, and cessation activities to reduce tobacco-related disparities and social norms among specific population groups. Duties will include: group and individual counseling for tobacco cessation services, implement alternative activities in place of tobacco breaks, attend trainings to acquire relevant information and skills to properly dose nicotine replacement therapy and ongoing education on tobacco.
- C. Reimbursement:** Contractor shall be reimbursed up to \$34,300. This includes \$28,820 for nicotine replacement therapy, \$5,000 for tobacco treatment specialist training, \$360 for Tegaderm, and \$120 for tobacco treatment specialist's recertifications. Invoices must be submitted monthly by the first Monday for the previous month. The final invoice being due on June 14, 2021.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** Contractor agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.
- F. Progress Reports:** FCPH, shall throughout the effective dates of this Agreement, conduct ongoing evaluation of the Contractor's performance in carrying out their tobacco prevention, control, and cessation services. Such evaluation may include, but not be limited to, periodic visits by departmental representatives to review progress made by Contractor in accomplishing stated goal/objectives. Contractor will submit written reports and forms provided by FCPH. Progress reports shall be submitted by the first Monday of each month, with the final report due on June 14, 2021.

### **Special Considerations:**

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of Fargo Cass Public Health for any other purpose.
- B.** The laws of the State of North Dakota shall govern this Service Agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by FCPH and the City of Fargo to receive payment for services will be completed as needed.

In **Witness** thereof, this Service Agreement has been executed between the Contractor and FCPH on the date-executed below.

**Fargo Cass Public Health**

By Desi Fleming  
Desi Fleming, Director of Public Health

Date 8/20/2020

By \_\_\_\_\_  
Timothy J. Mahoney, Mayor, City of Fargo

Date \_\_\_\_\_

**Southeast Human Service Center**

By Jeff Stenseth  
Name: Jeff Stenseth  
Title: Regional Director

Date 8/19/2020

**OFFICE USE:**


Contract Originator: Preston Nesemeier  
Division: Health Protection and Promotion  
Sub Category: Tobacco



(18)

## MEMORANDUM

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: DESI FLEMING **  
**DIRECTOR OF PUBLIC HEALTH**

**DATE: AUGUST 19, 2020**

**RE: AMENDMENT TO THE AGREEMENT FOR SERVICES  
WITH GIA RASSIER FOR CASS CLAY FOOD ACTION  
NETWORK MEETINGS FOR AN ADDITIONAL \$240**

The attached amendment to the Agreement for Services with Gia Rassier is to add an additional event from six events to seven for services of marketing and promotion connected with the Cass Clay Food Action Network. The additional cost is \$240 bringing the maximum for \$1,680.

No budget adjustment is required for this contract.

**Suggested Motion:** Move to approve the Agreement for Services with Gia Rassier.

DF/lis  
Enclosure

**AMENDMENT TO**  
**AGREEMENT FOR SERVICES**



**THIS AMENDMENT TO THE PREVIOUS AGREEMENT**, effective the 19th day of August 2020, by and between Fargo Cass Public Health ("FCPH"); and Gia Rassier (Independent Contracting Consultant).

**NOW, THEREFORE**, it is hereby agreed by and between the parties hereto as follows:

- A. Term of Agreement:** The parties originally entered into a written agreement for the period of November 18, 2019 through September 30, 2020. The term of the agreement has not changed.
- B. Services to be provided by independent contractor:** Independent contractor will work closely with the Cass Clay Food Partners to implement and conduct the Cass Clay Food Action Network meetings (also known as First Fridays @ B). Work includes planning the program and content for 7 events instead of previously agreed upon 6 events, work with the facility on set up and technology needs, market and promote events utilizing media, social media, etc. and videotaping events.
- C. Reimbursement:** The independent contracting consultant shall be reimbursed at a rate of \$240/event with a maximum of \$1,680 paid instead of the previously agreed upon \$1,440 for services and will submit an invoice twice during the contract period.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

**Special Considerations:**

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed to be an employee of Fargo Cass Public Health for any other purpose.
- B.** This service agreement shall be governed by the laws of the State of North Dakota. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.
- D.** Services including printing and other miscellaneous costs may be discussed and agreed to by the parties as needed.

**In Witness** thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

**FARGO CASS PUBLIC HEALTH**

By Desi Fleming  
Desi Fleming, Director of Public Health

Date 8/19/20

By \_\_\_\_\_  
Timothy, J. Mahoney, Mayor, City of Fargo

Date \_\_\_\_\_

**Gia Rassier, Independent Contractor**

By Gia Rassier  
Gia Rassier, Independent Contractor

Date 8-19-2020

Contract Originator: Kim Lipetzky





19

## MEMORANDUM

**TO:** BOARD OF CITY COMMISSIONERS

**FROM:** DESI FLEMING *DF*  
DIRECTOR OF PUBLIC HEALTH

**DATE:** AUGUST 19, 2020

**RE:** AMENDMENT TO THE AGREEMENT FOR SERVICES  
WITH ANNIE WOOD FOR CASS CLAY FOOD ACTION  
NETWORK MEETINGS FOR AN \$150

The attached amendment for Agreement for Services with Annie Wood is to add an additional event (from 6 to 7 events) for an additional \$150 bringing the maximum to \$1,050 for assistance in presentation creation connected with the Cass Clay Food Action Network.

No budget adjustment is required for this contract.

**Suggested Motion:** Move to approve the Agreement for Services with Annie Wood.

DF/lls  
Enclosure



## AMENDMENT TO AGREEMENT FOR SERVICES



**Public Health**  
Prevent. Promote. Protect.  
Fargo Cass Public Health

**THIS AMENDMENT TO THE PREVIOUS AGREEMENT**, effective the 19<sup>th</sup> day of August 2020, by and between Fargo Cass Public Health ("FCPH"); and Annie Wood (Independent Contracting Consultant).

**NOW, THEREFORE**, it is hereby agreed by and between the parties hereto as follows:


- A. Term of Agreement:** The parties entered into a written agreement for the period of November 18, 2019 through September 30, 2020. The term of the agreement has not changed.
- B. Services to be provided by independent contractor:** Independent contractor will work closely with the Cass Clay Food Partners and the Cass Clay Food Action Network Project Manager to assist event presenters with presentation creation and effective ways to "share their story". Services will be provided for 7 events instead of the previously agreed upon 6 events.
- C. Reimbursement:** The independent contracting consultant shall be reimbursed at a rate of \$150/event with a maximum of \$1,050 paid instead of the previously agreed upon \$900 for services and will submit an invoice twice during the contract period.
- D. Termination:** This Agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- E. Confidentiality:** The independent contracting consultant agrees to not, directly or indirectly, disclose, make known, divulge, publish or communicate any individually identifiable health information or other confidential information to any person, firm or corporation without consent unless that disclosure is authorized under North Dakota law.

**Special Considerations:**

- A.** It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed to be an employee of Fargo Cass Public Health for any other purpose.
- B.** This service agreement shall be governed by the laws of the State of North Dakota. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C.** It is understood any forms or paperwork required by Fargo Cass Public Health and the City of Fargo to receive payment for services will be completed as needed.
- D.** Services including printing and other miscellaneous costs may be discussed and agreed to by the parties as needed.

**In Witness** thereof, this purchase of service agreement has been executed between the Consultant and Fargo Cass Public Health on the date-executed below.

**FARGO CASS PUBLIC HEALTH**

By   
Desi Fleming, Director of Public Health

Date \_\_\_\_\_

By \_\_\_\_\_  
Timothy, J. Mahoney, Mayor, City of Fargo

Date \_\_\_\_\_

**Annie Wood, Independent Contractor**

By   
Annie Wood, Independent Contractor

Date AUGUST 19, 2020


Contract Originator: Kim Lipetzky



(20)

## MEMORANDUM

**TO:** BOARD OF CITY COMMISSIONERS

**FROM:** DESI FLEMING   
DIRECTOR OF PUBLIC HEALTH

**DATE:** AUGUST 19, 2020

**RE:** AGREEMENT FOR SERVICES WITH AMERICAN LUNG  
ASSOCIATION FOR IMPLEMENTING ACTIVITIES TO  
INCREASE TOBACCO PREVENTION, CONTROL AND  
CESSATION.

The attached Agreement for Services with American Lung Association for a maximum of \$11,000.00 for assistance in creating activities to increase tobacco prevention, control and cessation.

No budget adjustment is required for this contract.

**Suggested Motion:** Move to approve the Agreement for Services with American Lung Association.

DF/lls  
Enclosure

**Special Considerations:**

- A. It is understood and agreed that the relationship created by this Agreement shall be that of independent contractor and contractee that shall not be deemed an employee of FCPH for any other purpose.
- B. The laws of the State of North Dakota shall govern this service agreement. I hereby certify that the above assurances and provisions of service have been reviewed and our agency has agreed upon the conditions as set forth.
- C. It is understood any forms or paperwork required by FCPH and the City of Fargo to receive payment for services will be completed as needed.

**In Witness** thereof, this purchase of service agreement has been executed between the Contractor and Fargo Cass Public Health on the date-executed below.

**Fargo Cass Public Health**

By   
Desi Fleming, Director of Public Health

Date 8/19/20

By \_\_\_\_\_  
Timothy J. Mahoney, Mayor, City of Fargo

Date \_\_\_\_\_

**American Lung Association**

By \_\_\_\_\_  
Name:  
Title:

Date \_\_\_\_\_

**OFFICE USE:**

Contract Originator: Preston Nesemeier  
Division: Health Protection and Promotion  
Sub Category: Tobacco



(21)

**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: NICOLE CRUTCHFIELD, PLANNING & DEVELOPMENT DIRECTOR**  
**TIA BRASETH, COMMUNITY DEVELOPMENT PLANNING COORDINATOR**

**DATE: AUGUST 19, 2020**

**RE: APPROVAL OF PROPOSED BUDGET & ACTIVITIES FOR COVID-19  
 QUARANTINE SUPPORT, PREVENTION, PREPARATION, AND RESPONSE**

The Department of Planning & Development is proposing the following activities and estimated budgets in response to COVID-19. Funding is available through the Red River COVID-19 Task Force (RRTF) for Community Isolation and Quarantine Support (\$3,500,000 allocation) and through the City's Community Development Block Grant (CDBG) (\$1,349,253.00 allocation) from the Department of Housing & Urban Development (HUD). Funds are also available through the City of Fargo Social Service Funds (\$100,000 allocation).

Planning staff has been involved in various conversations with community partners and the greatest needs are addressed through this proposal. Based on staff's findings as well as our understanding about future concerns for the upcoming fall and winter, staff is suggesting the allocations below to focus specifically on food and shelter for people impacted by increased economic and pandemic outcomes. A summary of this outreach is included with this memo.

Agency	Need	Urgency	Fund	Est. Amt. to Fund
SouthEastern ND Community Action Agency	Housing and Utility Assistance	1 - 30 days	CDBG-CV	\$205,000.00
Presentation Partners in Housing	Housing and Utility Assistance	1 - 30 days	CDBG-CV	\$205,000.00
Gladys Ray Shelter	Bunks with separation panels	1 - 30 days	CDBG-CV	\$50,000.00
Gladys Ray Shelter	Mobile Outreach Vehicle & Operations	1 - 30 days	RRTF	\$100,000.00
Family Health	Mobile Clinic Supplies - Medical/Dental/COVID-19 Testing	1 - 30 days	RRTF	\$100,000.00
YWCA	Quarantine-related Renovations	1 - 30 days	RRTF	\$350,000.00
Great Plains Food Bank	Food, Equipment, Staff	2 - 60 days	RRTF	\$400,000.00
FM Food Pantry	Food & COVID-19-related Technology	2 - 60 days	RRTF	\$200,000.00
FM Food Pantry	PPE Assistance	1 - 30 days	RRTF	\$1,000.00
Youthworks Shelter	PPE Assistance	1 - 30 days	RRTF	\$1,000.00
Arbors at McCormick Park	PPE Assistance	1 - 30 days	RRTF	\$1,000.00
Metro-wide	Drop-in, Quarantine, Winter Overflow Building, Project Management	ASAP	CDBG, RRTF, Social Service Funds	Analysis and coordination underway (1-3.5 million)
Contingency/Other Future Projects	(e.g., education support for distance learning, food reimbursement costs)	As needed	RRTF	Some preliminary discussions underway (100-500 thousand)

**Recommended Motion:** Approve proposed COVID-19 Budget & Activities.

## **Covid-19 Summary of Community Needs**

As part of the work of the Red River Valley Covid-19 Task Force Education and Outreach subcommittee, several organizations that work with special and low-income populations were contacted. They were asked how covid-19 has impacted their organizations, how they were responding, and what gaps they were seeing and hearing from employees, partners, and clients. The following is a summary of the gaps, needs, and concerns heard, as well as a brief summary of each organization's current status in terms of covid.

### **Gaps, Needs, & Concerns Heard**

1. **Homeless quarantine/triple wave may hit homeless community** – evictions, increase in coronavirus cases, and winter. With the potential of rising cases this fall and limited isolation options, where are people going to safely isolate? Churches United, the only shelter in the metro that takes families (unless single parent fleeing domestic violence – goes to YWCA), is already at their winter overflow numbers. The others are up and down with capacity. Only 5-9 quarantine rooms in all shelters, 5 of which are in New Life's medical respite unit. All shelters have had positive cases since March. Other shelters at lower numbers partially because people are afraid to go to shelters in the midst of covid-19. Several have noted that this is not a shelter issue, this is a public health issue. Shelters feeling the weight to take on things that should be addressed by public health. Once the shelters take on public health items, they are likely to remain in the shelter's responsibility permanently.

#### **Possible solutions heard?**

- Drop-in/isolation center – Would need metro-wide effort to fit-up old Family Fare building in Moorhead as a drop-in, isolation, and overflow strategy. Also has a kitchen.
  - Hotels – buy building, rent floor or rooms, but problematic for staffing (linear architecture constraints – hard to staff) and costly.
  - Housing – get more people housed or keep them housed.
2. **Evictions and lack of funding for housing assistance and homeless prevention** – despite additional awards of funding. State of ND's Rent Bridge program has helped, but also hearing that not everyone can access, not easy for landlords to navigate or sign up, and the number of applications significantly outweighs the funding available.

#### **Possible solutions heard?**

- More housing assistance funding needed (for direct assistance and added staff) for rent, mortgages, and utilities
3. **Homeless healthcare** – mobile healthcare outreach is desperately needed to ensure that people who are homeless are being treated, addressing chronic disease, getting prescriptions, being tested if needed.

**Possible solutions heard?**

- Buy mobile outreach unit equipped with medical, dental, covid-testing, and PPE. Find people who are unsheltered.

4. **Food insecurity uncertainties** – without knowing the corona forecast, it's possible that food levels may drop. Pantry unable to have two of its major spring food drives and is already at the lower food supply months they see in the fall.

**Possible solutions heard?**

- Additional funding may be needed for food. Contactless food drive?

5. **New American/refugee needs** – in addition to housing assistance, other major needs heard include financial assistance for businesses, childcare, employment searching services, education/outreach services on coronavirus (e.g., signage in different languages, over the phone education, food delivery, PPE), and remote communication tools like phones, computers, and internet. Also hearing that community is experiencing a lot of stigma and fear. Members of the community do not want to get tested for coronavirus as a result. Some also related to being afraid of citizenship questions and the fear of being deported.

**Possible solutions heard?**

- Additional funding for direct expenses and educational outreach.

6. **PPE/added cleaning expenses** – while not everyone is in need of additional PPE, some agencies have dwindling supplies, with limited funds to add more, including the food pantry, New American/refugee community, Adult Learning Center, Arbors at McCormick, and Youthworks. Also, every agency is spending additional time and funds on cleaning routines, whether it is hired out or in-house between supplies and staff time.

**Possible solutions heard?**

- Additional funding or reimbursement from City to organizations building their own PPE kits.

**Other Information Heard**

1. **Mass testing** – State of ND and Family Health are pulling away from it and it never really made it to Moorhead in Minnesota. NDSU will be doing mass testing 8/18-8/23 for students, staff, and faculty.
2. **Masks/face coverings** – NDSU, everyone required to wear one when in class. Not mandated yet, but definitely in classroom for face to face teaching. State of Minnesota mandated mask wearing. City of Fargo has citywide mask recommendation.

3. **Clay County Public Health & Moorhead** – Clay Health is working on building trust in New American/refugee community and other marginalized people. Doing overall staff training on historical trauma.
4. **Lutheran Social Services** – Received ORR \$30,000 grant, most of which will go to PPE and they are willing to partner with others if there are needs.
5. **City of Moorhead and State of ND** – EDA grants for small businesses.

## **Organization Discussion Summaries – July 2020**

**Arbors & McCormick** (formerly Community Homes) – Cleaning routines have been amplified in the common areas of apartment buildings (gloves are \$1/pair, very costly and hard to come by), had to hire outside cleaning service (unbudgeted expense), only emergency maintenance is being performed in units (i.e., toilets, fixtures, kitchen appliances, etc.), PPE is not readily available for tenants, office still closed (open by appointment only), currently working on partnership with ESHARA to deliver onsite, outdoor covid education to residents. No one will lose their apartment due to loss of income or employment. Office staff busy with income change reporting. Set up hotline for residents for information on basic services (i.e., childcare, food, employment, healthcare, testing, rental assistance, etc.).

**Needs:** PPE for residents; gloves for maintenance staff; funding for outside cleaning service; A/C system cleanout for air quality, education for residents (planning in progress).

***Point of Contact:***

Sarah Bagley, ED of Chisom Housing Group, [sbagley@chisomhousing.org](mailto:sbagley@chisomhousing.org), (202) 422-0947

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**Great Plains Food Bank** – Nationwide food supply chain, safety measures, and decrease of volunteers and food drives have substantially impacted the food bank. Having to purchase semi-loads of food to meet demand (25k per truck, needed 12 so far). Unexpected costs, limited food storage options, inability to continue food choice model for beneficiaries because of social distancing requirements (had to pre-pack boxes). Through August, people are able to get a produce box at Fargo Dome without income verification (drive-thru service). This is a partnership with the USDA's Farmers to Families program for people in need as a result of covid-19. Overall lull at moment, expecting surge after added stimulus and food benefits end on July 31. Increase in first timers (25%) and 44-79% increase in clientele at partner food pantries and the GPFB Mobile Food Pantry. Hired temporary staff. Not sure how much the need will be, but anticipating a surge after July 31.

**Needs:** Funding for food, supplies, truck, trailer, lift gate, and possible temp staff.

***Point of Contact:***

Marcia Paulson, CDO, [mpaulson@greatplainsfoodbank.org](mailto:mpaulson@greatplainsfoodbank.org), (701) 476-9101

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**Family Health & Homeless Health** – Had to change to new model of care for patients, particularly with telehealth. Response has been entirely on covid itself. Just now getting back to somewhat normal operations. Dentists are on full, other health providers coming back slowly. It will be several months before all providers are back on site. Over a million dollars in lost revenue because there was a hold on patients with chronic disease management. Homeless Health was closed to be used as an isolation triage location for patients with covid symptoms and unsure when Homeless Health will be available again. Nurses are in shelters and mobile medical/dental/testing outreach is being considered. Unsure where people who are homeless are now and if they are still getting their needed treatment, especially with all the general gathering spaces closed and social distancing requirements. Red River Task Force doing covid testing onsite and disseminating care kits for those in quarantine.

