

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, August 12, 2019).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Receive and file an Ordinance Relating to Restrictions on Sale, Service or Dispensing of Alcoholic Beverages.
- 2. 1st reading of the following Ordinances:
 - a. Relating to Ordinance Violations.
 - b. Amending Ordinance No. 5140 which Rezoned Certain Parcels of Land Lying in Diamond Willow Addition, A Replat of Portions of Douglas Addition.
- 3. 2nd reading and final adoption of the following Ordinances; 1st reading, 8/12/19:
 - a. Rezoning Certain Parcels of Land Lying in 42nd Street Addition.
 - b. Relating to Marijuana and Marijuana Paraphernalia.
 - c. Relating to Classification of Ordinance Violations.
- 4. Amendment to Lease Agreement with FM Metropolitan Council of Governments.
- 5. Parking Lease Agreement with 5th Floor Apartments LLC.
- 6. Applications for property tax exemptions:
 - a. James C. and Kathy S. Rugroden, 1809 13th Avenue South (5 year).
 - b. John and Susan Deutsch, 220 8th Street South, Unit C1 (5 year).
 - c. Susan Viola Hunley, 1208 2nd Avenue South (5 year).
 - d. Laura A. Hahn, 1122 9th Avenue South (5 year).
- 7. Release of Agreement regarding Special Assessments for Lot 1, Block 12, The Pines at The District.
- 8. Annual Renewal and extension of the Class "FA" Alcoholic Beverage License until 2/29/20 for Grazies.
- 9. Site Authorization of Fargo Metro Baseball Association at the African International Restaurant and Night Club.
- 10. Applications for Games of Chance:

- a. Fargo South High School for a calendar raffle from 9/3/19 to 2/25/20.
 - b. Nativity Church Fargo for bingo and a raffle on 11/3/19.
 - c. Pink It Forward for a raffle on 9/14/19.
 - d. North Dakota Long Term Care Association for a raffle on 9/19/19.
 - e. Unseen for a raffle on 9/19/19; Public Spirited Resolution.
11. Resolution adopting the Cass County Multi-Hazard Mitigation Plan.
 12. Change Order No. 9 for an increase of \$13,532.20 for Project No. FM-15-K1.
 13. Easement (Storm Sewer and Outfall) with Heiser and Miller, LLC.
 14. Increase to the 2019 Fire Permit Fee Schedule beginning 1/1/20, as presented.
 15. First Amendment to Agreement for the Provision of Professional Services (Occupational Medicine and Medical Director Services) with Essentia Health West.
 16. Amendments to 2019 Action Plan Community Development Block Grant (CDBG) and HOME Investment Partnerships Programs.
 17. Agreement with Lisa Wise Consulting, Inc. for Professional Consulting Services for Land Development Code Diagnostic.
 18. Resolution approving Plat of St. Paul's Newman Center Addition.
 19. Change Orders for the Fargo Police Department Headquarters Project:
 - a. No. 2 for an increase of \$16,776.00 for general contract.
 - b. No. 2 for an increase of \$1,477.00 for mechanical contract.
 - c. No. 2 for an increase of \$38,169.44 for electrical contract.
 20. Bid award for General Consulting and Engineering Services (RFP19127).
 21. Amendment to the Joint Powers Agreement for Transit Support with NDSU.
 22. Reject bid for the GTC Jefferson Lines Ticketing and Storage Counter and rebid the project under the main GTC Renovation Project.
 23. Change Orders for Project No. SW 16-03 Phase II:
 - a. No. 11 for an increase of \$12,522.00 for the mechanical contract.
 - b. No. 7 for an increase of \$3,339.91 for the electrical contract.
 24. Task Order No. 8 with Apex Engineering in the amount of \$245,550.00 for design and bidding of a new Downtown water tower.
 25. Task Order No. 27 with AE2S in the amount of \$208,400.00 for Project No. WA1860.
 26. Sole Source Procurement with Metrohm Process Analytics for a process analyzer in the estimated amount of \$77,817.00 (SSP19137).
 27. Title VI and Non-Discrimination Policy Statement (City of Fargo Transit Department).
 28. Transit Capital Project – Fiscal Year 2019 Urban Roads Program Memorandum of Understanding with the NDDOT.

Page 29. Request to submit an RFP for tire purchase and services.

30. NDDOT Section 5310 and 5339 Transit Grant Agreements.
31. Bills.
32. Change Order No. 2 for an increase of \$3,301.98 for Improvement District No. BN-18-F2.
33. Change Order No. 3 for an increase of \$10,590.60 and time extension to 9/12/19 for Improvement District No. BR-18-A1.
34. Change Order No. 4 for an increase of \$9,097.43 and time extension to 9/30/19 for Improvement District No. NR-18-A1.
35. Change Order No. 7 for an increase of \$25,189.85 and time extension to 7/28/19 for Improvement District No. BN-17-A1.
36. Task Order No. 2 with Apex Engineering in the amount of \$235,200.00 for Improvement District No. BR-20-C0.
37. Change Order No. 5 for an increase of \$42,554.50 for Improvement District No. NR-17-B1.
38. Contract and bond for Improvement District No. NR-19-A1.

REGULAR AGENDA:

39. Construction projects update.
40. Public Hearings - 5:15 pm:
 - a. Special Assessment of unpaid utility bills.
 - b. Transfer of a Class "FA" Alcoholic Beverage License from ERJ Dining IV, LLC d/b/a Chili's to Brinker Restaurant Corporation d/b/a Chili's Grill & Bar at 3902 13th Avenue South, Suite 4402.
 - c. Transfer of a Class "A" Alcoholic Beverage License from FSB Associates LLC d/b/a Cowboy Jacks to L & D Hospitality d/b/a Cowboy Jacks at 506 Broadway North.
 - d. WITHDRAWN - Application for a Class "A-Club" Alcoholic Beverage License for the Downtown Community Partnership d/b/a Downtown Community Partnership at 207 4th Street North, Suite B.
 - e. Renaissance Zone Project for Great Plains 1001 Holdings, LLC for a new construction project located at 1001 and 1011 Northern Pacific Avenue North; 28 10th Street North; 1016 1st Avenue North and 11 11th Street North; continued from the 7/15/19 Regular Meeting; continued from the 7/15/19, 7/29/19 and 8/12/19 Regular Meetings.
 - f. Application filed by Great Plains 1001 Holdings, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 1001 NP Avenue, 28 10th Street North, 1016 1st Avenue North and 11 11th Street North which the applicant will use in the operation of leasing of residential apartments and commercial space; continued from the 7/15/19 and 7/29/19 Regular Meetings.

- g. Application filed by Great Plains Antique Holdings, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 1017 4th Avenue North which the applicant will use in the operation of leasing residential apartments; continued from the 7/15/19 and 7/29/19 Regular Meetings.
- h. Renaissance Zone Project for DFI Kesler LLC and DFI BJ LLC for a new construction project located at 617 and 621 1st Avenue North, and 624 2nd Avenue North; continued from the 7/15/19, 7/29/19 and 8/12/19 Regular Meetings .
- i. Application filed by DFI Kesler, LLC for a payment in lieu of tax exemption (PILOT) for a project located at 624 2nd Avenue North, 621 1st Avenue North and 617 1st Avenue North which the applicant will use in the operation of leasing residential apartments and commercial space; continued from the 7/15/19 and 7/29/19 Regular Meetings.
- j. CONTINUED to 9/9/19 - Right-of-Way Vacation of the alley between Lots A, B, C, D, E, F, T and U, the vacated 10 foot alley adjacent to Lots T and U, Hagaman's Subdivision of part of Block 2, Roberts Addition (624 2nd Avenue North and 613, 617, and 621 1st Avenue North); approval recommended by the Planning Commission on 4/2/19; continued from the 7/15/19 and 8/12/19 Regular Meetings.
- k. CONTINUED to 9/9/19 - Right of Way Vacation of a portion of 5th Street North between Blocks 21 and 22 Keeney and Devitt's Second Addition and lying North of 4th Avenue North and South of Lot B, Block 1, Great Northern Depot Addition (410 5th Street North); continued from the 8/12/19 Regular Meeting.
- l. CONTINUED to 9/9/19 - Alley Vacation of the alley between Lot 12, Block 26 and a part of Lot 7 and all of Lots 8-12, Block 25, Roberts Second Addition (1001 NP Avenue North and 28 10th Street North); approval recommended by the Planning Commission on 7/2/19; continued from the 8/12/19 Regular Meeting.
- m. Development Plan for Tax Increment Financing District No. 2019-02 (for property northeast of 11th Avenue North and University Drive North and other sites in the Roosevelt Neighborhood).

41. Appointments to the Human Relations Commission.

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.

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Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

August 22, 2019

Board of City Commissioners
City Hall
225 4th Street North
Fargo, ND 58102

Dear Commissioners:

Presented to you today for your consideration is an amendment to 25-1506 (U)- Class N license. The Class N license permits the sale of alcohol in a stadium with permanent seating of not less than 1,500, which includes Scheels Arena, FargoDome and Newman Outdoor Field as license holders. Representatives from Scheels Arena sought an amendment to the license to allow the sale of distilled spirits throughout the stadium, rather than limited to designated geographic areas. The Liquor Control Board heard testimony from representatives from Scheels Arena, and obtained feedback on the proposed change from Rob Solbolik relative to FargoDome and Newman Outdoor Field.

The proposed changes eliminate the geographic distinction for the sale of beer, wine, sparkling wine from distilled spirits, and further limits the number of alcoholic beverages a guest may purchase at any one time to two (2).

At its meeting on August 21, 2019, the Liquor Control Board unanimously approved the amendments as presented.

SUGGESTED MOTION: I move to receive and file the following Ordinance Amending Section 25-1506 (U) of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Restrictions on Sale, Service or Dispensing of Alcoholic Beverages, and place the ordinance on for first reading at the next regularly scheduled City Commission meeting.

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

Sincerely,



Nancy J. Morris
Assistant City Attorney

NJM/al
Enclosures



OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 25-1506 OF ARTICLE 25-15
OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE RELATING
TO RESTRICTIONS ON SALE, SERVICE OR DISPENSING OF
ALCOHOLIC BEVERAGES

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 25-1506 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended to read as follows:

* * *

U. Class "N" - A Class "N" license shall authorize the licensee to sell "on-sale" only, subject to the following conditions:

1. A Class "N" licensee need not have a Class "E" license as defined in § 25-1506(G) so long as the provisions of this Class "N" license are followed. A Class "N" licensee must be in compliance with any and all other licenses and restrictions that may be imposed and required by any other governing body.
2. A Class "N" licensee may sell alcoholic beverages at a stadium which has

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FARGO, NORTH DAKOTA

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a minimum permanent seating capacity of 1,500.

3. A Class "N" licensee may sell alcoholic beverages within 90 minutes prior to and during the event or activity held in the stadium.

4. Persons under the age of twenty-one (21) years shall be allowed into and throughout the stadium of a Class "N" licensee.

~~5. Alcoholic beverages may be sold and consumed as follows:~~

~~a. Concourse Area and Seating Arena. Only beer, wine and sparkling wine may be sold, consumed and distributed in the concourse area and seating arena of the stadium. All such beverages shall be sold in plastic or paper containers, such as bottles or cups.~~

~~b. Privates Suites and Other Designated, Controlled Areas. Alcoholic beverages may be sold and consumed in private suites and other specifically designated areas. Access to such designated areas must be limited to certain points of entry and departure. Alcoholic beverages other than beer, wine and sparkling wine may not be removed from such designated areas.~~

5. Distilled spirits shall be served in a clear plastic container.

6. No more than two (2) alcoholic beverages may be purchased at any one time by an individual guest.

~~67. Only employees of the Class "N" licensee who are at least twenty-one (21) years of age may deliver and sell the beer, wine or sparkling wine in the seating arena alcoholic beverages.~~

~~78. A Class "N" license shall authorize the licensee to sell on-sale only and no licensee hereunder may conduct any off-sale liquor sales.~~

~~89. The Class "N" license shall be governed by all of the provisions of this article applicable to Class "A" licensees.~~

* * *

Section 2. Effective Date

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

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Section 3. Penalty.

A person who willfully violates this ordinance is guilty of an infraction. Every person, firm or corporation violating an ordinance which is punishable as an infraction shall be punished by a fine not to exceed \$1,000; the court to have power to suspend said sentence and to revoke the suspension thereof.

(SEAL)

Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 1-0305(A)
OF ARTICLE 1-03 OF CHAPTER 1 OF THE FARGO MUNICIPAL CODE
RELATING TO ORDINANCE VIOLATIONS

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

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

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

WHEREAS, the Board of City Commissioners deems it necessary and appropriate to implement such authority by the adoption of this ordinance to reduce the penalty for possessing a firearm or dangerous weapon from a Class B misdemeanor to an Infraction in order to conform to state law;

NOW, THEREFORE,

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

Section 1. Amendment.

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

1-0305. Classification of ordinance violations.—

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

1. Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic offense), section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3) (lending registration plates), section 8-0308 (reproducing operator's or driver's license or permit), section 8-0309 (driving under suspension), section 8-0310 (driving under the influence), section 8-0314 (reckless driving), section 8-0320 (driving without liability insurance - \$150.00 minimum fine), section 8-0803

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(accidents involving damage to vehicle), section 8-0804 (duty to give information and render aid), section 8-0805 (duty upon striking fixture or other property), section 8-0809 (false reports), section 10-0101 (minor using alcohol), 10-0104 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly conduct), ~~section 10-0304 (carrying weapons)~~, section 10-0317 (resisting police officer), section 10-0319 (incendiary devices), section 10-0320 (registration in schools), section 10-0321 (criminal mischief), section 10-0322 (harassment), section 10-0323 (simple assault), section 10-0324 (aiding and abetting), section 10-0601 (shoplifting), section 10-0602 (theft), section 10-0702 (order to disperse), section 10-0703 (tenant/owner cooperation required), sections 10-1202 (marijuana) and 10-1204 (marijuana paraphernalia), section 12-0117(C) and 12-0117(G) (potentially dangerous and dangerous dogs), section 13-0511 (removal of wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse of compost sites), article 13-13 (drug lab cleanup), chapter 17 (sewers and sewerage), article 18-09 (excavation code), section 25-1509(A) (selling alcoholic beverage to minor), section 25-1513(C) (minor misrepresenting age), and section 25-1513(D) (delivery of alcoholic beverage to minor), article 25-33 (tattoos, body art and body piercing), article 25-36 (tanning facilities).

Section 2. Effective Date.

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

Timothy J. Mahoney, M.D., Mayor

(SEAL)

Attest:

First Reading:
Second Reading:
Final Passage:

Steven Sprague, City Auditor

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

26

ORDINANCE NO. _____

1 AN ORDINANCE AMENDING ORDINANCE NO. 5140
2 WHICH REZONED CERTAIN PARCELS OF LAND
3 LYING IN DIAMOND WILLOW ADDITION,
4 A REPLAT OF PORTIONS OF DOUGLAS ADDITION,
5 FARGO, CASS COUNTY, NORTH DAKOTA

6 WHEREAS, in 2017 the Fargo Planning Commission and the Board of City Commissioners
7 of the City of Fargo having held hearings pursuant to published notice to consider the rezoning of
8 certain parcels of land lying in the proposed Diamond Willow Addition, a replat of Lots Fifteen (15)
9 and Sixteen (16), Block Fifteen (15), Douglas Addition to the city of Fargo, Cass County, North
10 Dakota; and,

11 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
12 request on November 7, 2017; and,

13 WHEREAS, the rezoning changes were approved by the City Commission on March 26,
14 2018; and

15 WHEREAS, Ordinance No. 5140 was duly adopted and enacted by the Board of City
16 Commissioners, said ordinance receiving final passage on April 9, 2018; and,

17 WHEREAS, the staff report and other supporting information provided at the aforesaid
18 hearing that accurately described the nature of the Planned Unit Development Overlay and Master
19 Land Use Plan for the Diamond Willow Addition; however, Ordinance No. 5140 contained a
20 typographical error and an omission of the interior side setback, as the same was stated in the staff
21 report and as reported at the said public hearings and, because of these errors, it is necessary and
22 appropriate for an amendment to the said Ordinance No. 5140;

23 NOW, THEREFORE,

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

Section 1. Ordinance No. 5140 of the City of Fargo is hereby amended to read as follows:

The following described property:

All of Diamond Willow Addition, a replat of Lots Fifteen (15) and Sixteen (16), Block

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1 Fifteen (15), Douglas Addition to the city of to the City of Fargo, Cass County, North
2 Dakota,

3 is hereby rezoned from "MR-3", Multi-Dwelling Residential, District, to "MR-3", Multi-Dwelling
4 Residential with a PUD, Planned Unit Development Overlay and Master Land Use Plan, District
5 consisting of modifications of front, rear and street side setbacks pertaining to said base zoning
6 district as follows:

7 Front Setback: The front setback is reduced from 25 feet to 8 feet;

8 Rear Setback: The rear setback is reduced from 20 feet to ~~8~~7 feet; and,

9 Street Side Setback: The street side setback is reduced from 12.5 feet to 8 feet.

10 Interior Side Setback: Exempt per Alternative Development Options.

11 In all other respects, development must comply with the dimensional standards for the base
12 zoning district of a "MR-3", Multi-Dwelling Residential, District.

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

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

17 _____
18 Timothy J. Mahoney, Mayor

19 (SEAL)

20 Attest:

21 _____
22 Steven Sprague, City Auditor

23 First Reading:
Second Reading:
Final Passage:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

3a

ORDINANCE NO. _____

1 AN ORDINANCE REZONING CERTAIN PARCELS
2 OF LAND LYING IN 42ND STREET ADDITION
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

4 WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the
5 City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain
6 parcels of land lying in 42nd Street Addition to the City of Fargo, Cass County, North Dakota; and,

7 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning
8 request on July 2, 2019; and,

9 WHEREAS, the rezoning changes were approved by the City Commission on August 12,
10 2019,

11 NOW, THEREFORE,

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

13 Section 1. The following described property:

14 Lot Two (2), less the south 238 feet, Block One (1) of 42nd Street Addition to the
15 City of Fargo, Cass County, North Dakota;

16 is hereby rezoned from "LC", Limited Commercial, District, to "MR-3", Multi-Dwelling
17 Residential, District;

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

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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:

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

36

AN ORDINANCE AMENDING SECTIONS 10-1201, 10-1202
AND 10-1204 OF ARTICLE 10-12 OF CHAPTER 10 RELATING TO
MARIJUANA AND MARIJUANA PARAPHERNALIA

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 10-1201 of Article 10-12 of Chapter 10 of the Fargo Municipal Code is hereby
amended to read as follows:

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1. ~~"Marijuana" shall mean all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.~~ "Marijuana" is defined as set forth in the North Dakota Uniform Controlled Substances Act, N.D.C.C. Chapter 19-03.1 including N.D.C.C. §19-03.1-01.

2. "Marijuana paraphernalia" shall mean any device used, intended for use, or designed for personal use in, storing; or containing, or concealing marijuana or for personal use in ingesting, inhaling, or otherwise intentionally introducing marijuana into the human body.

Section 2. Amendment.

Section 10-1202 of Article 10-12 of Chapter 10 of the Fargo Municipal Code is hereby amended to read as follows:

1. Except as may be authorized by N.D.C.C. Chapter 19-24.1, regarding medical marijuana, it shall be unlawful for any person to willfully, as defined by N.D.C.C.

OFFICE OF THE CITY ATTORNEY
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section 12.1-02-02, possess up to one ounce (28.35 grams) of marijuana of an amount of less than one-half ounce [14.175 grams] within the corporate jurisdictional limits of the city; such person therefore being guilty of an infraction.

2. Except as may be authorized by N.D.C.C. Chapter 19-24.1, regarding medical marijuana, it shall be unlawful for any person to willfully, as defined by N.D.C.C. section 12.1-02-02, possess marijuana in an amount of at least one-half ounce [14.175 grams] but not more than 500 grams of marijuana; such person therefore being guilty of a class B misdemeanor.

3. Except as may be authorized by N.D.C.C. Chapter 19-24.1, regarding medical marijuana, a person who is under twenty-one years of age and intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is marijuana is guilty of a class B misdemeanor.

Section 3. Amendment.

Section 10-1204 of Article 10-12 of Chapter 10 of the Fargo Municipal Code is hereby amended to read as follows:

Except as may be authorized by N.D.C.C. Chapter 19-24.1, regarding medical marijuana, it shall be unlawful for any person to use or possess with the intent to use marijuana paraphernalia to ingest, inhale, or otherwise introduce into the human body marijuana or to possess with the intent to store or contain marijuana

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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

within the ~~corporate~~jurisdictional limits of the city.

Section 4. Penalty.

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2 A person who violates Subsection 1 of Section 12-1202 by possessing marijuana
3 in a quantity of less than one-half ounce [14.175 grams] is guilty of an infraction. A
4 person who violates Subsection 2 of Section 12-1202 by possessing marijuana in a
5 quantity of at least one-half ounce [14.175 grams] but not more than 500 grams of
6 marijuana is guilty of a class B misdemeanor. A person who violates Subsection 3
7 of Section 10-1202 (under age 21 ingesting or using marijuana or marijuana
8 paraphernalia) is guilty of a class B misdemeanor. A person who violates Section
9 10-1204 (possession of marijuana paraphernalia) is guilty of an infraction. Every
10 person, firm or corporation violating an ordinance which is punishable as a Class
11 B misdemeanor shall be punished by a fine not to exceed \$1,500.00, or by
12 imprisonment not to exceed 30 days, or by both such fine and imprisonment, in
13 the discretion of the court; the court to have power to suspend said sentence and
14 to revoke the suspension thereof. In addition to such fine and/or imprisonment,
15 the court, in its discretion, may assess a fee in an amount not to exceed \$25.00 as
16 provided in section 27-01-10, N.D.C.C. Every person, firm or corporation
17 violating an ordinance which is punishable as an infraction shall be punished by a
18 fine not to exceed \$1,000; the court to have power to suspend said sentence and to
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FARGO, NORTH DAKOTA

ORDINANCE NO. _____

revoke the suspension thereof.

Section 5. Effective Date.

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

Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:
Publication:

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OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

30

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 1-0305
OF ARTICLE 1-03 OF CHAPTER 1 OF THE FARGO
MUNICIPAL CODE RELATING TO
CLASSIFICATION OF ORDINANCE VIOLATIONS

1
2
3
4 WHEREAS, the electorate of the city of Fargo has adopted a home rule charter in
5 accordance with Chapter 40-05.1 of the North Dakota Code; and,

6
7 WHEREAS, Section 40-05.1-06 of the North Dakota Century Code provides that the City
8 shall have the right to implement home rule powers by ordinance; and,

9
10 WHEREAS, Section 40-05.1-05 of the North Dakota Century Code provides that said
11 home rule charter and any ordinances made pursuant thereto shall supersede state laws in conflict
12 therewith and shall be liberally construed for such purposes; and,

13
14 WHEREAS, the Board of City Commissioners deems it necessary and appropriate to
15 implement such authority by the adoption of this ordinance;

16 NOW, THEREFORE,

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

18 Section 1. Amendment.

19 1-0305. Classification of ordinance violations.--

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

- 22 1. Section 1-0306(D) (failure to appear or post bond on a non-criminal, non-traffic offense),
23 section 8-0305(A)(2) (fictitious registration), section 8-0305(A)(3) (lending registration
plates), section 8-0308 (reproducing operator's or driver's license or permit), section 8-
0309 (driving under suspension), section 8-0310 (driving under the influence), section 8-
0314 (reckless driving), section 8-0320 (driving without liability insurance - \$150.00
minimum fine), section 8-0803 (accidents involving damage to vehicle), section 8-0804

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

1 (duty to give information and render aid), section 8-0805 (duty upon striking fixture or
 2 other property), section 8-0809 (false reports), section 10-0101 (minor using alcohol), 10-
 3 0104 (curfew), section 10-0201 (indecent exposure), section 10-0301 (disorderly
 4 conduct), section 10-0304 (carrying weapons), section 10-0317 (resisting police officer),
 5 section 10-0319 (incendiary devices), section 10-0320 (registration in schools), section
 6 10-0321 (criminal mischief), section 10-0322 (harassment), section 10-0323 (simple
 7 assault), section 10-0324 (aiding and abetting), section 10-0601 (shoplifting), section 10-
 8 0602 (theft), section 10-0702 (order to disperse), section 10-0703 (tenant/owner
 9 cooperation required), section 10-1202(2) (≥½ oz. marijuana) and ~~10-1204 (marijuana
 10 paraphernalia)~~ 10-1202(3) (under 21 in possession of marijuana), section 12-0117(C) and
 11 12-0117(G) (potentially dangerous and dangerous dogs), section 13-0511 (removal of
 12 wastes), section 13-0513 (fee/permit for hauling waste), section 13-0529 (misuse of
 13 compost sites), article 13-13 (drug lab cleanup), chapter 17 (sewers and sewerage), article
 14 18-09 (excavation code), section 25-1509(A) (selling alcoholic beverage to minor),
 15 section 25-1513(C) (minor misrepresenting age), and section 25-1513(D) (delivery of
 16 alcoholic beverage to minor), article 25-33 (tattoos, body art and body piercing), article
 17 25-36 (tanning facilities).

18 B. Violations of all ordinances not designated in A or C of this section are infractions, subject to
 19 punishment as hereinabove provided. ~~Any person convicted of a violation which is designated as
 20 an infraction who has, within one year prior to commission of the infraction of which he was
 21 convicted, been previously convicted of a violation designated as an infraction may be sentenced
 22 as though convicted of a Class B misdemeanor. If the prosecution contends that the infraction is
 23 punishable as a Class B misdemeanor, the complaint shall specify that the offense is a Class B
 24 misdemeanor. Any person convicted of an infraction who, within one year before commission of
 25 the infraction of which the person was convicted, has been convicted previously at least twice of
 26 the same offense classified as an infraction may be sentenced as though convicted of a class B
 27 misdemeanor. If the prosecution contends that the infraction is punishable as a class B
 28 misdemeanor, the complaint must specify the offense is a misdemeanor.~~

* * * *

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

Section 2. Effective Date.

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

Timothy J. Mahoney, Mayor

Attest:

Steven Sprague, City Auditor

First Reading:
Second Reading:
Final Passage:

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4

August 26, 2019

To: Board of City Commissioners
Fr: Michael Redlinger, Assistant City Administrator
Re: Amendment to Metro COG Lease Agreement – Civic Center Offices

Background: The City of Fargo and Metro COG entered into a four (4) month Lease Agreement on May 1, 2019 for the former City Commission and Administration Offices on the second floor of the Fargo Civic Center. Metro COG is a short-term tenant while its office at Case Plaza is remodeled. Metro COG desires to extend its short-term lease by one (1) month to accommodate ongoing renovations at Case Plaza.