**Needs:** Homeless mobile outreach (including funding for ongoing supplies to stock), funding to make up for revenue loss.

***Point of Contact:***

Patrick Gulbranson, CEO, [pgulbranson@famhealthcare.org](mailto:pgulbranson@famhealthcare.org), (701) 239-2285

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**Churches United** – Already at their winter overflow numbers. Shelter full every night, many women, guests with serious, untreated mental illness with really problematic behaviors that take a lot staff supervision and time. With potential of increase in covid cases, winter, and evictions, it's likely that both homelessness and covid could increase. Ideally, there would be a drop-in/overflow/quarantine option, could be a metro-wide effort to purchase and fit-up existing building or build new. Unsheltered people need access to warm food, water, laundry, showers, toilets, and other resources. Currently, passing out 90 sack lunches per day because kitchen closed (was 150/month pre-covid). Some bottled water donated. Overall, already stretched to the maximum.

**Needs:** Homeless quarantine/winter overflow/drop-in center, homeless prevention assistance (via service providers, to help people stay housed and out of shelters), legislative needs include mass testing capabilities in MN and keeping eviction moratorium in place, funding (hiring temp. staff, lack of volunteers), needs two HVAC units replaced.

***Point of Contact:***

Sue Kosterman, ED, [pastorsue@churches-united.org](mailto:pastorsue@churches-united.org), (218) 236-0372 #238

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**Youthworks** – Access to emergency beds and housing (for youth over 18) is more limited during this time. Youth shelter (under 18) is at 35-40% full, trying to keep distance between youth. Not uncommon being at 40% in the summer. Shelter is likely to see uptick if schools open this fall. Greatest challenges are the distance guidelines (for health safety) to meet with youth face to face, the need to provide a lot of education on covid, and the extra staff hours needed to implement additional procedures in place (i.e., temps, screening, cleaning, extra outreach shifts, staffing for separate quarantine shelter, etc.). Drop-in process has been modified and was moved outside. Offering drop-in services 3 days a week for food, hygiene supplies, flip phones for safety, and services (grocery drop-off upon request). With no school, accessing services has been more difficult for youth. Some hotel vouchers through federal funding. Quarantine shelter space available for youth under 18.

**Needs:** Funding for hotel vouchers, to hire more PT staff, to offer hazard pay to street outreach team and shelter staff, and to get more PPE and cleaning supplies.

***Point of Contact:***

Jessica Fleck, Assistant Executive Director, [jfleck@youthworksnd.org](mailto:jfleck@youthworksnd.org), (701) 232-8558

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**Emergency Food Pantry** – Doing curbside model in parking lot. Unable to do food choice option as used in past, pre-packed boxes. Concerns about food waste with people not selecting their own food. Serving about 800-1000 families each month, down from 1000-1500 families pre-covid. Concerned that after benefits end July 31, there will be a surge. Early on, pantry was able to give more food so clients could go longer between food pick-ups. Pantry plans to do this again when clients or covid cases increase. Decrease in volunteers, concerned about volunteers moving forward. Providing masks to volunteers (required to wear) and offer to clients. Would like to install pager/intercom system so fewer people would need to be working a shift (many in parking lot checking people in, plus inside prepping food orders and sorting deliveries). Technology could streamline. Missed two spring food drives, supply already at fall levels, which is less than summer. Food supply line is taking longer than usual. If client is positive for covid-19, food baskets are delivered to door step as coordinated with client.

**Needs:** Funding for technology and pager/intercom system, food, toilet paper, soap, PPE.

***Point of Contact:***

Stacie Loegering, ED, [stacie@emergencyfoodpantry.com](mailto:stacie@emergencyfoodpantry.com), (701) 237-9337

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**FM Coalition to End Homelessness** – Policy action and organizing people to call governor on eviction moratoriums. Staying on top of what's going on in MN & ND. Finding new ways of building relationships, not being a direct service provider, found ways to alleviate workload of direct providers (i.e., coordinating, planning, organizing meetings, calls, etc.). State of ND moved all homeless quarantine response to local control, hotel is offline but could be brought back quickly if needed. Shelter facilities are ill-suited for pandemics, architecturally and operationally. Shelters thinking about how they can be better suited to quarantine in the future. Helpful that it is summer so people can be outside, but winter is a concern, particularly with evictions coming.

**Needs:** Funding to add staff and adapt training online, generally secure funding (fundraising events have not happened), and to identify how to help partners with gaps and how to prepare for the future.

***Point of Contact:***

Cody Schuler, ED, [cody@fmhomeless.org](mailto:cody@fmhomeless.org), (701) 936-7171

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**Lakes & Prairies Community Action Partnership** – Limited face to face visits with clients, generally outdoors. Provided phones and phone cards, food, toilet paper, and other hard to find items to clients. Also offering client delivery. Seniors still getting commodity boxes. For housing program, advocates going to units and showing clients remotely or have rental manager show remotely. Homeless/prevention program completely over the phone. Homeless outreach is outdoors or over the phone if in a shelter. Expecting surge in callers with evictions. Many new callers/first time crisis situations; unaware of how to access emergency resources. Seeing very high bills and rents due because people are so far behind. About 50% of callers are in crisis resulting from covid-19. Two summer classroom for children (limited access based on numbers to space out). Families also facing childcare needs. Just started senior rural bus route program to get seniors to medical appointments for example.

Rainbow Bridge running again. Added whole family resource navigator position, which knows a little about every program, integrated with front desk. Adding two more staff to the Homework Starts with Home program for Moorhead schools.

**Needs:** Flexible direct assistance for housing/utility bills, transportation, childcare, deposits, etc., navigating technology, long term to connect people with living wage jobs.

***Point of Contact:***

Emma Schmit, Housing Director, [emmas@caplp.org](mailto:emmas@caplp.org), (218) 512-1564

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**SENDCAA** – Not as busy as expected, likely due to Rent Bridge and unemployment stimulus still in effect. This is now changing as eviction notices and utility disconnections are being issued. In addition, households who have already exhausted rent bridge but are still in need are now applying. People in poverty are in limbo and need help applying for unemployment, getting help with rent, getting food and assistance with childcare. Navigating needs through the phone has been difficult. Existing utility, weatherization, rental assistance, childcare, housing/homeless, and case management have all ramped up. Contracted with 211 to screen callers, a lot of first time callers. Have delivered food to seniors, but not those who are covid-19 positive. Salvation Army and Presentation Partners in Housing are doing their best but are facing the same issues as SENDCAA.

**Needs:** Direct assistance on basic necessities (i.e., rent, food, utilities, transportation, etc.), additional capacity.

***Point of Contact:***

Sarah Hasbargen, Self-Sufficiency Coordinator, [sarahh@sendcaa.org](mailto:sarahh@sendcaa.org), (701) 232-2452

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**Lutheran Social Services** – Ended all in person interactions with clients (i.e., counseling, group sessions, gambling, New American), some suspended and some online. Some online programming has been successful, while some has been marginally successful. Phased reopening process will begin soon. Covid has impacted refugee services and basically their entire support system. The impact is both on the business and family side and is likely contributing to mental health issues. Concerned about this and abuse at home. Relationships between employers and employee are a concern, trust issues. Covid has been a stigma for refugees. For businesses, not able to access payroll protection program because of bank partnership requirements. Additionally, programs for loans and services, interest is an issue for Muslim culture. Struggle assisting remotely with internet or device set-ups for people who have not been using the technology. Remote counseling services does not work for kids under a certain age. School support online, but not as effective as in-person. Some of the clients struggling with technology will be able to call ahead and get services/access. Doing home visits on special occasions. Doing contact tracing in partnership with health department, connecting directly with families, close contacts, employers for the past two months. ESHARA and quarantine support is great for response. Also, it may be indirect, but on a global scale, refugees not coming to communities. Not sure how long that will be, only on emergency basis right now or for reunification.

**Needs:** Funding in general, becoming more efficient in program delivery, and PPE.

***Point of Contact:***

Dan Hannaher, Interim Director, New American Services, [danh@lssnd.org](mailto:danh@lssnd.org), (701) 271-1604

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**New Life Center** – Increased staffing. Have isolation dorm for covid-positive guests. All staff and guests getting covid tested every week onsite by National Guard. Greatest uncertainty is homeless quarantine. This is a public health problem, not a shelter problem. Performing contact tracing to best of their ability, while working closely with Cass Public Health. Had to close thrift store, loss of \$35,000 a month as a result. Not sure if they can hold fall fundraiser in October, \$150,000 revenue budgeted for that event. Access to more mental health counseling for employees in this field would be ideal.

**Needs:** Funding for increased staff, handwashing station, and supplies (doing okay with PPE).

***Point of Contact:***

Rob Swiers, ED, [rob.swiers@fargonlc.org](mailto:rob.swiers@fargonlc.org), (701) 532-4441

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**Presentation Partners in Housing –**

**Housing Navigation Program:** Services have not changed, just how they are provided. Mostly everything virtual, limited face to face. Internet and telephones provided to clients, with updated minutes each month. Assisted with prescription fills so they clients could stay home, delivered a lot of food in beginning, food cards and bus passes were also provided early on.

**Financial Assistance Program:** This service is being provided virtually and via phone. Many working poor people with 1-2 minimum wage jobs, denied unemployment. Single parent households had to quit work to homeschool, fallen behind on many months of rent. First Link referring clients, as well as Dakota Medical Foundation and local news at times. In June, 48% of applicants were first time applicants. There has been a drop in people applying, but the level of need people have is much higher. People are much farther behind on rents than in the past. Need to get prevention/diversion program up and running to get people housed. Unsheltered homeless will be the focus. Much funding has gone to shelters, food, and covid.

**Needs:** Funding for staff on front end prevention, direct assistance to clients (i.e., housing, rents, utility bills, food, communication devices, transportation, etc.), and more PPE.

***Point of Contact:***

Cheri Gerken, ED, [cheri@fmppih.org](mailto:cheri@fmppih.org), (701) 730-4556

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**YWCA** – No volunteers onsite, lost revenue from thrift store, unable to take in-kind donations. There are a lot of added processes, at one point staffed a hotel site for quarantined people who were homeless and fleeing domestic violence. Need new quarantine space because State of North Dakota is backing away from engagement and need to come up with community solution. Has some quarantine space at shelter, but not with private showers and toilets. Uptick in domestic violence reports because people are stuck at home together, up 19% from same time period as last year. At quarantine capacity with CDC guidelines and expecting surge. Unable to do fundraising events. Offering food baskets and added pop up food pantries in West Fargo and Fargo. Offering transportation and boredom kits for kids and adults.

**Needs:** Quarantine space for homeless, storage space for apartment furnishings, exploring private bathroom/shower renovations to provide better quarantine options, increase capacity, funding to staff non-YWCA properties with case managers.

***Point of Contact:***

Erin Prochnow, CEO, [eprochnow@ywcacassclay.org](mailto:eprochnow@ywcacassclay.org), (701) 232-2547

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**United Way** – Has a coronavirus response fund. Raised 80k, all going to homeless diversion and prevention initiative. This is a partnership between CAP agencies and Presentation Partners in Housing. Proactively working on ways to ensure to share work with the community. If people do not go back to work or there is another shutdown, wants to ensure they can still share message and impact with people across community. Developing ways to engage companies with digital fundraising content. Goal is to prevent and divert families from homelessness and support the nonprofit community overall-a long term shut down will ripple effects in this sector, especially in terms of fundraising and nonprofits' ability to deliver services (i.e., health services, after school programming, homelessness, senior programs, food, etc.). ESHARA partners are helpful. General education for New Americans is lacking in response to covid. Concerned about shelters and winter overflow with Churches United at capacity now. Concerned about added benefits (federal unemployment, eviction moratoriums) ending and the impact it will have on individuals potentially experiencing homelessness.

**Needs:** Add staffing positions to the homeless prevention and diversion programs. Prevent onslaught of crisis. Employment, childcare, etc. Incentivize Landlord Risk Mitigation Fund.

***Point of Contact:***

Thomas Hill, VP Community Impact, [THill@unitedwaycassclay.org](mailto:THill@unitedwaycassclay.org), (701) 237-5050

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**Lake Agassiz Regional Council** – concerned about smaller communities operating in a more “back to normal” way (i.e., open bars and restaurants, little PPE and mask wearing, etc.). Things are a lot different than in Fargo. This could lead to spikes in covid. Overall, agency is focusing on small business loans. Businesses that really need the funds are not the ones getting it due to access issues. They are trying to help those owners through loan processes. They see an uptick in people seeking their

programs. Added one staff member and plan to add another depending on a grant. Eventually wants to partner on micro lending for New American/refugee businesses.

**Needs:** Unrestricted loan funds, add staff member.

**Point of Contact:**

Amber Metz, ED, [Amber@lakeagassiz.com](mailto:Amber@lakeagassiz.com), (701) 235-1197

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**City of Moorhead** – Agency impact, relied on typical FEMA model as a response, but unsure if it was effective in getting the work done that needed to be done for a pandemic. Covid is not a cyclical problem like a flood, so planning and response was different than a previously experienced emergency. A covid command team was developed and it meets weekly. The team and those that updated the team on a regular bases include Moorhead Public Service, Downtown Moorhead Inc., Emergency Management, department leadership, and the City Manager. Trying to figure out how to re-open City Hall. Architectural barriers making it difficult (i.e., 2 elevators, high rise, small lobbies, small Chambers, etc.). Installing counter shields, supplying face masks, sanitation stations, sanitation services, etc.

In a public comment period until August 3 for CARES Act funding. Proposing 2 million of it goes to small business and community/non-profit organization support. Also seeing areas of need in childcare, housing payments, and food insecurity. Using CDBG-CV for housing assistance through Lakes & Prairies CAP and broadband access in partnership with Clay County HRA.

Did an emergency ordinance to house more than 4 unrelated in duplex next to Dorothy Day House operated by Churches United. More vulnerable populations were housed in duplex, not necessarily those with symptoms. Services next door at Dorothy Day. Churches United was able to send some guests needing quarantine to a hotel in Moorhead. City of Moorhead Police Department worked with the organization and security measures at the hotel.

**Needs:** Business support and re-opening City Hall.

**Point of Contact:**

Joshua Huffman, CD Program Administrator, [joshua.huffman@cityofmoorhead.com](mailto:joshua.huffman@cityofmoorhead.com), (218) 299-5375

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**New American Consortium –**

Social Services Support: Seeing increasingly high need for day-to-day living expenses. Many people out of jobs, even more difficult with school starting up and kids needing more attention with distance learning. Unemployment Benefits not making ends meet, especially with larger household sizes; Leniency from landlords, utility companies, etc. no longer offered, and have had poor success with eligibility with other assistance programs.

A handful of clients have been COVID-positive, and is a growing concern as social gatherings increase. Some prefer home remedies to hospital treatment. If there are active cases in the community, knowing they can receive some assistance for their family during positive quarantine time with the criteria of

being tested and confirmed will motivate individuals to seek testing, and then they can get linked with ESHARA and help provide a safety net.

Distance Learning Support: To this point, all financial aid and effort has been focused toward working adults; youth have been forgotten; they are struggling immensely with academics and mental health, especially minority children. Through early-COVID \$10K grant from FMAF, the Consortium has been running one of only virtual mentoring programs. Many mentees early on expressed depression, so they quickly adapted to virtual programming. They want to pay stipend for mentors; dependent on volunteers but recruitment has been hard.

PPE: More masks, hand sanitizers, thermometers to distribute would be helpful. Within two days of August, they distributed 50 masks.

**Needs:** Flexible direct assistance for housing/utility bills, transportation, etc., funding to hire more case managers; funding to hire mentors for students; PPE for clients

***Point of Contact:***

Maryann Allen, Executive Director, [Mallen@aipinitatives.org](mailto:Mallen@aipinitatives.org), 701-478-3636

Last updated 8.11.20



**RESOLUTION APPROVING PROPOSED BUDGET & ACTIVITIES FOR COVID-19  
QUARANTINE SUPPORT, PREVENTION, PREPARATION, AND RESPONSE**

**BE IT RESOLVED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY  
OF FARGO:**

WHEREAS, the City of Fargo has received COVID-19 specific funds through the Red River COVID-19 Task Force (RRTF) and Community Development Block Grant (CDBG), Department of Housing & Urban Development (HUD); and

WHEREAS, funds are also available through the Mayor's discretionary fund or Social Service Funds; and

WHEREAS, the Planning & Development Department is tasked with matching these resources to COVID-19 needs in Fargo, specifically needs related to low-income and special needs populations.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Fargo, North Dakota that the Mayor is herein approves the proposed budget and activities for COVID-19 quarantine support, prevention, preparation, and response.

# CERTIFICATE

STATE OF NORTH DAKOTA )  
 ) ss.  
COUNTY OF CASS )

I, Timothy J. Mahoney, the duly elected, qualified and acting Mayor of the City of Fargo, North Dakota; and

I, Steven Sprague, the duly appointed, qualified and acting City Auditor of the City of Fargo, North Dakota,

DO HEREBY CERTIFY:

That the foregoing is a full, true and correct copy of the original Resolution, and the whole thereof approving the amendments to the the proposed budget and activities for COVID-19 quarantine support, prevention, preparation, and response as described in the foregoing Resolution; which Resolution was duly adopted by the Board of City Commissioners of the City of Fargo, North Dakota, at the meeting of the Board held August 24, 2020 at which Regular Meeting all members present voted in favor of the adoption of the Resolution; and

That such Resolution is now a part of the permanent records of the City of Fargo, as such records are now filed in the office of the City Auditor.

(SEAL)

Timothy J. Mahoney,  
Mayor of the City of Fargo, North Dakota

ATTEST:

**Steven Sprague, City Auditor**

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, \_\_\_\_\_, a Notary Public in and for Cass County, in the State of North Dakota, personally appeared Timothy J. Mahoney, known to me to be the Mayor of the City of Fargo, North Dakota, and Steven Sprague, City Auditor of the City of Fargo, a municipal corporation under the laws of the State of North Dakota, and they acknowledged to me that they executed the foregoing instrument.

Notary Public, Cass County, North Dakota

## PUBLIC WORKS OPERATIONS

Fleet Management, Forestry,  
Streets & Sewers, Watermeters,  
Watermains & Hydrants  
402 23<sup>rd</sup> STREET NORTH  
FARGO, NORTH DAKOTA 58102  
PHONE: (701) 241-1465  
FAX: (701) 241-8100

August 24, 2020

(22)

Honorable Board of City Commissioners  
City Hall  
225 4<sup>th</sup> St N  
Fargo, ND 58102

Commissioners:

Three RFP's were received August 3, 2020, for our 2021 spring tree order. Urban Forestry Programs Manager Allen Lee, Arborist Supervisory Tracy Zablotney, Park District Forester Sam DeMarais, and I reviewed these.

<u>Company</u>	<u>Proposed Tree Cost</u>
Bailey Nurseries, Inc.	\$126,827.25
Chestnut Ridge Nursery, Inc.	\$113,017.75
Paul Bunyan Nurseries, Inc.	\$112,640.60

Funding is currently proposed in the 2021 forestry division tree budget. The Chestnut Ridge Nursery proposal was the most complete.

Most companies are able to provide volume discounts. To maximize this possibility, this is a combined order between the City of Fargo and the Fargo Park District. The park district will cover approximately \$28,000 of the total cost.

**Recommended motion:**

**Based on overall prices, quality, past experience, completeness of order, availability, and to secure the order as soon as possible, move to award the 2021 request for proposals (RFP20130) tree order to Chestnut Ridge Nursery, Inc.**

Your approval of this request is appreciated. Thank you.

Sincerely,



Scott Liudahl  
City Forester

Cc: Ben Dow  
Bruce Grubb  
Kent Costin

Commission2021 Tree Order.doc



August 18, 2020

The Honorable Board of City Commissioners  
City of Fargo  
Fargo, ND 58102

RE: Receive and File; 2020/2021 Updated Snow Emergency Route Designations.

Commissioners:

As part of Article 8-17 of the city municipal code, the City Snow Emergency Routes must be designated by resolution of the City Commission.

In preparation for the 2020/2021 winter, Public Works staff has reviewed and updated the enclosed Snow Emergency Route Designation Map to account for areas of growth within the city.

At this time, we are asking the City Commission to receive and file the enclosed Snow Emergency Route Designation Map with the intent that the resolution of adoption will be placed on the September 7, 2020 commission agenda.

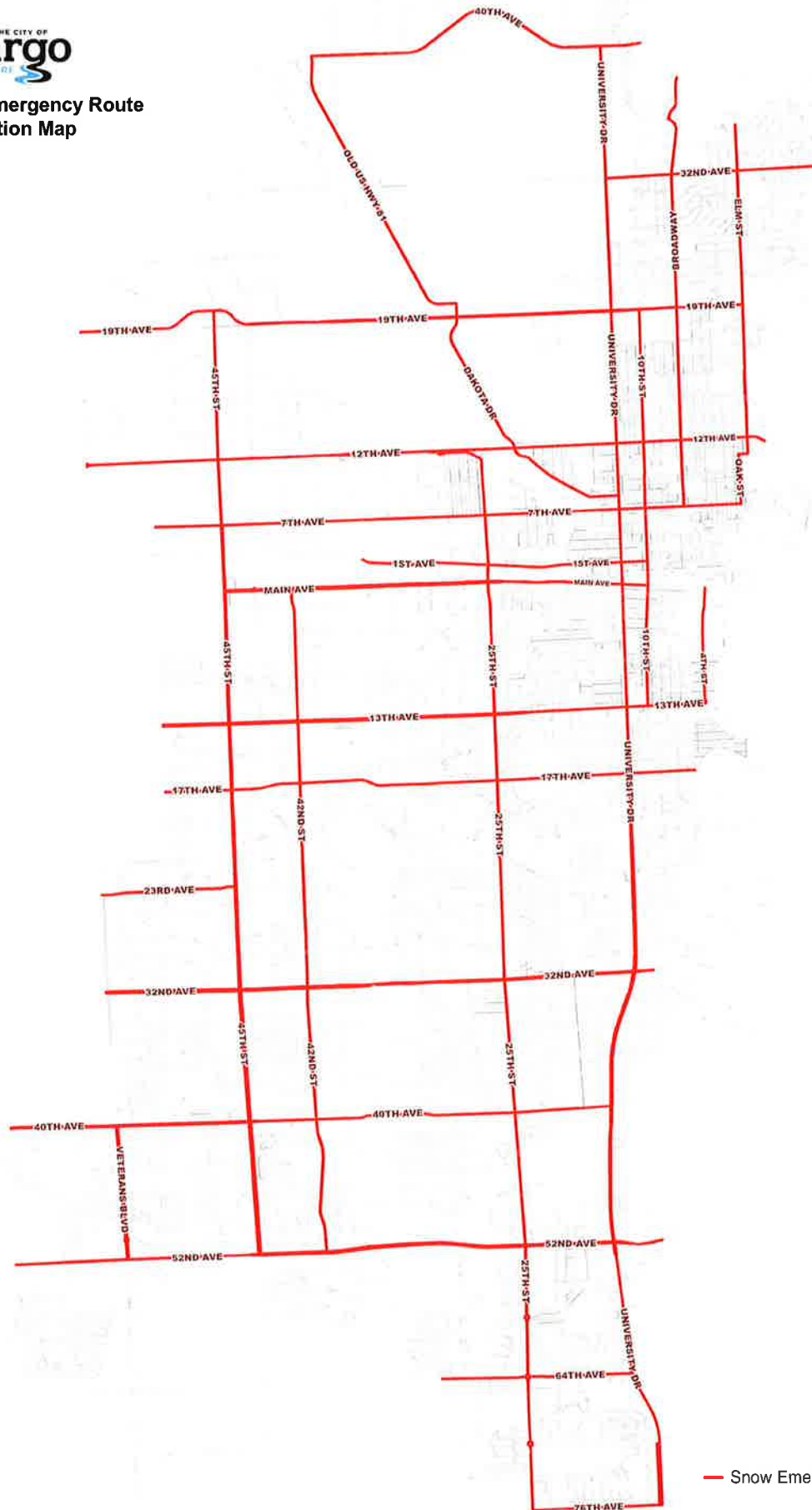
Respectfully submitted,

Ben Dow  
Fargo Public Works  
Director of Operations





**Snow Emergency Route  
Designation Map**



— Snow Emergency Route



## Metropolitan Area Transit

650 23rd Street N  
Fargo, ND 58102  
Phone: 701-241-8140  
Fax: 701-241-8558

August 24, 2020

(24)

Board of City Commissioners  
Fargo City Hall  
200 North Third Street  
Fargo, ND 58102

Re: RFP 20103

Dear Commissioners:

The renovation project at the Ground Transportation Center (GTC) requires modifications to the architectural/engineering services. The change is a result of unforeseen conditions regarding a few small areas of the concrete overlay.

The available funding within the grants for the project will cover the proposed change amount.

The requested motion is to approve Amendment No. 4 to the contract between the City of Fargo and Kadrmas, Lee & Jackson (KLJ, Inc.).

Thank you.

Sincerely,

Julie Bommelman  
Transit Director  
City of Fargo

\Attachment



**AMENDMENT TO ENGINEER-OWNER AGREEMENT**  
**Amendment No. 4**

Background Data

- a. Effective Date of Engineer-Owner Agreement: April 2019
- b. Engineer: Kadmas, Lee & Jackson
- c. Owner: City of Fargo
- d. Project: GTC Remodel
- e. This Part of the Project: Concrete Overlay Assessment & Repairs

Nature of Amendment (check all that apply)

- ☒ Additional services to be performed by Engineer
- ☐ Modifications to services of Engineer
- ☐ Modifications to responsibilities of Owner
- ☒ Modifications to payment to Engineer
- ☐ Modifications to time(s) for rendering Services

Description of Modifications

KLJ's scope of services have been modified as identified in the Exhibit A.4 attached.

Agreement Summary

a. Original agreement amount:	\$332,740.08
b. Net change for prior amendments:	\$(7,607.74)
c. This amendment amount:	\$6,478.57
d. Adjusted Agreement amount:	\$331,610.91

Engineer and Owner hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is August 6, 2020.

ENGINEER: Kadrmas Lee & Jackson, Inc.

OWNER: City of Fargo



By: Mark Anderson

By: Tim Mahoney, MD

Title: Vice President

Title: Mayor

Date Signed: August 7, 2020

Date Signed: \_\_\_\_\_

**Contract Amendment No. 4  
August 6, 2020  
Architectural/Engineering Services  
GTC Remodel  
GTC Design Bid Build  
Fargo, ND**

**Engineer's Services**

The following modifications have been made to the scope of work included in the original contract between city of Fargo and KLJ dated April 2019. The changes are a result of concerns the new concrete overlay placed by the contractor had debonded from the structural deck. The additional scope will include a structural assessment of the new overlay, construction observation and documentation as repairs are made, and associated coordination between design team, contractor and owner.

- I. Structural Assessment
  - A. KLJ will visit the site to assess the condition of the new concrete overlay and identify areas of concrete where the concrete overlay may have debonded from the structural concrete deck. Assessment will include walking the site with the general contractor and overlay subcontractor while chaining the deck and hammer sounding areas of concern.
  - ~~B. KLJ will mark areas of concern, agreed upon by KLJ and contractors, with marking paint for repair.~~
  - C. As concrete is removed, KLJ will observe the removals and document them with colored photos.
  - D. KLJ will prepare a letter of memorandum detailing the findings of the assessment including colored photos.
- II. Construction Observation
  - A. KLJ will review contractor's repair plan including proposed mixed design.
  - B. KLJ's structural engineer will be onsite during the construction repairs to complete the following:
    - 1. Document contractor's operations (labor/equipment/materials)
    - 2. Observe repairs
    - 3. Prepare field reports
  - C. Braun Intertec will perform material testing for the concrete overlay repairs.
- III. Project Management & Coordination
  - A. KLJ's project manager will provide coordination between owner, contractor and design team.

<b>GTC REMODEL - Contract Amendment #4 (August 6, 2020)</b>								
<b>1.</b>	<b>Direct Labor</b>	<b>Hours</b>	<b>X</b>	<b>Rate</b>	<b>=</b>	<b>Project Cost</b>	<b>Total</b>	
	Project Assistant	2	X	25	=	\$ 50.00	\$ 50.00	
	Project Manager	8	X	58	=	\$ 464.00	\$ 464.00	
	Engineer Structural	24	X	50	=	\$ 1,200.00	\$ 1,200.00	
			X		=	\$ -	\$ -	
			X		=	\$ -	\$ -	
			X		=	\$ -	\$ -	
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<b>Subtotal</b>					<b>=</b>	<b>\$ 1,714.00</b>	<b>\$ 1,714.00</b>	
<b>2.</b>	<b>Overhead/Indirect Cost (expressed as indirect rate x direct labor)</b>						<b>185.39%</b>	<b>\$ 3,177.58</b>
<b>3.</b>	<b>Subcontractor Costs</b>						<b>\$ 1,000.00</b>	<b>\$ 1,000.00</b>
<b>4.</b>	<b>Materials and Supplies Costs</b>						<b>\$ -</b>	<b>\$ -</b>
<b>5.</b>	<b>Travel Costs</b>						<b>\$ -</b>	<b>\$ -</b>
<b>6.</b>	<b>Fixed Fee</b>						<b>12%</b>	<b>\$ 586.99</b>
<b>7.</b>	<b>Miscellaneous Costs</b>							<b>\$ -</b>
<b>Total Cost</b>					<b>=</b>		<b>\$ 6,478.57</b>	

REPORT OF ACTIONUTILITY COMMITTEE

(25)

Project No. N/A

Type: Wireless Lease Agreement  
New Cingular Wireless PCS, LLCLocation: Fargo Water Tower 10 (64<sup>th</sup> Avenue South)

Date of Hearing: 8/20/20

<u>Routing</u>	<u>Date</u>
City Commission	8/24/20
Project File	


Troy Hall, Water Utility Director, presented the attached memo regarding a new wireless lease agreement with New Cingular Wireless PCS, LLC (AT&T). This lease agreement allows space on top of Water Tower 10 to install wireless equipment for cellular/wireless service. A structure will also be located on the ground. The initial terms of the agreement are an annual rental rate of \$22,620. The negotiated rental rate (revenue) was compared against tower leases in other cities in our region. This revenue will be split 50/50 with Cass Rural Water Users District (CRWUD), because CRWUD owns the land on which Water Tower 10 is built. This lease agreement was negotiated over a period of more than 2 years.

**MOTION:**

On a motion by Terry Ludlum, seconded by Ben Dow, the Utility Committee voted to approve the lease agreement with New Cingular Wireless PCS, LLC contingent upon Water Utility approval of final construction documents.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Anthony Gehrig, City Commissioner				
Kent Costin, Director of Finance	X			
Brian Ward, Water Plant Supt.				
Mark Miller, Wastewater Plant Supt.	X			
Bruce Grubb, City Administrator				
Scott Liudahl, City Forester	X			
Terry Ludlum, Solid Waste Utility Director	X			
James Hausauer, Wastewater Util. Director	X			
Troy Hall, Water Utility Director	X			
Ben Dow, Public Works Operations Director	X			
Brenda Derrig, City Engineer	X			

ATTEST:

  
 Troy B. Hall  
 Water Utility Director

C: Tim Mahoney, Mayor  
 Commissioner Strand  
 Commissioner Piepkorn  
 Commissioner Preston



**MEMORANDUM**

August 14, 2020

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**To:** Utility Committee

**From:** Troy B. Hall, Water Utility Director *TBH*

**Re:** New AT&T Lease Agreement – Equipment Space on Water Tower 10

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Attached, please find a proposed lease agreement with New Cingular Wireless PCS, LLC (AT&T). The agreement is to lease Antenna Space on top of Water Tower 10 and approximately 250 square feet on the ground. Water Tower 10 is located at 64<sup>th</sup> Avenue South near Davies High School. Per the attached agreement, the monthly rental rate will be \$1,885 or an annual rate of \$22,620. The rental rate will increase by 3% annually. Water Tower 10 is owned by the City of Fargo, but the land is owned by Cass Rural Water Users District (CRWUD). Since CRWUD owns the land on which Water Tower 10 was constructed, the lease revenue will be split 50/50 between the City of Fargo and CRWUD. The initial term will be five (5) years with renewal for three (3) additional five (5) year terms.



**Water Tower 10 on 64<sup>th</sup> Avenue South in Fargo. This water tower is owned by the City of Fargo, but sits on land owned by Cass Rural Water Users District.**

The City Attorney's office, engineering consultants for the Water Utility, and Water Utility staff have been working on this lease agreement for over two (2) years. Water Tower 10 is also an



important location for emergency communications through Red River Dispatch. The protection of internal City of Fargo and Clay County wireless needs are very high priority when negotiating lease agreement with wireless providers.

**SUGGESTED MOTION:**

Approve lease agreement with New Cingular Wireless PCS, LLC (AT&T).

Your consideration in this matter is greatly appreciated.

Market: MNP  
Cell Site Number: NDL02914  
Cell Site Name: Briarwood  
Search Ring Name: Briarwood  
Fixed Asset Number: 11674559

## STRUCTURE LEASE AGREEMENT

THIS STRUCTURE LEASE AGREEMENT ("**Agreement**"), dated as of the latter of the signature dates below (the "**Effective Date**"), is entered into by City of Fargo, a North Dakota municipal corporation, having a mailing address of 225 4<sup>th</sup> Street North, Fargo, ND 58102 ("**Landlord**") and New Cingular Wireless PCS, LLC, a Delaware limited liability company, having a mailing address of 1025 Lenox Park Blvd NE, 3rd Floor, Atlanta, Georgia 30319 ("**Tenant**").

### BACKGROUND

Landlord owns or controls that certain plot, parcel or tract of land, as described on **Exhibit 1**, improved with a structure (the "**Structure**" or "**Water Tower**"), together with all rights and privileges arising in connection therewith, located at 1708 64 Ave S, Fargo, in the County of Cass, State of North Dakota (collectively, the "**Property**"). Landlord desires to grant to Tenant the right to use a portion of the Property in accordance with this Agreement.

The parties agree as follows:

#### 1. LEASE.

- (a) Landlord hereby grants to Tenant a lease of a portion of the Property consisting of:
- (i) approximately 250 square feet of ground space including the air space above such ground space, as described on attached **Exhibit 1**, for the placement of Tenant's Communication Facility (as defined below);
  - (ii) space for any structural steel or other improvements to support Tenant's equipment (collectively, the space referenced in (i) and (ii) is the "**Equipment Space**");
  - (iii) that certain space on the Structure, as generally depicted on **Exhibit 1** annexed hereto and made a part hereof, including the air space above same, where Tenant shall have the right to install its antennas and other equipment (collectively, the "**Antenna Space**"); and
  - (iv) those certain areas where Tenant's conduits, wires, cables, cable trays and other necessary connections are located between the Equipment Space and the Antenna Space, and between the Equipment Space and the electric power, telephone, and fuel sources for the Property (hereinafter collectively referred to as the "**Connection Space**"). The Connection Space includes the utility alignments as more fully described on attached **Exhibit 1**. Landlord shall provide Tenant access to the site as necessary to implement the intention of this Agreement. The Equipment Space Antenna Space and Connection Space are hereinafter collectively referred to as the "**Premises**." **Approval of Site installation shall be evidenced by initials of both parties and as attached to this Agreement.**
- (b) During the term of this Agreement, Tenant and its agents, engineers, surveyors and other representatives will be granted permission to enter upon the Property to inspect, examine, conduct soil borings, drainage testing, material sampling, radio frequency testing and other geological or engineering tests or studies of the Property (collectively, the "**Tests**"), to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate for Tenant's use of the Premises. Further, in conjunction with Landlord, Tenant may file applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively, the "**Government Approvals**"), initiate the ordering and/or scheduling of necessary utilities, and otherwise to do those tasks necessary to determine the physical condition of the Property, the environmental history of the Property, Landlord's title to the Property and the feasibility or suitability of the Property for Tenant's Permitted Use, all at Tenant's expense. Tenant will not be liable to Landlord or any third party on account of any pre-existing defect or condition on or with respect to the Property, whether or not such defect or

condition is disclosed by Tenant's inspection. Tenant will restore the Property to its condition as it existed at the commencement of the Term (as defined below), reasonable wear and tear and casualty not caused by Tenant excepted. In addition, Tenant shall indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or claims arising directly out of Tenant's Tests.

(c) If during the term of this Agreement, Landlord decides to subdivide, sell, or change the status of the zoning of the Premises or Property or in the event of foreclosure, Landlord shall immediately notify Tenant in writing. Any sale of the Property shall be subject to Tenant's rights under this Agreement. Landlord agrees that during the Term of this Agreement, Landlord shall not initiate or consent to any change in the zoning of the Premises or Property or impose or consent to any other restriction that would prevent or limit Tenant from using the Premises for the approved uses by Tenant as hereinafter set forth in this Agreement.

2. **PERMITTED USE.** Tenant may use the Premises for the transmission and reception of communications signals and the installation, construction, maintenance, operation, repair, replacement and upgrade of communications fixtures and related equipment, cables, accessories and improvements, which may include a suitable support structure, associated antennas, equipment shelters or cabinets and fencing and any other items necessary to the successful and secure use of the Premises (the "**Communication Facility**"), as well as the right to test, survey and review title on the Property. Tenant's Communication Facility shall be as provided in Exhibit 1 attached hereto, and any modification or additional attachments or equipment must be in writing signed by both Parties (collectively, the "**Permitted Use**"). Landlord grants Tenant, the right to use such portions of the Property as agreed to in Exhibit 2, during construction and installation of the Communication Facility, for such time and in accordance with such schedule as shall be agreed to by the parties and attached hereto as Exhibit 3. Tenant shall have the right to construct a fence around the Communication Facility portion of the Premises, install warning signs to make individuals aware of risks, install protective barriers, install any other control measures reasonably required by Tenant's safety procedures or applicable law, and undertake any other appropriate means to secure Tenant's equipment at Tenant's expense.. Any modifications or additions to the Communication Facility beyond what is initially depicted and approved by Landlord as set forth in **Exhibit 1** shall be approved in writing by Landlord in advance of the commencement of the work, such approval not to be unreasonably withheld, conditioned or delayed.