Financial Considerations: The lease agreement terms will remain in effect at the current rate of \$2,870 for the month of September. An option is provided to Metro COG to extend the lease by one (1) additional month (October) with written notice to the City. The same rate and terms will apply to the option, if exercised.

Recommended Action: I move to approve the attached Amendment to the Lease Agreement between the City of Fargo and the FM Metropolitan Council of Governments.

Attachment: Amendment to Lease Agreement – City of Fargo/Metro COG Lease Agreement

AMENDMENT TO LEASE AGREEMENT
City of Fargo/FM Metropolitan Council of Governments

THIS AMENDMENT to the AGREEMENT is made and entered into effective the 1st day of September, 2019, by and between CITY OF FARGO, a North Dakota municipal corporation (hereinafter called "Lessor" or "City") and Fargo Moorhead Metropolitan Council of Governments (hereinafter called "Lessee" or "METRO COG").

RECITALS:

- A. City and METRO COG entered into a Lease Agreement effective the 1st day of May, 2019 for the short-term lease of approximately 3280 square feet, not including common area, on the second floor of the Civic Memorial Auditorium building, referred to said Lease Agreement as the "subject property", "premises" or "demise premises".
- B. The parties wish to amend the said Lease Agreement to extend the term of the lease.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements herein contained, the parties agree as follows:

- 1. The Lease Agreement is hereby extended through September 30, 2019, with rent to remain and continue at the current rate of \$2,870 per month.
- 2. At the option of METRO COG it shall be authorized to extend the term of the lease for a period of one (1) month, that being the month of October, 2019, also at the said existing rate. Said option may be exercised by METRO COG by written notice to the City delivered on or before September 30, 2019.
- 3. In all other respects the terms of the Lease Agreement shall remain in full force and effect.

Dated the day and year first set forth above.

LESSOR:

CITY OF FARGO,
a North Dakota municipal corporation

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

ATTEST:

Steven Sprague, City Auditor

LESSEE:

Fargo Moorhead Metropolitan Council of
Governments


By: Cynthia Gray
Its: Executive Director



5

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR 

DATE: AUGUST 22, 2019

SUBJECT: BISON APARTMENTS PARKING IN MERCANTILE PARKING RAMP

I have been working with the owner of the Bison Apartments to coordinate access, property transfers and parking for the proposed Mercantile Parking Ramp.

The Bison Apartments are 16 units located at 415 Broadway. Rents for one-bedroom units are \$745 a month without parking. There are just 5 parking spaces behind the building. Other parking spaces are rented from an adjacent property owner, but those will not be available after project completion.

The current plan for the Mercantile Parking Ramp includes removing the alley and the five parking spots behind the apartment building. The owner of the Bison Apartments is supportive of the project, but wants to secure parking for building tenants with a discounted parking rate for five years.

The City Commission authorized the City Attorney to prepare an agreement that provides tenants of the Bison Building with parking. The agreement is attached.

RECOMMENDED MOTION: Approve an agreement with 5th Floor Apartments, LLC.

PARKING LEASE AGREEMENT

This Parking Lease Agreement (“Lease”) is made as of the _____ day of _____, 2019, by and between the **CITY OF FARGO**, a North Dakota municipal corporation (“CITY”) and **5th FLOOR APARTMENTS LLC**, a North Dakota Limited Liability Company (“5th Floor”).

RECITALS:

WHEREAS, 5th Floor is the owner of an apartment building located at _____Broadway, which property is legally described as follows:

LOT TEN (10), BLOCK TWENTY-ONE (21), KEENEY & DEVITTS 2ND ADDITION TO THE CITY OF FARGO, COUNTY OF CASS, STATE OF NORTH DAKOTA

[“5th Floor Apartment Property”]; and,

WHEREAS, the CITY intends to enter into a development agreement with a developer for the construction of a project to become known as the “Mercantile Project” which will consist of a CITY-owned parking garage with a multi-use building integrated into the same project, said multi-use building to include office and retail uses as well as residential uses, said project to be constructed on property lying both east of, and south of, the 5th Floor Apartment Property; and,

WHEREAS, the Mercantile Project is intended to be constructed upon that certain real property situate in the County of Cass and state of North Dakota more fully described as set forth in the attached Exhibit “A”; and

WHEREAS, as part of the plans for the intended Mercantile Project the developer and CITY wish to vacate an alley that bisects the Mercantile Project Property and lies adjacent to, and east of, the 5th Floor Apartment Property and the CITY has requested that the 5th Floor Apartments join in the petition for vacation of said alley; and

WHEREAS, 5th Floor Apartments and the CITY wish to enter into this agreement to memorialize the terms by which the request and petition for vacation of the said alley is to be pursued and whereby the CITY will make available a maximum of twenty-five (25) parking spaces on the parking garage that is intended to be built and to memorialize the terms thereby; and

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements hereinafter said forth, and for other good and valuable consideration, the receipt and adequacy

of which is hereby acknowledged, CITY and 5th Floor Apartments, intending to be legally bound, agree as follows:

1. Grant of Lease. CITY hereby grants to 5th Floor Apartments a non-exclusive lease for use by the commercial tenants, including employees of commercial tenants working in the 5th Floor Apartment Property, and residential tenants of the 5th Floor Apartment Property which grant is in the form of the CITY providing to 5th Floor for such purposes the availability of sufficient parking spaces to accommodate such parking space needs of 5th Floor up to a maximum of 25 parking spaces per day on a 24/7 basis (24 hours per day, seven days per week) for parking purposes in, over and on the Mercantile Parking Garage, more fully described below. For purposes of the Lease, CITY will make said 25 spaces available and grants 5th Floor access to said 25 spaces for said commercial tenants, including employees of commercial tenants working in the 5th Floor Apartment Property, and residential tenants of the 5th Floor Apartment Property. The parties recognize that the CITY will have parking space rental agreements with multiple other users of the Mercantile Parking Garage during daytime business hours and other times of the day; provided, however, that the Mercantile Parking Garage will be operated in a manner consistent with other public parking garages wherein a significant portion of the available parking spaces are leased to businesses or individuals for parking during customary office hours; a portion are available for daily and hourly parking during customary office hours by general members of the public and, as part of the management approach, no single parking spaces reserved to any single individual or business but, rather, collectively parking spaces are leased and rented to a number that will utilize the parking to a maximum capacity.
2. Term. This Lease shall run for a term commencing on the date, after the Mercantile Parking Garage is constructed, that said Garage is opened for business (the "Commencement Date") and ending on December 31, 2061 ("Termination Date"). It is estimated that said Garage will be opened for business by approximately October 1, 2020; however, this is merely an estimate and is not binding upon either party hereto.
3. 5th Floor Users Parking Fee. With respect to the said maximum of 25 parking spaces to be made available for lease by the said commercial tenants, including employees of commercial tenants working in the 5th Floor Apartment Property, and residential tenants of the 5th Floor Apartment Property, said parking space rental leases will include the payment to the CITY of a fee of \$53 per month for each of said spaces that are leased, said fee applicable for said 24/7 availability as described above. This rate shall remain fixed for a period of five years from the date of opening of the Mercantile Parking Garage. Said lease, including said monthly rental rate, shall not be assignable by the said residential tenants, commercial tenants or employees of said commercial

tenants. The CITY agrees to reserve a maximum of 25 spaces, of all of the parking spaces that are to be leased or available for public parking, for lease to the said commercial tenants, including employees of commercial tenants working in the 5th Floor Apartment Property, and residential tenants of the 5th Floor Apartment Property. Said Eligible Lessees may contact the CITY, or its designated Mercantile Parking Garage facility manager to determine whether any of the said maximum 25 total available parking spaces are, in fact, available for lease. From and after the expiration of the initial said five-year period after the opening of the parking garage, for an additional period ending on the Termination Date above-defined, the same arrangements shall continue provided, however, that the monthly parking fee for said lease shall be at the rate established by the City for parking that is charged to other monthly parkers.

4. The City will install, control and validate equipment that is adequate and sufficient to monitor parking as required for purposes of controlling access to parking. The City shall be responsible for maintenance and repair of such equipment.
5. Mercantile Project Condominium. 5th Floor recognizes that CITY intends that a condominium organization will be established for the ownership of the Mercantile Project by which the Mercantile Parking Garage will become identified as a single "unit" within the condominium and the mixed-use portion of the project will be identified as one or more other "units" within the condominium to be owned by the developer, or its successors in interest, and 5th Floor recognizes and agrees that this Parking Lease Agreement is intended to be applicable to the Mercantile Parking Garage, and to the condominium unit that is established therefore, and agrees that to the extent that it becomes necessary or appropriate in order to confine the application of this Lease Agreement to the Mercantile Parking Garage portion of the Mercantile Project and to release any interest 5th Floor may have in portions of the Mercantile Project other than the condominium unit associated with the Mercantile Parking Garage, 5th Floor agrees to execute such document or documents for such recording.
6. Contingencies for the Benefit of the CITY. The following contingencies shall be for the benefit of the CITY. The obligations of the CITY under this agreement shall be contingent upon:
 - A. The CITY entering into a development agreement for the construction of the Mercantile Project; and,
 - B. That the described alley bisecting the Mercantile Project and adjacent to, and east of, the 5th Floor Apartment Property is, in fact, vacated; and,

- C. That the Mercantile Parking Garage is constructed and thereafter conveyed to the CITY, as is expected under the intended development agreement for the Mercantile Project.
7. City and 5th Floor recognize and agree that parking will be available for monthly or other periodic lease or rental agreement to tenants, guests, employees of tenants of the mixed-use portion (the portion that will not be the CITY-owned Mercantile Parking Garage) of the Mercantile Project as well as to members of the general public.
8. Eminent Domain. For purposes of this Lease, "*Taking*" means acquisition by a public authority having the power of eminent domain of all or part of the Mercantile Parking Garage by condemnation or conveyance in lieu of condemnation. If there is a Taking of fifty percent (50%) or more of the Premises or fifty percent (50%) or more of the total parking spaces of the Parking Ramp, either party may terminate this Lease as of the date the public authority takes possession, by written notice to the other party within 30 days after the Taking. All damages, awards and payments for the Taking will belong to City irrespective of the basis upon which they were made or awarded, except that 5th Floor will be entitled to any amounts specifically awarded for 5th Floor. If this Lease is not terminated as a result of the Taking, City will restore the remainder of the Premises to a condition as near as reasonably possible to the condition prior to the Taking, any rent will be abated for the period of time the parking spaces are not available on a proportionate basis and this Lease will be amended appropriately to reflect the deletion of the space taken.
9. Amendment. This Lease may be amended from time to time by the parties only by written agreement signed by 5th Floor and City.
10. Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by certified mail, postage prepaid, addressed as follows:

(A) if to 5th Floor:

5th FLOOR APARTMENTS LLC
ATTN: Anthony Coronato

Fargo, ND 58_____

(B) if to City:

City of Fargo
225 4th Street North
Fargo, N D 58102
ATTN: Steven Sprague, City Auditor

AND

City of Fargo
225 4th Street North
Fargo, ND 58102
ATTN: James Gilmour, Director of Strategic Planning

11. Additional Covenants. City covenants to maintain the Mercantile Parking Garage in such a manner that the Mercantile Parking Garage is suitable for its current use and to be responsible for all costs related thereto, including costs of insurance and taxes. Without limiting the foregoing, the City shall, at its expense, maintain the Mercantile Parking Garage, and all improvements thereon, including all partitions, walls, doors, fixtures, equipment and appurtenances thereof (including lighting, heating and plumbing fixtures, any heating or air handling equipment, and all plumbing systems, in clean, neat and good working order, condition and repair (including reasonably periodic painting), reasonable wear and tear excepted. City shall also be responsible for, at its cost and expense, arranging janitorial, pest control services, lawn care and snow removal services for the Mercantile Parking Garage.
12. Additional Covenants. City covenants that it is the owner of the Mercantile Parking Garage and that the Mercantile Parking Garage is not currently subject to any lien or mortgage, except that the Mercantile Parking Garage may be subject to bond indebtedness and special assessment indebtedness. City agrees that the rights of any mortgagee of the Mercantile Parking Garage shall be subordinate to the rights of 5th Floor hereunder.
13. Severability of Provisions. If anyone or more of the covenants, agreements, provisions or terms of this Lease shall be held invalid for any reason whatsoever, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Lease and shall in no way affect the validity or enforceability of the other provisions of this Lease.
14. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of 5th Floor and City, and their respective successors and assigns. The Lease contained herein and other provisions of this Lease shall run with the land benefitted and burdened thereby. 5th

Floor and City may assign their respective rights and obligations under this Lease, but only in connection with a transfer of ownership to such assignee of the 5th Floor Apartment Property or the Mercantile Parking Garage, respectively. Any obligations arising under this Lease following any such assignment shall be the sole responsibility of the assignee, and the assignor shall have no obligations under this Lease for matters arising after any such assignment.

15. Assignment. 5th Floor may, without City’s consent, assign this Lease and 5th Floor’s rights, duties and obligations hereunder, to any party, person or entity that purchases the 5th Floor Apartment Property from the 5th Floor; provided, however, that such assignee, by the act of acceptance of such assignment thereby attorns to the City and agrees, therefore, to fulfill the obligations of 5th Floor hereunder, including without limitation, the payment of all fees described herein.

16. Entire Agreement: This Lease sets forth all the covenants, promises, agreements, conditions and understandings between City and 5th Floor concerning the Mercantile Parking Garage and matters related thereto, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth.

IN WITNESS WHEREOF, 5th Floor and CITY have executed this Lease Agreement, effective as of the date and year first above written.

5TH FLOOR APARTMENTS LLC, a North Dakota
limited liability company

By: _____
Anthony Coronato

Its: _____

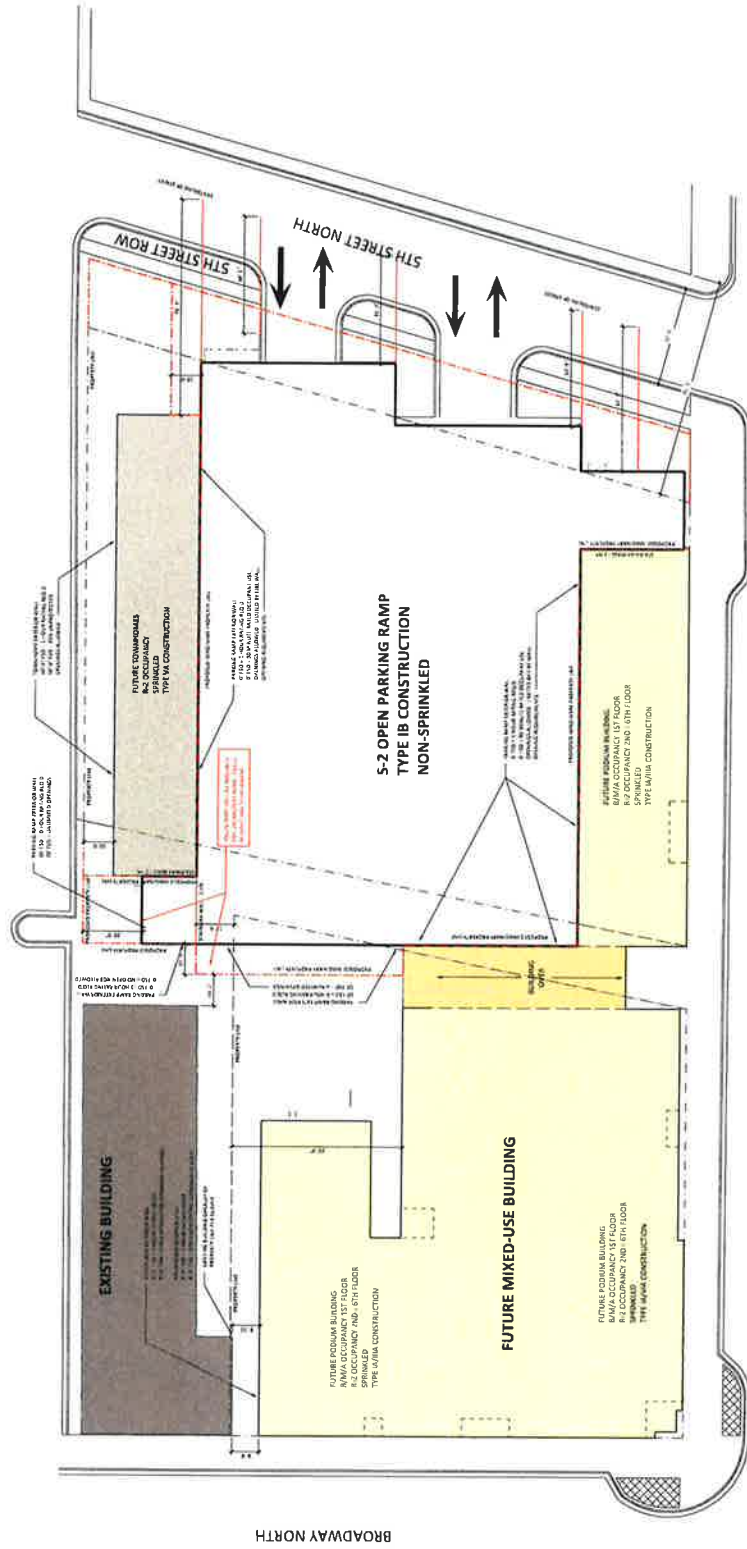
STATE OF NORTH DAKOTA)
) ss.
COUNTY OF CASS)

On this _____ day of _____, 2019, before me, a notary public in and for said county and state, personally appeared ANTHONY CORONATO, to me known to be the _____ of 5TH FLOOR APARTMENTS LLC, that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.

Notary Public

Exhibit "A"

(Description of Mercantile Project)



4TH AVENUE NORTH

BROADWAY NORTH

1 SITE PLAN CODE REVIEW
G110 06/24/19

CITY OF
Fargo
ASSESSMENT DEPARTMENT



August 15, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1809 13 Ave. S as submitted by James C. & Kathy S. Rugroden. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

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

Sincerely,



Ben Hushka
City Assessor

hah
attachment

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

Property Identification

1. Name of Property Owner James C. & Kathy Rugroden Phone No. 701-541-1715

2. Address of Property 1809 13th Ave. S.

City FARGO State ND Zip Code 58103-3813

3. Legal description of the property for which the exemption is being claimed. 1809 13th Ave. S.
Hilleboe 1st

4. Parcel Number Lot 3 Blk 2 Residential Commercial Central Business District

5. Mailing Address of Property Owner 1809 13th Ave. S.

City Fargo, State ND Zip Code 58103-3813

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary) New siding and windows, add shower room (lower level), remodel bathroom (upper level)

7. Building Permit No. On file #181505 8. Year Built 1954

9. Date of Commencement of making the improvement 6/1/2018 approx.

10. Estimated market value of property before improvement \$ 179,000.00

11. Cost of making the improvement (all labor, material and overhead) \$ 12,500.00

12. Estimated market value of property after improvement \$ 195,000.00+

Applicant's Certification and Signature

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

Applicant's Signature James C. Rugroden Date 7/29/2019

Assessor's Determination

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

Assessor's Signature Den Huska Date 8/19/19

Action of Governing Body

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

Approval subject to the following conditions:

Chairman of Governing Body _____ Date _____

CITY OF
Fargo
ASSESSMENT DEPARTMENT

(106)

August 15, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 220 8 St. S Unit C1 as submitted by John & Susan Deutsch. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$1,300 with the City of Fargo's share being \$220.

Sincerely,



Ben Hushka
City Assessor

hah
attachment

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

Property Identification

1. Name of Property Owner John + Susan Deutsch Phone No. 701-200-1184

2. Address of Property 220 E St S Unit C1
City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed. Apartment style condo unit, 1472 sq feet, 1 story,

4. Parcel Number 01-2240-02681-010 Residential Commercial Central Business District

5. Mailing Address of Property Owner 1720 7th St S
City Fargo State ND Zip Code 58103

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Complete gut and remodel of kitchen, living room, and ^{one bathroom} ~~two bathrooms~~. Updated electrical, fixtures, flooring, lights, ^{second bathroom - painted} updated toilet, floor ^{appliances} & paint.

7. Building Permit No. 181263 8. Year Built 1985

9. Date of Commencement of making the improvement July 1, 2019

10. Estimated market value of property before improvement \$ 200,000

11. Cost of making the improvement (all labor, material and overhead) \$ 100,000

12. Estimated market value of property after improvement \$ 285,000

Applicant's Certification and Signature

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

Applicant's Signature [Signature] Date 7/25/19

Assessor's Determination

14. The local assessor finds that the improvements in this application has has not met the qualifications for exemption for the following reason(s): 3 YEARS FOR QUALIFYING WORK

Assessor's Signature [Signature] Date 8/19/19

Action of Governing Body

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

Approval subject to the following conditions: _____

Chairman of Governing Body _____ Date _____

CITY OF
Fargo
ASSESSMENT DEPARTMENT



August 15, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1208 2 Ave. S as submitted by Susan Viola Hunley. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$585 with the City of Fargo's share being \$100.

Sincerely,



Ben Hushka
City Assessor

hah
attachment

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

Property Identification

1. Name of Property Owner SUSAN HUNLEY Phone No. 720. 878. 6047

2. Address of Property 1208 2 AVE S

City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed. PT BLK 28
ORIGINAL TOWNSITE ADDITION

4. Parcel Number 01-2240-02960-000 Residential Commercial Central Business District

5. Mailing Address of Property Owner 11472 DOWNING ST

City NORTHGLENN State CO Zip Code 80233

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Rebuilt front porch, new windows, new flooring throughout, new kitchen counter tops & cabinets, paint throughout (tile + vinyl) new appliances, sinks, electrical box updated

7. Building Permit No. _____ 8. Year Built 1898

9. Date of Commencement of making the improvement 4/1/19

10. Estimated market value of property before improvement \$ 124,500

11. Cost of making the improvement (all labor, material and overhead) \$ 70,000

12. Estimated market value of property after improvement \$ 170,000.00

Applicant's Certification and Signature

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

Applicant's Signature [Signature] Date 7/19/19

Assessor's Determination

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

Assessor's Signature [Signature] Date 8/19/19

Action of Governing Body

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

Approval subject to the following conditions: _____

Chairman of Governing Body _____ Date _____

CITY OF
Fargo
ASSESSMENT DEPARTMENT



August 15, 2019

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1122 9 Ave. S as submitted by Laura A. Hahn. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$40 with the City of Fargo's share being \$5.

Sincerely,



Ben Hushka
City Assessor

hah
attachment

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

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

Property Identification

1. Name of Property Owner Laura Hahn Phone No. (701) 793-3063

2. Address of Property 1122 9 Ave S

City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed. Pt of Lt 25,
Lts 26 & 27, Blk Q, Chas A Roberts

4. Parcel Number 01-2400-02330-000 Residential Commercial Central Business District

5. Mailing Address of Property Owner Same

City _____ State _____ Zip Code _____

Description Of Improvements For Exemption

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Main level & basement bathrooms remodeled

7. Building Permit No. _____ 8. Year Built 1932

9. Date of Commencement of making the improvement Feb 2018

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

11. Cost of making the improvement (all labor, material and overhead) \$ 3000.00

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

Applicant's Certification and Signature

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

Applicant's Signature [Signature] Date 7-31-19

Assessor's Determination

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

Assessor's Signature [Signature] Date 8/19/19

Action of Governing Body

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

Approval subject to the following conditions: _____

Chairman of Governing Body _____ Date _____

7

Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

August 22, 2019

Board of City Commissioners
City Hall
225 4th Street North
Fargo, ND 58102

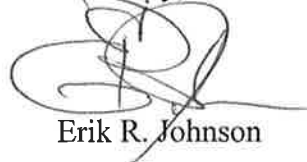
**RE: Recognition of status of deferrals of special assessments Release of Agreement
Regarding Special Assessments-Lot 1, Block 12, The Pines at The District**

Dear Commissioners,

Enclosed for your approval is a form of Release of Agreement. In 2010, the City entered into an agreement with Landco Fargo, Ltd. for the deferral of special assessments that would otherwise be certified for collection against Lot 1, Block 12, The Pines at The District, generally located at 3800 56th Ave S. This release has been requested by a party acquiring this property. They have conferred with Dan Eberhardt, the city Special Assessments Coordinator. Mr. Eberhardt has confirmed that all deferred special assessments that were contemplated in the said agreement and pertaining to this particular lot have already been levied and, therefore, there are no further special assessments remaining deferred. The enclosed Release of Agreement memorializes this fact and provides a suitable release of the property from any obligations under the aforesaid deferral agreement. Your approval is hereby recommended.

SUGGESTED MOTION: I move to approve the Release of Agreement for Lot 1, Block 12, The Pines at The District to the city of Fargo as presented.

Sincerely,



Erik R. Johnson

ERJ/lmw

Enclosure



RELEASE OF AGREEMENT

THIS RELEASE OF AGREEMENT, is made and entered into this ____ day of _____, 2019, by the CITY OF FARGO, a North Dakota municipal corporation (“City”).

STATEMENT OF FACTS

- A. On April 5, 2010, City and Landco Fargo, Ltd, executed a Memorandum Agreement, recorded in the Cass County, North Dakota Recorder’s Office on October 13, 2010, as Document No. 1307067, regarding the deferral of special assessments for improvements to be made by City benefitted property legally described therein. As used herein, “Agreement” shall mean the Memorandum Agreement referred to above and the Agreement Regarding Special Assessments referred to in such Memorandum Agreement.
- B. The property legally described as Lot One, Block Twelve, The Pines at The District to the City of Fargo, Replat of all of Block Three, of The District of Fargo First Addition and part of Block One of The District of Fargo Second Addition, a vacation of part of 56th Avenue South in the City of Fargo and a plat of part of the North Half of Section Three, Township One Hundred Thirty-eight North of Range Forty-nine West of the Fifth Principal Meridian, Cass County, North Dakota (“Property”) is subject to the Agreement.
- C. All deferred special assessments contemplated in the Agreement and pertaining to the Property have been levied against the Property, there are no special assessments contemplated in the Agreement and pertaining to the Property that remain deferred, and accordingly, the Agreement has been fully satisfied and no longer of any force or effect as pertains to the Property.
- D. The owner of the Property has requested City to release the Property from the Agreement.

RELEASE

NOW, THEREFORE, City hereby certifies and states, as follows:

- 1. All deferred special assessments contemplated in the Agreement and pertaining to the Property have been levied against the Property, there are no special assessments contemplated in the Agreement and pertaining to the Property that remain deferred and the

Agreement has been fully satisfied and no longer of any force or effect as pertains to the Property.