3. **TERM.**

(a) The initial lease term will be five (5) years (the "**Initial Term**"), commencing on the Effective Date. The Initial Term will terminate on the fifth (5th) anniversary of the Effective Date.

(b) This Agreement will automatically renew for three (3) additional five (5) year term(s) (each additional five (5) year term shall be defined as an "**Extension Term**"), upon the same terms and conditions set forth herein unless Tenant notifies Landlord in writing of Tenant's intention not to renew this Agreement at least six (6) months prior to the end of the then current term or Extension Term.

(c) Unless (i) Landlord or Tenant notifies the other in writing of its intention to terminate this Agreement at least six (6) months prior to the expiration of the final Extension Term, or (ii) the Agreement is terminated as otherwise permitted by this Agreement prior to the end of the final Extension Term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year, and for annual terms thereafter ("**Annual Term**") until terminated by either party hereto by giving to the other party hereto written notice of its intention to so terminate at least six (6) months prior to the end of any such Annual Term. Monthly rent during such Annual Terms shall be equal to the Rent paid for the last month of the final Extension Term. Tenant shall, upon termination of this Agreement, within a reasonable period of time but not greater than sixty (60) days from Termination, remove its personal property and fixtures and restore the Premises to its original condition, reasonable wear and tear excepted.

(d) The Initial Term, any Extension Terms, any Annual Terms are collectively referred to as the "**Term.**"

4. **RENT.**

(a) Commencing on the first day of the month following the date that Tenant commences construction (the "**Rent Commencement Date**"), Tenant will pay Landlord on or before the fifth (5<sup>th</sup>) day of each calendar

month in advance, One Thousand Eight Hundred Eighty Five Dollars (\$1,885.00) (the "**Rent**"), at the address set forth above. In any partial month occurring after the Rent Commencement Date, the Rent will be prorated. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Rent Commencement Date.

(b) Monthly Rent will increase by three percent (3.0%) per year over the Rent paid during the previous year.

#### **5. APPROVALS.**

(a) Landlord agrees that Tenant's ability to use the Premises is contingent upon the suitability of the Premises and Property for the Permitted Use and Tenant's ability to obtain and maintain all Government Approvals. Landlord shall cooperate with Tenant to prepare, execute and file all required applications to obtain Government Approvals for the Permitted Use and agrees to reasonably assist Tenant with such applications and with obtaining and maintaining the Government Approvals.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice.

(c) Tenant may also perform and obtain, with reasonable notice and permissions from Landlord, at Tenant's sole cost and expense, soil borings, percolation tests, engineering procedures, environmental investigation or other tests or reports on, over, and under the Property, necessary to determine if Tenant's use of the Premises will be compatible with Tenant's engineering specifications, system, design, operations or Government Approvals.

#### **6. TERMINATION.** This Agreement may be terminated, without penalty or further liability, as follows:

(a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 16 of this Agreement after the applicable cure periods;

(b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Communication Facility as now or hereafter intended by Tenant;

(c) by Tenant, upon written notice to Landlord, if Tenant determines, in its sole discretion, due to the title report results or survey results, that the condition of the Premises is unsatisfactory for its intended uses;

(d) by Tenant upon sixty (60) days' prior written notice to Landlord during the Initial Term, for any reason or no reason, so long as Tenant pays Landlord a termination fee equal to twelve (12) months' Rent, at the then-current rate;

(e) by Landlord, upon sixty (60) days' written notice if Landlord's use of the Water Tower is materially impaired or impeded by Tenant's use of the Premises permitted herein, or Tenant fails to comply with Landlord's directive to repair or maintain the equipment, at Landlord's sole discretion.

(f) Landlord intends to continue to use the Premises as a Water Tower for an indefinite period of time. In the event such use is discontinued at this location for any reason, as determined by Landlord at its sole discretion, Landlord shall have the right to terminate this Agreement by giving notice to Tenant thereof in writing, effective twelve (12) months from receipt of notice by Tenant.

(g). In the event of an emergency rendering the Premises unsuitable for the use as a water tower, this Agreement shall immediately terminate.

**7. INSURANCE.** During the Term, Tenant will purchase and maintain in full force and effect such commercial general liability policy as required in this Agreement. Said policy of commercial general liability insurance as per ISO form CG 00 01 or its equivalent will provide a combined single limit of Five Million and No/100 Dollars (\$5,000,000.00) per occurrence and in the aggregate, including the city of Fargo and Cass Rural Water Users as additional insureds by endorsement as respects this Agreement. Tenant shall deliver evidence of such insurance to Landlord in advance of construction and upon request. Such insurance shall not be cancelled, or non-renewed without at least thirty (30) days advance written notice to Landlord. Tenant may replace such insurance as per ISO form CG 00 01 or its equivalent and provide evidence to Landlord within thirty (30) days thereof. Self-insurance shall not be permitted under this Agreement.



8. In the event the required insurance is no longer in effect, this Agreement shall immediately terminate and Tenant shall remove all the Communication Facility and all related equipment in accordance with the terms hereof.

9. **INTERFERENCE.**

(a) Tenant warrants that its use of the Premises will not interfere with those existing radio frequency uses on the Property, as long as the existing radio frequency user(s) operate and continue to operate within their respective frequencies and in accordance with all applicable laws and regulations.

(b) Landlord will not grant, after the Effective Date, a lease, license or any other right to any third party, if the exercise of such grant may in any way adversely affect or interfere with the Communication Facility, the operations of Tenant or the rights of Tenant under this Agreement. Tenant shall be responsible for such determination.

(c) For the purposes of this Agreement, "interference" may include, but is not limited to, any use on the Property that causes electronic or physical obstruction with, or degradation of, the communications signals from the Communication Facility.

(d) Notwithstanding any other term in this Agreement, Landlord reserves the right to suspend Tenant's broadcast rights upon the giving of 60 days' notice should Landlord determine, in its sole discretion, that the Communication Facility is causing radio interference to Landlord's use such tower for the sanitary lift station and water tower telemetry.

10. **INDEMNIFICATION.**

(a) Tenant agrees to indemnify, defend and hold Landlord harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim arising directly from the installation, use, maintenance, repair or removal of the Communication Facility or Tenant's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Landlord, its employees, invitees, agents or independent contractors.

(b) To the extent permitted by law, Landlord agrees to indemnify, defend and hold Tenant harmless from and against any and all injury, loss, damage or liability, costs or expenses in connection with a third party claim arising directly from the actions or failure to act of Landlord, its employees, invitees, agents or independent contractors, or Landlord's breach of any provision of this Agreement, except to the extent attributable to the negligent or intentional act or omission of Tenant, its employees, agents or independent contractors.

(c) The indemnified party: (i) shall promptly provide the indemnifying party with written notice of any claim, demand, lawsuit, or the like for which it seeks indemnification pursuant to this Section 10 and provide the indemnifying party with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of the indemnifying party; and (iii) shall fully cooperate with the indemnifying party in the defense of the claim, demand, lawsuit, or the like. A delay in notice shall not relieve the indemnifying party of its indemnity obligation, except (1) to the extent the indemnifying party can show it was prejudiced by the delay; and (2) the indemnifying party shall not be liable for any settlement or litigation expenses incurred before the time when notice is given.

11. **WARRANTIES.**

(a) Tenant and Landlord (to the extent not a natural person) each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power, and authority or capacity, as applicable, to enter into this Agreement and bind itself hereto through the party or individual set forth as signatory for the party below.

(b) Landlord represents, warrants and agrees that: (i) Landlord solely owns the Structure; (ii) Cass County Water Resource District, as owner of the land on which the Structure is located (the "Owner"), has consented to this Agreement as attached hereto; (iii) Landlord controls the Property by that certain lease between Landlord and the Owner, a true and accurate copy of which is attached hereto as **Exhibit 10(b)(i)** along with all amendments thereto (collectively, the "Ground Lease"); (iv) to the best of Landlord's knowledge, neither Owner

nor Landlord is, or with the giving of notice, or passage of time (or both), will be in default under any of the terms or conditions of the Ground Lease; (v) Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises in accordance with the terms of this Agreement without hindrance or ejection by any persons lawfully claiming under Landlord; (vi) Landlord's execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on Landlord; (vi) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, then Landlord will provide promptly to Tenant a mutually agreeable subordination, non-disturbance and attornment agreement executed by Landlord and the holder of such security interest.

## **12. ENVIRONMENTAL.**

(a) Landlord represents and warrants, (i) the Property, as of the Effective Date, to the best of its knowledge is free of hazardous substances, including asbestos-containing materials and lead paint, and (ii) to Landlord's knowledge, the Property is not subject to contamination or hazardous conditions resulting in any environmental investigation, inquiry or remediation. Landlord and Tenant agree that each will be responsible for compliance with any and all applicable governmental laws, rules, statutes, regulations, codes, ordinances, or principles of common law regulating or imposing standards of liability or standards of conduct with regard to protection of the environment or worker health and safety, as may now or at any time hereafter be in effect, to the extent such apply to that party's activity conducted in or on the Property.

(b) Landlord and Tenant agree to hold harmless and indemnify the other from, to the extent permitted by law, and to assume all duties, responsibilities and liabilities at the sole cost and expense of the indemnifying party for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding ("**Claims**"), to the extent arising from that party's breach of its obligations or representations under Section 12(a). To the extent permitted by law, Landlord agrees to hold harmless and indemnify Tenant from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Landlord for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from subsurface or other contamination of the Property with hazardous substances prior to the Effective Date or from such contamination caused by the acts or omissions of Landlord during the Term. Tenant agrees to hold harmless and indemnify Landlord from, and to assume all duties, responsibilities and liabilities at the sole cost and expense of Tenant for, payment of penalties, sanctions, forfeitures, losses, costs or damages, and for responding to any Claims, to the extent arising from hazardous substances brought onto the Property by Tenant.

(c) The indemnification provisions contained in this Section 12 specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority. The provisions of this Section 12 will survive the expiration or termination of this Agreement.

(d) In the event Tenant becomes aware of any hazardous materials on the Property, or any environmental, health or safety condition or matter relating to the Property, that, in Tenant's sole determination, renders the condition of the Premises or Property unsuitable for Tenant's use, or if Tenant believes that the leasing or continued leasing of the Premises would expose Tenant to undue risks of liability to a government agency or other third party, then Tenant will have the right, in addition to any other rights it may have at law or in equity, to terminate this Agreement upon written notice to Landlord.

**13. ACCESS.** At all times throughout the Term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access ("**Access**") to and over the Property, from an open and improved public road to the Premises, for the installation, maintenance and operation of the Communication Facility and any utilities serving the Premises as described in **Exhibit 1**. Landlord agrees to provide to Tenant such codes, keys and other instruments necessary for such Access at no additional cost to Tenant. Tenant shall abide by procedures established by Landlord for access to the Premises. If Tenant elects to utilize an Unmanned Aircraft System ("UAS") in connection with its installation, construction, monitoring, site audits, inspections, maintenance, repair, modification, or alteration activities at the Property, Tenant shall provide notice to Landlord of such intention, and shall secure Landlord's written permission, which permission shall not be unreasonably withheld. Landlord shall



grant Tenant, or any UAS operator acting on Tenant's behalf, permission to fly over the applicable Property and Premises, and shall consent to the use of audio and video navigation and recording in connection with the use of the UAS.

14. **REMOVAL/RESTORATION.** All portions of the Communication Facility brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, may be removed by Tenant at any time during the Term. Landlord covenants and agrees that no part of the Communication Facility constructed, erected or placed on the Premises by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Premises will be and remain the property of Tenant and may be removed by Tenant at any time during the Term. Tenant will repair any damage to the Property resulting from Tenant's removal activities. Tenant, upon termination of this Agreement, shall, within a reasonable period (but not to exceed one hundred twenty (120) days), remove its personal property and fixtures and restore the Premises to its original condition at the commencement of this Agreement, reasonable wear and tear excepted. Tenant shall be responsible for rent at the then existing monthly rate until such time as the removal of the personal property is completed, including any period of time after termination of this Agreement.

15. **MAINTENANCE/UTILITIES.**

(a) Tenant will keep and maintain the Premises in good condition, reasonable wear and tear and damage from the elements excepted. Landlord will maintain and repair the Property and access thereto, the Structure, and all areas of the Premises where Tenant does not have exclusive control, in good and tenantable condition, subject to reasonable wear and tear and damage from the elements. Landlord will be responsible for maintenance of landscaping on the Property as a condition of this Agreement or any required permit.

Tenant must secure its own metered electrical supply and any other utility used by Tenant on the Premises.

(b) Tenant may install utilities, at Tenant's expense, and to improve present utilities on the Property and the Premises. Landlord shall grant to any service company providing utility or similar services, including electric power and telecommunications to Tenant, a right of access from an open and improved public road to the Premises, and upon the Premises, for the purpose of constructing, operating and maintaining such lines, wires, circuits, and conduits, associated equipment cabinets and such appurtenances thereto, as such service companies may from time to time require in order to provide such services to the Premises, in accordance with procedures as established by Landlord.

(c) Tenant and Landlord agree and understand that the Water Tower and the site may, from time to time, require repair and/or maintenance including, but not limited to painting of the Water Tower. Upon ninety (90) days' notification by Landlord, Tenant agrees to protect its Communication Facility and its own property during such time of repair/maintenance and Tenant shall be permitted to temporarily relocate and continue to operate its antennas, or otherwise to secure the antennas or the Communication Facility generally, to protect them from damage and allow Tenant's continued operation. Tenant will be permitted to install a temporary facility on the Property necessary to keep its Communication Facility operational, which such temporary facility shall not impede or impair Landlord's use of water tower or maintenance thereof, which temporary facility may not impede or impair Landlord's use of the premise, at Landlord's discretion. Tenant agrees that Landlord shall not be responsible for any temporary cessation of use, provided the rentals due hereunder shall be suspended during the necessary cessation of use. Tenant agrees to relocate or protect any property or equipment during such repair or maintenance, said relocation or protection to be at Tenant's sole expense.

16. **DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after written notice from Landlord of such failure to pay; or (ii) Tenant's failure to cure an interference problem as required by Section 8 within ten (10) days after written notice of such failure; (ii) Tenant's failure to perform any other term or condition under this Agreement within thirty (30) days after written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided

that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, then Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement: (i) Landlord's failure to provide Access to the Premises as required by Section 13 within twenty-four (24) hours after written notice of such failure; (ii) Landlord's failure to perform any term, condition or breach of any warranty or covenant under this Agreement within forty-five (45) days after written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have any and all other rights available to it under law and equity.

17. **ASSIGNMENT/SUBLEASE.** Tenant will have the right to assign or transfer its interest under this Agreement, in whole or part, without Landlord's consent, to: (a) Tenant's Affiliate, or (b) any entity that acquires all or substantially all of the Tenant's assets in the market as defined by the Federal Communications Commission in which the Property is located. Upon notification to Landlord of such assignment or transfer under the foregoing clause (b), Tenant will be relieved of all future performance, liabilities and obligations under this Agreement. Tenant may not otherwise assign this Agreement or sublease the Premises without Landlord's consent, Landlord's consent not to be unreasonably withheld, conditioned or delayed.

18. **NOTICES.** All notices, requests and demands hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties hereto as follows:

If to Tenant:                   New Cingular Wireless PCS, LLC  
                                      Attn: Network Real Estate Administration  
                                      Re: Cell Site #: NDL02914; Cell Site Name: Briarwood (ND)  
                                      Fixed Asset #: 11674559  
                                      1025 Lenox Park Blvd NE, 3<sup>rd</sup> Floor  
                                      Atlanta, Georgia 30319

With a copy to:               New Cingular Wireless PCS, LLC  
                                      Attn.: Legal Dept – Network Operations  
                                      Re: Cell Site #: NDL02914; Cell Site Name: Briarwood (ND)  
                                      Fixed Asset #: 11674559  
                                      208 S. Akard Street  
                                      Dallas, TX 75202-4206

If to Landlord:               City of Fargo  
                                      225 4<sup>th</sup> Street North  
                                      Fargo, ND 58102

Either party hereto may change the place for the giving of notice to it by thirty (30) days' prior written notice to the other party hereto as provided herein.

19. **CONDEMNATION.** In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within twenty-four (24) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. Tenant will be entitled to reimbursement for any prepaid Rent on a *pro rata* basis.

20. **CASUALTY.** Landlord will provide notice to Tenant of any casualty or other harm affecting the Property caused by Landlord or others, excluding Tenant, within twenty-four (24) hours of the casualty or other harm. If any part of the Communication Facility or the Property is damaged by casualty or other harm as to render the Premises unavailable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to Landlord, which termination will be effective as of the date of such casualty or other harm. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent on a *pro rata* basis. Tenant may seek permission to place temporary transmission and reception facilities on the Property, and Landlord agrees to cooperate with Tenant to secure such facilities for such time until Tenant is able to secure a replacement transmission at another location. Such temporary facilities shall be governed by the terms of this Agreement. If Landlord or Tenant undertakes to rebuild or restore the Premises and/or the Structure, as applicable, Landlord agrees to permit Tenant to place temporary transmission and reception facilities on the Property until the reconstruction of the Premises and/or Structure is completed, for the same Rent as the initial Premises. If Landlord determines not to rebuild or restore the Property and/or the Structure, Landlord will notify Tenant of such determination within thirty (30) days after the casualty or other harm. Landlord agrees that the Rent shall be abated until the Property and/or the Premises are rebuilt or restored, if ever, unless Tenant places temporary transmission and reception facilities on the Property.

21. **LANDLORD'S LIENS.** Landlord shall retain any and all lien rights it may have, statutory or otherwise, concerning the Communication Facility or any portion thereof while it remains attached to Landlord's premises.

22. **MISCELLANEOUS.**

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by Landlord and Tenant. No provision may be waived except in a writing signed by both parties. The failure by a party to enforce any provision of this Agreement or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

(b) **Memorandum/Short Form Lease.** Contemporaneously with the execution of this Agreement, the parties will execute a recordable Memorandum of Lease substantially in the form attached as **Exhibit 23(b)**. Either party may record this Memorandum of Lease at any time during the Term, in its absolute discretion.

(c) **Compliance with Law.** Tenant agrees to comply with all federal, state and local laws, orders, rules and regulations ("**Laws**") applicable to Tenant's use of the Communication Facility on the Property. Landlord agrees to comply with all Laws relating to Landlord's ownership and use of the Property and any improvements on the Property.

(d) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(e) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement. Exhibits are numbered to correspond to the section wherein they are first referenced. Except as otherwise stated in this Agreement, each party shall bear its own fees and expenses (including the fees and expenses of its agents, brokers, representatives, attorneys, and accountants) incurred in connection with the negotiation, drafting, execution and performance of this Agreement and the transactions it contemplates.

(f) **Governing Law.** This Agreement will be governed by the laws of North Dakota, and any action shall be venued in federal or state courts in Cass County, North Dakota.

(g) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv)

exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; (vi) reference to a default will take into consideration any applicable notice, grace and cure periods; (vii) to the extent there is any issue with respect to any alleged, perceived or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement; (viii) the singular use of words includes the plural where appropriate; and (ix) if any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force if the overall purpose of the Agreement is not rendered impossible and the original purpose, intent or consideration is not materially impaired.