2. The Property is hereby released from the Agreement.

[The remainder of this page intentionally left blank – signatures and acknowledgement contained on following page]

8

MEMORANDUM

TO: Board of City Commissioners
FROM: Steven Sprague, City Auditor
SUBJECT: Grazies Liquor License Extension
DATE: August 14, 2019

The Auditor's office received a request to renew and extend the Class FA alcoholic beverage license issued to Grazies. The licensee would like the opportunity to sell the liquor license.

The request is a six-month extension of ordinance 25-1512 on liquor license to allow time to sell and transfer the license to a new entity.

Recommended Motion:

Approve the annual renewal and a six-month extension of ordinance 25-1512 until February 29, 2020 for the Grazies class FA liquor license.



August 13, 2019

City Commissioners
225 4th Street North
Fargo, ND 58102

RE: Grazie's Liquor License

Dear Commissioners:

In talking with Mr. Steve Sprague, we learned the Grazie's Liquor License has expired. We are asking the Commission for an exemption to code 251512, and have the license reinstated so we may sell this asset.

Enclosed is the annual renewal fee of \$1,700.00

If you have any questions please call me at 701-492-6123.

Best Regards,

A handwritten signature in black ink that reads "Arleen McKay". The signature is written in a cursive style.

Arleen McKay
Controller

1635 43rd Street South, Suite 105
Fargo, North Dakota 58103



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

9

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

Full, Legal Name of Gaming Organization **Fargo Metro Baseball Association**

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

Name of Location African International Restaurant and Night Club			
Street 4554 7th Ave S	City Fargo	ZIP Code 58103	County Cass
Beginning Date(s) Authorized 8/1/19	Ending Date(s) Authorized 6/30/20	Number of twenty-one tables if zero, enter "0": 0	
Specific location where games of chance will be conducted and played at the site (required) Northeast corner of building			
If conducting Raffle or Poker activity provide date(s) or month(s) of event(s) if known			

RESTRICTIONS (City/County Use Only)

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

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

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

APPROVALS

Attorney General	Date
Signature of City/County Official	Date
PRINT Name and official position of person signing on behalf of city/county above Steven Sprague/City Auditor	8/26/19

INSTRUCTIONS:

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

RETURN ALL DOCUMENTS TO:

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

100a

8-9-19
\$25.00
✓



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 <i>Fargo South High School</i>		Date(s) of Activity <i>9-3-19 to 2-25-20</i>		For a raffle, provide drawing date(s):	
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 *					

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
<i>50/50 Raffle</i>	<i>1/2 of money collected</i>	<i>1500.00</i>			
Total:					(Limit \$12,000 per year) <i>\$ 1500.00</i>

Intended uses of gaming proceeds: *Student travel 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 <i>Dwilla Sloan</i>	Date <i>8/9/19</i>	Title <i>Bookkeeper</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)

106

✓ 12322
 \$25.00
 8-14-19

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

Name of Non-profit Organization <i>Nativity Church of Fargo</i>		Date(s) of Activity <i>11-3-19 to 11-3-19</i>	For a raffle, provide drawing date(s): <i>11-3-19</i>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <i>Karen L. Donahue</i>		Title <i>Treasurer</i>	Business Phone Number <i>701-232-2414</i>	
Business Address <i>1825 11th Street S.</i>		City <i>Fargo</i>	State <i>ND</i>	Zip Code <i>58103</i>
Mailing Address (if different)		City	State	Zip Code
Name of Site Where Game(s) will be Conducted <i>Nativity Church</i>		Site Address <i>1825 11th St. S.</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.
 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/Giftcards	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 <i>Karen L. Donahue</i>	Date <i>8-14-19</i>	Title <i>Fall Festival Treasurer</i>	Business Phone Number <i>701-361-4263</i>
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APPLICATION FOR A LOCAL PERMIT OR RESTRICTED EVENT PERMIT
OFFICE OF ATTORNEY GENERAL
SFN 9338 (08/2019)

(100)

Application for: [X] Local Permit * [] Restricted Event Permit (one event per year)

Form with fields: Name of Nonprofit Organization or group of people permit is issued to (Pink It Forward), Date(s) of Activity (9-14/18 9-14/19), Title (Treasurer), Business Address (4265 45th St S Ste 111-17), City (Fargo), State (ND), Zip Code (58104-4309), Name of Site Where Game(s) will be Conducted (Fargo Billiards and Gaastropub), Site Address (3234 43 St S), City (Fargo), State (ND), Zip Code (58104-8644), County (Cass).

DESCRIPTION AND RETAIL VALUE OF PRIZES TO BE AWARDED

Table with 2 columns: Game Type, Description of Prize, Retail Value of Prize. Includes entries for Bean Bag Board (\$185.00) and Dart Board (\$189.99). Total: \$ 649.99 (Limit \$40,000 per year)

Intended uses of gaming proceeds: Nonprofit - Pink It Forward care packages given to breast cancer patients

Does the organization presently have a state gaming license? [X] 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? [X] 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? [X] 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 (Deanne Leier), Date (8-13-19), Title (Treasurer), Business Phone Number (701-367-5587)



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

(God)

✓/301

25.00

8/20/19

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

Name of Nonprofit Organization or group of people permit is issued to North Dakota Long Term Care Association		Date(s) of Activity to		For a raffle, provide drawing date(s): 9/19/2019	
Person Responsible for the Gaming Operation and Disbursement of Net Income Susan Bahmiller		Title Education Ast		Business Phone Number (701) 354-9775	
Business Address 1900 N. 11th St.		City Bismarck		State ND	Zip Code 58501-1914
Mailing Address (if different)		City		State	Zip Code
Name of Site Where Game(s) will be Conducted Holiday Inn Fargo		Site Address 3803 13th Ave. S			
City Fargo		State ND	Zip Code 58103-3301	County Cass	
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	Prize Basket 1	\$100.00	Raffle	Prize Basket 8	\$100.00
Raffle	Prize Basket 2	\$100.00	Raffle	Prize Basket 9	\$100.00
Raffle	Prize Basket 3	\$100.00			
Raffle	Prize Basket 4	\$100.00			
Raffle	Prize Basket 5	\$100.00			
Raffle	Choc/Wine Basket	\$100.00			
Raffle	UND Basket	\$100.00			
Raffle	Prize Basket 6	\$100.00			
Raffle	Prize Basket 7	\$100.00			
Total:					(Limit \$40,000 per year) \$ 1,100.00

Intended uses of gaming proceeds: Grant wishes to the residents in long term care facilities in the state

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 <i>Shooby Peterson</i>	Date 8-14-19	Title President	Business Phone Number (701) 222-0660
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11

Mayor and City Commissioners

The Cass County Multi-Hazard Mitigation Plan (MHMP) has been updated and is pending approval from the North Dakota Department of Emergency Services and FEMA. This plan was developed in 2007 and the Federal Disaster Mitigation Act of 2000 requires local governments to update their plan every five years to remain eligible for federal disaster preparedness and relief grants.

The contractor hired to update this document for Cass County and the City of Fargo was the Lake Agassiz Development Group. The planning team was made up of members from Cass County and the City of Fargo and assisted the overall development of this document, which is now ready for approval, and to pass the attached resolution of the MHMP as part of the renewal process.

Leon Schlafmann

Emergency Services Coordinator

Cass Fargo Emergency Management

2 attachments

Cass County Multi-Hazard Mitigation Plan

Whereas, the City of Fargo in Cass County recognizes the threat that natural, man-made or technological hazards pose to people and property within our community; and

Whereas, undertaking hazard mitigation actions will reduce and/or eliminate the potential for harm to people and property from future hazard occurrences; and

Whereas, an adopted Multi-Hazard Mitigation Plan is required as a condition of future funding for mitigation projects under multiple Federal Emergency Management Agency (FEMA) pre- and post-disaster mitigation grant programs; and

Whereas, the City of Fargo in Cass County participated in the preparation of this plan in accordance with the Disaster Mitigation Act of 2000; and

Whereas, adoption of the Cass County Multi-Hazard Mitigation Plan demonstrates the commitment to hazard mitigation; and

Now, therefore, be it resolved, that the City of Fargo in Cass County adopts the Cass County Multi-Hazard Mitigation Plan pending final approval by the North Dakota Department of Emergency Services and the Federal Emergency Management Agency.

Dated this 26th day of August, 2019. City of Fargo, a North Dakota and municipal corporation

Timothy J. Mahoney, M.D., Mayor

ATTEST:

Steve Sprague, City Auditor

CASS COUNTY MULTI-JURISDICTIONAL MULTI-HAZARD MITIGATION PLAN

2019 - 2023

DRAFT

Cass Fargo Emergency Management
4630 15th Avenue North
Fargo, North Dakota 58102

EXECUTIVE SUMMARY

The threat of natural hazards is keenly felt by many in Cass County. Recent experiences with floods and severe weather have elevated mitigation to the forefront of elected official's agendas. To that end, the county and its cities have prepared this update to its multi-jurisdiction multi-hazard mitigation plan, per Federal Emergency Management Agency (FEMA) requirements. A steering committee comprised of representatives of city and county departments examined the goal and objective statements from the 2014 version of the plan and evaluated whether these were still applicable in light of the County's changing hazard profile. The committee concurred that all of the goals and objectives remained unchanged, except for increasing participation in the Community Rating System was added as an objective.

- 1) Encourage County and local planning related to hazard mitigation
- 2) Enhance the public's awareness of hazards
- 3) Reduce the impact future development has upon potential losses and vulnerabilities
- 4) Reduce impacts of flooding and geotechnical hazards to people and property
- 5) Mitigate the effects severe summer and winter weather has upon people and property
- 6) Mitigate the effects strong winds have upon people and property
- 7) Reduce impacts of drought and wildland fires on communities

Mitigation aims to reduce a community's exposure to hazards and to enhance its resiliency. If a disaster were to occur, the extent of damage and dislocation would be minimized. As a result, the recovery process will be less costly and shorter in duration. Activities which mitigate the effects of disasters can be categorized in several ways. *Construction* of infrastructure or the alteration of existing structures is the physical separate of structures from hazards or allowing those hazards to interact with structures in a manner that is not damaging. Levees, floodproofing, retrofitting buildings for high winds, and storm shelters are a few examples. *Prevention* entails directing development to areas that do not present as high of a risk or permitting only the design of structures that can better withstand disasters and protect its inhabitants. Finally, *education* is the process of informing key stakeholders and the public at-large the measures they can take since not every mitigation action will be the responsibility of governmental entities. Sharing with the public the various methods of reducing risk can empower people to take responsibility for their own properties.

Section I: Introduction
 Purpose
 Scope
 Laws and Authorities
 Plan Structure and Contents

Section II: Planning Process
 Plan Maintenance

Section III: County Profile.....
 Population
 Age
 Race
 Households
 Income
 Social Vulnerability Index
 Rivers
 Lakes, Reservoirs, and Wetlands
 Aquifers
 Transportation
 Highways and Roads
 Rail
 Air Service
 Mass Transit
 Land Uses
 Climate

DRAFT

Section IV: Hazard Identification and Risk Assessment
 Dam Failure
 Drought
 Flooding
 Geological Hazards
 Severe Summer Storms
 Severe Winter Storms

Urban Fire
Wildfire

Section V: Goals and Objectives

Section VI: Mitigation Strategy

Cass County
Alice.....
Amenia
Argusville
Arthur
Ayr
Briarwood
Buffalo
Casselton
Davenport
Enderlin
Fargo
Frontier
Gardner
Grandin
Harwood
Horace
Hunter
Kindred
Leonard
Mapleton
North River
Oxbow
Page
Prairie Rose
Reiles Acres
Tower City
West Fargo

DRAFT

Appendix A: Jurisdictional Commitment Letters
Appendix B: Jurisdictional Participation
Appendix C: Executed Resolutions of Adoption

DRAFT

SECTION I: INTRODUCTION

The threat presented by natural hazards is keenly felt by the leaders and residents of Cass County, especially given the fact that there have been 28 Presidentially declared disasters in the county since 1953. 20 of those were floods and the remaining 8 were severe winter or summer storms. The distinct possibility of a disaster occurring along with the resulting damage and disruption to normal economic and social life have led to the prioritization of undertaking efforts to prevent or reduce the impact of adverse natural events. Stakeholders from various Cass County agencies and each municipality have developed this 2019-2024 Cass County Multi-Jurisdictional Multi-Hazard Mitigation Plan, hereafter referred to simply as the "Plan".

PURPOSE

This Plan represents a coordinated effort and ongoing commitment to mitigate the potential impacts of hazards that continue to be experienced in Cass County. In the wake of recent events there is a renewed commitment to maintaining this Multi-Hazard Mitigation Plan that was first adopted on May 21, 2001. Updates were formally approved in 2009 and 2014.

Hazard mitigation is any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards. Mitigation activities may be implemented prior to, during, or after an incident. The resources and information within the mitigation plan establish a foundation for coordination and collaboration among agencies and the public in Cass County, identify and prioritize future mitigation projects, and assist in meeting qualifications for federal assistance programs. This Plan works in conjunction with other county plans, including municipalities, townships', and the county's comprehensive plans and emergency operations plans.

SCOPE

The geographic scope of this plan encompasses all of Cass County, both its incorporated municipalities and unincorporated rural areas. Jurisdictions analyzed include Alice, Amenia, Argusville, Arthur, Ayr, Briarwood, Buffalo, Casselton, Davenport, Enderlin, Fargo, Frontier, Gardner, Grandin, Harwood, Horace, Hunter, Kindred, Leonard, Mapleton, North River, Oxbow, Page, Prairie Rose, Reile's Acres, Tower City and West Fargo.

The planning process identified mitigation actions that would eliminate or reduce the impact of natural disasters. If implemented, the actions would enhance the resiliency of communities and allow them to bounce back quicker and more robustly after a disaster, if one were to occur. Mitigation aims to break the cycle of damages and repairs, as well as reducing repeated losses and the financial burden of rebuilding time and time again.

LAWS AND AUTHORITIES

This Plan has been developed in accordance with the Disaster Mitigation Act of 2000, Public Law 106-390. The Disaster Mitigation Act of 2000 provides the legal basis for mitigation planning requirements as a condition of mitigation grant assistance. The Disaster Mitigation Act of 2000 also established a new requirement for local mitigation plans, hereby providing guidance to the planning process in the development of this Plan. Nothing in this Plan supersedes or contradicts the Disaster Mitigation Act of 2000 or any other Federal, State or Local laws.

PLAN STRUCTURE AND CONTENTS

This document is organized into six sections beginning with the introduction that outlines the purpose of the plan, its scope, and the laws and authorities guiding mitigation planning. Section Two describes the process through which the plan was updated, including how input from the public and stakeholders was collected and incorporated into the plan.

Section Three gives the reader a brief overview of Cass County including its people, natural features, land use and transportation infrastructure. All of these factors influence the risk assessment provided in Section Four.

Section Four includes a discussion of natural hazards most likely to affect Cass County. These are dam failure, drought, flood, severe summer storm, severe winter weather, urban fire, wildland fire and geologic hazards. Each hazard is further broken down into subcategories of description, location, extent, previous occurrences, probability of future events, and the designation of a risk class. Location describes the geographic areas within the planning area that are affected by each hazard. For several identified hazards, the entirety of the county has an equal chance of being affected. Therefore, location information is most relevant when considering dam failure, flood, and geologic hazards. Extent is the strength or magnitude of the hazard. Although extent defines the characteristics of the hazard regardless of its effect on people and the built environment, potential impacts that refer to these effects are also included in this section. Previous occurrences describe historic incidences with the natural hazards. These occurrences have been compiled from national, state and local data sources. The level of detail may vary per the data source. Probability of future events is a compilation of statistical data based on past events and trends and experiences of local officials knowledgeable of the subject matter. The risk classes defined in the previous version of the plan were also reevaluated and included in this section. The risk class rating system used ranges from A to D, with A signifying the greatest risk. The steering committee thoroughly discussed the ratings for each hazard and felt the existing classification scheme was still accurate. Below are brief descriptions of each risk class.

Figure 1.1 Hazard Risk Assessment Classification

A	High risk condition with the highest priority for mitigation and contingency planning
B	Moderate to high risk condition with sufficiently high consideration for further mitigation
C	Low to moderate risk condition with some consideration for further mitigation
D	Low risk condition with not given a great deal of planning consideration

Section Five lists the overarching goals of the county’s mitigation strategy. These align closely with the State of North Dakota’s goals. Several objectives described therein are an ongoing effort through the plan’s effective period and beyond.

Section Six has a section for the county and for each city that describes their unique vulnerabilities, the capabilities of the jurisdiction, and the proposed mitigation actions. Each jurisdiction was asked to prioritize which of the action items were more pressing. This does not mean the project will necessarily be accomplished before others. The vagaries of funding, the technical feasibilities of the projects, and the capacities of the cities can translate into an ever changing workplan.

DRAFT

SECTION II: PLANNING PROCESS

The oversight of this plan update was done by a steering committee made up of representatives from city and county departments. One role of this committee was to lead the development of a plan that is embraced by all jurisdictions and is within the realm of political, technical, and financial feasibility. Many of the county representatives work extensively with rural communities and thus had insights into needs in the unincorporated county and smaller jurisdictions.

In an effort to ensure continuity, some members of the steering committee were involved in the previous two update processes. Table 2.1 lists all of the steering committee members and Table 2.2 is an attendance record of all steering committee meetings.

Table 2.1 Steering Committee

Name	Position	Agency Represented
Kay Anderson	GIS Manager	Cass County
Jason Benson	County Engineer	Cass County
Jody Bertrand	Senior Engineer	Fargo
Mitch Calkins	Program Manager	Lake Agassiz Regional Council
Hali Durand	Planner (until October 2018)	Cass County
Pierre Freeman	Code Enforcement Officer	West Fargo
Jeremy Gorden	Engineer	Fargo
Josh Hassell	Engineer	Moore Engineering, Inc.
Amanda Johnson	Assistant	Cass Fargo Emergency Management
Daryl Masten	GIS Manager	Fargo
Amber Metz	Executive Director	Lake Agassiz Regional Council
Doug Murphy	Emergency Preparedness Reg. Coordinator	Fargo Cass Public Health
Mike Opat	Engineer	Moore Engineering, Inc.
Jim Prochniak	Emergency Manager	Cass Fargo Emergency Management
Leon Schlafmann	Emergency Manager	Fargo
Tom Soucy	Assistant County Engineer	Cass County
Barrett Voigt	Planner (from October 2018 onward)	Cass County
Mark Williams	Assistant Planning Director	Fargo

Table 2.2 Steering Committee Meeting Attendance

Name	8-23-18	10-26-18	1-10-19	3-5-19	5-9-19
Kay Anderson	■		■	■	■
Jason Benson		■	†		
Jody Bertrand	■	■	■	■	
Mitch Calkins	■	■		■	■
Hali Durand	■				
Pierre Freeman	■		■	■	
Jeremy Gorden	■	■	■		

Josh Hassell	■				
Amanda Johnson	■			■	■
Daryl Masten	■	■	■		
Amber Metz	■	■		■	■
Doug Murphy		■		■	■
Mike Opat		■		■	
Jim Prochniak	■	■	■	■	■
Leon Schlafmann	■		■	■	■
Tom Soucy	■		■	■	■
Barrett Voigt			■	■	
Mark Williams	■	†			

† Indicates a substitute was present at the meeting

At the start of the process, a letter was sent to each city requesting their commitment to participate in the update of the plan. Copies of those commitment letters are found in Appendix A. The following Table 2.3 lists the elected leaders, auditors or other staff with whom initial contacts was made. Requests for information and for feedback were forwarded to the city council members' attentions. Appendix B shows the extent of each city's participation in more detail.

Table 2.3 Jurisdiction Contact List

Jurisdiction Name	Contact	Position
Cass County	Heather Worden	County Commission Administrative Assistant
Alice	Lori Schmidt	Auditor
Amenia	William Stansbery	Mayor
Argusville	Mary Howatt	Auditor
Arthur	Scott Kroeger Greg Nelson	Auditor Mayor/Floodplain Administrator
Ayr	Diane Hovland	Auditor
Briarwood	Mike Fritz John Adams	Auditor Mayor/Floodplain Administrator
Buffalo	Harmony Richman	Auditor
Casselton	Sheila Klevgard	Auditor/Floodplain Administrator
Davenport	Mark Roster	Auditor
Enderlin	Cyndee Chesley	Auditor
Fargo	Kember Anderson	Executive Assistance to City Commission
Frontier	BJ Blanchette Perry Ronning	Mayor Zoning/Floodplain Administrator
Gardner	Todd Kalm	Mayor

Grandin	Tracey Dahl	Auditor
Harwood	Casey Eggermont	Auditor/Floodplain Administrator
Horace	Matt Lower Perry Ronning	Community Development Director Zoning/Floodplain Administrator
Hunter	Ben Olson Emily Murch	Mayor Auditor/Floodplain Administrator
Kindred	Tabitha Arnaud	Auditor/Floodplain Administrator
Leonard	Greg Wessels	Mayor
Mapleton	Mary Hirschberger	Auditor
North River	Troy Durham	Mayor/Floodplain Administrator
Oxbow	Stacey Fett Jim Nyhof	Auditor Mayor/Floodplain Administrator
Page	Judy Johnson	Auditor
Prairie Rose	Rick Callens Robert Staloch	Mayor Auditor/Floodplain Administrator
Reiles Acres	Shane Amundson	Mayor
Tower City	Jody Haselu	Auditor
West Fargo	Tina Fisk	Auditor

Near the beginning, LARC staff met with the cities' contracted engineers, either with Moore Engineering or with Interstate Engineering. The purpose of these meetings was to gather their technical input regarding the needs, vulnerabilities, and mitigation-related projects being planned for each city. They explained what projects from the 2014 version of the plan have been completed, were not relevant anymore, or need to remain but have the timelines and cost estimates updated.

Kick-off meetings open to the public were held at the Casselton Auditorium in Casselton on October 3, 2018 and Northport Library in Fargo on October 4, 2018. Notification was published in the Cass County Reporter. Email invitations were also sent to all local jurisdictions' mayors and auditors. A copy of the notice follows as Figure 2.1.

Figure 2.1 Notice of Public Meeting

Notice of Public Open House

Cass County Emergency Management is updating the county’s Multi-Hazard Mitigation Plan. This plan will describe the strategy to lessen the impact of natural disasters upon lives and property. To kick off the process, two public open houses will be held to describe the purpose of the plan and to gather input on past performance of mitigation activities and possible future actions.

Interested individuals are encouraged to stop by between the following times:

Wednesday, October 3 from 7 to 8:30 pm at the Casselton Auditorium, 702 1st St N, Casselton, ND.

Thursday, October 4 from 6 to 7:30pm at the community room of the Northport Library, 2714 N. Broadway, Fargo, ND.

If special accommodations are necessary, please call Mitch Calkins at 701-235-1197.

It is imperative that the multi-hazard mitigation plan be integrated with and does not work at cross purposes with existing plans. To that end, a range of plans were examined in order to find what nexus, if any, there was to natural hazard mitigation. If mitigation-related elements were found in those documents, these were brought up with the relevant stakeholders during the outreach process. It should be noted that many of the smaller towns do not have adopted plans. Table 2.4 lists the plan and policy documents that were examined and how it contributed to the mitigation plan development.

Table 2.4 Plans Examined and Incorporation into Mitigation Plan

County-wide	Contribution
Red River Basin Commission’s Long Term Flood Solutions	County’s mitigation actions as it relates to flood control
Cass County Comprehensive & Transportation Plan	County’s profile, vulnerabilities to all hazards, and potential mitigation-related action steps
Cass County Comprehensive Highway Plan 2018-2022	County’s profile and potential mitigation-related action steps
Fargo-Moorhead Alternate Route & Traffic Incident Management Guidebook	The vulnerability of the transportation network as it relates to hazards
Traffic Operations Incident Management Strategy	The vulnerability of the transportation network as it relates to hazards
Transportation Improvement Program 2018-2021	Potential mitigation actions for transportation network
Emergency Operations Plan	Vulnerabilities that would hinder response

	efforts
Subdivision Ordinance	Capabilities of the county to regulate development in risky areas
Long-Range Transportation Plan	Potential mitigation action steps
Argusville	Contribution
Flood response plan	Vulnerabilities that would hinder flood response efforts
Casselton	Contribution
Comprehensive plan	City profile and potential mitigation actions
Emergency operations plan	Vulnerabilities that would hinder response efforts
Storm water management standards	Capability to regulate development in manner that prevents aggravating flooding
Enderlin	Contribution
Ransom County Multi-Hazard Mitigation Plan	Potential mitigation actions
Fargo	Contribution
Downtown InFocus	Profile for downtown core, vulnerability assessment for all hazards, and potential mitigation actions
Go2030 comprehensive plan	City profile, vulnerability assessment for all hazards, and potential mitigation actions
Floodproofing standards	Capability to regulate floodproofing standards and basement exemption.
Prioritized Comprehensive Flood Mitigation Plan	Potential mitigation actions for flooding
Subdivision and land use zoning ordinances	Capabilities to regulate development in risky areas
Emergency Operations Plan	Vulnerabilities that would hinder response for all disaster event types
Fargo Park District	Contribution
Long Range Capital and Maintenance Plan	Vulnerabilities of Park District's facilities to all hazards and potential mitigation actions
Fargo Public Schools	Contribution
Long Range Facility Plan	Vulnerabilities of School District's facilities to all hazards and potential mitigation actions

Frontier	Contribution
Zoning Ordinance	Capability of city to regulate development
Gardner	Contribution
Zoning Ordinance	Capability of city to regulate development
Harwood	Contribution
Flood Emergency Plan	Vulnerabilities as it relates to ability to respond to flooding
Horace	Contribution
2028 Comprehensive Plan	City profile, vulnerabilities for all hazards, and potential mitigation actions
Oxbow	Contribution
Land Development Code	Capability to regulate development in risky areas
Tower City	Contribution
Zoning ordinances	Capability to regulate development in risky areas
West Fargo	Contribution
Drought Contingency and Emergency Water Management Plan	Vulnerability assessment as it relates solely to drought and potential mitigation actions
Zoning ordinance	Capability to regulate development in risky areas
West Fargo 2.0 comprehensive plan	City profile, vulnerability assessment for all hazards, and potential mitigation actions

The quality of a hazard mitigation plan can be traced to the quality of the outreach conducted in its formation. To that end, LARC staff endeavored to directly contact as many stakeholders as possible. The steering committee agreed that one-on-one conversations was the method that would have the most success.

Compared to the previous version of the plan, more effort was placed upon contacting a diverse range of stakeholders. This included social service agencies, special-purpose governmental entities, owners of critical infrastructure, neighborhood coalitions, and environmental groups. In total, 56 different organizations responded to requests for information and to answer questions on what mitigation concerns they have with their operations.

LARC staff attended other meetings where pertinent stakeholders were present, such as regularly scheduled city council meetings, the Cass County Local Emergency Planning Committee, and the Cass County Township Officers Association. A list of those stakeholder groups and experts who were informed of the plan and who offered input can be found in Table 2.5

Table 2.5 Responding Stakeholders

City or contracted engineers for each jurisdiction	Fargo Planning Department	West Fargo Planning Department
Horace Community Development Director	Fargo Public Works	West Fargo Public Works
Cass Rural Water District	ND Department of Transportation	North Dakota State Fire and Tornado Fund
Fargo Fire Department	Harwood Area Fire and Rescue	West Fargo Fire Department
Fargo Police Department	MATBUS (public transportation)	Hector International Airport
Housing Authority of Cass County	Northern Cass Public School District	Fargo Public School District
Central Cass Public School District	Kindred Public School District	Cass County Electric
Xcel Energy	Sanford Health	VA Medical Center
Essentia Health	BNSF	Red River Regional Dispatch Center
Jefferson Area Neighborhood Association	Horace Mann Area Neighborhood Association	Cass County Historical Society
Riverkeepers	Cass County Soil Conservation District	Fargo Park District
North Dakota State Climatologist	Lutheran Social Services	AARP
FM Coalition for the Homeless	Southeast North Dakota Community Action Agency	NDSU Extension Service
NDSU	Rush River Water Resource District	Cass County Jail

In cooperation with staff from the North Dakota Department of Emergency Services and Cass Fargo Emergency Management, two Community Coffee sessions were held on March 7th, 2019. The first was with 26 students enrolled in the NDSU emergency management program; the second was with 23 New American representatives at the offices of Lutheran Social Services. This unique outreach method consisted of presentations from DES staff about their experiences with hazard mitigation planning and the lessons they have learned throughout the years.

LARC staff followed with its own presentation specifically about the Cass County Multi-Hazard Mitigation Plan. Participants were asked to rank the hazards according to its location and extent of impact. Both audiences offered valuable input not only when it comes to mitigation, but also for the other phases of emergency management. Going forward, this technique for speaking with stakeholders should be continued in the plan maintenance phase due to the valuable discussions that were had.

PLAN MAINTENANCE

Mitigation plans are meant to be living documents whereby alterations are made as hazard conditions change, projects are completed, new project ideas start being considered, as funding sources change, as laws are adopted, and as vulnerabilities change due to population changes or continued land development. Maintenance of the plan keeps its value as a guidepost for communities.

Therefore, the steering committee commits itself to reviewing the plan once a year over the five-year period of the plan. It is believed the membership steering committee will remain, although new members can be added as deemed appropriate. At the annual review sessions, the steering committee will monitor goals, objectives, and action items as well as evaluate the effectiveness of the county's and cities' mitigation efforts. Reviews of the plan will take place upon the conclusion of a disaster event, in order to find what action steps should be taken and in what priority. This will be done in addition to the normal annual review if time permits.

Cass County staff and its partners will continue doing public outreach as part of plan maintenance. In addition to the preparedness messages that are disseminated on a regular basis, messages regarding the mitigation steps individuals, households, and businesses can take will also be shared through various media including radio, television, social media, and in-person meetings or presentations. Continuing lines of communication with the public, stakeholder groups, and cities will aid in the implementation of mitigation actions as well as shed light on any new strategies that should be employed.

PLAN INTEGRATION

Cass Fargo Emergency Management staff will ensure this mitigation plan will be referred to during the crafting of other plans. This will be accomplished through Cass Fargo Emergency Management staff responding to invitations to participate or provide input and by assisting local governments and special districts. The benefit will be that the separate plans do not conflict, but rather align in a manner whereby the implementation of actions will bring about benefits that touch upon different domains, hazard mitigation included.

As the regional planning agency for the area, Lake Agassiz Regional Council will be actively involved in planning efforts where appropriate. Additionally, FM Metro COG – the Metropolitan Planning Organization (MPO) for the Fargo-Moorhead area – will receive this mitigation plan so that they can refer to the document during their planning processes. Upon approval, the plan will be distributed to each city's engineer so that it can be consulted during the creation of new capital improvement plans.

The other types of plans in which hazard mitigation has a nexus is listed in the following table, along with a

description of how these are connected.

Table 2.6 Plan Integration

Plan	Connection
Continuity of Operations	In the event of a disaster, governments must continue a basic level of services to maintain public order, health, and safety. A significant potential exists for staff to be dislocated, buildings damaged, and demands for assistance increase. Finding alternative methods of continuing services, maintaining chains of command, and keeping track of expenditures are elements in this type of plan. The hazard identification and city-specific vulnerabilities can be examined to find weak spots in the governments' disaster contingencies.
Disaster Response	Disaster-specific response plans lay out the actions various governmental entities and voluntary organizations undertake to limit the damage caused by the disaster as it is occurring (e.g. building sandbag levees for flooding), as well as rescuing those who are affected. Areas with higher-than-normal vulnerability that makes evacuation more challenging is one element that should be noted. Mitigation actions that reduce the challenge of evacuation, or the need to evacuate in the first place, can and should be listed within this plan document.
Disaster Recovery	Disasters are inevitable. The way in which a community rebuilds is a decision, however, that can be determined before a disaster strikes. The mitigation action steps from this plan can be implemented during the recovery phase. Changes to policy would ensure development occurs in areas deemed safe and in a manner that is better able to withstand hazards. Rebuilding infrastructure to a higher standard is possible given that federal aid dollars may be available.
Comprehensive Plan	As the name implies, comprehensive plans take an all-inclusive look at a community and delineates a course of action to manage changes which are undergoing and those that are anticipated to occur. These are long-range, general in scope documents which guide the physical development of the city according to the social, cultural, and economic goals of residents. Conforming these to the mitigation plan would entail that the growth priority areas where future infrastructure expansion and development will occur does not happen in areas of high-risk, such as floodplains for example. Any goals in the comprehensive plan targeted towards uplifting those disadvantaged socio-

	<p>economically speaking should take into consideration how those populations are differently affected by disasters. North Dakota law requires comprehensive plans address emergency management. Cass County's new comprehensive plan fulfills that requirement.</p>
Capital Improvement Plan	<p>These are short-range plans that identifies infrastructure improvements, a tentative schedule of construction, and financing options. The benefit of this plan lies within it laying out a realistic and fiscally responsible course of action for a jurisdiction's infrastructural needs. As it relates to mitigation, the hazard profiles and vulnerability assessments should be referred to in order to make sure that infrastructure is not extended into risky areas.</p>
Small-area or neighborhood plans	<p>These are planning efforts focused solely on a specific neighborhood. Often initiated by residents, these examine the issues most pertinent to them including but not limited to housing, public safety, managing development pressures, capital improvements, and so on. These efforts would be aided by examining the vulnerability assessments as it relates to their neighborhoods.</p>
Transportation	<p>Often tied into comprehensive and capital improvement plans, transportation planning looks at the current and projected needs for all modes of transportation. These documents should reference the vulnerability assessments found in this hazard mitigation plan and ensure that roads, rail, trails, and so on aren't extended into areas in the floodplain.</p>
Housing Needs Assessments	<p>The availability, affordability, and condition of the housing stock is often a concern among local elected officials and community leaders. These analyses should also take into consideration the ability of the housing stock to withstand flooding and high winds. Examining this through the lens of socio-economic vulnerabilities will find what types of households are better prepared and which will need extra attention in implementing mitigation measures for their properties.</p>

Upon the final adoption of this plan by each jurisdiction, copies will be sent to each city council, auditor, and other staff. They will be encouraged to not only reference the plan as needed, but also review on a regular basis. These reviews will examine whether the hazard profile has changed and whether the mitigation actions will need to be updated to reflect that change.

It should be noted that there is a trend among federal agencies to incentivize having the project mentioned in multiple plans. Applications can be scored better if it is demonstrated the project in question cuts across domains

and tackles multiple issues.

Upon the North Dakota Department of Emergency Services and FEMA Region VIII's approval, the plan will be formally adopted by all jurisdictions in Cass County, including the Cass County Commission and each city council or commission. A sample adoption resolution follows as Figure 2.2. Executed resolutions for all jurisdictions can be found in Appendix C.

Figure 2.2 Adoption Resolution

RESOLUTION NO. _____

RESOLUTION TO ADOPT THE MULTI-HAZARD MITIGATION PLAN

A RESOLUTION OF THE ____ TO ADOPT THE 2019 CASS COUNTY
MULTI-JURISDICTIONAL, MULTI-HAZARD MITIGATION PLAN

WHEREAS, the ____ recognize the threat that natural hazards pose
to people and property within Cass County, North Dakota; and

WHEREAS, the Cass County Commission and participating city councils have prepared a multi-
hazard mitigation plan, hereby known as 2019 Cass County Multi-Jurisdictional, Multi-Hazard
Mitigation Plan in accordance with the Disaster Mitigation Act of 2000; and

WHEREAS, the as 2019 Cass County Multi-Jurisdictional, Multi-Hazard Mitigation Plan identifies
mitigation goals and actions to reduce or eliminate long-term risk to people and property in Cass
County from the impacts of future hazards and disasters; and

WHEREAS, adoption by the ____ demonstrates a commitment to hazard mitigation and achieving
the goals outlined in the 2019 Cass County Multi-Jurisdictional, Multi-Hazard Mitigation Plan.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL, THAT:
The ____ adopts the as 2019 Cass County Multi-Jurisdictional, Multi-Hazard
Mitigation Plan.

ADOPTED by a vote of ____ in favor and ____ against, and ____ abstaining,
this ____ day of _____, ____.

APPROVED: ATTEST:

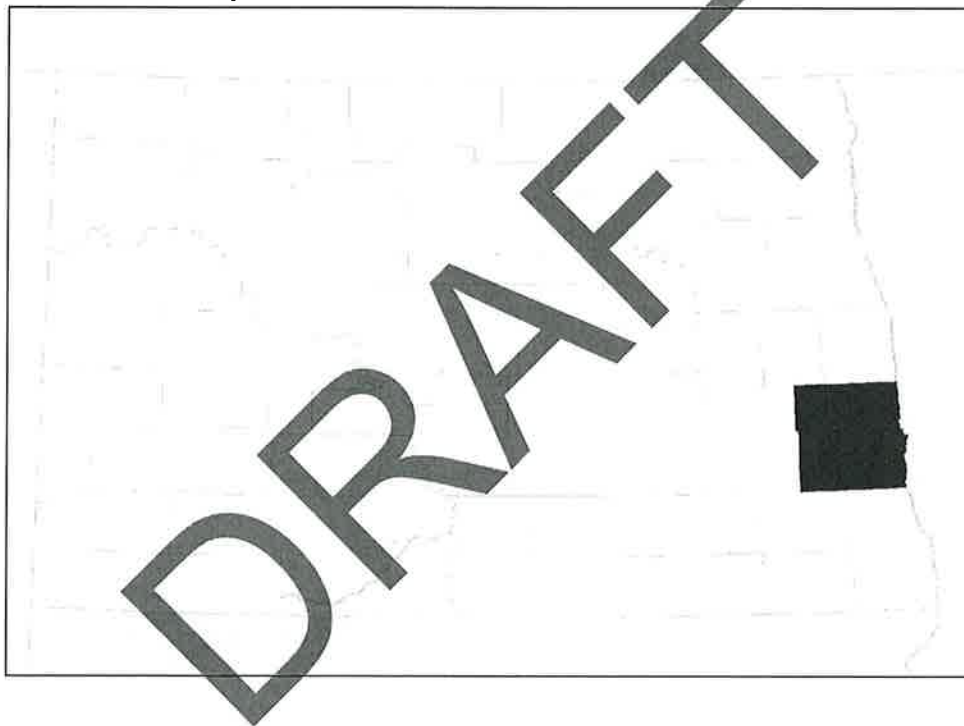
By: _____ By: _____
Mayor Auditor

SECTION III: COUNTY PROFILE

Cass County is located in southeastern North Dakota in the Red River Valley. It is the most populous county in the State with the 2010 Census reporting its population at 149,788. The population for 2017 as estimated by the Census Bureau sits at 177,787, for an increase of approximately 18%.

The county seat is Fargo where over 70 percent of the population resides. The Red River of the North establishes Cass’s eastern border, separating North Dakota from Minnesota. The county has a total area of over 1.13 million acres, the majority of which is dedicated towards agricultural uses.

Figure 3.1 Location of Cass County



POPULATION

The continuous population growth sets Cass County from many others in North Dakota. The diversified economy that has developed in the Fargo metropolitan area has greatly contributed to this consistent growth. Table 3.1 and Figures 3.2 and 3.3 shows the population of Cass County as compared to the rest of the state, which has seen the general trend of stagnation only until the current decade.

Table 3.1 Cass County and State of North Dakota Populations 1900 - 2010

Year	North Dakota	Cass County	Cass’s Percent of State Total
1900	319,146	28,625	8.9
1910	577,056	33,935	5.8
1920	646,872	41,477	6.4

1930	680,845	48,735	7.1
1940	641,935	52,849	8.2
1950	619,636	58,877	9.5
1960	632,446	66,947	10.5
1970	617,761	73,653	11.9
1980	652,717	88,247	13.5
1990	638,800	102,874	16.1
2000	642,200	123,138	19.1
2010	672,591	149,778	22.2

Figure 3.2 North Dakota Population 1900 - 2010

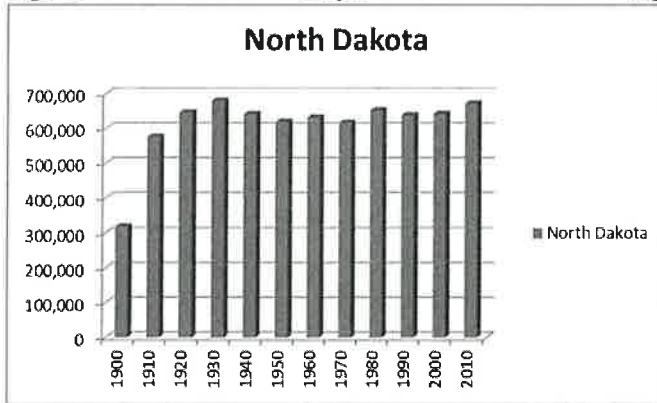
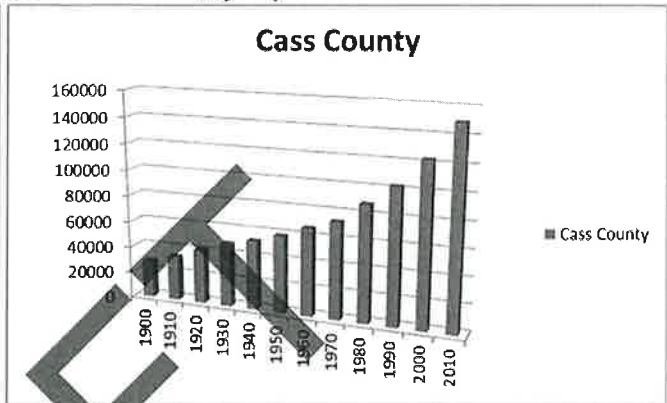


Figure 3.3 Cass County Population 1900 - 2010



Source: U.S. Decennial Census

Cass County's population increased by 26,640 people, or 21.63 percent, between the years of 2000 and 2010. The population residing within municipalities increased by 28,535 people, or 25.11 percent, while the population living in rural unincorporated areas decreased by 1,895 people, nearly 20 percent. It should be noted that the state of North Dakota uses the word "city" for towns of all sizes.

Population changes in the cities from 2000 to 2010 are shown in Table 3.2. The current population density as shown in Figure 3.4 is telling of a continuing migratory trend in the county. Fargo and communities within a 30 mile commuting distance of the Fargo-Moorhead Metropolitan Statistical Area (FM MSA) are growing while the populations of communities farther from the FM MSA continue to decline.

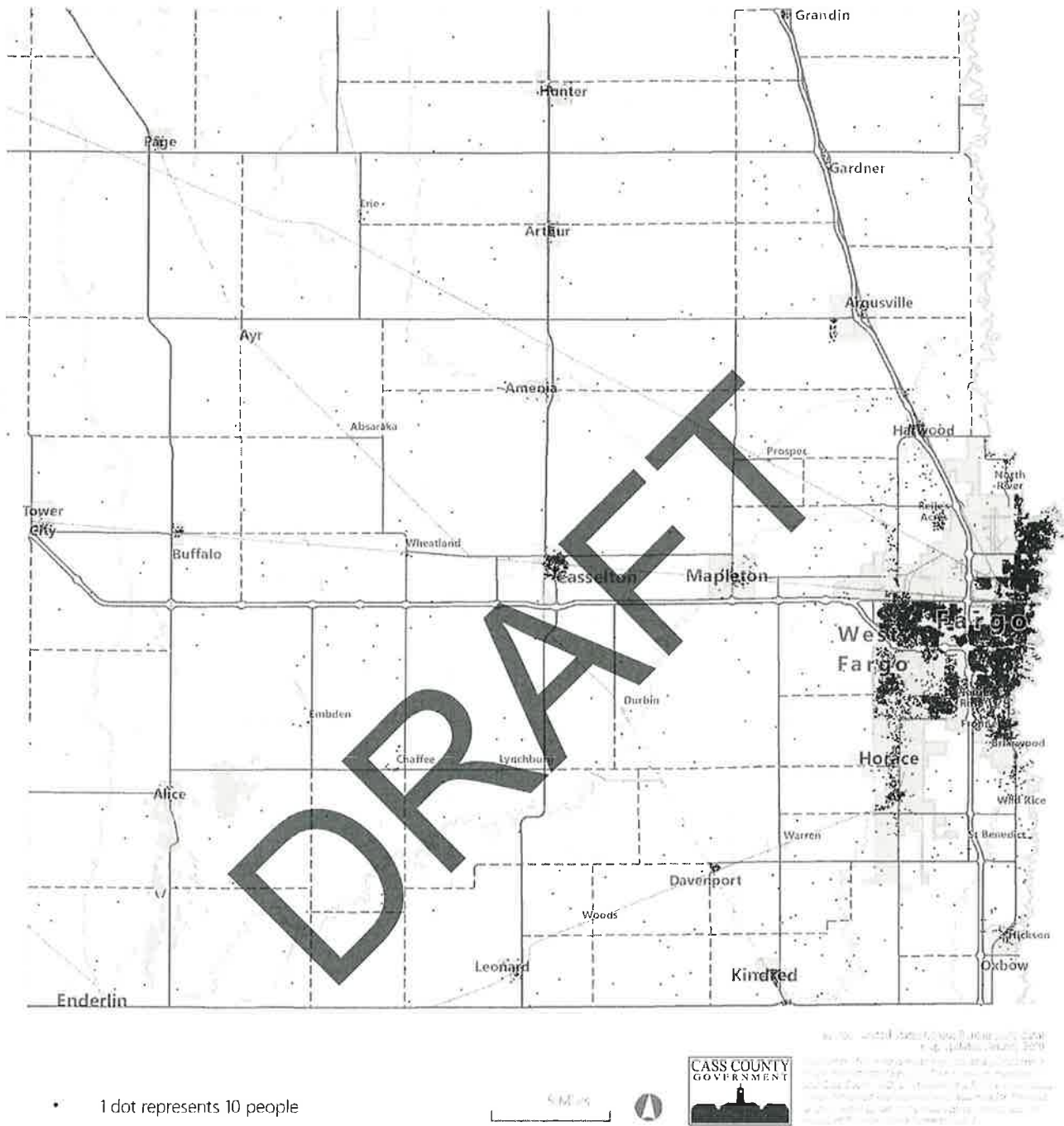
Table 3.2 City Populations in Cass County 2000 – 2010, by population change

City	2000	2010	Change
Argusville	147	475	223.13%
Horace	915	2,430	165.57%
Reile's Acres	254	513	101.97%
West Fargo	14,940	25,830	72.89%
Mapleton	606	762	25.74%
Casselton	1,855	2,329	25.55%
Oxbow	248	305	22.98%
Harwood	607	718	18.29%
Fargo	90,599	105,549	16.50%
Kindred	614	692	12.70%
Prairie Rose	68	73	7.35%

Amenia	89	94	5.62%
Page	225	232	3.11%
Tower City	252	253	0.40%
Davenport	261	252	-3.45%
Grandin	181	173	-4.42%
Briarwood	78	73	-6.41%
Gardner	80	74	-7.50%
Buffalo	209	188	-10.05%
Leonard	255	223	-12.55%
North River	65	56	-13.85%
Arthur	402	337	-16.17%
Hunter	326	261	-19.94%
Frontier	273	214	-21.61%
Ayr	23	17	-26.09%
Alice	56	40	-28.57%

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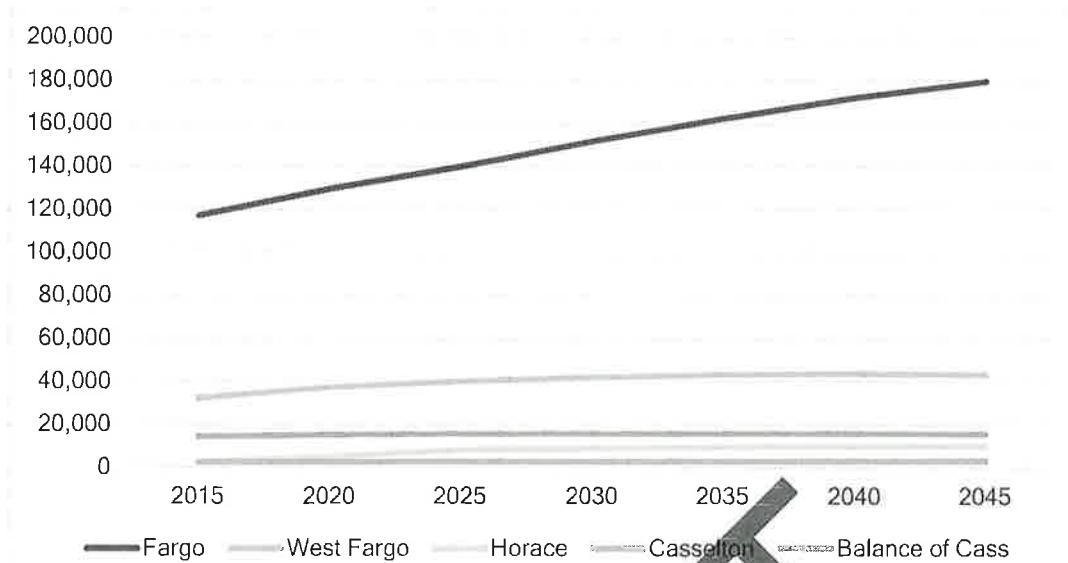
Figure 3.4 Cass County Population Density as of 2010



Source: Cass County

In 2017, Fargo-Moorhead Metropolitan Council of Governments created population estimates for Cass County and its jurisdictions through the year 2045, as seen in the following chart:

Figure 3.5 Cass County Population Projections to 2045



Fargo will be the primary beneficiary of population growth with its surrounding cities also experiencing some increases, although not to the same extent. The rural portions of Cass County, however, will continue to feel the effects of the rural-to-urban migration trend. Thus, the population will stagnate, if not decline, over the next few decades.

AGE

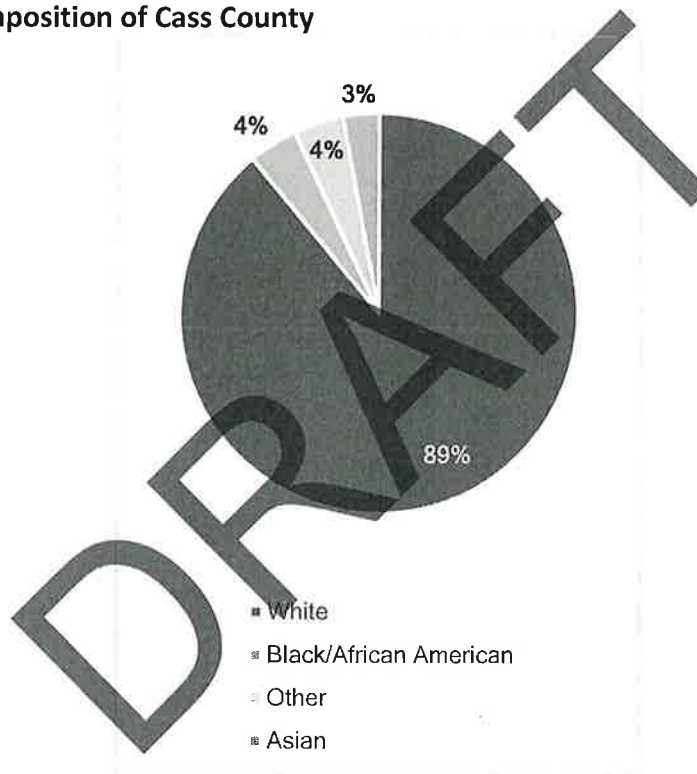
The median age of Cass County increased from 31.3 years old in 2000 to 32.2 years old in 2017, although it should be noted this is still below the median for North Dakota (35.1) and the nation (37.8). This is partly the result of the large student population attending the multiple universities and colleges in the Fargo-Moorhead metropolitan area, as well as the relatively strong economy that has allowed for the successful retention of college graduates.

The aforementioned population projections also estimated that the share of the population considered elderly (age 65 and over) will continue to increase. Baby Boomers continue to reach that age threshold as health care advances continue, allowing for longer lifespans. As of 2017, 10.9% of Cass County are elderly, and increase from 9.6% in 2010. In emergency management, the elderly is viewed as a subpopulation that is particularly vulnerable to the impacts of disasters. Additionally, those with disabilities may also have a disproportionate exposure to impacts of disasters. Mitigation best practices state that these and other demographic subpopulations should be examined separately during the risk assessment and mitigation strategy crafting processes.

RACE

Cass County has a predominantly Caucasian population as seen in the following chart. However, it has become more diverse over the years. In 2000, the county consisted of 96% white and by 2010 it was 94%. The share of the population that are Hispanic increased from 1.2% in 2000 to 2.0% in 2010 and 2.4% in 2016. An active refugee resettlement program has made Fargo home to one of the highest New American populations for a city of its size. Families have come from the Middle East, Sub-Saharan Africa, and the Balkans. The latest data from 2017 show that 8.2% of Fargo’s population is foreign-born. Language barriers will then have to be addressed by translating hazard mitigation information into both print and audio formats. New Americans tend to utilize smart phones for Internet access more, meaning websites should be mobile friendly.