(h) **Affiliates.** All references to "Tenant" shall be deemed to include any Affiliate of New Cingular Wireless PCS, LLC using the Premises for any Permitted Use or otherwise exercising the rights of Tenant pursuant to this Agreement. "Affiliate" means with respect to a party to this Agreement, any person or entity that (directly or indirectly) controls, is controlled by, or under common control with, that party. "Control" of a person or entity means the power (directly or indirectly) to direct the management or policies of that person or entity, whether through the ownership of voting securities, by contract, by agency or otherwise.

(i) **Survival.** Any provisions of this Agreement relating to indemnification shall survive the termination or expiration hereof. In addition, any terms and conditions contained in this Agreement that by their sense and context are intended to survive the termination or expiration of this Agreement shall so survive.

(j) **W-9.** As a condition precedent to payment, Landlord agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Agreement and at such other times as may be reasonably requested by Tenant, including any change in Landlord's name or address.

(k) **Execution/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

(l) **Attorneys' Fees.** In the event that any dispute between the parties related to this Agreement should result in litigation, each party shall be responsible for its own fees and expenses, including attorney's fees.

(m) **Incidental Fees.** Unless specified in this Agreement, no unilateral fees or additional costs or expenses are to be applied by either party to the other party, including review of plans, structural analyses, consents, provision of documents or other communications between the parties.

(n) **Further Acts.** Upon request, Landlord will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents, and assurances as Tenant may request from time to time in order to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and all transactions and permitted use contemplated by this Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be effective as of the Effective Date.

**“LANDLORD”**

City of Fargo, a North Dakota municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**“TENANT”**

New Cingular Wireless PCS, LLC,  
a Delaware limited liability company

By: AT&T Mobility Corporation  
Its: Manager

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**[ACKNOWLEDGMENTS APPEAR ON NEXT PAGE]**



**TENANT ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, and acknowledged under oath that he/she is the \_\_\_\_\_ of AT&T Mobility Corporation, the Manager of New Cingular Wireless PCS, LLC, the Tenant named in the attached instrument, and as such was authorized to execute this instrument on behalf of the Tenant.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**LANDLORD ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me, personally appeared \_\_\_\_\_, who acknowledged under oath, that he/she is the person/officer named in the within instrument, and that he/she executed the same in his/her stated capacity as the voluntary act and deed of the Landlord for the purposes therein contained.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



REPORT OF ACTIONUTILITY COMMITTEE

(26)

Project No. WA2004

Type: Bid Award for Project WA2004

Location: Near 52<sup>nd</sup> Avenue & Sheyenne River

Date of Hearing: 8/20/20

<u>Routing</u>	<u>Date</u>
City Commission	8/24/20
Project File	

Troy Hall, Water Utility Director, presented the attached memo regarding the bid opening for Project WA2004. This project is titled, 'Fargo South Regional Water Connection – Phase 1'. Most of the contractor scope is installing 24-inch pipe for a 3<sup>rd</sup> West Fargo water service connection, which includes directional drilling for a Sheyenne River crossing at 52<sup>nd</sup> Avenue. The bid opening took place on Wednesday, August 19, 2020. Three bids were opened. The bid information is as follows:

<u>Contractor</u>	<u>Total Bid Amount</u>
<b>Sellin Brothers, Inc.</b>	<b>\$1,222,187.00</b>
J.R. Ferche, Inc.	\$1,357,966.00
Dakota Underground Company	\$1,835,371.92

Engineer's Estimate: \$1,694,534.40

Two bids were below Engineer's Estimate. One bid was higher compared to the estimate. The bid from Sellin Brothers, Inc. was 27.9 percent below the Engineer's estimate and apparent low bid. Water Utility staff recommended approval contingent on successful review of a completed Bidder Qualification Form.

**MOTION:**

On a motion by Jim Hausauer, seconded by Mark Miller, the Utility Committee voted to approve the Bid Award to Sellin Brothers, Inc. for Project WA2004 in amount of \$1,222,187.00 contingent upon successful review of a completed Bidder Qualification Form.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Anthony Gehrig, City Commissioner				
Kent Costin, Director of Finance	<u>X</u>			
Brian Ward, Water Plant Supt.				
Mark Miller, Wastewater Plant Supt.	<u>X</u>			
Bruce Grubb, City Administrator				
Scott Liudahl, City Forester	<u>X</u>			
Terry Ludlum, Solid Waste Utility Director	<u>X</u>			
James Hausauer, Wastewater Util. Director	<u>X</u>			
Troy Hall, Water Utility Director	<u>X</u>			
Ben Dow, Public Works Operations Director	<u>X</u>			
Brenda Derrig, City Engineer	<u>X</u>			

ATTEST:

C: Tim Mahoney, Mayor  
Commissioner Strand  
Commissioner Piepkorn  
Commissioner Preston

  
\_\_\_\_\_  
Troy B. Hall  
Water Utility Director

**MEMORANDUM**  
 August 19, 2020

**To:** Utility Committee

**From:** Troy B. Hall, Water Utility Director *TBH*

**Re:** Project WA2004 Bid Award – South Regional Water Connection – Phase 1

**Introduction**

Bids were opened for Project WA2004 at the City Auditor's Office on August 19, 2020 at 11:45 AM. Attached, please find a bid award recommendation letter from AE2S. There were three (3) sealed bids opened. The low apparent bidder is Sellin Brothers, Inc. in the amount of \$1,222,187. The Engineer's Estimate was \$1,694,534.40. There were two (2) bids below the estimate and one bid above it. The low bid was 27.9 percent below the Engineer's Estimate and Water Utility staff recommends award contingent upon successful review of completed Bidder Qualification Form in accordance with the AE2S recommendation letter.

The West Fargo pipe installation portion is eligible for State Water Commission (SWC) cost-share funding at 60% for construction and construction engineering under our 'Regionalization' grant. Currently, there is about \$1.867 million remaining under this SWC Regionalization grant. The major portion of this project is to install piping – including a Sheyenne River crossing – for a 3<sup>rd</sup> West Fargo water service connection. According to the bid documents, there are two other smaller construction projects to be complete in the contractor's scope since a contractor is already on site.



**Diagram shows phases of 3<sup>rd</sup> West Fargo Water Service Connection & Drain Improvements for Storm Water Management and Water Supply to the Water Treatment Plant.**

### **Plan of Financing**

Construction and construction engineering for this project are eligible for State Water Commission (SWC) cost-share funding at 60 percent. The remaining \$1.867 million on this SWC 'Regionalization' grant needs to be utilized by June 30, 2021. Water Utility staff recommends the local share of 40 percent be paid with Infrastructure Sales Tax (Fund 450) according to the budget line. Water use by regional customers increases revenue to the City of Fargo and will offset capital improvement costs paid directly by the Water Utility. A small portion of site work on the Ground Storage Reservoir (GSR) site will not be eligible for SWC reimbursement, but there is a cost efficiency because the contractor is already nearby. This site work will be paid with Infrastructure Sales Tax (Fund 450) per Finance Committee approval as an eligible project.

### **SUGGESTED MOTION:**

Approve Bid Award to Sellin Brothers, Inc. for Project WA2004 in amount of \$1,222,187.00 contingent upon successful review of completed Bidder Qualification Form.

Your consideration in this matter is greatly appreciated.





8/19/2020

Mr. Troy Hall  
Water Utility Director  
City of Fargo  
435 14th Ave S  
Fargo ND 58103-4306

**Re: Fargo South Regional Water Connection Improvements – Phase 1  
Engineer's Bid Review and Award Recommendation  
Fargo Water Project #WA2004**

Dear Mr. Hall:

Bids were received at 11:30 a.m. on Wednesday, August 19, 2020 at the City Auditor's Office and subsequently opened at 11:45 a.m. in the Engineering Conference Room at the Fargo City Hall for the above referenced project. A total of three (3) different bidders submitted a total of three (3) sealed bids. Each of the bids that were submitted met all of the prescribed requirements and were opened and read aloud. This letter summarizes the bid results received and includes the Engineer's recommendation for award.

The project was bid as one (1) contract: Contract No. 1 – General Construction. A bid tabulation is attached to this letter for your review.

The recommendation to award the low, responsible bid is presented below. Based on a review of the bids, the apparent low bid is Sellin Brothers, Inc. for Contract No. 1 – General Construction. As allowed by the contract documents, the apparent low bidder has been requested to complete and submit the Bidder Qualifications Form, which is due within 10 days of the bid opening date. Contingent upon successful review of the completed Bidder Qualifications Form, the project team recommends the following construction contracts:

- Contract No. 1 – General Construction: Sellin Brothers, Inc. in the amount of \$1,222,187.00.

Thank you for the opportunity to assist the City of Fargo with this important project. Should you have any comments or questions regarding the bid results or the project in general, please do not hesitate to contact me at (701) 364-9111.

Respectfully Submitted,

AE2S

Brian Gaddie, PE  
Project Manager

Attachments

**Fargo South Regional Water Connection Improvements - Phase I**  
**City of Fargo, North Dakota**  
**City Project No. WA2004**  
**AE2S Project No. P00803-2018-028**  
**Bid Opening 11:30 AM CDT, Wednesday, August 19, 2020**

Contractor	Acknowledge Addenda 1-2	Bid Bond	Contractor's ND License or Renewal Certificate	Bid Form	Total Bid Price
Sellin Brothers, Inc.	✓	✓	✓	✓	\$1,222,187.00
J.R. Ferche Inc.	✓	✓	✓	✓	\$1,357,966.00
Dakota Underground Company	✓	✓	✓	✓	\$1,835,371.92
Engineer's Estimate					\$1,694,534.40



Advanced Engineering and Environmental Services, Inc.  
 4170 28th Avenue S  
 Fargo, ND 58104  
 Tel: 701-364-9111

Brian Gaddie, PE



REPORT OF ACTIONUTILITY COMMITTEE

(27)

Project No. WA1906

Type: Water Tower Recondition  
Tower 7 Change Order #1Location: Water Tower 7 (45<sup>th</sup> Street & 9<sup>th</sup> Avenue South)

Date of Hearing: 8/20/20

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/24/20</u>
Project File	<u>                    </u>

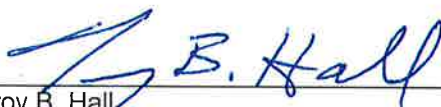
Troy Hall, Water Utility Director, presented the attached memo, letter from AE2S, and change order form for Project WA1906, Water Towers 4 & 7 Reconditioning. This change order is with Classic Protective Coatings in the amount of \$2,450 and includes two (2) cost items. One item is a cost increase and one item is a cost decrease. Reconditioning at Water Tower 7 is complete (other than restoration on the ground). The contractor is now working on Water Tower 4. Water Tower Reconditioning is in the Water Utility Capital Improvement Plan (CIP). This project is funded with Infrastructure Sales Tax (Fund 450) and is in the budget. With approval of this change order for \$2,450, the new contract amount with Classic Protective Coatings will be \$1,576,375.

**MOTION:**

On a motion by Jim Hausauer, seconded by Scott Liudahl, the Utility Committee voted to approve Change Order #1 with Classic Protective at a cost increase of \$2,450 for Project WA1906.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u>X</u>
				<u>Proxy</u>
Anthony Gehrig, City Commissioner				
Kent Costin, Director of Finance	<u>X</u>			
Brian Ward, Water Plant Supt.				
Mark Miller, Wastewater Plant Supt.	<u>X</u>			
Bruce Grubb, City Administrator				
Scott Liudahl, City Forester	<u>X</u>			
Terry Ludlum, Solid Waste Utility Director	<u>X</u>			
James Hausauer, Wastewater Util. Director	<u>X</u>			
Troy Hall, Water Utility Director	<u>X</u>			
Ben Dow, Public Works Operations Director	<u>X</u>			
Brenda Derrig, City Engineer	<u>X</u>			

ATTEST:

  
 Troy B. Hall  
 Water Utility Director

C: Tim Mahoney, Mayor  
 Commissioner Strand  
 Commissioner Piepkorn  
 Commissioner Preston



**Water Treatment Plant**  
435 14th Avenue South  
Fargo, ND 58103  
Office: 701.241.1469 | Fax: 701.241.8110  
[www.FargoND.gov](http://www.FargoND.gov)

## MEMORANDUM

August 14, 2020

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**To:** Utility Committee

**From:** Troy B. Hall, Water Utility Director *TBH*

**Re:** Project WA1906 Change Order #1 – Water Towers 4 & 7 Reconditioning

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### Introduction

Attached, please find a proposed change order with Classic Protective Coatings (Project WA1906). This is a water tower reconditioning project at both Water Towers 4 & 7. Full reconditioning at water towers is anticipated to occur about every 20-30 years. Water Tower 7 reconditioning is now complete with a recommended change order cost increase of \$2,450 involving two (2) contract changes. Reconditioning work at Water Tower 4 (I-29 & 12<sup>th</sup> Ave. North) is now taking place and is scheduled for completion by the end of the construction season. With approval of the proposed change order, the new contract price will be \$1,576,375. Project WA1906 is being cash funded using Infrastructure Sale Tax (Fund 450) and is in the Water Utility budget.



Completed Water Tower 7 reconditioning project at 45<sup>th</sup> Street and 9<sup>th</sup> Avenue South.

**Detailed Summary of Change Orders**

The two items considered under this change order are summarized in the following table:

<b><u>No.</u></b>	<b><u>Item</u></b>	<b><u>Cost</u></b>	<b><u>Reason</u></b>
1	Work with SCADA Antennas in Place	\$9,650.00	Reduce Interruption
2	Remove Expansion Fitting from Scope	(\$7,200.00)	Done by WTP Staff
<b>Total – Change Order No. 1</b>		<b>\$2,450.00</b>	

**Plan of Financing**

Water Utility staff recommends this change order be paid with Infrastructure Sales Tax (Fund 450) according to the budget line for Water Tower Reconditioning, Project WA1906.

**SUGGESTED MOTION:**

Approve Change Order No. 1 with Classic Protective Coatings in the amount of \$2,450 under Project WA1906.

Your consideration in this matter is greatly appreciated.



July 15, 2020

City of Fargo  
Attn: Mr. Dan Portlock, PE  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

**Re: Fargo Water Tower Nos. 4 and 7 Reconditioning  
Construction Change Order No. 1**

Dear Mr. Portlock:

Classic Protective Coatings has requested a change order for the above-mentioned project. The change order is to include the work of Work Change Directive No. 1. Work Change Directive No. 1 includes the work associated for the Contractor to provide services and coordination with City of Fargo personnel to remove and reinstall existing antenna equipment at Water Tower No. 7 and also a deduct cost for not installing a new expansion fitting at Water Tower No. 4. The expansion fitting is not required since the City recently replaced it themselves due to a leak. The antennas that were relocated are the City's two (2) wastewater repeater antennas that were just moved from the old (13 ft diameter handrail) to the newly installed (20 ft diameter handrail) on top of the water tower.

The Substantial and Final Completion dates do not change as a result of this change order. The construction contract total, as a result of this change order, is expected to increase \$2,450.00 for a total of \$1,576,375.00.

Upon the City of Fargo's acceptance of Change Order No. 1, please sign and date. Return a scanned copy of the formal change order form containing all signatures to AE2S. AE2S will forward the signed copy to the contractor and will retain a copy for our records. AE2S greatly appreciates the opportunity to assist the City with construction phase services for the project. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

**AE2S**

A handwritten signature in blue ink, appearing to read "Kevin Johnson", is written over a horizontal line.

Kevin Johnson, PE  
Project Manager



## Change Order

No. 1Date of Issuance: 07/15/2020Effective Date: 07/15/2020

Project: Fargo WTP Raw Water Valve Improvements

Owner: City of Fargo, ND

Owner's Contract No.:

Contract: General Construction

Date of Contract: 11/11/2019

Contractor: Classic Protective Coatings, Inc.

Engineer's Project No.: P00803-2019-013**The Contract Documents are modified as follows upon execution of this Change Order:**

Description: This change order includes work completed under Work Change Directive No. 1 for the project. Work Change Directive No. 1 included the work associated for the Contractor to provide services and coordination with City of Fargo personnel to remove and reinstall existing antenna equipment at Water Tower No. 7 and also a deduct cost for not installing a new expansion fitting at Water Tower No. 4.

Attachments: Work Change Directive No. 1

**CHANGE IN CONTRACT PRICE:**

Original Contract Price:

\$ 1,573,925.00[Increase] [Decrease] from previously approved Change Orders No. 0 to No. 0;\$ 0.00

Contract Price prior to this Change Order:

\$ 1,573,925.00

[Increase] [Decrease] of this Change Order:

\$ 2,450.00

Contract Price incorporating this Change Order:

\$ 1,576,375.00**CHANGE IN CONTRACT TIMES:**Original Contract Times: ☒ Working days ☐ Calendar daysSubstantial completion (days or date): November 1, 2020Ready for final payment (days or date): November 30, 2020[Increase] [Decrease] from previously approved Change Orders No. 0 to No. 0;

Substantial completion (days or date):

Ready for final payment (days or date):

Contract Times prior to this Change Order:

Substantial completion (days or date): November 1, 2020Ready for final payment (days or date): November 30, 2020

[Increase] [Decrease] of this Change Order:

Substantial completion (days or date): NAReady for final payment (days or date): NA

Contract Times with all approved Change Orders:

Substantial completion (days or date): November 1, 2020Ready for final payment (days or date): November 30, 2020

RECOMMENDED:

By: 

Engineer (Authorized Signature)

ACCEPTED:

By: 

Owner (Authorized Signature)

ACCEPTED:


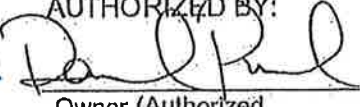
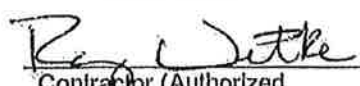
By: 

Contractor (Authorized Signature)

Date: 7-15-2020

Date:

Date: 7-16-20

<b>Work Change Directive</b> <span style="float: right;">1</span>			
Date of Issuance:	2/26/20	Effective Date:	2/26/20
Owner:	City of Fargo, North Dakota	Owner's Contract No.:	
Contractor:	Classic Protective Coatings, Inc.	Contractor's Project No.:	
Engineer:	AE2S	Engineer's Project No.:	P00803-2019-013
Project:	Fargo Water Tower Nos. 4 and 7 Reconditioning	Contract Name:	Contract No. 1 – General Construction
<p>Contractor is directed to proceed promptly with the following change(s):</p> <p><b>Description:</b>            This work change directive includes the work associated for the Contractor to provide services and coordination with City of Fargo personnel to remove and reinstall existing antenna equipment at Water Tower No. 7 and also a deduct cost for not installing a new expansion fitting at Water Tower No. 4.</p> <p>The antenna coordination work includes pre-blasting and painting the new roof handrail, furnishing and installing the roof handrail, providing penetrations through the containment system bonnet for City owned antennas, coordination work with City personnel for relocation of the existing City owned antennas to the new handrail, and touch-up and final coating of the hand rail. The cost increase for this Work, as provided by the Contractor, is \$9,650.00.</p> <p>The 16-inch stainless steel expansion fitting has been removed from the scope of work for the project since the Owner has completed this work recently as maintenance of the water tower. This Work Change Directive deletes Item No. 19 on Sheet C3 of the Contract Documents. The cost deduct for this Work, as provided by the Contractor, is (\$7,200.00).</p> <p>The net change in contract price as a result of this Work Change Directive No. 1 is an increase in the amount of \$2,450.00.</p> <p><b>Purpose for Work Change Directive:</b>            Directive to proceed promptly with the Work described herein, prior to agreeing to changes on Contract Price and Contract Time, is Issued due to: <i>[check one or both of the following]</i></p> <p><input type="checkbox"/> Non-agreement on pricing of proposed change.</p> <p><input checked="" type="checkbox"/> Necessity to proceed for schedule or other Project reasons.</p> <p><b>Estimated Change in Contract Price and Contract Times (non-binding, preliminary):</b></p> <p>Contract Price \$ 2,450.00 [increase].</p> <p>Contract Time 0 days [no change].</p> <p><b>Basis of estimated change in Contract Price:</b></p> <p><input checked="" type="checkbox"/> Lump Sum <span style="margin-left: 100px;"><input type="checkbox"/> Unit Price</span></p> <p><input type="checkbox"/> Cost of the Work <span style="margin-left: 100px;"><input type="checkbox"/> Other</span></p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 30%;"> <p>RECOMMENDED:</p> <p>By: </p> <p style="text-align: center;">Engineer (Authorized Signature)</p> <p>Title: Project Manager</p> <p>Date: 2/26/20</p> </div> <div style="width: 30%;"> <p>AUTHORIZED BY:</p> <p>By: </p> <p style="text-align: center;">Owner (Authorized Signature)</p> <p>Title: WATER UTILITY ENGINEER</p> <p>Date: 2/27/20</p> </div> <div style="width: 30%;"> <p>RECEIVED:</p> <p>By: </p> <p style="text-align: center;">Contractor (Authorized Signature)</p> <p>Title: President</p> <p>Date: 3/2/2020</p> </div> </div>			



REPORT OF ACTIONUTILITY COMMITTEE

(28)

Project: WW1904

Type: Change Order #2-CC Steel, Inc.