Figure 3.6 Racial Composition of Cass County



HOUSEHOLDS

There are 70,460 households in Cass County, 91% of which were in the cities of Fargo, West Fargo, and Horace. The average household sizes for select cities are presented below:

Table 3.3 Average Household Sizes for Select Cities

City	Avg. Household
Argusville	3.1
Casselton	2.7
Fargo	2.3
Harwood	3.0
Horace	3.1

Kindred	2.7
Mapleton	3.2
Reiles Acres	3.6
West Fargo	2.6
Remainder of Cass	2.5

Fargo and West Fargo have lower household sizes, perhaps indicative of its younger population that have yet to form families. Among renters across the county, the average household size is 1.89; for homeowners the average size is 2.65. A little over quarter (27 percent) of households have children under the age of 18. This is a slight decline since 2000 where 30 percent of households had children under 18.

Whether a household has access to a vehicle or not is relevant to emergency managers since it is a proxy indicator of the resources a household possesses that would allow for them to evacuate in case of an emergency. The vast majority of households in Cass County have access to at least one vehicle (93.2%). Almost 7% of households do not have any vehicles available. Crafting mitigation strategies with the location of those households in mind will lead to the examination of the vulnerability of alternative transportation options.

INCOME

It is generally believed that households with higher incomes will have more resources available to not only respond to a disaster, but also to engage in mitigation actions in the first place. The spatial distribution of higher compared to lower-income households helps guide mitigation actions by focusing on those areas that may need extra assistance in implementation. The chart below details three incomes statistics by city. Median household income is the number by which half of households are above and half are below. Mean household income is the average and can be a more skewed measurement. The poverty rate is the percentage of individuals who fall below the poverty rate line based on their household size and income, as determined by the federal government.

Table 3.4 Income Characteristics by Jurisdiction (2017)

Jurisdiction	Median Household Income (\$)	Mean Household Income (\$)	Poverty Rate (%)
Cass County	58,026	79,729	11.2
Alice	38,750	51,675	4.5
Amenia	74,375	67,202	3.7
Argusville	105,313	117,088	1.4
Arthur	57,222	98,378	1.9
Ayr	†	†	†
Briarwood	†	†	†
Buffalo	68,472	76,010	2.4
Casselton	69,858	82,256	3.3
Davenport	66,250	70,326	7.5

Enderlin	55,500	63,916	10.0
Fargo	50,561	71,030	13.9
Frontier	123,750	128,512	†
Gardner	33,750	48,135	5.6
Grandin	65,625	71,500	1.0
Harwood	93,750	104,523	1.1
Horace	110,870	140,022	1.8
Hunter	64,821	91,309	12.4
Kindred	81,000	94,381	10.6
Leonard	60,125	79,165	5.1
Mapleton	78,487	87,477	1.6
North River	122,500	120,011	†
Oxbow	136,932	189,612	†
Page	56,607	67,401	4.5
Prairie Rose	113,125	121,238	†
Reiles Acres	128,125	144,523	1.2
Tower City	47,212	63,951	7.6
West Fargo	76,925	95,247	6.9

† Data not available due to small sample size and confidentiality

SOCIAL VULNERABILITY INDEX

The resiliency of a community is found in its ability to withstand and bounce back after the occurrence of a natural disaster. One method of measuring resilience is through the Social Vulnerability Index (SVI) developed by the US Centers for Disease Control. It uses 15 variables at the census tract level to help local leaders better understand what portions of their communities may need for support for disaster response and hazard mitigation. The variables are grouped into four themes that summarize the extent to which an area is socially vulnerable to hazards: socioeconomic status contains poverty, unemployment, per capita income, and no high school diploma; household composition and disability contains age 65 and over, age 17 and younger, single-parent household, age 5 and over with a disability; race/ethnicity/language contains minority share, and English language ability; housing and transportation contains multi-unit residential, mobile homes, crowding, no vehicle, and group quarters. These four categories are summarized into one composite score. Below are maps exhibiting the overall score and the four subcomponent scores.

Figure 3.7 CDC's Social Vulnerability Index overall score, 2016

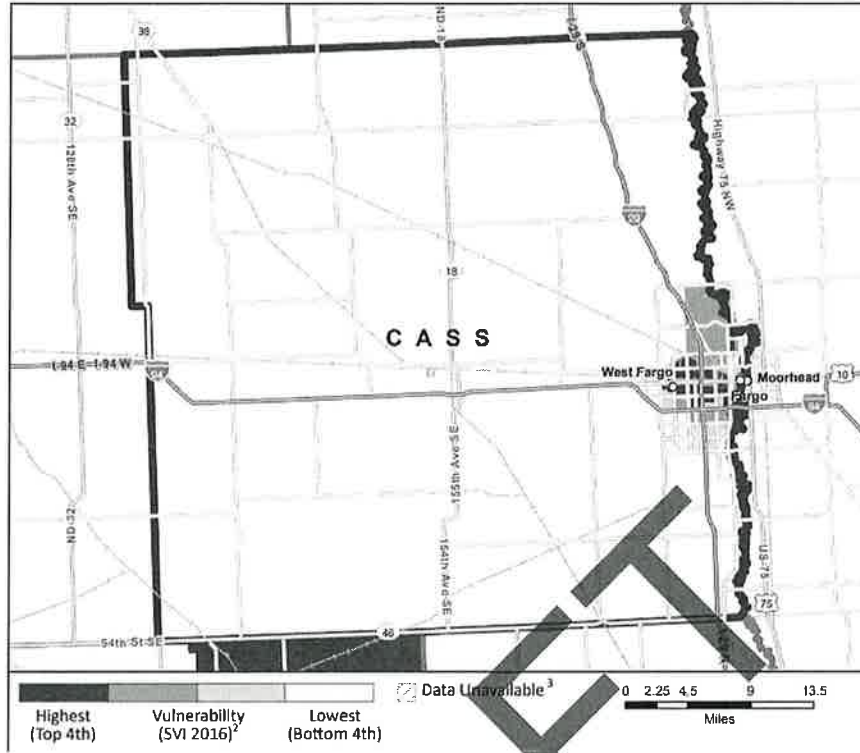
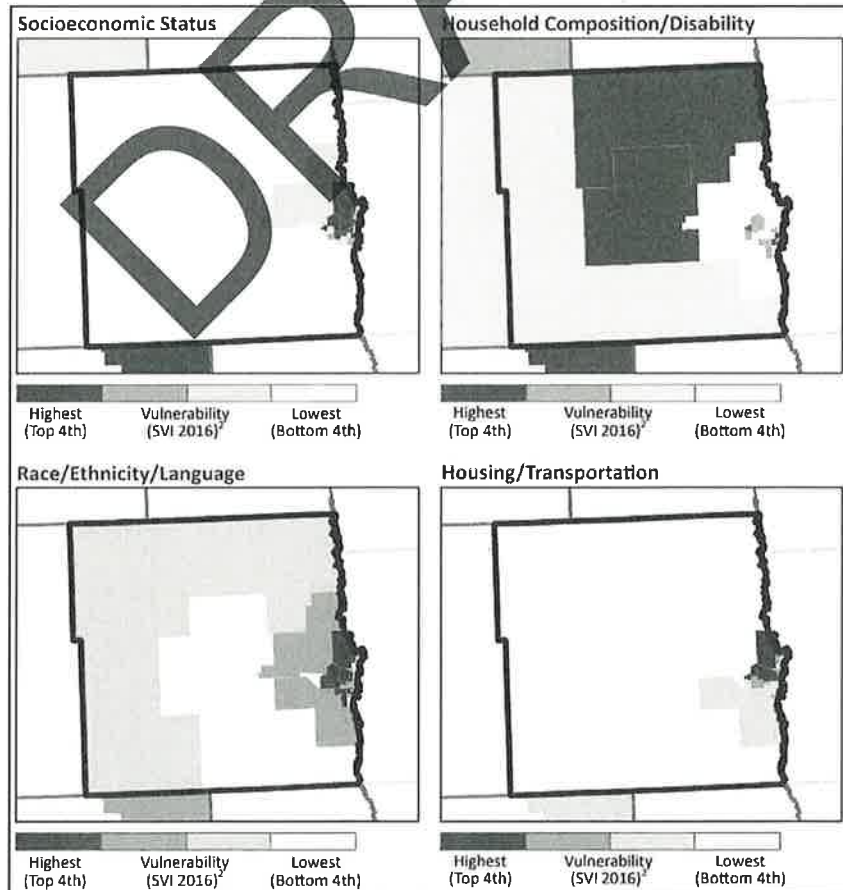


Figure 3.8 CDC's Social Vulnerability Index theme scores, 2016



The areas of higher social vulnerability are found mainly in Fargo, particularly in the central and northern parts of the city. The areas of lower socio-economic status are in downtown Fargo, the neighborhoods around West Acres Mall, and around the NDSU campus. It should be noted for the last one that college students often report low incomes, but they are not be considered low-income as commonly understood given that many still receive support from parents and student loans. In Fargo and West Fargo, there are several mobile home parks that affect the data since mobile homes are an important source of affordable housing. Mobile homes, also called manufactured housing, are more vulnerable to high winds and storms than stick-built housing.

The household composition and disability category show that central and northern parts of the county are more vulnerable. This is partly a result of the older-than-average population found in those communities. The presence of a nursing home or assisted living facility appeared to affect this score. Older individuals may be less mobile in responding to the need to evacuate. Those housing facilities for the elderly should pay extra attention to mitigation, given evacuation of that population is more difficult and requires more time.

The race, ethnicity, and language measurement find that many of the same neighborhoods with the highest vulnerability scores in the socio-economic category are also high in this one as well. The neighborhood around West Acres Mall has become home to New Americans, many of whom are renting. Therefore, it will have to be recognized that those residents do not own their dwelling and are unable to implement many mitigation actions.

The housing and transportation indicators show that the areas of highest vulnerabilities are in downtown and north Fargo plus the core neighborhoods in West Fargo. These areas of contain a higher proportion of apartment buildings. Around NDSU those cater to students, while the downtown Fargo contains apartments geared towards those seeking a more urban-style living arrangement. Fewer people than average in those census tracts own a vehicle. West Fargo's area of higher vulnerability is due, in part, to the mobile home park that is located there.

RIVERS

Five rivers comprise the major components of Cass County's surface drainage system: Red River of the North, Sheyenne River, Maple River, Rush River and Wild Rice River. Other significant tributaries include Swan Creek and Buffalo Creek. Rivers play a vital role in irrigation, recreation, and municipal water supplies in the County. The very flat nature of the Red River Valley, the minimal gradient of the rivers, and the northerly flow of the Red River of the North make the area prone to extensive and prolonged flooding during the spring melt.

The Red and Sheyenne Rivers serve as the primary water sources for the metropolitan area while the smaller outlying communities obtain it from groundwater. Protecting the quality of those rivers is undoubtedly

important. The drinking water has been consistently found safe after going through the treatment process. The rivers' tributaries experience water quality problems that are caused by the area's agricultural operations as well as the continued urban development.

LAKES, RESERVOIRS, AND WETLANDS

Cass County has 32 lakes found mostly in the west and southwest averaging 42 acres in size. 10 artificially created lakes average 36 acres in size. These lakes and reservoirs provide flood protection, irrigation, and recreational opportunities. The remaining sources of surface water found in the county are wetlands which are valuable for surface and subsurface water storage, nutrient cycling, retention of sedimentation, and plant and wildlife habitats. The fertile soils found in wetland areas make them productive areas for farming and resulted in drainage and removal of many acres of wetlands. Many of these wetlands are now protected by federal and state laws. According to the National Wetlands Inventory, Cass County has 21,036 acres of wetlands (excluding lakes and rivers). Of this area 7,693 acres are permanently or semi-permanently flooded.

AQUIFERS

The county has several larger aquifers being utilized for agricultural, residential and commercial use to varying degrees. These possess limited additional development possibility. The aquifers in the county are the West Fargo Aquifer System (WFAS), the Page Aquifer, and the Sheyenne Delta Aquifer.

The West Fargo Aquifer System is made of multiple loosely related aquifer units located in the Fargo metro area from Argusville through West Fargo down to the Wild Rice River. This roughly encompasses the same areas being developed over the years. These nine aquifer units share similar characteristics and are loosely connected, meaning changes in one unit could likely be somewhat transmitted to the other units. The individual channels of the WFAS were created during different times of glacial melting traveling through the valley that predated the Red River Valley as we know it. As a result, this aquifer system is covered by glacial lake clays of the bottom of Lake Agassiz. This layer of clay ranges from 60-90 feet, thus greatly inhibiting the recharge rate of the aquifer.

A positive side benefit is the chance of contamination and the spreading of pollution is reduced. The main drawback is the finite source of water that is ultimately available. The profile of the water in the WFAS indicates the majority of the water has characteristics of cold water precipitation, rather than mixture of cold and warm water precipitation. The fact that the area only receives a small portion of precipitation in the form of snow indicates the water in the WFAS dates back to the cold water trapped during the glacial melts, meaning little apparent modern day recharge has occurred.

The declining levels in the WFAS's finite amount of water suggest little potential for new users to utilize the

aquifer. The WFAS has experienced some of the largest water declines in the area. As a result, proper planning of new development will need to find other sources of water and in the future current users of the system will likely need to find alternative water sources, principally from surface water.

The Page Aquifer is located in the northwest portion of the county and extends into Traill and Steele counties. This aquifer was primarily used as municipal water supply for the town of Page. Since 1976 approximately 15,000 acres of land have been supplied water for irrigation from the Page Aquifer. This aquifer has received significant recharge since 1993 following the droughts of the 1980s. If managed in a sustainable manner, this aquifer can service new users for years to come.

The Sheyenne Delta Aquifer is a large and substantial aquifer located in southern Cass, northern Richland, northeastern Sargent, and eastern Ransom counties. While this is a large aquifer, the majority of it is located outside the county, limiting its usefulness for Cass County.

Cass County also has smaller and less significant aquifers with lower potential and water output. These tend to be more greatly affected by climatic extremes. Included in this group are the Tower, Bantel, and Dakota aquifers.

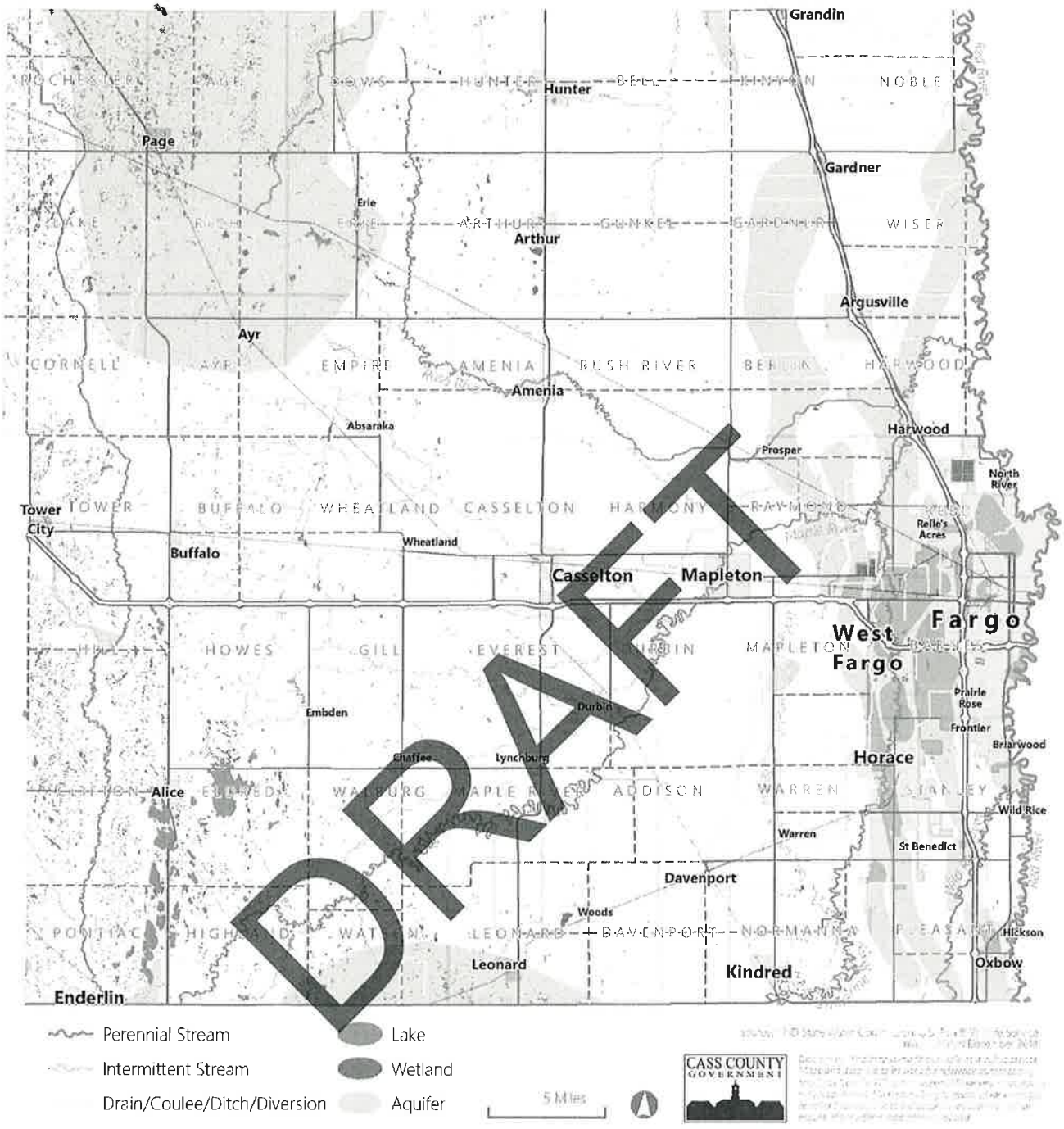
The Tower Aquifer located in western Cass County supplies the water needs of Tower City. This shallow aquifer is very vulnerable to climatic extremes and experienced declining water levels during the 1980s and early 1990s drought conditions. Since 1993, the aquifer has begun a period of recharge, but its small size limits its usefulness to supplying only the current water requirements of Tower City.

The Bantel Aquifer's use has been limited to domestic and stock wells in southwest corner of Cass County. Fortunately, this aquifer has a higher recharge rate.

The Dakota Aquifer is the deepest aquifer in Cass County, with some wells in western portions of the county descending 800 feet, covering areas from the eastern to western borders of Cass County. The water in this aquifer contains high amounts of saline and mineralization, deterring its use for only limited applications.

The data points to the conclusion that groundwater resources are limited, inaccessible, or of poor quality. The slow rate of recharge makes it relatively easy to overdraw. Only the Page Aquifer has any potential for new users. To accommodate future growth and meet increasing water demands, water will be primarily drawn from surface sources. The region has been experiencing a wet cycle over the past few decades. Historical records show this is not a permanent condition. Therefore, contingency planning for droughts and implementing mitigation measures if of concern. A map of the hydrologic features in Cass County follows.

Figure 3.8 Cass County Hydrology

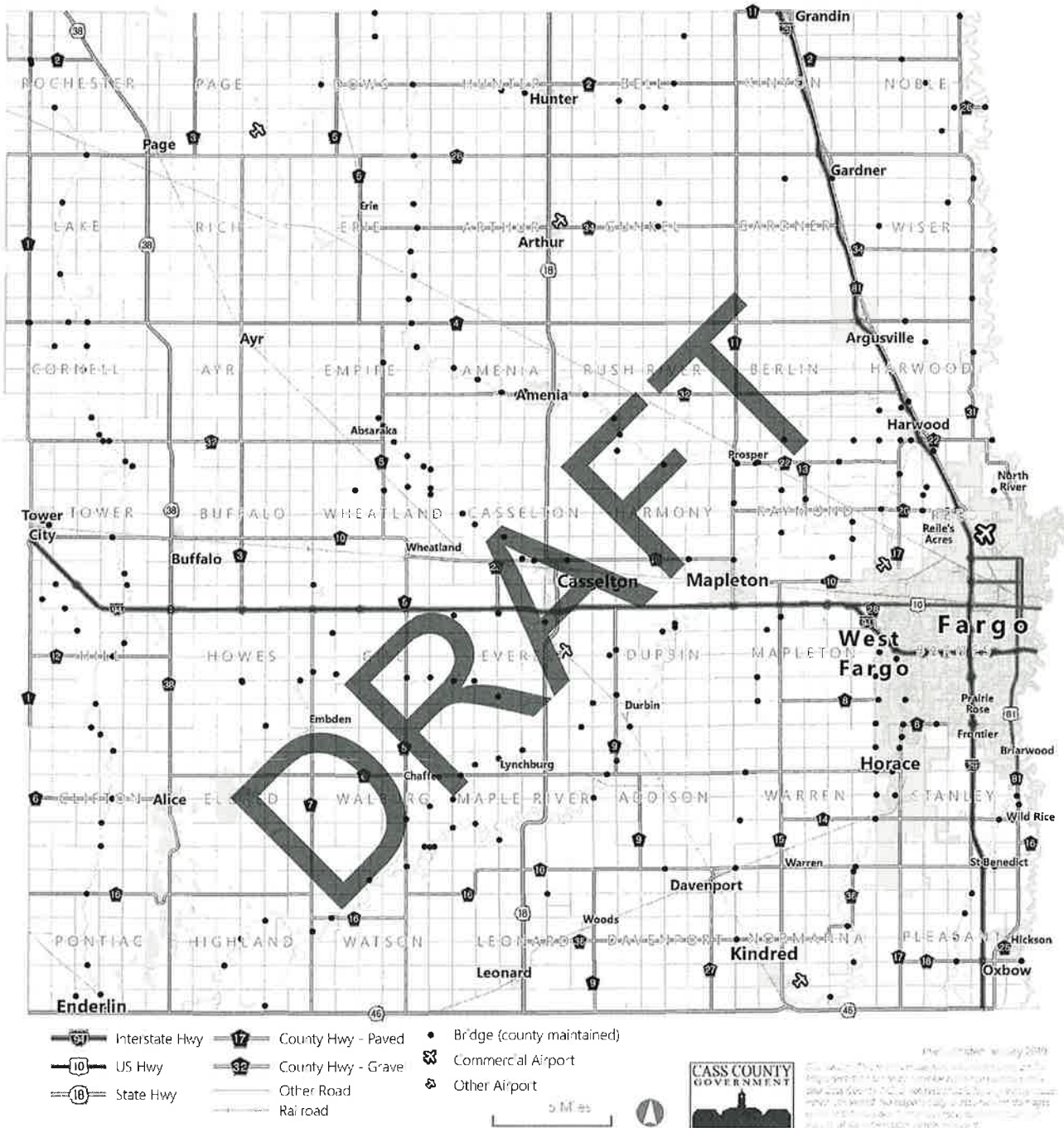


TRANSPORTATION

It is important to understand transportation and its connection to all phases of disasters. Although a more direct link can be drawn between transportation and preparedness and response, there is potential for mitigation actions to have a significant impact on this crucial infrastructure. Reducing the transportation network's exposure to risk can rectify most problems that would occur if a disaster were to hit. Details on area highways

and roads, railways, air service and mass transit are included in this section. Figure 3.9 below is an overview of Cass County transportation.

Figure 3.9 Cass County Transportation System



HIGHWAYS AND ROADS

Cass County is served by two Interstate Highways: north and southbound Interstate 29 and east and westbound Interstate 94 intersect in Fargo. The state highway classification system identifies state highways as Principal Arterials and Major Arterials. Interstate Highways, Principal Arterials and Major Arterials in Cass

County are outlined in Table 3.5 and shown on the previous map.

Table 3.5 Principal Arterials and Major Arterial Highways in Cass County

Road	Classification	Cities in Cass Served	Traffic Count (Average annual daily traffic in 2015)
I-29	Interstate	Grandin, Gardner, Argusville, Harwood, Fargo	10,400 – 65,145
1-94	Interstate	Fargo, West Fargo, Mapleton, Casselton, Buffalo, Tower City	11,555 – 78,170
Hwy 18	State highway	Leonard, Casselton, Amenia, Arthur, Hunter	830 – 4,170
Hwy 38	State highway	Buffalo, Page	515 – 905
Hwy 46	State highway	Enderlin, Leonard, Kindred	1,140 – 2,020

Source: ND Department of Transportation

Cass County is also served by a system of county, township and municipal roads. These make up over 90 percent of road miles in the county. Increasing costs to materials and labor have increasingly strained many government's budgets, as they work to continue keeping the road network in good shape. According to a study conducted by the Upper Great Plains Transportation Institute in 2017, 24% of Cass County's roads are in "very good" shape. 62% are considered "good" while the remaining 15% is considered "fair". The same study found a need to invest approximately \$287 million into unpaved (i.e. gravel) roads over the next twenty years. Paved roads need \$124 million. \$31.6 million will be necessary to rehabilitate or replace the county's 49 bridges. \$2.5 million will need to go towards preventative maintenance.

Floods in 2009, 2010 and 2011 caused considerable damage to county and township roads, and although Federal Emergency Management Agency's (FEMA) Public Assistance funding has covered a majority of the repair costs, local budgets cannot cover significant repair costs.

RAIL

The expansion of rail westward across the country was a major impetus of the settlement of Cass County. Today, it is served with both freight and passenger rail service. Amtrak's Empire Builder route stops in Fargo. In fiscal year 2018, approximately 18,700 passengers departed or arrived at the Fargo station. The Burlington Northern Santa Fe (BNSF) and the Canadian Pacific (CP) Rail System provide mainline freight service to major cities in the region including Fargo, Casselton, and Mapleton. The Red River Valley and Western (RRVWRR) short line railroad provides localized service to rural communities along 577 miles of track formerly owned by BNSF,

including the ethanol plant at Casselton. The vast majority of RRVWRR's customers are agriculturally related and many were threatened with the loss of rail service when the region's main line railroads were abandoning branch lines in rural areas.

AIR SERVICE

Hector International Airport in Fargo is the region's largest and only airport served by major air carriers. Allegiant, American, Delta, Frontier and United Airlines provide daily passenger service to Minneapolis, Denver, Phoenix, Chicago, Dallas, Las Vegas, Los Angeles, Atlanta, and Orlando. Six fixed base operators are located at Hector International Airport and provide charter air service, flight school, and aircraft maintenance and repair. The county is also served by five general aviation airports, detailed in the following table.

Table 3.6 General Aviation Airports, Cass County, ND

Airport	Ownership	Runway	Surface/Condition	Services
Arthur (1A2)	Arthur Airport Authority	Runway 17 – 3100x85 ft.	Turf/Fair	Tiedowns
Casselton (5N8)	Casselton Regional Airport Authority	Runway 13/31 – 3900 x 75 ft.	Concrete/Good	Hangars, Tiedowns, Fuel, Major Airframe
Kindred (K74)	Kindred-Davenport Regional Airport Authority	Runway 11/29 – 3300 x 60 ft.	Concrete/Good	Tiedowns, Fuel, Major Airframe, Major Powerplant
Page (64G)	Leased to Page Regional Airport Authority	Runway 17/35 – 2600 x 30 ft.	Asphalt/Fair	Tiedowns, Fuel, Major Airframe, Major Powerplant
West Fargo (D54)	West Fargo Airport Authority	Runway 18/36 – 3300 x 50 ft.	Asphalt/Good	Tiedowns, Hangars, Major Airframe, Major Powerplant, Bottled Oxygen

MASS TRANSIT

Metro Area Transit (MATBUS) is a fixed-route and demand-response transit agency operated by the cities of Fargo and Moorhead, MN serving both cities plus West Fargo and Dilworth, MN. Boardings have increased fairly consistently since 2008 with most of the growth coming through the free rides offered to students on the area's colleges and universities.

Beyond ridership figures, the system has served an important role during flood fights in recent years. The cities of Fargo and Moorhead have relied heavily on volunteers and their ability to fill and place sandbags to create the necessary temporary levees to protect core infrastructure. MATBUS personnel and their fleet are a critical factor in mobilization and implementation of the flood fight effort. Valley Senior Services and Handi-Wheels

Transportation Inc are organizationally separate demand-response services for elderly and disabled clients.

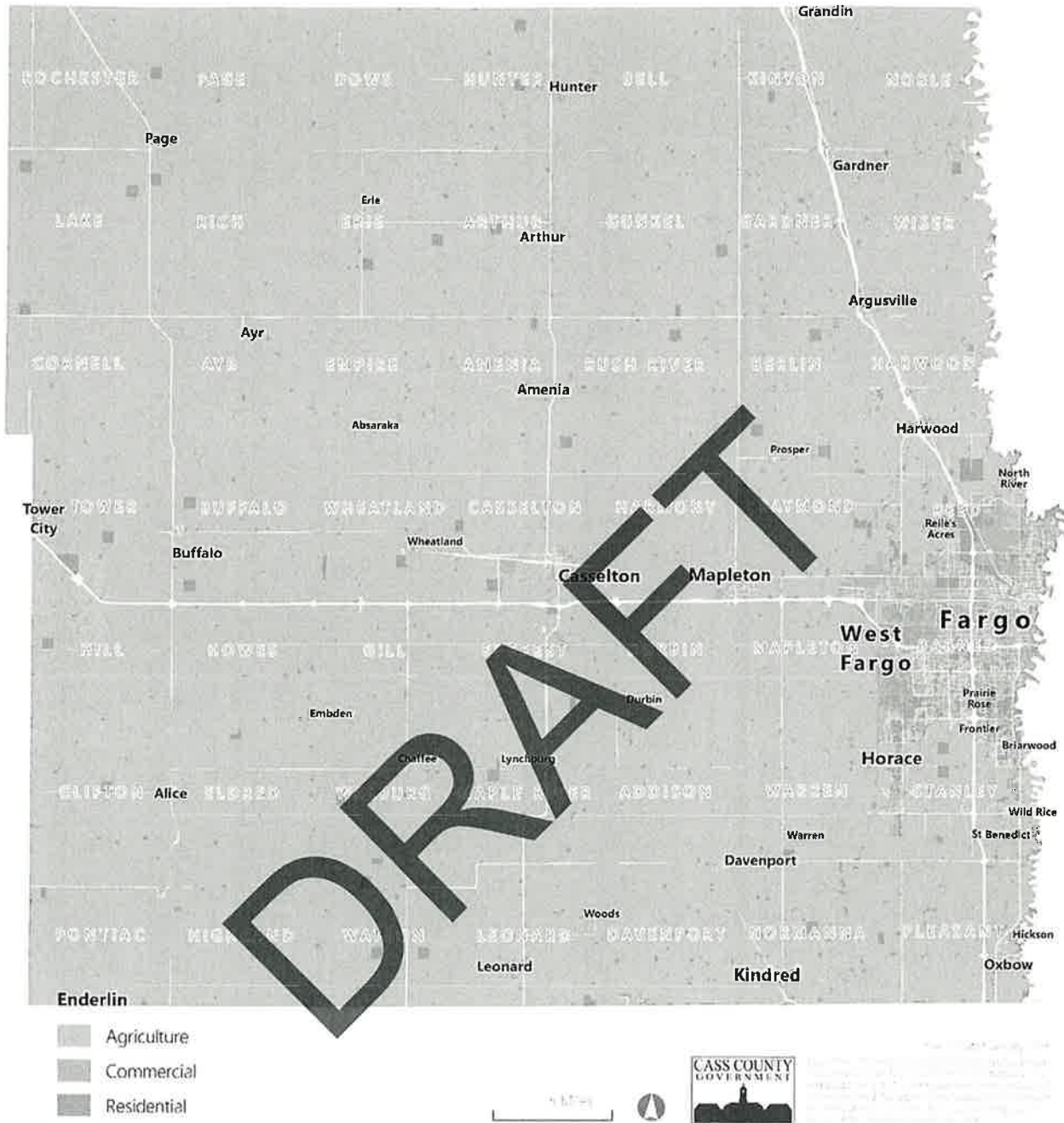
LAND USE

Cass County has an area of approximately 1,131,000 acres. The county is roughly square in shape spanning around 44 miles east to west and 42 miles north to south.

Three general land use categories are used to classify land use in the county in ascending order commercial, residential and agricultural. Figure 3.9 is a visual representation of the land use in Cass County.

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Figure 3.9 Cass County Land Use



CLIMATE

Cass County has a continent climate with four distinct seasons. The variability of the county’s weather is due it being located within the intersection of three major air masses: cold dry air coming from the polar region, warm moist air coming up from the Gulf of Mexico, and cooler moist air that originates in the Pacific. During the winter polar air mass dominates; in the summer the other two interact.

The average annual temperature is 42.3° with the coldest average temperature being in January (9°) and the warmest in July (71°). Typically, Cass County experiences 12 days above 90° and 178 days below 32°. Figures 3.10 and 3.11 shows how the temperature and precipitation varies during the year.

Figure 3.10 Average High and Low Monthly Temperatures

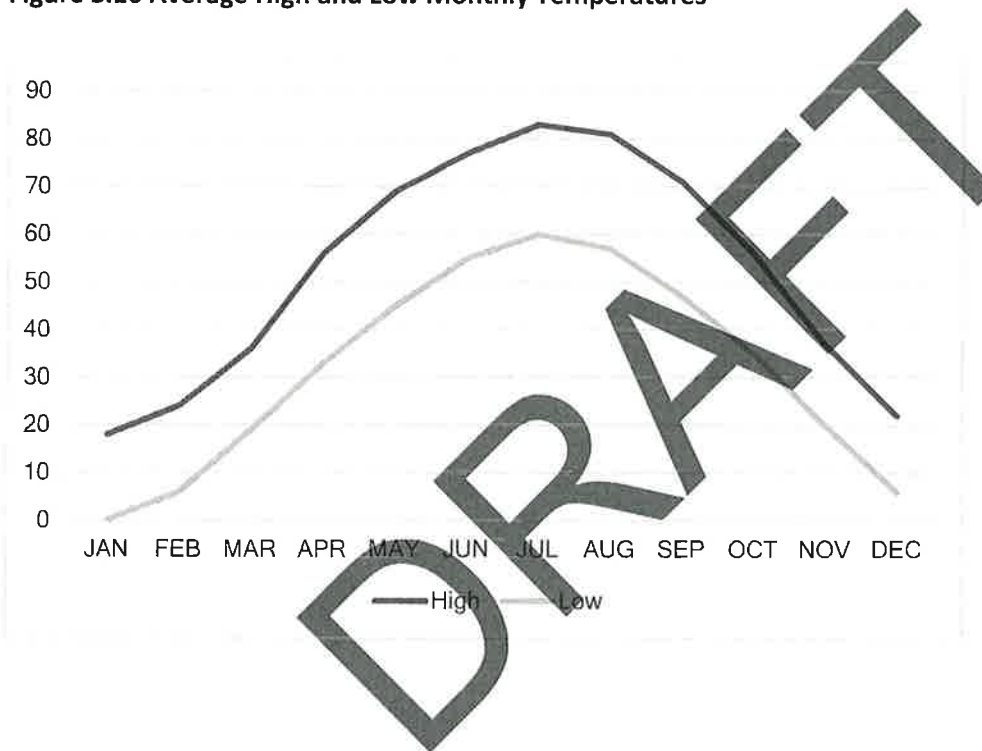
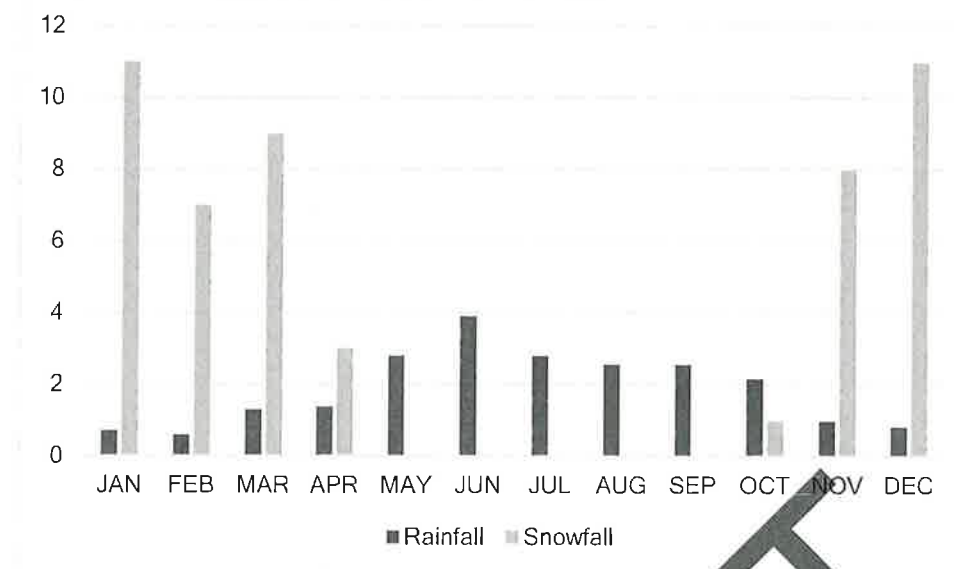


Figure 3.11 Average Monthly Precipitation



The county has been experiencing a wetter than normal period over the past decade and half, which is directly related to the incidence of severe floods. The larger-scale climatic trend is an increase in precipitation, namely in the fall (September through November). The silver lining is that the precipitation is occurring before the onset of winter, which makes predictions of spring flooding potential easier.

The Fourth National Climate Assessment issued by the federal government in late 2018 predicts that the northern Great Plains is more prone to dramatic climatic variability. Models show an increase in the number of heavy precipitation events as well as the number of days above 90°. Precipitation projections show only modest changes, but the high degree of interannual variability of swings between flooding one year and drought the next that makes planning and mitigation more difficult. In fact, the Red River watershed, river flows during the highest annual flood event have been increasing by about 10% per decade since the 1920s.

Reservoir and groundwater storage are expected to be increasingly important as buffers acting against increasing vulnerability to water shortages. This is still the case even with increases in precipitation, given that the warmer temperatures are expected to increase evaporative demand thus leading to more frequent and severe droughts.

While the longer growing season will benefit agriculture in the short term, in the longer term ever increasing temperatures will negatively affect yields. The range of invasive species will expand thus leading to more crop loss. As temperatures increase and the area becomes more arid, the type of crop grown will shift from corn and soybeans towards wheat and grass.

Human health will be adversely affected as extremely hot and cold days can be dangerous; particularly so to the elderly, those with health issues, and lower-income individuals. For example, the increase in the number and duration of heat waves will impact those prone to heat stress and other heat-related health problems (e.g. dehydration, cardiovascular strain, and respiratory problems). Climate change may also increase the length and severity of pollen season for allergy sufferers. That season has grown longer as the first frost in the fall is coming later and later.

Everything considered, the lesson for elected officials and emergency management professionals is that there is an increasing need to plan and prepare for more extreme weather, not to mention the need to prepare for a climate that will swing drastically from year to year. For example, mitigation of the impacts of flooding and of drought will need to be pursued concurrently.

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SECTION IV: HAZARD IDENTIFICATION AND RISK ASSESSMENT

The focus of this plan is solely on natural hazards. Drought, flood, severe summer storms, severe winter storms, urban fire, wildfire, and geological hazards are examined in this plan. Since dams are manmade structures but yet are closely tied to flooding hazards, dam failure is also included. Each hazard is described one-by-one with the description, location, extent, previous occurrences, and probability of future events all analyzed.

This hazard identification and risk assessment section focuses on hazards from a county-wide perspective. Unique features, risks, and vulnerabilities that exist in individual jurisdictions can be found along with each community's mitigation actions in Section VI.

Dam Failure

A dam is any artificial barrier, including appurtenant works, which impounds or diverts water. Dam failure is defined as a sudden, rapid, and uncontrolled release of impounded water that can create a potentially significant downstream hazard. The purpose of dams includes storage of water for irrigation, hydroelectric power generation, flood control, water supply, fire protection, recreation, and wildlife habitat. Should a dam fail, the consequences are determined by the potential loss of life and downstream property damage it may cause. This can be extensive if significant numbers of houses and property would become inundated. The water released from the dam could very well reach high velocities, meaning people will not have much time to get out of harm's way. The most likely reasons for dam failure in Cass County are either hydrologic inadequacy and seepage related problems.

Hydrologic Failures – Hydrologic failures are typically associated with flood events. A hydrologic failure may occur due to dam overtopping or excessive spillway erosion. A dam can be overtopped during a flood event due to insufficient reservoir storage and insufficient spillway capacity. Earthen dams are particularly susceptible to failure when overtopped since earthen material may erode relatively easily. Some dams have an earthen auxiliary spillway designed to carry excess flows during a flood event. Since these are earthen spillways, some erosion can be expected, but under certain conditions excessive erosion can occur.

Seepage Failures - All dams have some seepage occurring through the structure and foundation. Seepage, if uncontrolled, can erode material from the embankment of an earthen dam and lead to complete failure of the dam. Piping is a specific seepage problem which occurs when erosion starts at the point where seepage is exiting the downstream slope or foundation, then works backwards toward the upstream slope. Internal erosion, another type of seepage failure, occurs when water flowing through the dam causes erosion along a crack in

the embankment or foundation, or along some other discontinuity or preferential flow path in the embankment, such as along a spillway conduit. Tree roots and animal burrows can also provide paths for seepage. Seepage failures can occur during the course of normal operations but can also occur during flood conditions when reservoir levels are abnormally high.

LOCATION & VULNERABILITY ASSESSMENT

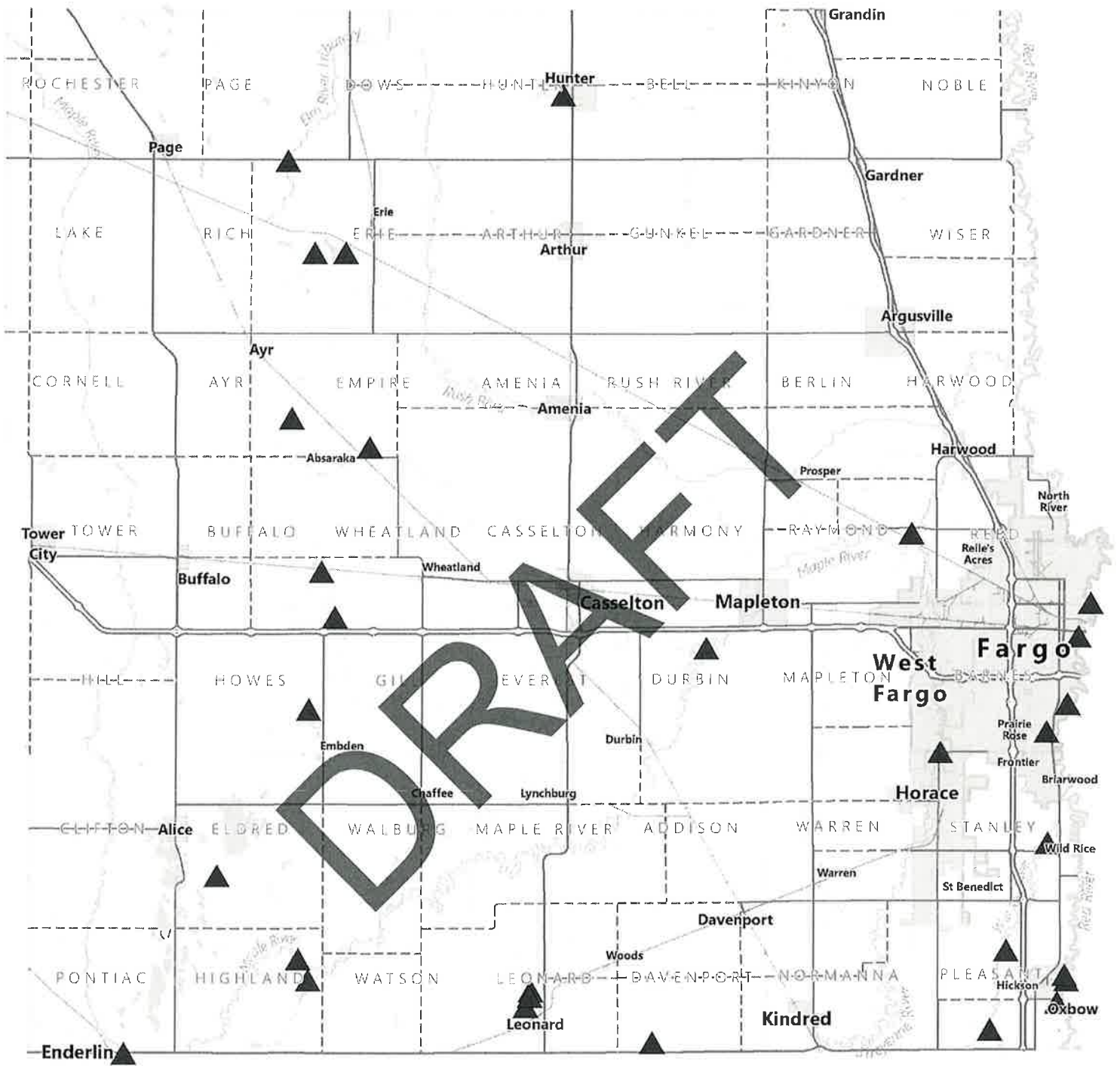
The Dam Inventory managed by the North Dakota State Water Commission includes 27 dams within the County. The majority of these dams are located in the Maple River and Red River basins. A full listing of Cass County dams follows as Table 4.1. Figure 4.1 is a map showing the dam locations.

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Purpose	Owner	Year Built	Hazard Class	Potential Impacts
er Supply	City of Fargo	1937	Low	Parkland and greenway
& Wildlife	George Leher	1995	Low	Agricultural land
r	Claudia Souba	2010	Unknown	Agricultural land
d Control	Wayne Lunder	2005	Low	Agricultural land
tion	Albert Lemke	1976	Low	Agricultural land
tion	Albert Lemke	1976	Low	Agricultural land
tion	Leonard Golf Club Inc.	1988	Low	Golf course
d Control	Cass County Joint WRD	2006	High	14 th , 16 th , 17 th , and 18 th Streets SE; 133 rd Ave SE; and BNSF rail east of Page
d Control	Maple River WRD	1985	High	Agricultural land
er Supply	SE Cass County WRD	1972	Medium	Undetermined portions of West Fargo
ation	SE Cass County WRD	1934	Low	Agricultural land
& Wildlife	Harvey Kemmer	1989	Low	Agricultural land
er Supply	City of Fargo	1929	Medium	Low head dam with minimal impact
er Supply	City of Fargo	1933	Low	Low head dam with minimal impact
r	City of Fargo	2003	Low	Low head dam with minimal impact
ation	Maple River WRD	1934	Low	Agricultural land
d Control	Maple River WRD	1961	High	I-94, RRVW Railroad, Cass Highway #5, and 36 homes.
d Control	Maple River WRD	1968	High	Cass Highway #7 and #5, RRVW Railroad, and 33 homes.
er Supply	City of Fargo	1933	Low	Low head dam with minimal impact
tock	Maple River WRD	1934	Low	Agricultural land
& Wildlife	ND Game & Fish Dept.	1908	Low	Agricultural land, BNSF Railroad
d Control	Maple River WRD	1960	High	Cass Highway #32, 10 homes, and 1 business.
tock	Donald Eckart	1978	Low	Agricultural land
& Wildlife	ND Game & Fish Dept.	1982	Low	Agricultural land
ation	Rush River WRD	1970	Medium	Cass Highway #5
d Control	North Cass WRD	1962	Medium	14 homes
er Supply	City of Hunter	1960	High	Undetermined portion of Hunter

n

Figure 4.1 Dams in Cass County



▲ Dam

5 Miles



Source: ND State Water Commission
Map updated January 2019

Disclaimer: This map is provided as a public service. While the state endeavours to make the map as accurate as possible, the state and Cass County, ND, do not warrant the accuracy of the information. No responsibility is assumed for damages or losses, whether due to the accuracy or otherwise, of the information shown on this map.



EXTENT

Dams are classified based on the potential hazard to life and property should the dam suddenly fail. The hazard rating is not an indicator of the condition of the dam or its probability of failure. The following categories are described in the North Dakota Dam Design Handbook:

<p>Low Hazard</p>	<p>These dams are located where there is little possibility of future development such as rural or agricultural areas. Failure of low hazard dams may result in damage to agricultural land, township and county roads, and non-residential farm buildings. No loss of life is expected if failure occurs.</p>
<p>Medium (Significant) Hazard</p>	<p>These dams are located in predominately rural or agricultural areas where failure may damage isolated homes, main highways, railroads, or cause interruption of minor public utilities. The potential for the loss of a few lives exists if the dam fails.</p>
<p>High Hazard</p>	<p>These are dams located upstream of developed and urban areas where failure may cause serious damage to homes, industrial and commercial buildings, and major public utilities. There is a potential for the loss of more than a few lives if the dam fails.</p>

North Dakota Century Code Section 61-03-25, which became effective in 2015, states that owners of a high-hazard or medium-hazard dam shall create and periodically test an emergency action plan that shall be implemented in the case of an emergency. The aforementioned data on the potential impacts of dam failures came from those emergency action plans submitted to the State Engineer. These plans are on file in the County's Emergency Management office.

PREVIOUS OCCURANCES

There have been no incidents of dam failure within Cass County, however due to previous events throughout the United States it remains a hazard. There have been a couple of non-failure incidents at the Swan Buffalo Detention Dam No. 12 (aka Absaraka Dam). In both springs of 2009 and 2010, the emergency spillway was damaged as a result of high water flows.

PROBABILITY OF FUTURE EVENTS

Although history would suggest a low probability of dam failures of occurring, changes in climatic conditions and the amount of precipitation, not to mention increases in flooding, makes dam failure a notable risk to areas of Cass County.

According to the ND State Water Commission, two dams are known to not meet current safety standards for spillway capacity, which relates to the risk of overtopping during an extreme precipitation event. Those are the Hunter Dam and Swan Buffalo Detention Dam No. 5 (aka Garsteig Dam). Thus far, neither dams have experienced a problem related to the spillway capacity. Two dams, the Elm River Detention Dam No. 3 and Maple River Dam T-180, were inspected and found to have some deteriorating of the principal spillway outlet pipes that may require repairs in the future.

Proper maintenance and routine inspections will keep the risk of dam failure low. Dams owned by units of government will need adequate appropriations for maintenance and enhancement projects. According to the American Society of Civil Engineers North Dakota Section, the grade assigned to the condition of dams was a "D", the lowest among all the categories of civil infrastructure examined. Across the state, 73% of the high-hazard dams have a condition assessment rating in the National Inventory of Dams. Of those, half are considered deficient and do not meet accepted safety standards in some way.

RISK CLASS

C	Low to moderate risk condition, sufficiently high to give consideration for further mitigation. Risk rating is unchanged since last plan.
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Drought

Drought is an insidious, slow onset natural hazard that is the result of severe below-average precipitation for a prolonged period of time. The impacts that occur are a result of the interplay between the natural event (i.e. precipitation deficiencies caused by climate variability) and the demand placed on water resources by people. Reduced cropland productivity, increased fire potential, reduced water source levels, damage to flora and fauna are all direct impacts of drought. This can lead to reduced agricultural sector income, unemployment due to water-demanding industrial plant closures, reduced tax revenue, and farm foreclosures due to defaulting loans.

Drought can be defined in four ways. First, meteorological drought is defined on the basis of the degree of dryness, often compared to the average amount and upon the normal seasonal wet and dry cycles for a given location. Second, agricultural drought links the meteorological conditions to the extent of impact upon agriculture. Even if precipitation is below average, existing soil moisture as well as drawn water sources – rivers and aquifers for example - can sustain plant growth for period of time. Third, hydrological drought is measured by the effect deficient precipitation has upon surface or subsurface water supplies. These effects usually lag meteorological and agricultural droughts, but nonetheless if conditions persist can easily affect water used for drinking, irrigation, industry, and recreation. Fourth, socioeconomic drought incorporates the aforementioned three but is measured by the impact those conditions have upon the ability for economic goods to be met. In extreme cases, social order can be threatened as competition over scarce water resources increases.

LOCATION

Drought can easily affect the entire planning area and all participating jurisdictions in any given year. Agriculture is most likely to be impacted first and foremost. Therefore, rural areas of the county are likely to experience the effects of drought more often. Persistent drought conditions over a longer period of time will be necessary to cause the changes to the water supply municipalities and industries depend on.

The US Drought Monitor, hosted by the National Drought Mitigation Center at the University of Nebraska, maps the extent of drought across the nation. Data are updated each Thursday. Information about ground water - including hydrographs, recent water levels and chemistry conditions - can be found at the State Water Commission's website. Daily streamflow conditions are maintained by the US Geological Survey.

EXTENT

Drought is a creeping phenomenon that is pervasive in nature. The effects of drought are slowly accumulated and tend to persist over long periods of time. Drought's effects on agriculture depend on time of year, timing of precipitation, amount of stored soil moisture, type of crop, stage of growth, and meteorological variables

such as temperature, humidity, and wind. Precipitation deficits as little as four to six inches can cause severe agricultural drought conditions.

A number of secondary hazards are generally associated with drought. Rural grassland fires increase due to dry vegetation. Reduction in vegetation will expose the soil to wind erosion. Reduced flow characteristics adversely affect chemical quality of lakes and rivers. Sediment transport regimes in streams and rivers are altered. Deterioration of water quality results in increased plants and animal mortality. Stagnant pools along rivers provide favorable habitat for insects, particularly mosquitoes. When rain does come the dry and unstable topsoil are susceptible to runoff and flooding. Fortunately, with Cass County's flat topography, the potential for landslides is minor and would affect only a few properties.