Location: Sanitary Lift Station #32 &amp; 24 Rehabilitation

Date of Hearing: 8-20-2020

<u>Routing</u>	<u>Date</u>
City Commission	<u>8-24-2020</u>
Project File	<u>                    </u>

Jim Hausauer, Water Reclamation Utility Director, presented the attached Change Order #2, from CC Steel, Inc. The Water Reclamation Utility currently operates and maintains 67 sanitary sewer lift stations as a part of the sanitary sewer collection system. In 2017 a risk analysis was conducted to determine which lift stations were most likely to fail. As a result of the risk analysis, Lift Stations 24 and 32 were recommended for immediate rehabilitation & improvement to meet capacity demands and to prevent failure/sanitary sewer backup.

Lift Station (LS) #24

LS #24 is located in the NW portion of the City at the intersection of 7<sup>th</sup> Ave. and 42<sup>nd</sup> St. N. LS #24 has a 650-acre service area that includes domestic flows from surrounding industrial and commercial land uses. LS #24 also provides service to the Fargo Solid Waste (SW) landfill and compost facility. Leachate and site runoff of the Solid Waste operations are directed to the wastewater collection system and eventually to LS #24. Currently the SW landfill is modifying its operation to include expansion into reclaimed cells east of the current SW landfill. Rehabilitation of LS #24 was needed to meet existing and future condition flows due to operational changes at the landfill and service area.

Lift Station #32

LS #32 is located near the Highland Park Addition (Cass County Rd 31 and Drain 10). LS staff have observed signs of deterioration on the inner surface of LS #32, which is attributed to high H2S levels. The high H2S concentrations have resulted in severely corroded concrete in the wet well. AE2S recommended that the deteriorated concrete be removed and a protective coating or lining be installed. Additionally, this station receives flows from LS #31 which ironically has a larger capacity than LS #32, thus resulting in numerous instances of sanitary sewer bypass events at LS #32.

The repairs for Lift Station's #24 and 32 were included in the 2018 Lift Station Rehab and Renewal Fund 455 20 year CIP (Project WW1904). These funds have been rolled over to 2019/20 for this construction.

Change Order #2

This change order consists of additional work for both Lift Stations 24 & 32. The additional work consisted of three items as follows:

- 1). Additional work by Key Contracting (subcontractor) to clean, patch, repair damage, and cracks on corroded concrete that required additional mortar and coating injections on concrete surfaces at both LS 24 and 32.
- 2). This item includes additional work at the intersection of 7<sup>th</sup> Avenue and Aggregate Drive for street lighting and conduit as a result of the tie-in of the existing force main. The tie-in of the force main required that the street light and conduit be removed/replaced.
- 3). This additional work included modifying the precast concrete wall on LS #24 to encase an existing pipe installed in the concrete wall and to install a sluice gate over a new pipe

The total cost of the work submitted by CC Steel is in the amount of \$35,528.93.

**MOTION:**

On a motion by Troy Hall, seconded by Ben Dow, the Utility Committee voted to approve Change Order #2 from CC Steel, Inc. in the amount of \$35,528.93

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>	<u>X</u>
					<u>X</u>
					<u>Proxy</u>
Anthony Gehrig, City Commissioner					
Kent Costin, Director of Finance	X	X			
Brian Ward, Water Plant Supt.					
Mark Miller, Wastewater Plant Supt.	X	X			
Bruce Grubb, City Administrator					
Scott Liudahl, City Forester	X	X			
Terry Ludlum, Solid Waste Utility Director	X	X			
Jim Hausauer, Water Reclamation Utility Dir.	X	X			
Troy Hall, Water Utility Director	X	X			
Ben Dow, Public Works Operations Director	X	X			
Brenda Derrig, City Engineer	X	X			
Jason Halsne, Enterprise I/C Coordinator	X	X			

ATTEST:



Jim Hausauer  
Water Reclamation Utility Director


C: Mayor Mahoney  
Commissioner Strand  
Commissioner Piepkorn  
Commissioner Preston

## MEMORANDUM

August 20<sup>th</sup>, 2020

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**To:** Utility Committee

**From:** Jim Hausauer, Wastewater Utility Director 

**Re:** Project WW1904 Change Order #2 – CC Steel, Inc.  
Rehabilitation of Sanitary Lift Stations 24, 32

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### Background

The Wastewater Utility currently operates and maintains 67 sanitary sewer lift stations as a part of the sanitary sewer collection system. In 2017 we conducted a desktop risk analysis of which lift stations are most likely to fail. As a result of the risk analysis based on input from Wastewater staff, Lift Stations 24 and 32 were recommended for immediate rehabilitation and improvement to meet capacity demands and to prevent failure/sanitary sewer backup.

### Lift Station (LS) #24

LS #24 is located in the NW portion of the City at the intersection of 7<sup>th</sup> Ave. and 42<sup>nd</sup> St. N. LS #24 has a 650-acre service area that includes domestic flows from surrounding industrial and commercial land uses. LS #24 provides service to the Fargo Solid Waste (SW) landfill and compost facility. Leachate and site runoff of the Solid Waste operations are directed to the wastewater collection system and eventually to LS #24. The Wastewater Utility has reported numerous high level alarms following large rain events. Currently the SW landfill is modifying its operation to include expansion into reclaimed cells east of the current SW landfill. Rehabilitation of LS #24 was needed to meet existing and future condition flows due to operational changes at the landfill and service area.

### Lift Station #32

LS #32 is located near the Highland Park Addition (Cass County Rd 31 and Drain 10). LS staff have observed signs of deterioration on the inner surface of LS #32, which is attributed to high H<sub>2</sub>S levels. The high H<sub>2</sub>S concentrations have resulted in severely corroded concrete in the wet well. Terracon was retained by the Wastewater Utility to conduct an analysis of two core concrete samples. The findings indicated a distressed surface of the core samples to depths of 0.3-0.5" but no damage to the reinforcing steel. AE2S recommended that the deteriorated concrete be removed and a protective coating or lining be installed. Additionally, this station receives flows from LS #31 which ironically has a larger capacity than LS #32, thus resulting in numerous instances of sanitary sewer bypass events at LS #32.

The repairs for Lift Station's #24 and 32 were included in the 2018 Lift Station Rehab and Renewal Fund 455 20 year CIP (Project WW1904). These funds have been rolled over to 2019/20 for this construction.



**Change Order #2**

This change order consists of additional work for both Lift Stations 24 & 32. The additional work consisted of three items as follows:

- 1). Additional work by Key Contracting (subcontractor) to clean, patch, repair damage, and cracks on corroded concrete that required additional mortar and coating injections on concrete surfaces at both LS 24 and 32.
- 2). This item includes additional work at the intersection of 7<sup>th</sup> Avenue and Aggregate Drive for street lighting and conduit as a result of the tie-in of the existing force main. The tie-in of the force main required that the street light and conduit be removed/replaced.
- 3). This additional work included modifying the precast concrete wall on LS #24 to encase an existing pipe installed in the concrete wall and to install a sluice gate over a new pipe

The total cost of the work submitted by CC Steel is in the amount of \$35,528.93.

Your consideration in this matter is greatly appreciated.

**Recommended Motion**

Approve the attached Change Order #2 from CC Steel, Inc. in the amount of \$35,528.93 for Project WW1904.



August 13, 2020

City of Fargo  
Attn: Mr. Jim Hausauer  
North Broadway  
Fargo, ND 58102

**Re: Lift Station 24 and 32 Improvements - City Project WW1904  
Construction Change Order No. 2**

Dear Mr. Hausauer:

CC Steel has requested a change order for the above-mentioned project. The change order is to include the work completed at Lift Stations 24 and 32 including 1) additional work completed by Key Contracting to patch and repair cracks, corroded concrete, leaks, etc. in the precast concrete manholes/vaults; 2) additional work completed to remove and replace street lighting conduit and wiring for the work completed in 7<sup>th</sup> Avenue North; and 3) additional work completed to modify the precast concrete wall to encase an existing pipe and install a sluice gate in Lift Station 24. An itemized breakdown of the costs for the work, as submitted by the Contractor, is included as an attachment to the change order. The total cost of the work, as submitted by CC Steel is in the amount of \$35,528.93. The construction contract total, as a result of this change order, is expected to increase \$35,528.93 for a total of \$681,113.58.

Upon the City of Fargo's acceptance of Change Order No. 2, please sign and date. Return a scanned copy of the formal change order form containing all signatures to AE2S. AE2S will forward the signed copy to the contractor and will retain a copy for our records. AE2S greatly appreciates the opportunity to assist the City with construction phase services for the project. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

**AE2S**

A handwritten signature in blue ink, appearing to read "K. Johnson", is written over a horizontal line.

Kevin Johnson, PE  
Project Manager





# Change Order

## Instructions

---

### A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

### B. COMPLETING THE CHANGE ORDER FORM

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

7/29/2020

JOB: Fargo Lift Station 24 &amp; 32

**Change Order 2 - Itemization and Detail****ITEM 1**

Additional coatings work

Key Contracting: Injection on LS32	8,500.00
Key Contracting: Extra mortar and cleaning on LS32	13,000.00
Key Contracting: Injection on LS24	4,500.00
Key Contracting: Injection and drop replacement on LS24	3,200.00

<b>Subtotal</b>		29,200.00
General Contractor overhead and margin on subs 5%		1,460.00
General Contractor bonding 0.87%		266.74
<b>Item 1 Change Order</b>		<b>\$30,926.74</b>

**ITEM 2**

- A. Stop sign install and remove street light wiring on LS24  
 B. Remove street light wiring at LS24, install new UG conduit, re-pull wire, and connections to 2 bases

A. 3D Specialties	135.00
B. JDP Electric	848.33

<b>Subtotal</b>		983.33
General Contractor overhead and margin on subs 5%		49.17
General Contractor bonding 0.87%		8.98
<b>Item 2 Change Order</b>		<b>\$1,041.48</b>

**ITEM 3**

8" concrete driveway oversize and sluice gate alteration at LS24

CC Steel: concrete 13 sy @ \$70.00	910.00
CC Steel: sluice gate alteration lump sum	2,620.00

<b>Subtotal</b>		3,530.00
General Contractor overhead and margin		0.00
General Contractor bonding 0.87%		30.71
<b>Item 3 Change Order</b>		<b>\$3,560.71</b>
<b>Change Order 2 Total</b>		<b>\$35,528.93</b>

Submitted by:

Mike Cebulla  
 CC Steel, LLC  
 612-964-6351  
[mike@ccsteel.com](mailto:mike@ccsteel.com)

**Key Contracting, Inc.**

245 7th Avenue NE

West Fargo, ND 58078

**Invoice**

Date	Invoice #
7/22/2020	6679

Bill To
CC Steel 5303 Creekview Green Maple Plain, MN 55359



P.O. Number	Terms	Project
		Lift Station 32 Fargo

Quantity	Description	Rate	Amount
0	Coating and injecting Lift Station #32	0.00	0.00
1	Base bid	10,500.00	10,500.00
1	Injection	8,500.00	8,500.00
1	Extra mortar and extra cleaning	13,000.00	13,000.00

Please pay from this invoice. Thank you for the business.

<b>Total</b>	<b>\$32,000.00</b>
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Phone #
701-238-8192

Fax #
701-356-0166

Web Site
<a href="http://www.keycontracting.com">www.keycontracting.com</a>

**Key Contracting, Inc.**

245 7th Avenue NE  
West Fargo, ND 58078

**Invoice**

Date	Invoice #
7/6/2020	6658

Bill To
CC Steel 5303 Creekview Green Maple Plain, MN 55359



		P.O. Number	Terms	Project	
				Lift Station 24 Fargo	
Quantity	Description	Rate		Amount	
1	Lift Station 24 Rehab Fargo-Lining	10,500.00		10,500.00	
1	Injections	4,500.00		4,500.00	
The work is complete. Please pay from this invoice. Thank you for the business.		<b>Total</b>		\$15,000.00	
Phone #		Fax #		Web Site	
701-238-8192		701-356-0166		www.keycontracting.com	



245 7th Avenue NE  
West Fargo, ND 58078

# Invoice

Date	Invoice #
7/6/2020	6660

Bill To
CC Steel 5303 Creekview Green Maple Plain, MN 55359



P.O. Number	Terms	Project
		Lift Station <sup>24</sup> 32 Fargo

Quantity	Description	Rate	Amount
1	Manhole lining at 43rd St & 7th Ave N, Fargo	5,500.00	5,500.00
1	Injection and drop replacement	3,200.00	3,200.00

The work is complete. Please pay from this invoice. Thank you for the business.

<b>Total</b>	<b>\$8,700.00</b>
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Phone #
701-238-8192

Fax #
701-356-0166

Web Site
www.keycontracting.com



1110 25th Ave N \* PO Box 1615 \* Fargo, ND 58107-1615  
 800-726-4064 \* Office: 701-293-8599 \* Fax: 701-293-7811  
 Email: sales@3Dspecialties.com

**INVOICE 216532**

**Bill to:** CC Steel Fargo  
 5303 Creekview Green  
 Maple Plain, MN 55359  
 ddbdddbbddd

**Ship to:** CC Steel Fargo  
 1841 43rd St N  
 Fargo, ND 58102  
 Phone #:

Cust #	Customer PO	Quote #	Invoice Date	Due Date	Contract #	Terms
108829		11245	07/18/20	07/18/20	20103D1518	Due upon receipt
Line	Material	Description	Unit Price	Quantity	Amount	
1	14000	Labor - Per Man Hour	90.00000	1.500 HRS	135.00	

Notes:

Total	135.00
Sales Tax	
Less Retainage	
<b>Total Due</b>	<b>135.00</b>

When you provide a check as a payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. For inquiries please call: 701.293.8599

# Invoice



INCORPORATED

License # ND M3308 / MN EA003202

**Bill To:**

CC Steel, LLC

5303 Creekview Green

Maple Plain, MN 55359

Attn: Mike

**Job Address:**

7th Ave N &amp; Aggregate Drive

803 28th St S  
Fargo, ND 58103-2364  
(701) 232-1991  
Fax: (701) 364-5483

Date	Invoice Number	Customer Order Number	Customer Number	Net Terms
7/15/2020	JC14934		CCS765	Net 20

**Description**

Remove street light wiring at Fargo LS #24; install new UG conduit, re-pull wire, and make connections in two cases.

Material: \$61.08

Labor \$787.25

Billing Amount:	848.33
Retention Withheld:	0.00
Retention Due:	0.00
Subtotal:	<hr/> \$848.33
Misc:	0.00
Tax:	0.00
<b>Pay This Amount</b>	<b>\$848.33</b>

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(30)

Improvement District No. BN-20-C1

Type: Change Order #1 &amp; Time Extension

Location: 64<sup>th</sup> Ave S, 25<sup>th</sup> St – 33<sup>rd</sup> St

Date of Hearing: 8/17/2020

Routing

Date

City Commission

8/24/2020

PWPEC File

X

Project File

Jeremy Engquist

The Committee reviewed the accompanying correspondence from Project Manager, Jeremy Engquist, for Change Order #1 in the amount of \$55,929.27, bringing the total contract amount to \$5,207,474.89, for additional work, along with the associated time extension as described below:

Original Completion Dates	Revised This Memo
Phase 1 Interim – August 15, 2020	Phase 1 Interim – August 18, 2020
Substantial – September 26, 2020	Substantial – September 29, 2020
Final – October 31, 2020	Final – October 31, 2020

Staff is recommending approval of Change Order #1 and the associated time extension.

On a motion by Kent Costin, seconded by Steve Dirksen, the Committee voted to recommend approval of Change Order #1 and the time extension as described above to Dakota Underground.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Order #1 in the amount of \$55,929.27, bringing the total contract amount to \$5,207,474.89 and the associated time extension to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Cass County Joint WRD Funds, Sales Tax & Special Assessments

Developer meets City policy for payment of delinquent specials

Yes No

Agreement for payment of specials required of developer

N/A

Letter of Credit required (per policy approved 5-28-13)

N/A

N/A

COMMITTEE

Present	Yes	No	Unanimous
			<input checked="" type="checkbox"/>
<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 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"/>	Tom Knakmuhs
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

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

ATTEST:

  
Tom Knakmuhs, P.E.  
Assistant City Engineer

C: Kristi Olson



## Memorandum

**To:** PWPEC

**From:** Jeremy Engquist, Project Manager

**Date:** August 12, 2020

**Re:** Improvement District #BN-20-C1 – Change Order #1 & Time Extension

---

**Background:**

Improvement District #BN-20-C1 is for new construction of paving and incidentals on 64<sup>th</sup> Avenue South from 25<sup>th</sup> Street to 33<sup>rd</sup> Street.