Determining whether conditions warrant drought status versus an extended dry spell can be difficult to determine. However, a typical drought in Cass County would begin with snowfall low in moisture content, lower spring precipitation accompanied by warmer than normal temperatures and windy conditions. At this point, normal spring greening does not occur, causing a shortage of natural livestock feed. Farmers' plans for spring planting would most likely change. Fire danger to grasslands begins to increase. Growth and production of cash crops and feed grains become questionable. Continued drought negatively affects farm income, ultimately affecting agriculture-related businesses. Besides crop loss, recreational opportunities are limited. Water supplies for industries such as food processing may become constrained over time, thus threatening their operations. Eventually, public drinking water supplies could be affected, resulting in a direct impact to most people. Drought can easily cause serious economic problems for the entire state.

VULNERABILITY ASSESSMENT

Agriculture, a vitally important economic sector, has the greatest vulnerability to drought. According to the 2017 Census of Agriculture, there were 784 farms in Cass County totaling 1,126,085 acres. The market value of agricultural products sold by county producers was around \$439 million. Purchasing crop insurance is a mitigation tool commonly used by farmers. However, it does not always make the farmer financially whole. The economic ripple effect will be keenly felt by many communities, particularly the rural ones that do not have as diversified of an economy.

The following are entities, listed by jurisdiction, that are economically important for their community and whose facilities are more reliant upon an abundant and steady source of water. Drought conditions will present a greater challenge for these facilities compared to other commercial businesses. These are the businesses which

were required to obtain a permit due to the amount of water needed for their operations. Irrigation permits are not included within this table.

Table 4.2 Facilities Particularly Vulnerable to Drought by Jurisdiction

City	Facilities	Type of Business	Appropriated Acre-Feet	Source	Basin
Rural Cass County	Rolling Green Family Farms	Animal Feeding Operation	80.6	Ground	Maple
Casselton	Sinner Bros & Bresnahan	Ag Processing	20	Ground	Lower Sheyenne
Fargo	Cass Clay Creameries, Inc.	Ag Processing	200	Ground	Upper Red
West Fargo	Cargill, Inc.	Ag Processing	175	Ground	Upper Red
	Central Livestock	Livestock auction	80	Ground	Lower Sheyenne

The one notable heavy user of water not in the above table is the Tharoldson Ethanol plant in Casselton. This is due to the fact that the plant purchases treated wastewater from the City of Fargo, thus negating the need to withdraw water from aquifer sources. The permit Fargo received from the State Water Commission that allowed the diverting of treated wastewater away from being discharged into the Red River towards the ethanol plant was approved with junior status. This means if a drought were to hit the region and upstream communities need the water, the state could order Fargo to stop delivering to the ethanol plant.

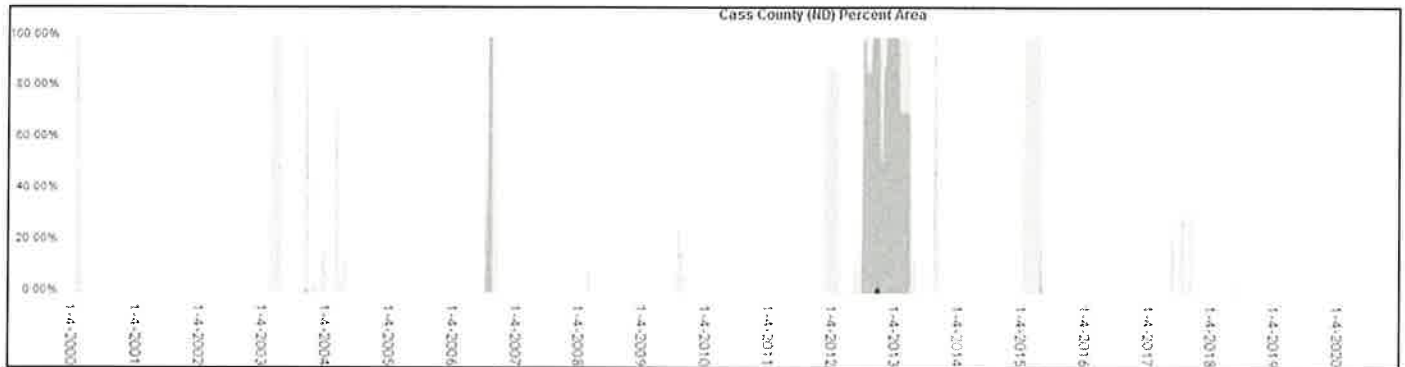
Individual vulnerability to the effects of drought differs based on one's socio-economic status. Those with lower incomes are less able to implement water conservation measures such as installing efficient faucets or appliances and switching to drought-resistant landscaping. If water utilities have to increase rates to cover higher costs for drawing and treating water, those households will feel the financial pinch first. Water utilities should pay attention to how drought response affects those households and what kinds of assistance can be offered. The income data presented in the county profile section provides a rough image of those communities that may have higher vulnerability to drought based on the ability of households to afford water.

PREVIOUS OCCURANCES

The following chart from the US Drought Monitor illustrates the percent of Cass County that exhibited drought conditions going back to beginning of 2000. The darker orange represents "severe drought" and the red represents "extreme drought". Fortunately, Cass County hasn't had a time when it reached the "exceptional drought stage". From the spring of 2012 through spring of 2013, the county was in a drought along with large portions of the nation. Agricultural losses were widespread across the Great Plains, North Dakota included. More recently, in 2017 the county experienced a drought relatively minor compared to elsewhere in the state. Although the growing season began with sufficient moisture, near-record low precipitation in the months of May through July – which is typically the wettest months of the year – led to significant impacts upon

agriculture.

Figure 4.2 Percent of County Under Drought Conditions



Source: *The National Drought Mitigation Center*

The previous severe drought lasted from 1988 to 1992. The first two years of the drought were particularly bad for the middle part of the United States with significant crop loss and wildfires. It is believed that the 1988-1992 drought was the second most severe drought in North Dakota since the 1930s, which remains the most severe drought ever. In fact, the Red River stopped flowing nearly every year of that decade. Those environmental conditions of scant rainfall, extremely hot temperatures, and the return of grasshoppers challenged many farmers' incomes. Years upon years of poor crop yields and prices caused many farmers and the towns that they supported to vanish.

The 1930s serve as a warning sign for the residents of Cass County. The water sources upon which the economy, not to mention day-to-day life, depends upon is vulnerable. If a ten year drought akin to the 1930s were to occur today, it would create a \$25 billion impact upon the economy. Implementing long-term, perennial reductions in water use will make a community more resilient and adaptable in the face of an extreme drought.

PROBABILITY OF FUTURE EVENTS

The climate has been in a wet cycle over the past decade, so drought has not been in the forefront of most peoples' minds. However, the cycle will inevitably change and the county could be facing years of deficient precipitation. Given that the population continues to grow and the demand for water will increase accordingly, attention is being given to the probability of droughts occurring in the near future. This is especially pertinent since many communities utilize surface water as their source. The volume of water in aquifers will not be a suitable one-for-one replacement in a long-term scenario. Under present climate conditions and the realistic projected growth scenarios, the water supplies – according to the City of Fargo and the Cass Rural Water Users District - are deemed adequate.

To that end, the Lake Agassiz Water Authority was created by the North Dakota Legislature in 2003 to shepherd the securing of an alternative water supply for when eastern North Dakota is gripped by a severe drought. The Red River Valley Water Supply Project will draw water from the Missouri River near Washburn and convey it via a 165 mile, 72" main transmission line to a site on the Sheyenne River north of Valley City. The project is estimated to cost approximately \$1.2 billion.

RISK CLASS

A	High risk condition, highest priority for mitigation and contingency planning. All areas in Cass County are at the same risk of this hazard. Risk rating is unchanged since last plan.
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DRAFT

Flooding

The incidence of flooding has shaped the county in many facets throughout history. While access to the Red River was the primary draw for the early settlers who found the Red River to be a valuable transportation route, the fact that towns were built upon the bottom of an ancient glacial lake bed comprised of soils heavy in clay with a miniscule change in topography has always meant floods were an ever-present concern. The periodic flooding of rivers is entirely a natural process; problems arise when alteration of the floodplain and inappropriately designed or located development puts people and property into harm's way.

In Cass County, floods occur along rivers and streams as well as areas that are poorly drained or with oversaturated soil. As the county's population continues to grow and cities expand outward, increases in impervious pavement and non-native turf sends more runoff into the rivers and streams. Building in the floodplain reduces the surface area available to absorb precipitation. Tilled crop land and installation of drain tile also contribute to the amount of water sent to rivers, exacerbating the problem even more.

The peak time for riverine flooding is during the transition from winter into spring. If the soil enters winter with high moisture content and the amount of snowfall was higher than normal, conditions are ripe for flooding to occur. Additional precipitation falls on the still-frozen ground and thus enters streams and rivers relatively quickly. Temperatures warm up in the southern part of the Red River Valley first. Water will be backed up as it runs into ice jams as the river flows north.

Several types of flooding can and do occur in Cass County: riverine flooding, levee failure, ice jam flooding and flash flooding. Ice jam flooding occurs in winter and early spring months during thawing periods.

Riverine Flooding – Riverine flooding originates from a body of water - typically a river, creek, or stream - as water levels rise to a point that exceeds its normal capacity and onto normally dry land. The riverine hazard areas may be mapped as part of the National Flood Insurance Program (NFIP). NFIP designates the level of risk by breaking the floodplain into zones. Most commonly, the areas within the 100-year floodplain are considered the greatest risk. The 100-year floodplain is that which has a 1% chance of flooding in any given year. Over a 100-year period, a flood of this magnitude or greater has a 63.5 percent chance of occurring. According to the Federal Emergency Management Agency, structures in the 100-year floodplain are nearly three times more likely to be damaged by flood than a major fire. Locations outside the 100-year floodplain may also experience flooding during greater magnitude floods, localized events, flash flooding, or along unmapped creeks, streams, and ditches. In fact, according to FEMA nearly 30% of all flood insurance claims are filed in such areas.

Most riverine floods are slowly emerging events that can be predicted according to the source of water (e.g.

snowmelt, rain, or controlled dam release). If implemented in a timely manner, protective measures can be implemented to reduce damage.

For this plan, the floodplain maps that were in effect as of writing were used. Preliminary, but unadopted, floodplain maps were released that reflected the flood mitigation projects that have occurred. A map based upon the completion of the Fargo-Moorhead Diversion has also been created. The steering committee felt it was prudent to use the existing floodplain data due to the uncertainty associated with not only what the final version of the preliminary maps will look like, but also the question of what form the Fargo-Moorhead Diversion will take if it proceeds towards starting construction. Cities were asked to consider flood mitigation actions that can be implemented independent or in addition to the Diversion.

It should be noted that floodplain management is not confined solely to the borders of Cass County. Instead, a basin-wide approach across two states and one Canadian province is needed. The Red River Basin Commission, an international coordination organization, created an overarching strategy to manage and mitigate flooding risk. Three principles were crafted to guide the mitigation strategy: first, nonstructural strategies must be implemented for existing development and future growth will be held to higher standards; second, levels of protection must be raised for an integrated approach for urban and rural areas, critical infrastructure, agricultural land, and emergency services; and finally, retention was recognized as a potential key to taking the peak off floods and a full recommendation of this method was recommended.

Levee Failure - Levees are earthen embankments constructed along rivers to contain, control, or divert the flow of water so as to provide protection from temporary flooding conditions. Floodwalls are concrete structures, often components of any overall levee system, designed for urban areas where there is insufficient room for earthen levees. Levees are usually engineered to withstand a flood with a computed risk of occurrence. When a larger flood occurs and/or levees and floodwalls and their appurtenant structures are stressed beyond their capabilities to withstand floods, levee failure can result in loss of life and injuries as well as damages to property and the environment.

Across North Dakota, there are hundreds of levees ranging in size from small agricultural levees that were constructed primarily to protect farmland from high frequency flooding to large urban levees that were constructed to protect people and property from larger, less frequent flooding events. For purposes of this plan, the levee failure hazard will refer to both overtopping or a breach of a levee or floodwall. Levees have not been regulated in terms of safety and design standards until relatively recently, meaning many older levees were constructed in a variety of ways that may not provide adequate protection. These older levees are typically those smaller ones built by a landowner for their property only. A majority of these structures have been built under

emergency conditions, with changing cross sections or elevations. Some lack the necessary free board, many are not strong enough, or have not been maintained properly. The presence of levees that are not built in accordance with current standards or are not intended to protect against larger floods such as the 100-year or 500-year flood can generate a false sense of security.

Ice Jams - Flooding can also result from ice collecting and blocking the flow of rivers. Ice breaking up into pieces, called floes, move along with the flowing rivers or streams. The ice floes can jam at curves, narrow places in the channel, structures, river or stream confluences, or where there is a sharp decrease in river bed gradient. This essentially creates a dam that produces backup and overflow. Ice jams can cause considerable increases in upstream water levels, while at the same time downstream water levels may drop. According to the US Army Corps of Engineers, the types of ice jams include freeze up jams, breakup jams, or combinations of both. When an ice jam releases, the effects downstream can be similar to that of a flash flood levee failure, or dam failure. Ice jams are more prevalent on the Red River due to its northward flow into often colder areas where melting is delayed.

Flash Flood - This type of flooding occurs when precipitation falls in such a short time that the soil cannot absorb it and drainage systems, either natural or man-made, cannot carry the volume of water away as quickly as it accumulates. A flash flood is usually caused by severe thunderstorms, heavy rains on snowpack, slow moving storms, dam, dike, or levee failures, or ice jam releases. Because of the localized nature of flash floods and variables in rainfall amounts and duration, clearly defined areas prone to flash flooding are difficult to identify. FEMA's FIRM maps do not show areas susceptible to this localized flooding. Property owners may look at these maps and erroneously think that they are not exposed to a flood risk.

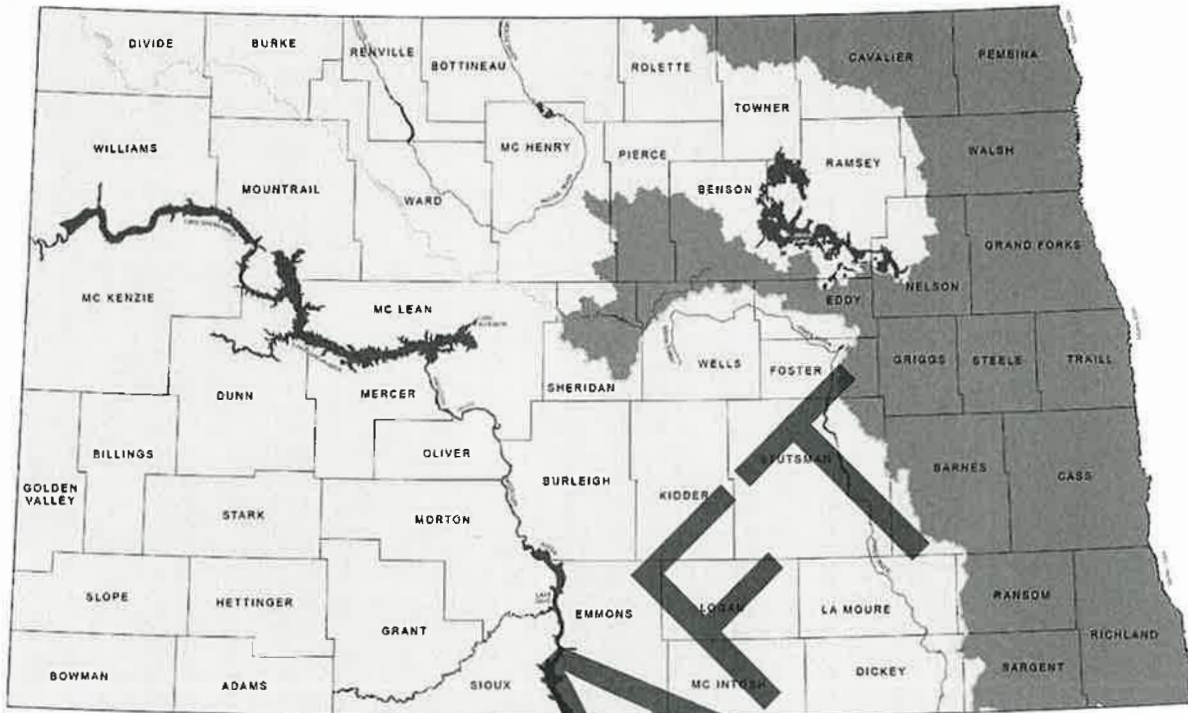
Although often more minor in the extent of impact compared to riverine flooding, flash flooding is nonetheless still a hazard to consider mitigating. The safety risks include the potential for drowning, vehicles being swept away, and damage to electrical systems. Health concerns can result from mold and mildew growth in flooded buildings, gasoline and chemicals can be spilt, and standing water is a breeding ground for mosquitos. Soils saturated for a long time can undermine building foundations. This is particularly the case with the heavily clay soils found in Cass County.

LOCATION

Cass County is located in the Red River Basin, as seen in the map in **Figure 4.3**. The Red River is the principal river of the basin. It serves as the border between North Dakota and Minnesota and winds nearly 400 river miles from its origin at the confluence of the Otter Tail and Bois de Sioux Rivers at Wahpeton, North Dakota and Breckenridge, Minnesota, north to the Canadian border. The Red River continues to flow about 155 river miles

to Lake Winnipeg in Manitoba. The valley through which the river flows is the flat lakebed of pre-historic Lake Agassiz. The very flat gradient causes widespread overland flooding when the channel capacity is exceeded.

Figure 4.3 Red River Basin



Source: ND State Water Commission

Flash flooding can occur throughout the county in poorly drained areas. However, riverine flooding is the principle concern in Cass County. Maps of the 100-year floodplains currently in effect by FEMA are presented in the Mitigation Strategy chapter along with each city.

EXTENT

Floods can be extremely disruptive to the economy and normal day-to-day life, not to mention the immense monetary losses that are possible. The extent of flood losses, expressed in dollar amounts, were estimated utilizing FEMA's Hazus software with the current floodplain maps as the data source.

In this plan, the floodplain maps that were officially adopted by FEMA as of writing were used to determine each community's exposure, vulnerabilities, and potential for damage or disruption. Unlike the previous iteration of this plan, no separate floodplain modeling was done.

The number in total losses are comprised of losses in residential assets, in commercial assets, other assets (e.g. industrial, agricultural, religious, governmental, and education), and losses associated with business disruption. The loss ratio expresses the scenario-based losses divided by the total building value for a jurisdiction. This is a gauge to determine a community's resiliency by looking at how much of the community would be affected by a

100-year (1% annual chance) flood event. Table 4.3 shows the estimated flood losses for each jurisdiction, as well as the number of critical facilities located in the floodplain. Critical facilities are those with national datasets in the Hazus inventory data, including dams, schools, police stations, hospitals, and fire stations. These are the structures that must be operational before, during, and after an emergency and which are vital to public health and safety.

Table 4.3 Flood Risk Exposure by Jurisdiction

City	Critical Facilities in Floodplain	Total Dollar Losses (in thousands)	Loss Ratio
Alice	0	0	0
Amenia	0	100	1
Argusville	2	100	0
Arthur	1	0	0
Ayr	0	0	0
Briarwood	0	1,800	14
Buffalo	1	0	0
Casselton	3	500	0
Davenport	2	200	0
Enderlin	0	50	12
Fargo	45	322,500	1
Frontier	0	200	0
Gardner	0	0	0
Grandin	1	0	0
Harwood	2	8,100	4
Horace	1	5,900	2
Hunter	0	100	0
Kindred	1	900	1
Leonard	1	0	0
Mapleton	2	1,900	2
North River	0	1,000	7
Oxbow	0	4,700	8
Page	2	0	0
Prairie Rose	0	200	1
Reile's Acres	0	100	0
Tower City	2	0	0
West Fargo	14	27,100	1

Table 4.4 below contains data - as of May 30th, 2019 - provided by FEMA which shows the jurisdictions that have flood insurance policy holders who have filed multiple claims for their property and the dollar amount paid out. Repetitive loss properties are defined as those insured buildings for which two or more claims of more than \$1,000 were paid by the NFIP within any rolling ten-year period since 1978.

Table 4.4 NFIP Repetitive Loss Properties

Jurisdiction	Total Losses	Properties	Total Payments (\$)
Argusville	2	1	8,623.42

Barnes Township	11	5	50,506.67
Briarwood	3	1	489,589.72
Cass County	2	1	155,403.73
Enderlin	2	1	19,788.89
Fargo	51	20	749,089.88
Harwood	2	1	14,217.62
Harwood Township	10	5	87,161.53
Kindred	2	1	30,359.57
Noble Township	9	3	45,299.89
Normanna Township	8	4	138,819.05
Pleasant Township	13	6	309,021.42
Raymond Township	6	3	27,555.42
Reed Township	34	15	204,314.85
Stanley Township	92	34	2,980,722.75
West Fargo	22	10	113,292.18
Wiser Township	5	2	107,895.26
<i>Total</i>	274	113	5,531,661.85

It is not surprising to find that the city of Fargo and its adjacent townships (e.g. Reed, Harwood, Barnes, Stanley, and Pleasant) have a higher number of repetitive loss properties, given that there are more structures there to begin with. In the past, it was not uncommon for people to move out to the more rural areas of the county and build a house adjacent to rivers. Although the setting was serene and the river was an aesthetic amenity for the property owner, it did put those structures in the floodplain. Over time, properties were bought out after flood events with FEMA grant dollars and more stringent development regulations were enacted.

PREVIOUS OCCURANCES

Flooding has impacted Cass County with increasing frequency and severity in recent years. Ten of the top twenty crests have occurred since 1989 with crests in 2009, 2010 and 2011 ranking first, seventh and fourth respectively of all time. Additional detail about historical crests can be found in Table 4.5.

Table 4.5 Historical Crests for Red River of the North at Fargo

Rank	Crest	Date	Rank	Crest	Date
1	40.84	3/28/2009	11	34.41	4/2/1978
2	39.72	4/18/1997	12	33.31	5/1/2013
3	39.10	4/7/1897	13	33.26	7/4/1975
4	38.81	4/9/2011	14	33.18	4/30/2013
5	37.34	4/15/1969	15	30.88	6/9/2007
6	37.13	4/5/2006	16	30.50	4/15/1965
7	36.99	3/21/2010	17	30.16	3/22/1966
8	36.69	4/14/2001	18	29.8	3/31/1907
9	35.39	4/9/1989	19	28.79	4/16/1952
10	34.93	4/19/1979	20	28.75	4/15/1996

The County has also been included in fourteen Presidential Disaster Declarations that have included flooding in the description. The Disaster Declarations follow in Table 4.6

Table 4.6 Presidential Disaster Declarations Related to Flooding since 1989, Cass County, ND

Disaster Number	Date	Description
4118	5/29/2013	Flooding
1981	5/10/2011	Flooding
1907	4/30/2010	Flooding
1829	3/24/2009	Severe storms and flooding
1713	7/17/2007	Severe storms and flooding
1645	6/5/2006	Severe storms, flooding and ground saturation
1376	5/28/2001	Floods
1334	6/27/2000	Severe Storms and Flooding
1279	6/8/1999	Severe Storms, tornadoes, flooding, ground saturation, landslides and mudslides
1220	6/15/1998	Flooding and ground saturation
1174	4/7/1997	Severe storms and flooding
1118	6/5/1996	Flooding
1001	7/26/1993	Flooding and severe Storms
825	5/8/1989	Flooding

The following information details significant flood events including, but not limited to the situations spurring the Presidential Disaster Declarations noted above.

April 10, 1996 – Moderate to severe flooding occurred on the Red River and many of its tributaries in North Dakota due to six months of consistent above average precipitation. In addition, heavy snow cover, with drifts up to 12 feet, lingered into early April. This combined with rapid snowmelt to produce a memorable spring flood, despite below average precipitation from mid-March through April. On April 19th at 7:00 pm, a 19 year-old man from Warroad, MN, drowned while attempting to cross the Robin Bridge over the Red River at Drayton, ND. The man unfortunately did not heed a road-closed sign. Residents along the Sheyenne River were hit particularly hard. At Kindred, Governor Schafer declared a flood disaster and activated the National Guard to assist in response and recovery.

May 17, 1996 – A flash flood in Fargo resulted in extensive basement flooding and roads closed. Property damage from this event is estimated at \$100,000.

April 2, 1997 – Overland flooding due to melting snow forced the towns of Casselton, Amenia, and Mapleton to

dike and sandbag. Water filled entire fields along Interstate 94 between Casselton and West Fargo, even flowing over Interstate-94 in several points. The Maple River set a new record in Mapleton on April 4th. Property damage from this event is estimated at \$10 million.

April 8, 1997 – Record levels on the Sheyenne River forced the closing of Interstate 29 near Harwood. New records were set on the Sheyenne at Kindred on the 8th, West Fargo on the 9th, and Harwood on the 10th. The 600 people of Harwood, inside a newly constructed ring dike, could only leave by boat. Property damage in Cass County from this event is estimated at \$100 million.

April 16, 1997 – The cresting Red River caused numerous problems in the Hickson and Fargo areas. Numerous homes along the river were flooded as the river rose to a new record for the century on the 18th, at 39.55 feet. Overland flooding caused problems along the south and southwest sides of Fargo, as water from the Wild Rice River broke out of its banks and headed overland toward Fargo. The water flowed over Interstate 29 near the Horace exit. A clay dike was built along the south side of the city to prevent this water from flooding thousands of homes. A section was also cut out of US Highway 81 to relieve the water level along the south side of Fargo. Property damage in Cass County from this event is estimated at \$150 million.

April 17, 1997 – The Red River broke through a dike along South Terrace Drive in Fargo, flooding 30 homes and the Oak Grove High School. Two hundred and seventy students and their teachers and parents had sandbagged at the high school for three weeks to try to save the school.

June 18, 1998 – Three to five inches of rain fell in less than three hours across portions of Fargo resulting in a flash flood. The Fargo airport reported 3.03 inches of rain. The western edge of the city was hit the hardest. The interchange between Interstate-29 and Interstate-94 was closed due to high water. Several garages in the basement levels of apartment buildings flooded. Major underpasses around the city also had to be closed. Property damage from this event is estimated at \$250,000.

June 19, 2000 – After three to five inches of rain fell on the Casselton area, flash flooding occurred. Roughly 40 percent of the homes sustained some sort of water damage, which equated to about 200 homes. Property damage from this event is estimated at \$500,000.