Dakota Underground is the Prime Contractor on this project

**The following six (6) items totaling \$55,929.27, are included on attached Change Order #1:**

1. The Plans originally specified the Contractor to furnish and install new bee-hive style castings on the inlets located in the boulevards. This style of casting is difficult to maintain and mow around is more intended for areas adjacent to farm fields that have lots of crop trash. The boulevard areas along 64<sup>th</sup> Avenue will be grassy areas, so Staff has requested the Contractor to switch out the bee-hive style castings to a flat style type. Approximately \$5,160.49 of attached Change Order was for switching out the (38) castings.
2. The locations of (2) existing sanitary sewer services were in conflict of installing the new storm sewer. The one service was a 4" PVC pipe at Station 172+28 and the other was an 8" PVC pipe at Station 165+19. This required the Contractor to dig up and relay the services at a lowered elevation to get below storm sewer and backfill with a Class-3 aggregate base. Approximately \$25,544.42 of attached Change Order was for lowering these (2) services.
3. The bid item for F&I hydrant extensions was missed during design so the Contractor installed the extensions under time and material as approved by Staff. There were (6) new hydrants requiring extensions and approximately \$8,798.01 of attached Change Order was for these extensions.
4. Cass Rural Water District requested a flushing hydrant to be installed on their existing 2" waterline in the south boulevard of 64<sup>th</sup> Avenue at Station 177+10. Approximately \$2,290.95 of attached Change Order was for installing flushing hydrant. Cass Rural Water District will reimburse City all costs.
5. The Plans show the new proposed storm sewer getting connected into an existing storm sewer system in the northwest corner of 64<sup>th</sup> Avenue and 27<sup>th</sup> Street intersection. The location of the existing storm pipe shown was incorrect and the Contractor had to install an additional 121 LF of 18" RCP storm sewer pipe to make the connection. The Contractor had to also remove and relay sections of the existing storm pipe to make proper connection. Approximately \$9,534.65 of attached Change Order was for mentioned work.



6. While the Contractor was exposing and lowering one the existing sanitary services on 64<sup>th</sup> Avenue, Staff noticed a section of the existing pipe had settled enough to cause one of the pipe joints to become separated. This raised concerns with conditions of the remaining existing sanitary services along 64<sup>th</sup> Avenue, so Staff decided to televise the remaining services along 64<sup>th</sup> Avenue in case other repairs were needed before the street is paved. The only way to access the services was through the 30" Main pipe, which was too large of diameter for our City camera crew to navigate the secondary camera up the service pipe. Therefore, Staff directed the Contractor to have Jet-way Services televise the services. Jet-way televised the services and found no additional issues. Approximately \$4,600.75 of attached Change Order was for televising (9) sanitary services.

For the additional work performed, Dakota Underground has requested a 3-day time extension be added to the Phase 1 Interim and Substantial Completion Date.

**Recommended Motion:**

Approve Change Order #1 in the amount of \$55,929.27 for the additional work and add 3 working days to the Phase 1 Interim and Substantial Completion Dates as shown below:

Original Completion Dates	Revised This Memo
Phase 1 Interim – August 15, 2020	Phase 1 Interim – August 18, 2020
Substantial – September 26, 2020	Substantial – September 29, 2020
Final – October 31, 2020	Final – October 31, 2020

Attachment

C: Tom Knakmuhs



**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

<b>Improvement District No</b>	BN-20-C1	<b>Change Order No</b>	1
<b>Project Name</b>	PCC Paving, Site Grading, Structures, Storm Sewer, Water Main Replacement, Street Lighting, Sidewalk		
<b>Date Entered</b>	7/25/2020	<b>For</b>	Dakota Underground Co 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:** Change Order #1 & Time Extension

The following (6) items totaling \$55,929.27, are included on this Change Order #1:

1. The Plans originally specified the Contractor to furnish and install new bee-hive style castings on the inlets located in the boulevards. This style of casting is difficult to maintain and mow around is more intended for areas adjacent to farm fields that have lots of crop trash. The boulevard areas along 64th Ave will be grassy areas, so Staff has requested the Contractor to switch out the bee-hive style castings to a flat style type. Approximately \$5,160.49 of attached Change Order was for switching out the (38) castings.
2. The locations of (2) existing sanitary sewer services were in conflict of installing the new storm sewer. The one service was a 4" PVC pipe at Station 172+28 and the other was an 8" PVC pipe at Station 165+19. This required the Contractor to dig up and relay the services at a lowered elevation to get below storm sewer and backfill with a Class-3 aggregate base. Approximately \$25,544.42 of attached Change Order was for lowering these (2) services.
3. The bid item for F&I hydrant extensions was missed during design so the Contractor installed the extensions under time and material as approved by Staff. There were (6) new hydrants requiring extensions and approximately \$8,798.01 of attached Change Order was for these extensions.
4. Cass Rural Water District requested a flushing hydrant to be installed on their existing 2" waterline in the south boulevard of 64th Avenue at Station 177+10. Approximately \$2,290.95 of attached Change Order was for installing flushing hydrant. Cass Rural Water District will reimburse City all costs.
5. The Plans show the new proposed storm sewer getting connected into an existing storm sewer system in the northwest corner of 64th Ave and 27th Street intersection. The location of the existing storm pipe shown was incorrect and the Contractor had to install an additional 121 LF of 18" RCP storm sewer pipe to make the connection. The Contractor had to also remove and relay sections of the existing storm pipe to make proper connection. Approximately \$9,534.65 of attached Change Order was for mentioned work.

6. While the Contractor was exposing and lowering one the existing sanitary services on 64th Ave, Staff noticed a section of the existing pipe had settled enough to cause one of the pipe joints to become separated. This raised concerns with conditions of the remaining existing sanitary services along 64th Ave, so Staff decided to televise the remaining services along 64th Ave in case other repairs were needed before the street is paved. The only way to access the services was through the 30" Main pipe, which was too large of diameter for our City camera crew to navigate the secondary camera up the service pipe. So Staff directed the Contractor to have Jet-way Services televise the services. Jet-way televised the services and found no additional issues. Approximately \$4,600.75 of attached Change Order was for televising (9) sanitary services.

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 (\$)
Storm Sewer	49	F&I Pipe 18" Dia Reinf Conc	LF	303.00	0.00	303.00	121.00	424.00	47.00	5,687.00
	141	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	5,160.49	5,160.49
	144	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	3,847.65	3,847.65
<b>Storm Sewer Sub Total (\$)</b>										14,695.14



**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

<b>Water Main</b>	140	Extra - WaterMains	LS	0.00	0.00	0.00	1.00	1.00	8,798.01	8,798.01
	143	Extra - WaterMains	LS	0.00	0.00	0.00	1.00	1.00	2,290.95	2,290.95
<b>Water Main Sub Total (\$)</b>										11,088.96
<b>Sanitary Sewer</b>	142	Extra - SanitarySewer	LS	0.00	0.00	0.00	1.00	1.00	25,544.42	25,544.42
	145	Extra - SanitarySewer	LS	0.00	0.00	0.00	1.00	1.00	4,600.75	4,600.75
<b>Sanitary Sewer Sub Total (\$)</b>										30,145.17

**Summary****Source Of Funding**

Cass County Joint WRD Funds, Sales Tax Funds - Infrastructure - 420, Special Assessments

**Net Amount Change Order # 1 (\$)**

55,929.27

**Previous Change Orders (\$)**

0.00

**Original Contract Amount (\$)**

5,151,545.62

**Total Contract Amount (\$)**

5,207,474.89

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

**CONTRACT TIME**

<b>Current Substantial Completion Date</b>	<b>Current Final Completion Date</b>	<b>Additional Days Substantial Completion</b>	<b>Additional Days Final Completion</b>	<b>New Substantial Completion Date</b>	<b>New Final Completion Date</b>
09/26/2020	10/31/2020	3.00	0.00	09/29/2020	10/31/2020

**Description**

For the additional work performed, Dakota Underground has requested a 3-day time extension be added to the Phase 1 Interim and Substantial Completion Date.

Original Completion Dates:  
Phase 1 Interim – August 15, 2020  
Substantial – September 26, 2020  
Final – October 31, 2020

Revised Completion Dates:  
Phase 1 Interim – August 18, 2020  
Substantial – September 29, 2020  
Final – October 31, 2020

**APPROVED****APPROVED DATE**



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

APPROVED

*Daleora Undergraw*  
For Contractor  
Title  
Project Manager 8/12/2020

APPROVED DATE

Department Head  
*T. Cole*  
Mayor 8/18/2020  
Attest

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(31)

Improvement District No. BN-20-F1

Type: Change Order #1 &amp; Time Extension

Location: 62<sup>nd</sup> Ave S, 21<sup>st</sup> St – 22<sup>nd</sup> St

Date of Hearing: 8/17/2020

Routing

City Commission

Date

8/24/2020

PWPEC File

X

Project File

Will Bayuk

The Committee reviewed the accompanying correspondence from Project Manager, Will Bayuk, for Change Order #1 in the amount of \$13,896.45, bringing the total contract amount to \$2,105,162.95, for additional work, along with the associated time extension as described below:

Original Completion Dates	Revised This Memo
Interim – August 15, 2020	Interim – August 20, 2020
Substantial – October 15, 2020	Substantial – October 20, 2020
Final – November 15, 2020	Final – November 20, 2020

Staff is recommending approval of Change Order #1 and the associated time extension.

On a motion by Kent Costin, seconded by Steve Dirksen, the Committee voted to recommend approval of Change Order #1 and the time extension as described above to Fox Underground.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Order #1 in the amount of \$13,896.45, bringing the total contract amount to \$2,105,162.95 and the associated time extension to Fox Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

Yes	No
N/A	
N/A	
N/A	

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

Present	Yes	No	Unanimous
			<input checked="" type="checkbox"/>
<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 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"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tom Knakmuhs
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
Tom Knakmuhs, P.E.  
Assistant City Engineer



## Memorandum

**To:** PWPEC

**From:** Will Bayuk, Project Engineer

**Date:** August 14, 2020

**Re:** Improvement District No. BN-20-F1 – Change Order #1 and Time Extension

---

**Background:**

Improvement District No. BN-20-F1 is for Sanitary Sewer, Water Main, Storm Sewer, Paving, Street Lights and Site Grading & Incidentals on 62<sup>nd</sup> Avenue South, on 21<sup>st</sup> Street South and on 22<sup>nd</sup> Street South in the Legacy I Sixth Addition.

Fox Underground is the Prime Contractor for this project.

After the installation of sanitary sewer service it was determined that a service was staked incorrectly and needed to be relocated. The cost to relocate the sanitary sewer service was \$11,760.81 and 2 additional working days to the interim, substantial and final completion dates.

During the installation of storm sewer on 62<sup>nd</sup> Avenue South it was determined that 4 water service curb stops were in conflict with the storm sewer. The cost to relocate the 4 water service curb stops was \$2,135.64 and 1 additional working day to the interim, substantial and final completion dates.

When connecting to the existing water main on 64<sup>th</sup> Avenue South the Contractor was delayed 1 working day due to coordination with BN-20-C1.

Weather delay time extension. For the duration of the contract from June 2020 to August 2020 it was anticipated that 9 calendar days were going to be lost due to weather. The actual days lost due to weather on ID BN-20-F1 was 5 calendar days. No additional calendar days will be added to the final and substantial completion dates for rain delays.

**Recommended Motion:**

Approve Change Order #1 in the amount of \$13,896.45 and Time Extension of 5 calendar days to the new interim, substantial and final completion date as shown below:

Original Completion Dates	Revised This Memo
Interim – August 15, 2020	Interim – August 20, 2020
Substantial – October 15, 2020	Substantial – October 20, 2020
Final – November 15, 2020	Final – November 20, 2020

Attachments



**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

<b>Improvement District No</b>	BN-20-F1	<b>Change Order No</b>	1
<b>Project Name</b>	Sanitary Sewer, Water Main, Storm Sewer, Paving, Site Grading, Street Lights & Incidentals		
<b>Date Entered</b>	8/14/2020	<b>For</b>	Fox Underground

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:** Change Order #1 and Time Extension

After the installation of sanitary sewer service it was determined that a service was staked incorrectly and needed to be relocated. The cost to relocate the sanitary sewer service was \$11,760.81 and 2 additional working days to the interim, substantial and final completion dates.

During the installation of storm sewer on 62nd Avenue South it was determined that 4 water service curb stops were in conflict with the storm sewer. The cost to relocate the 4 water service curb stops was \$2,135.64 and 1 additional working day to the interim, substantial and final completion dates.

When connecting to the existing water main on 64th Avenue South the Contractor was delayed 1 working day due to coordination with BN-20-C1.

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 (\$)
Sanitary Sewer	103	Extra - Sanitary Sewer	LS	0.00	0.00	0.00	0.00	1.00	11,760.81	11,760.81
<b>Sanitary Sewer Sub Total (\$)</b>										11,760.81
Water Main	104	Extra - Water Mains	LS	0.00	0.00	0.00	0.00	1.00	2,135.64	2,135.64
<b>Water Main Sub Total (\$)</b>										2,135.64

**Summary**

**Source Of Funding**

Special Assessments

**Net Amount Change Order # 1 (\$)**

13,896.45

**Previous Change Orders (\$)**

0.00

**Original Contract Amount (\$)**

2,091,266.50

**Total Contract Amount (\$)**

2,105,162.95

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

**CONTRACT TIME**



**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
09/15/2020		35.00	5.00	10/18/2020	
<b>Description</b>  1 additional working day to the interim, substantial and final completion dates for the 4 water services. 2 additional calendar days to the interim, substantial and final completion dates for the relocation of the sanitary service relocation. 1 addition day to the interim, substantial and final completion dates for the watermain connection.  Weather delay time extension. For the duration of the contract from June 2020 to August 2020 it is anticipated that 9 calendar days are going to be lost due to weather. The actual days lost due to weather on ID BN-20-F1 was 5 calendar days. No additional calendar days will be added to the final and substantial completion dates.  30 days were added due to clerical error.					
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p><b>APPROVED</b></p> <p>For Contractor <i>Fox Underground</i></p> <p>Title <i>VP</i> <i>8-15-20</i></p> </div> <div style="width: 45%;"> <p><b>APPROVED DATE</b></p> <p>Department Head <i>[Signature]</i></p> <p>Mayor <i>[Signature]</i> <i>8/19/2020</i></p> <p>Attest</p> </div> </div>					



August 11, 2020

Will Bayuk  
City of Fargo  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

RE: Request for Additional time to complete contract

We are requesting additional time for the substantial completion of Improvement District # BN-20-F1 Legacy's 6<sup>th</sup>, Sanitary Sewer, Water Main, Storm Sewer, Paving, Site Grading, Street Lights and Incidentals.

We are asking for an additional eleven (11) days due to delays beyond our control. The reason and basis for the requested additional time is due to the amount and duration of rain for June & July, and for extra work performed. Below is a rain day list, along with days for extra work performed.

<del>.576" Sunday, June 7</del>	<del>.411" Wednesday, July 1 lost 1 day</del>	<del>.331" Tuesday, July 21- lost 2 day ✓</del>
<del>.752" Monday, June 8 - lost 1 day</del>	<del>.024" Monday, July 6</del>	<del>.607" Friday, July 24 - lost 1 day worked</del>
<del>.751" Tuesday, June 9 - lost 1 day ✓</del>	<del>1.125" Monday, July 8 - lost 1 days ✓</del>	<del>.699" Saturday, July 25 ✓</del>
<del>.262" Thursday, June 18 - lost 1 day</del>	<del>.58" Saturday, July 11</del>	<del>.032" Friday, July 31 worked</del>
<del>.052" Saturday, June 20</del>	<del>.063" Tuesday, July 14 - lost .5 day</del>	
<del>.068" Tuesday, June 23</del>	<del>.481" Thursday, July 16 - lost 2.5 days</del>	2 days for Sanitary Extra
<del>.47" Thursday, June 25 - lost 1 day</del>	<del>1.019" Friday, July 17</del>	1 day for Water Extra
<del>.048" Monday, June 29 - lost 1 day</del>	<del>.301" Monday, July 20 - lost 1 day</del>	1 day for Waiting to Connect Water

*5 day effected by rain*

Extra work described is related to water services, sanitary services, and making a connection close to the water tower that required collaboration with another contractor off of 64<sup>th</sup> Ave S, that required their passing of bacteria tests to allow for our install.

Thank you for your consideration.

Sincerely,

Scott Sanders  
Vice President



**1860 Sheyenne Loop North - Fargo, ND 58102 - 701.361.1919**

## Extra Work

**Date:** 6/29/2020

**PROJECT:** BN-20-F1 Legacy 1 - 6th Edition

**LOCATION:** 64th Ave S & 21st St S

**Description:** Sanitary Service Correction from Staking

No.	Price Breakdown	QUAN	UNIT	PRICE	EXTENSION
<b>Equipment</b>					
	CAT 336 Excavator	7.75	Hr	160.50	1,243.88
	CAT 336 Excavator (7.75 Hrs + 3.5 Hrs)	11.25	Hr	160.50	1,805.63
	CAT D6T Dozer (7.75 Hrs + 3.5 Hrs)	11.25	Hr	129.79	1,460.14
	CAT Sheepsfoot CP56	7.75	Hr	68.69	532.35
	CAT Loader (7.75 Hrs + 3.5 Hrs)	11.25	Hr	66.01	742.61
	Kubota Skidsteer (7.75 Hrs + 3.5 Hrs)	11.25	Hr	43.41	488.36
	2018 Chevy 3500 Pickup	11.25	Hr	25.94	291.83
				<b>Equipment Total</b>	<b>6,564.79</b>
<b>Labor</b>					
	Nick Gjestvang	7.75	Hr	27.50	213.13
	Nick Gjestvang OT	3.50	Hr	41.25	144.38
	Alex Marichalar	7.75	Hr	22.00	170.50
	Alex Marichalar OT	3.50	Hr	33.00	115.50
	Hudson Gisvold	7.75	Hr	21.00	162.75
	Hudson Gisvold OT	3.50	Hr	31.50	110.25
	Collin Albrecht	7.75	Hr	24.00	186.00
	Collin Albrecht OT	3.50	Hr	36.00	126.00
	David Birdsbill	7.75	Hr	18.00	139.50
	David Birdsbill OT	3.50	Hr	27.00	94.50
	Raeshawn Mousseau	7.75	Hr	17.00	131.75
	Raeshawn Mousseau OT	3.50	Hr	25.50	89.25
	Tyler Wolf	7.25	Hr	19.00	137.75
	Brodie Sanders	7.25	Hr	21.00	152.25
	Cameron Moe	7.25	Hr	17.00	123.25
	RJ McKay	7.25	Hr	18.00	130.50
				<b>Sub-Total</b>	<b>2,227.25</b>
				<b>Payroll Taxes at 20%</b>	<b>445.45</b>
				<b>Sub-Total</b>	<b>2,672.70</b>
				<b>25% Overhead and Profit</b>	<b>668.18</b>
				<b>Labor Total</b>	<b>3,340.88</b>
<b>Material</b>					
	Core & Main - Pipe Materials	1.00	lsum	1,046.36	1,046.36
	Gravel Pipe Bedding	48.00	tons	9.12	437.76
				<b>Sub-Total</b>	<b>1,484.12</b>
				<b>25% Overhead and Profit</b>	<b>371.03</b>





1860 Sheyenne Loop North - Fargo, ND 58102 - 701.361.1919

## Extra Work

Date: 6/29/2020

PROJECT: BN-20-F1 Legacy 1 - 6th Edition

LOCATION: 64th Ave S & 21st St S

Description: Sanitary Service Correction from Staking

No.	Price Breakdown	QUAN	UNIT	PRICE	EXTENSION
				Material Total	1,855.15
				Equip Total	6,564.79
				Labor Total	3,340.88
				Material Total	1,855.15
				Subcontractor Total	-
				Extra Work Total	11,760.81
				Added Days	2



**1860 Sheyenne Loop North - Fargo, ND 58102 - 701.361.1919**

## Extra Work

**Date:** 6/25/2020

**PROJECT:** BN-20-F1 Legacy 1 - 6th Edition

**LOCATION:** 64th Ave S & 21st St S

**Description:** Reinstall 4 Curb Stops

No.	Price Breakdown	QUAN	UNIT	PRICE	EXTENSION
	<b>Equipment</b>				
	CAT 336 Excavator	2.50	Hr	160.50	401.25
	CAT 930K Loader	1.00	Hr	66.01	66.01
	CAT D6T Dozer	1.25	Hr	129.79	162.24
	Kubota Skidsteer	0.50	Hr	43.41	21.71
	2018 Chevy 3500 Pickup	2.50	Hr	25.94	64.85
				Equipment Total	716.05
	<b>Labor</b>				
	Alex Marichalar	5.75	Hr	22.00	126.50
	Hudson Gisvold	1.00	Hr	21.00	21.00
	Logan Horstad	1.25	Hr	21.00	26.25
	David Birdsbill	5.75	Hr	18.00	103.50
	Raeshawn Mousseau	5.75	Hr	17.00	97.75
	Tyler Wolf	5.75	Hr	19.00	109.25
	Nick Gjestvang	2.50	Hr	27.50	68.75
	Brodie Sanders	2.50	Hr	21.00	52.50
	Collin Albrecht	2.50	Hr	24.00	60.00
	Alan Walker	2.50	Hr	24.00	60.00
	Cameron Moe	2.50	Hr	17.00	42.50
				Sub-Total	768.00
				Payroll Taxes at 20%	153.60
				Sub-Total	921.60
				25% Overhead and Profit	230.40
				Labor Total	1,152.00
	<b>Material</b>				
	Core & Main - Pipe Materials	1.00	Isum	214.07	214.07
				Sub-Total	214.07
				25% Overhead and Profit	53.52
				Material Total	267.59
				Equip Total	716.05
				Labor Total	1,152.00
				Material Total	267.59
				Subcontractor Total	-
				Extra Work Total	2,135.64
				Added Days	1

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(32)

Improvement District No. BR-20-E1

Type: Change Order #3 (Time Extension)

Location: 17<sup>th</sup> St S, 21<sup>st</sup> Ave – 25<sup>th</sup> Ave  
25<sup>th</sup> Ave S, 18<sup>th</sup> St - 14<sup>th</sup> St

Date of Hearing: 8/17/2020

Routing	Date
City Commission	8/24/2020
PWPEC File	X
Project File	Aaron Edgar

The Committee reviewed the accompanying correspondence from Project Manager, Aaron Edgar, regarding a time extension (Change Order #3) requested by Northern Improvement for additional work.

Staff is recommending approval of the time extension (Change Order #3) as shown below:

Original Completion Dates	Revised Previously	Revised This Memo
Interim Phase 1-14 Days (May 25 <sup>th</sup> , 2020)	Interim Phase 1 - 17 days (May 28 <sup>th</sup> , 2020)	--
Interim Phase 2A – 35 Days (June 30 <sup>th</sup> , 2020)	Interim Phase 2A – 38 days (July 3 <sup>rd</sup> , 2020)	--
Interim Phase 2B – 35 Days (August 9 <sup>th</sup> , 2020)	--	Interim Phase 2B – 37 days (August 10 <sup>th</sup> , 2020)
Substantial – September 19, 2020	--	Substantial – September 21, 2020
Final-October 23, 2020	--	Final- October 25, 2020

On a motion by Kent Costin, seconded by Steve Dirksen, the Committee voted to recommend approval of the time extension (Change Order #3) as described above to Northern Improvement.

**RECOMMENDED MOTION**

Concur with the recommendation of PWPEC and approve the time extension (Change Order #3) to the Interim, Substantial, and Final Completion Dates to Northern Improvement.

**PROJECT FINANCING INFORMATION:**

Recommended source of funding for project: State Funds, Utility Funds & Special Assessments

Developer meets City policy for payment of delinquent specials

Agreement for payment of specials required of developer

Letter of Credit required (per policy approved 5-28-13)

Yes No

N/A

N/A

N/A

**COMMITTEE**

Present	Yes	No	Unanimous
			<input checked="" type="checkbox"/>
<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 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"/>	Tom Knakmuhs
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Tim Mahoney, Mayor

Nicole Crutchfield, Director of Planning

Steve Dirksen, Fire Chief

Bruce Grubb, City Administrator

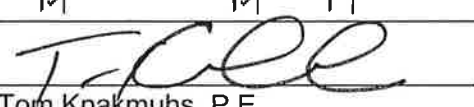
Ben Dow, Director of Operations

Steve Sprague, City Auditor

Brenda Derrig, City Engineer

Kent Costin, Finance Director

ATTEST:

  
Tom Knakmuhs, P.E.  
Assistant City Engineer

C: Kristi Olson

## Memorandum

**To:** Members of PWPEC  
**From:** Aaron Edgar, Project Manager  
**Date:** August 13, 2020  
**Re:** Improvement District No. BR-20-E1– Change Order #3 (Time Extension)

### Background:

Improvement District No. BR-20-E1 is on 17<sup>th</sup> Street South from 21<sup>st</sup> Avenue to 25<sup>th</sup> Avenue and on 25<sup>th</sup> Avenue South from 18<sup>th</sup> Street to the east side of 14<sup>th</sup> Street.

Northern Improvement is the Prime Contractor on this project.

Northern Improvement is requesting a 2-day time extension on the interim completion date for Phase 2B (the first of 3 phases on 17<sup>th</sup> Street South) and a 2 day time extension on the Substantial and Final Completion Dates.

Northern Improvement's time extension request is for the additional time that it took to add gravel backfill to the 30" RCP storm sewer. The plans did not call for class 3 gravel backfill around the 30" RCP storm sewer in the Boulevard. We had the Contractor add gravel backfill to the 30" RCP, which required additional time to install the pipe and haul out the additional clay material.

### Recommended Motion:

Approve Change Order #3 (time extension) for Improvement District BR-20-E1, as shown below:

Original Completion Dates	Revised Previously	Revised This Memo
Interim Phase 1-14 Days (May 25 <sup>th</sup> , 2020)	Interim Phase 1 - 17 days (May 28 <sup>th</sup> , 2020)	--
Interim Phase 2A – 35 Days (June 30 <sup>th</sup> , 2020)	Interim Phase 2A – 38 days (July 3 <sup>rd</sup> , 2020)	--
Interim Phase 2B – 35 Days (August 9 <sup>th</sup> , 2020)	--	Interim Phase 2B – 37 days (August 10 <sup>th</sup> , 2020)
Substantial – September 19, 2020	--	Substantial – September 21, 2020
Final-October 23, 2020	--	Final- October 25, 2020



**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

Improvement District No	BR-20-E1	Change Order No	3
Project Name	Water Main Replacement, Street Reconstruction, Asphalt Mill & Overlay, & Incidentals		
Date Entered	8/12/2020	For	Northern Improvement Co

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:**

This change order is for a time extension request.

Northern Improvement is asking for a time extension for the additional time that it took to add gravel backfill to the 30" RCP. The plans didn't call for Class 3 gravel backfill around the 30" RCP storm sewer in the Boulevard. We had the Contractor add gravel backfill to the 30" RCP, which required additional time to install the pipe and haul out the additional clay material (2 days).

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 (\$)
<b>Summary</b>										
<b>Source Of Funding</b>										
<b>Net Amount Change Order # 3 (\$)</b>										
<b>Previous Change Orders (\$)</b>										
<b>Original Contract Amount (\$)</b>										
<b>Total Contract Amount (\$)</b>										
25,624.07										
1,754,601.35										
1,780,225.42										

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
09/19/2020	10/23/2020	2.00	2.00	09/21/2020	10/25/2020

**Description**

**APPROVED**

For Contractor

*Caron P. Deinga*

**APPROVED DATE**

Department Head

*T. O'Connell* 8/18/2020





CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

Title

Project Manager

Mayor

Attest

## REPORT OF ACTION

## PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

(33)

Improvement District No. BN-19-F1 Type: Negative Final Balancing Change Order #5

Location: Eagle Valley 3<sup>rd</sup> Addition Date of Hearing: 8/17/2020

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/24/2020</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Leonard</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, regarding Negative Final Balancing Change Order #5 in the amount of -\$120,397.08, which reconciles the measured quantities used in the field with those estimated for the contract.

Staff is recommending approval of Negative Final Balancing Change Order #5 in the amount of -\$120,397.08, bringing the total contract amount to \$1,382,017.62.

On a motion by Kent Costin, seconded by Steve Dirksen, the Committee voted to recommend approval of the Negative Final Balancing Change Order #5 to Northern Improvement.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #5 in the amount of -\$120,397.08, bringing the total contract amount to \$1,382,017.62 to Northern Improvement.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: CRWUD & Special Assessments

Developer meets City policy for payment of delinquent specials  
 Agreement for payment of specials required of developer  
 Letter of Credit required (per policy approved 5-28-13)

Yes	No
<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

Present	Yes	No	Unanimous
			<input checked="" type="checkbox"/>
<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 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"/>	Tom Knakmuhs
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs, P.E.  
 Assistant City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Jason Leonard, Project Engineer  
**Date:** August 13, 2020  
**Re:** Improvement District No. BN-19-F1 – Negative Final Balancing Change Order #5

---

### **Background:**

Improvement District No. BN-19-F1 is for the new construction of underground utilities, asphalt pavement, street lights and incidentals on 74<sup>th</sup> Avenue South, 23<sup>rd</sup> Street South and Eagle Valley Drive South.

Northern Improvement Company is the Contractor for this project.

The attached Negative Final Balancing Change Order #5 in the amount of -\$120,397.08, reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

The original contract bid price for this project was \$1,457,241.15 and this Negative FBCO #5 will bring the project final amount to \$1,382,017.62 (5.16% Decrease). This Improvement District is 100% Special Assessed.

### **Recommended Motion:**

Approve Negative Final Balancing Change Order #5 in the amount of -\$120,397.08 to Northern Improvement Company.

JTL\klb  
Attachments



**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

<b>Improvement District No</b>	BN-19-F1	<b>Change Order No</b>	5
<b>Project Name</b>	Sanitary Sewer, Water Main, Storm Sewer, Site Grading, Concrete Curb & Gutter, Asphalt Pavement & In		
<b>Date Entered</b>	8/11/2020	<b>For</b>	Northern Improvement Co

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: FINAL BALANCING CHANGE ORDER**

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

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 (\$)
Miscellaneous	1	Temp Pumping	LS	1.00	0.00	1.00	-1.00	0.00	2,000.00	-2,000.00
	2	Temp Fence - Safety	LF	500.00	0.00	500.00	-380.00	120.00	4.25	-1,615.00
	3	Silt Fence - Heavy Duty	LF	1,000.00	0.00	1,000.00	-1,000.00	0.00	2.35	-2,350.00
	5	Temp Construction Entrance	EA	2.00	0.00	2.00	-2.00	0.00	1,300.00	-2,600.00
<b>Miscellaneous Sub Total (\$)</b>										-8,565.00
Sanitary Sewer	7	F&I Manhole 4' Dia Reinf Conc	EA	7.00	0.00	7.00	-1.00	6.00	5,100.00	-5,100.00
	8	F&I Manhole w/Ext Drop 4' Dia Reinf Conc	EA	1.00	0.00	1.00	1.00	2.00	14,750.00	14,750.00
	9	F&I Pipe SDR 26 - 6" Dia PVC	LF	1,288.00	0.00	1,288.00	25.00	1,313.00	23.50	587.50
	10	F&I Pipe SDR 26 - 8" Dia PVC	LF	830.00	0.00	830.00	5.00	835.00	26.75	133.75
<b>Sanitary Sewer Sub Total (\$)</b>										10,371.25
Cass Rural Water Main	15	F&I Fittings C153 Ductile Iron	LB	1,191.00	0.00	1,191.00	-384.00	827.00	4.00	-1,456.00
	18	F&I Pipe C900 DR 18 - 8" Dia PVC	LF	1,085.00	0.00	1,085.00	900.00	1,985.00	26.75	24,075.00
	21	F&I Tapping Sleeve & Valve 12"x8"	EA	2.00	0.00	2.00	-1.00	1.00	3,000.00	-3,000.00
	22	F&I Tapping Sleeve & Valve 12"x10"	EA	1.00	0.00	1.00	-1.00	0.00	1,600.00	-1,600.00
	24	F&I Gate Valve 8" Dia	EA	5.00	0.00	5.00	-1.00	4.00	1,800.00	-1,800.00
	102	* Tracer Wire Junction Box	LS	0.00	0.00	0.00	1.00	1.00	1,717.83	1,717.83
<b>Cass Rural Water Main Sub Total (\$)</b>										17,936.83
<b>Storm Sewer</b>	27	F&I Manhole 5' Dia Reinf Conc	EA	4.00	0.00	4.00	1.00	5.00	3,850.00	3,850.00



**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

<b>Storm Sewer</b>									
28	F&I Manhole 6' Dia Reinf Conc	EA	2.00	0.00	2.00	-1.00	1.00	5,100.00	-5,100.00
30	F&I Manhole 8' Dia Reinf Conc	EA	1.00	0.00	1.00	-1.00	0.00	3,600.00	-3,600.00
33	Connect Pipe to Exist Pipe	EA	4.00	0.00	4.00	-1.00	3.00	375.00	-375.00
35	F&I Pipe 12" Dia Reinf Conc	LF	13.00	0.00	13.00	-13.00	0.00	31.50	-409.50
36	F&I Pipe 15" Dia Reinf Conc	LF	877.00	0.00	877.00	-49.00	828.00	35.50	-1,739.50
38	F&I Pipe 21" Dia Reinf Conc	LF	321.00	0.00	321.00	-9.00	312.00	43.00	-387.00
39	F&I Pipe 24" Dia Reinf Conc	LF	2.00	0.00	2.00	-2.00	0.00	53.50	-107.00
40	F&I Pipe 27" Dia Reinf Conc	LF	589.00	0.00	589.00	4.00	593.00	68.00	272.00
42	F&I Pipe 36" Dia Reinf Conc	LF	456.00	0.00	456.00	-3.00	453.00	105.00	-315.00
43	F&I Pipe w/GB 15" Dia Reinf Conc	LF	263.00	0.00	263.00	15.00	278.00	55.00	825.00
44	F&I Pipe w/GB 21" Dia Reinf Conc	LF	40.00	0.00	40.00	8.00	48.00	72.00	576.00
46	F&I Flared End Section 15" Dia Reinf Conc	EA	2.00	0.00	2.00	-2.00	0.00	105.00	-210.00
48	F&I Rip Rap Rock	CY	20.00	0.00	20.00	5.80	25.80	125.00	725.00
<b>Storm Sewer Sub Total (\$)</b>									
<b>Paving</b>									
49	Remove Pavement All Thicknesses All Types	SY	265.00	0.00	265.00	91.00	356.00	9.00	819.00
53	Excavation	CY	1,500.00	0.00	1,500.00	-1,500.00	0.00	3.00	-4,500.00
54	Subcut	CY	2,529.00	0.00	2,529.00	-2,029.00	500.00	5.50	-11,159.50
55	Subgrade Preparation	SY	7,588.00	0.00	7,588.00	352.00	7,940.00	1.60	563.20
56	F&I Woven Geotextile	SY	7,588.00	0.00	7,588.00	352.00	7,940.00	1.45	510.40
57	F&I Class 5 Agg - 8" Thick	SY	7,588.00	0.00	7,588.00	352.00	7,940.00	9.00	3,168.00
58	F&I Edge Drain 4" Dia PVC	LF	3,588.00	0.00	3,588.00	93.00	3,681.00	6.25	581.25
59	F&I Curb & Gutter Mountable (Type I)	LF	2,358.00	0.00	2,358.00	-1.40	2,356.60	16.00	-22.40
60	F&I Curb & Gutter Standard (Type II)	LF	1,230.00	0.00	1,230.00	189.70	1,419.70	18.00	3,414.60
61	Remove Curb & Gutter	LF	150.00	0.00	150.00	112.00	262.00	6.50	728.00
62	F&I Sidewalk 4" Thick Reinf Conc	SY	464.00	0.00	464.00	2,137.43	2,601.43	45.00	96,184.35
63	F&I Sidewalk 5" Thick Reinf Conc	SY	2,211.00	0.00	2,211.00	-2,211.00	0.00	47.70	-105,464.70
64	F&I Sidewalk 6" Thick Reinf Conc	SY	133.00	0.00	133.00	-7.88	125.12	65.00	-512.20





**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

Paving	66	F&I Aggregate for Asph Pavement FAA 43	TON	2,855.00	0.00	2,855.00	-260.78	2,594.22	43.00	-11,213.54
	67	F&I Asphalt Cement PG 58-34	GAL	39,835.00	0.00	39,835.00	-6,305.75	33,529.25	2.25	-14,187.94
	71	Mulching Type 1 - Hydro	SY	23,720.00	0.00	23,720.00	-9,104.24	14,615.76	0.35	-3,186.48
	73	Inlet Protection - New Inlet	EA	18.00	0.00	18.00	-6.00	12.00	175.00	-1,050.00
	74	Seeding Type C	SY	23,720.00	0.00	23,720.00	-6,604.00	17,116.00	0.30	-1,981.20
										-47,309.16
LOMR-F	77	Fill - Haul	CY	12,084.00	0.00	12,084.00	-159.00	11,925.00	3.75	-596.25
	78	Mulching Type 2 - Straw	SY	24,305.00	0.00	24,305.00	-24,305.00	0.00	0.07	-1,701.35
	79	Seeding Type C	SY	24,305.00	0.00	24,305.00	-24,305.00	0.00	0.25	-6,076.25
	80	Fill - Contractor Supply	CY	7,620.00	2,419.00	10,039.00	-6,686.00	3,353.00	11.00	-73,546.00
										-81,919.85
Street Lighting	86	F&I Luminaire Type B	EA	4.00	0.00	4.00	-4.00	0.00	520.00	-2,080.00
	89	F&I Pull Box	EA	4.00	0.00	4.00	-3.00	1.00	825.00	-2,475.00
										-4,555.00
Pavement Markings	90	Paint Epoxy Line 24" Wide	LF	90.00	0.00	90.00	-10.00	80.00	35.00	-350.00
										-350.00
Signing	92	F&I Diamond Grade Cubed	SF	71.00	0.00	71.00	12.81	83.81	19.00	243.39
	93	F&I Sign Assembly	EA	7.00	0.00	7.00	-6.00	1.00	63.00	-378.00
	94	F&I Sign Assembly & Anchor	EA	13.00	0.00	13.00	-1.00	12.00	75.00	-75.00
	104	* Replace Damaged Sign from Snow Removal	LS	0.00	0.00	0.00	1.00	1.00	198.46	198.46
										-11.15
										-120,397.08
										45,173.55
										1,457,241.15

\* NC Items

**Summary****Source Of Funding****Net Amount Change Order # 5 (\$)****Previous Change Orders (\$)****Original Contract Amount (\$)**



**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

**Total Contract Amount (\$)**

1,382,017.62

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
10/16/2019	09/27/2019	0.00	0.00	10/16/2019	09/27/2019

**Description**

**APPROVED**

**APPROVED DATE**

For Contractor

Department Head

Title

Mayor

Attest

*[Signature]*  
Project Manager

*[Signature]* 8/18/2020