June 19, 2000 – A series of thunderstorms brought heavy rain to the Fargo area. A total of 6.82 inches was reported at the ASOS site at the Fargo airport. The official observer in north Moorhead reported 7.31 inches. This is believed to be a new 24-hour rainfall record for the Fargo-Moorhead area. The heavy rain halted traffic, inundated storm sewers, and knocked out electricity and phones. Approximately 20,000 customers lost power when a power station was submerged. A state of emergency was declared in the city at

3:00 am. At one point, fifty percent of the city streets were flooded. The major traffic arteries, Interstate-29 and Interstate-94, were flooded and closed for several days. The Fargodome sustained major damage when flooding along 19th Avenue North overflowed into the parking lot and into the lower level of the building. Eight to 12 feet of water, roughly 51.8 million gallons filled the bottom level. This was up to the first row of seats. There was an unconfirmed report of a man injured from a flying manhole cover that blew out from the force of the sewer line backup. Damage was particularly high at North Dakota State University, where nearly all buildings took on water. Four feet of water in the campus library damaged the periodical section. The telephone and Internet services for the campus were also disrupted. 54 percent of the residences in the city of Fargo had water damage. Property damage from this event is estimated at \$100 million.

June 19, 2000 – After the six to eight inches of rain fell across eastern Cass County; the runoff affected area rivers. The Sheyenne River broke outside its banks north of Fargo, flooding the rest stop along Interstate-29. The Red River in Fargo stood at 15.64 feet late in the day on the 19th. By early on the 21st, the river rose to 22.85 feet. Several low-lying roads along the river had to be closed. One-half of the cropland in Cass County was damaged. Crop damage from this event is estimated at \$20 million.

April 8, 2001 – The Maple River at Mapleton, ND crested at 14.77 feet. This crest was the third highest recorded with the National Weather Service.

April 10, 2001 – The Sheyenne River at Harwood, ND crested at 891.30 feet. This crest was the second highest recorded with the National Weather Service.

April 10, 2001 – The Wild Rice River at Abercrombie, ND crested at 22.13 feet. This crest was the third highest recorded with the National Weather Service.

April 11, 2001 – The Sheyenne Diversion just on the northwest corner of West Fargo, ND crested at 22.13 feet. This was the second highest crest recorded with the National Weather Service. The non-diverted stretch of the Sheyenne River at West Fargo crested at 17.79 feet on April 4, 2001.

April 30, 2001 – Flood fight costs and damages from the flooding and overflows of the rivers in Cass County was \$2.8 million. Eleven cities reported damages and flood fight costs due to flooding rivers. A lot of additional damage was averted due to extensive mitigation efforts undertaken by all of Cass County after the 1997 flooding of Cass County Rivers and just prior to the cresting of the rivers in 2001. Volunteer efforts lead by First Link in Fargo allowed for many homeowners to protect their property early enough to avert a high level of home damage. Both the City of Fargo and Cass County provided homeowners and other large residential areas with

free sand and sandbags to assist in the flood fight.

April 1, 2006 - The Red River at Fargo/Moorhead rose above flood stage around 1:00 am on March 30th and remained above flood stage until around 7:00 pm on April 19th. The river peaked at roughly 37.18 feet around 2:00 am on April 5th. Unofficially, 37.18 feet would be the fifth highest modern-day river stage recorded. The third highest modern-day river stage of 891.35 feet MSL (unofficial) was recorded on the Sheyenne River at Harwood on April 3rd and the seventh highest was recorded at the West Fargo Diversion on April 3rd. Overland flooding also occurred in addition to the river flooding, with over 40 roads around the county closed due to flooding. The body of a homeless man was also found in the Red River north of Main Avenue on April 7th. Cass County received a Presidential Disaster Declaration for damages caused by spring flooding. In summary, the total public and private flood losses experienced within the Red River of the North basin through late March and April 2006 were in excess of \$20 million.

March 28, 2009 – The Red River of the North crested at a record 40.82 feet. Cass County received a Presidential Disaster Declaration for damages caused by spring flooding including both Individual Assistance and Public Assistance. Volunteers filled and placed sandbags along most drains in Fargo to protect homes and other critical infrastructure. Miles of clay levees were built along the river and on streets near the river to protect the FM MSA. Approximately 3,500 people were evacuated. Up until that point, there was no historical instance requiring that level of shelter or mass care. Expenditures by the City of Fargo and Cass County total more than \$15 million dollars. This does not include small cities or any private damage costs. Total losses across the state from the floods of 2009 are estimated at \$623 million.

March 21, 2010 - The flood depth on the Red River at Fargo reached 36.99 feet. In the Fargo-Moorhead area alone, about 1.5 million sandbags were put in place to protect property. Several bridges over the Red River were closed, but no major damage was reported. Emergency expenditures by the City of Fargo and Cass County total more than \$7.5 million dollars. This does not include small cities or any private damage costs.

April 9, 2011 – The Red River at Fargo crested at 38.81 feet, the fourth highest crest on record. The Red River Valley began flooding on March 22nd, with Fargo reaching flood stage on March 29th. Due to a rather wet summer, Fargo experienced 150 days above flood stage this spring and finally dropped below flood stage on the 27th of August. Expenditures by the City of Fargo and Cass County total more than \$13.7 million dollars. This does not include small cities or any private damage costs.

May 1, 2013 - The Red River at Fargo crested at 33.22. Predictions were much worse than the flood experienced therefore damage was minimal. The City of Fargo and Cass County still spent more than \$3 million dollars

primarily in preparation.

April 8, 2019 – The Red River crested at 35.03 feet. Predictions for major flooding were made due to record snowfall occurring in February and two major snowstorms in March blanketing the area in wet, heavy snow. A second crest of 30.05 feet occurred two weeks later as the result of a large snowstorm event. On April 5th, the Fargo/Cass County Tactical Operations Center opened on a 24-hour basis. Officials had requested assistance from the North Dakota National Guard. Additional officers from the North Dakota Highway Patrol were requested to assist with flood-related calls. Boat teams began 12-hour shifts. The Salvation Army and American Red Cross were placed on standby. In total Cass County and the City of Fargo have spent approximately \$2 million in response and recovery costs.

PROBABILITY OF FUTURE EVENTS

Considering the extensive history of flooding in Cass County the probability of an event in any given year is fairly high. Experiencing flooding that warranted Presidential Disaster Declarations fourteen times in the past 25 years shows that a major flood has occurred more frequently than once in every two years. As expected, the more frequent events have a low impact, and the high impact events occur less frequently. However, in recent history the County has experienced several high impact events which has thrust this hazard to the forefront in terms of attention and mitigation. Numerous and substantial mitigation projects have significantly reduced the extent of potential damages going forward.

Since it is predicted with reasonable certainty that anthropogenic climate change will lead to an increase in precipitation overall as well the likelihood of high-intensity events, flooding in Cass County can become more severe. The implementation of new standards after the major floods of 2009 and 2011 by cities and the county has prevented risky patterns of development and increased the protection level for structures, particularly houses.

NFIP COMPLIANCE

Cass County recognizes the importance and value in the National Flood Insurance Program. The county, together with cities and townships that participate in NFIP, are responsible for administering regulations concerning development in the floodplains. Residents are encouraged to purchase flood insurance, whether or not they are in a mapped floodplain. In the designated high-risk flood zones, over a standard 30-year mortgage there is a 25 percent chance of flooding. The graphic below (Figure 4.7) shows the number of policies per jurisdiction that has had a claim in the past.

Figure 4.7 NFIP Policy Count by Jurisdiction as of May 30, 2019

City	Number of Policies
Amenia	0
Argusville	2
Briarwood	11
Casselton	5
Enderlin	2
Fargo	3,206
Frontier	4
Harwood	75
Horace	47
Hunter	0
Kindred	1
Mapleton	5
North River	10
Oxbow	5
Prairie Rose	9
Reiles Acres	37
West Fargo	170

Township	Number of Policies
Amenia	0
Barnes	1
Berlin	2
Davenport	1
Durbin	6
Gardner	1
Harwood	31
Mapleton	5
Noble	6
Normanna	23
Pleasant	24
Raymond	9
Reed	20
Stanley	63
Walberg	0
Warren	4
Wiser	6

The Community Rating System is a voluntary program that encourages jurisdictions to adopt and implement floodplain management activities that exceed the minimum NFIP standards. Besides the chief benefit of enhancing the community's resiliency when it comes to floods, those property owners will receive a discount on their flood insurance premiums according to the class rating the local government has achieved. CRS classes are rated from 9 to 1 with 1 being the highest level. Jurisdictions can improve their ranking via engaging in more of the any nineteen creditable activities in four categories: public information, mapping and regulations, flood damage reduction, and warning and response.

Fargo, with a Class 5 rating, is the only community in Cass County participating in the CRS. Joining the CRS may be more difficult for smaller communities to participate in, given that it requires staff time to enroll and maintain certification, not to mention the administration of any new regulations. However, many communities may already be engaging in activities that qualify for CRS points. If a city tracks its building permits in the floodplain, checks Elevation Certificates as they come in, has open space in the floodplain, and enforces at least a few regulations exceeding NFIP minimums, then CRS participation can be relatively straightforward. One action step for the county mentioned in this plan is to assist cities and townships with setting up a new or enhancing their floodplain management program, as resources will allow.

The County has implemented procedures to address specific NFIP requirements and regulations. The Cass County Flood Damage Prevention Ordinance authorizes the County Engineer to grant and deny development

permit applications in accordance with its provisions. When issuing building permits it is ensured that new development does not cause increased flooding elsewhere and new buildings will be built according to the current BFE. Within city limits or its extraterritorial boundary, the permits will come from the city according to its policy. Those townships participating in NFIP have their own regulations.

Residents are provided information on flood hazards, floodplain map data, flood insurance and proper construction measures. An interactive floodplain map can be found on the County's website.

RISK CLASS

A	Given the high probability of flooding occurring and the potential for severe damage to property, not to mention the threat to lives, flooding – in all types – will remain the highest priority for mitigation and contingency planning.
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DRAFT

Geological Hazards

Geologic hazards in Cass County usually have not been a major source of concern, but the potential exists for the occasional landslide affecting properties built too close to the river.

Landslide - A landslide is the movement of rock, soil, artificial fill, or a combination thereof on a slope in a downward or outward direction. The primary causes of landslides are slope saturation from intense rainfall, snowmelt, or changes in ground-water levels. This is seen most often on steep slopes, earthen dams, as well as the banks of lakes, reservoirs, canals, and rivers.

Riverbank slumping are a form of landslides and can occur along the rivers and streams of Cass County. The riverbank soils are inherently weak and the natural flow of the river as it meanders cause it to change move over time. Urbanization has artificially accelerated riverbank slumping by creating instability through activities such as placing homes and structures too close to the riverbank in a way that adds pressure to the bank and increases soil hydration through increased storm water runoff, use of irrigation systems that saturate the soil and decrease its strength, adding weight to the riverbank with structures, retaining walls, and riprap, and planting shallow-rooted vegetation. Attempts to mitigate riverbank slumping through bank stabilization techniques are not always successful. Rather, building structures away from the river, planting deep rooted stabilizing vegetation, and limiting the use of irrigation as well as siting septic drain fields away from the river are all practices that would limit the damage caused by this natural process.

There are four types of riverbank erosion. The first is called *rotational slump* whereby oversteepened slopes that are naturally found on the outside of meanders along the Red River have blocks of earth move downward, sometimes rapidly. Trees and landscaping will rotate with the block. The second is *flow slump* is when the earth drops vertically into the river instead of rotating downward. Trees and landscaping will still remain vertical, albeit at a lower elevation than they were previously. The third is *creep*, which is the very slow downslope movement of earth towards the river. This process is imperceptibly slow, typically only a few centimeters a year. The final is *earthflow* that is described as the downslope movement of earth that results in a lobe-shaped landform. These are very localized and occur more frequently in extremely high soil moisture conditions.

Earthquake – Earthquakes are a very minor concern given that the area sees some of the least seismic activity in the United States, due to being located in the middle of a tectonic plate. An earthquake is the sudden movement of the Earth, caused by the abrupt release of strain that has accumulated over a long time. Over millions of years, huge plates slowly move over, under, and past each other. Sometimes the movement is gradual. At other times, the plates are locked together, unable to release the accumulating energy. When the accumulated energy grows strong enough, the plates break free suddenly causing the force to be felt on the surface.

LOCATION

Cass County is not located on a major fault line or other high probability geologic hazard area thus the main geologic threat is along the waterways throughout the County. Bank slumping is a concern that has sparked set back requirements and riparian projects where possible.

EXTENT

Riverbank slumping is typically a creeping phenomenon caused by a number of natural forces. Over the years, human interaction has accelerated the problem. Impacts to the built environment are what cause this natural occurrence to be considered a hazard. Impacts to community infrastructure are the main concern to the County and local jurisdictions followed closely by effects experienced by individual residents. The extent of riverbank slumping is typically limited towards single property owners.

A geotechnical evaluation can be performed by engineering firms to study soil stability, the impacts of a landslide on the integrity of any structures nearby and the likelihood of future movement in landslide locations. This is the best way to determine potential impacts.

PREVIOUS OCCURENCES

A condo complex and approximately 12 residences have been identified in West Fargo with slumping issues along the Sheyenne River. Other areas in the County have been identified where riparian projects may be a solution or buildings may need to be acquired and removed or relocated to areas further from the unstable riverbanks. These areas are primarily along the Red River, Sheyenne River and Wild Rice River in the unincorporated County.

PROBABILITY OF FUTURE EVENTS

Flood-related property buyouts have removed many of the structures that were highly exposed. The adoption of larger setbacks should reduce the building of structures in risky locations too close to the river. To prevent future problems, outreach can be done to educate property owners that still live near the river on best practices. That will give people a better understanding of rivers and how they function, so wise management decisions with our river ecosystems can be made by landowners and government entities.

RISK CLASS

B	Moderate to high risk condition, risk addressed by mitigation and contingency planning. Geologic hazards were not identified in the previous plan. Unstable soils and slumping along rivers have been a concern in recent years in many areas throughout the County.
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Severe Summer Storms

Cass County's continental climate entails warm summers that, along with the highest precipitation of the year, can create the right conditions for which severe storms can develop. These include tornadoes, hail, downburst, straight-line winds, lightening, intense heat, and flash flooding rains.

Tornado - A tornado is a violent rotating column of air extending from a thunderstorm to the ground. A tornado starts as a cloud within the thunderstorm, composed of condensed water vapor. A tornado forms when a change in wind direction and increase in wind speed with increasing height creates a horizontal spinning effect in the lower atmosphere. This area of rotation may be two to six miles wide, extending through much of the storm. Most tornadoes form within this area of strong rotation when the rising air within the thunderstorm updraft tilts the rotating air from horizontal to vertical. Tornadoes may appear nearly transparent until the circulating wind in the funnel reaches the ground and picks up debris that eventually darkens the whole funnel. "Missiles" is the term that refers to the debris picked up by the wind that is projected with enough force to damage, and even penetrate, parts of buildings. In general, the stronger the wind the larger and heavier the missiles it can carry, thus increasing the risk of severe damage accordingly.

Tornadoes can vary greatly in shape, size, and wind speed. 88% of tornadoes have wind speeds of less than 110 miles per hour (mph) and a lifetime of less than ten minutes. These weak tornadoes result in less than five percent of tornado deaths. Tornadoes commonly move from southwest to northeast, but tornadoes have been known to move in any direction. The average forward speed is 30 mph but may vary from nearly stationary to 70 mph. Approximately 11 percent of all tornadoes have wind speeds between 110 mph and 205 mph and result in nearly 30 percent of all tornado deaths. These strong tornadoes may last 20 minutes or longer. Less than one percent of all tornadoes have resulted in 70 percent of all tornado deaths. These violent tornadoes can be over a mile wide with documented rotating winds of more than 250 mph, and they can have lifetimes exceeding one hour and stay on the ground for over 50 miles.

Hail – Hail is precipitation in the form of a lump of ice that forms during some thunderstorms. Hail occurs when strong rising currents of air within a storm, called updrafts, carry water droplets to a height where freezing occurs. The ice particles grow in size, finally becoming too heavy to be supported by the updraft and fall to the ground. Hailstones are usually round but can be conical or irregular in shape. They can range from pea size to the size of grapefruit, and large hailstones can fall at speeds faster than 100 mph. Hail tends to fall in swaths that range from a few acres to an area ten miles wide and one hundred miles long. Most hail events, however, affect only relatively small areas.

Downbursts – Downbursts form along the leading edge of a thunderstorm. Downbursts are intense

concentrations of sinking air, which can fan out upon striking the earth's surface, producing damaging horizontal winds also referred to as straight line winds. These strong winds can produce damage similar to a tornado. Downbursts are more common than tornados but are commonly mistaken for tornados. Downbursts can overturn mobile homes, tear roofs off of houses, and topple trees. People who are outdoors, such as campers, are particularly vulnerable.

Straight Line Winds – Straight-line winds are responsible for most thunderstorm wind damage. These winds occur most often at the leading edge of a storm. They do not tend to last long but can approach 100 mph. Straight-line winds can have much the same effect on structures as tornadoes; the primary difference between the two phenomena is the lack of rotation in straight-line winds. Strong sustained winds and gusts accompanying severe thunderstorms can last for several hours, causing significant damage to crops, buildings, power lines, and trees. Unlike the more localized damaged caused by tornados, straight-line winds affect a larger geographical area that makes response and restoration of services take longer.

Lightning – Lightning is produced by the interaction of charged particles that produce an intense electrical field within the cloud of a thunderstorm. The earth is normally negatively charged with respect to the atmosphere, but as a thunderstorm passes over the ground, the negative charge in the base of the cloud induces a positive charge on the ground below for several miles around the storm. The ground charge follows the storm like an electrical shadow, growing stronger as the negative cloud charge increases. Air is a poor conductor of electricity which insulates the cloud and ground charges preventing a flow of current until huge electrical charges are built up. Lightning occurs when the difference between the positive and negative charges becomes great enough to overcome the resistance of the insulating air and to force a conductive path for current to flow.

Lightning can cause fatalities, injuries, and property damage directly and indirectly. It can strike humans, animals, aircraft, buildings, equipment, and the surface of the earth causing death and destruction. Lightning can trigger other hazards including fires, power surges, interruption of communications, downed power lines, and exposure to noxious gas due to vaporization of materials. Computer equipment is especially vulnerable to damage from power surges.

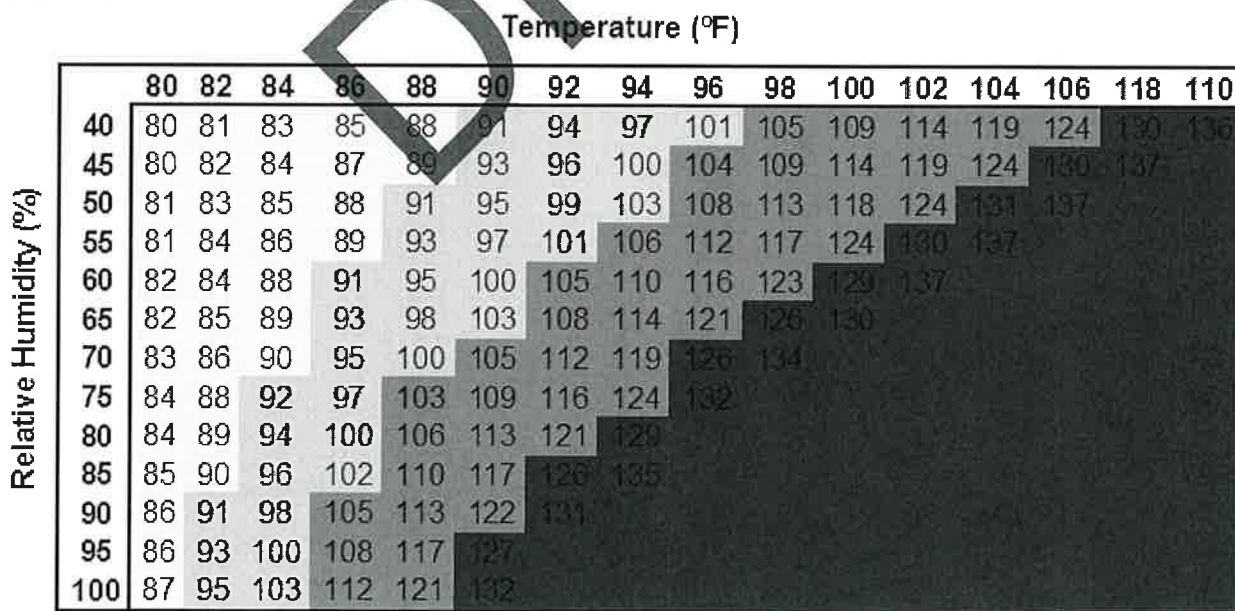
Extreme Heat – Extreme heat, commonly called "heat waves", is defined as temperatures that hover ten degrees or more above the average high temperature for the region and last for several weeks. Depending on the severity and duration, heat waves can create or provoke secondary hazards including dust storms, droughts, wildfires, water shortages, and brownouts.

The direct danger posed by heat is the effect it has upon the body's functions. Heat illnesses generally have to

do with a reduction or collapse of the body's ability to shed heat by circulatory changes and sweating or a salt imbalance caused by too much sweating. When heat gain exceeds the level of heat that the body can remove, or when the body cannot compensate for fluids and salt lost through perspiration, the temperature of the body's inner core begins to rise and heat-related illness may develop. People who are elderly, young, chronically ill, on certain medications or drugs, have respiratory problems, or are afflicted with weight or alcohol problems are particularly susceptible to heat reactions. The areas where a prominently cooler climate prevails, such as Cass County, are more vulnerable to extreme heat than areas with people who are more accustomed. One important contributor to increased morbidity are consecutive days with very warm evenings with little wind, meaning there is no relief to be found.

Figure 4.4 shows the Heat Index (HI) as a function of heat and relative humidity. The HI describes how hot the heat and humidity combination make it feel. As relative humidity increases, the air seems warmer than it actually is because the body is less able to cool itself via evaporation of perspiration. As the HI rises so do health risks. When the HI is 90°F, heat exhaustion is possible with prolonged exposure and physical activity; from 90° to 105°F, heat exhaustion is probable with the possibility of sunstroke or heat cramps with prolonged exposure and/or physical activity; from 105° to 129°F, sunstroke, heat cramps or heat exhaustion is likely, and heatstroke is possible with prolonged exposure and/or physical activity; and from 130°F and higher, heatstroke and sunstroke are extremely likely with continued exposure. Physical activity and prolonged exposure to the heat increase the risks.

Figure 4.4 Heat Index



Source: National Weather Service

Most summer storms occur during the hottest months and may be tied with other summer-specific hazards. Lightning in thunderstorms may spark wildfires. When coupled with strong winds, these fires can quickly spread. Slow-moving thunderstorms often trigger flash floods due to the extended duration of heavy rainfall. The heavy rain, hail, strong winds, and tornadoes in summer storms may become problematic for ground and air travelers. Such conditions can cause accidents and could possibly lead to a hazardous material release such as storage tanks being overturned and punctured, or hazardous lagoon walls are compromised or simply overtopped. Should winds be strong enough, they can take down power and communication infrastructure and lead to long-term outages.

LOCATION

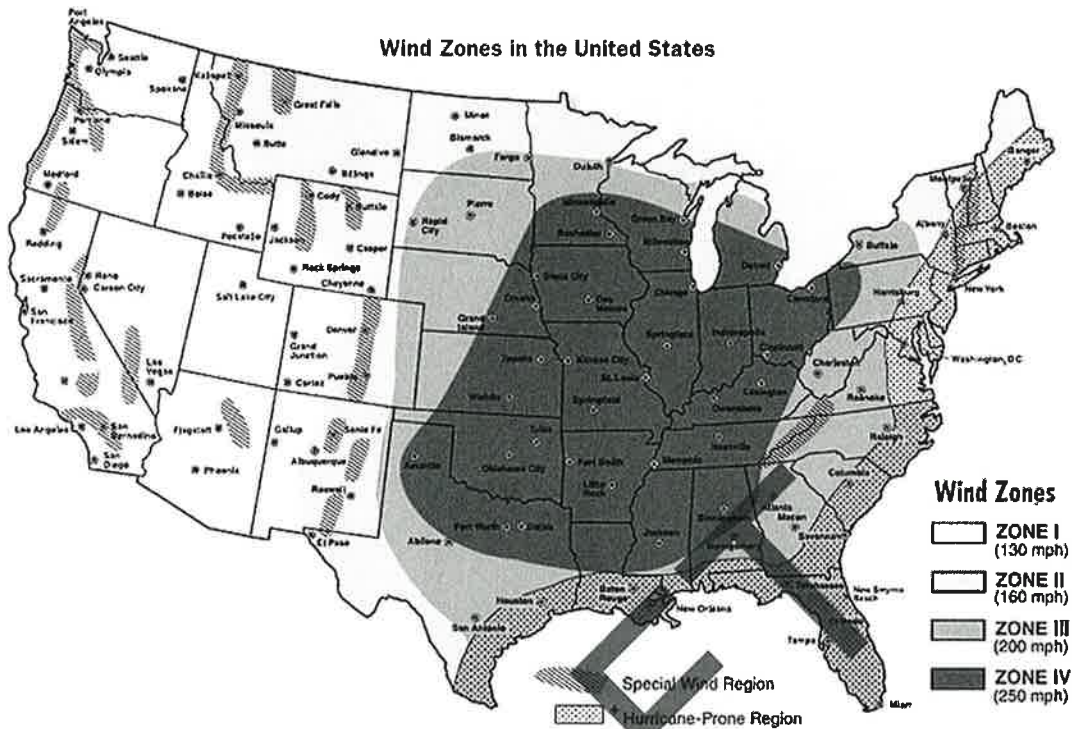
Cass County is not large enough nor has varied topographical features that will create noticeable differences in the geographical distribution of summer storm hazards. Instead, the vulnerabilities are based more on socio-demographic characteristics as well as the sturdiness of buildings.

EXTENT

Reported severe summer weather over the past several decades provide an acceptable framework for determining the magnitude of summer storms that can be expected and should be planned for. The Fourth National Climate Assessment released by the federal government in November of 2018 predicts that global average temperature increases between 2 and 4 degrees Fahrenheit will lead to increased incidence of heat waves. Summertime precipitation is not anticipated to increase under the low-emissions scenario but can be reduced 10-20% in the high-emissions scenario. The frequency of heavy precipitation events will increase about 50% by 2050 under the high-emissions scenario. The lesson is that past experiences with severe summer weather may not be an adequate predictor of future conditions. Mitigation planning should be adjusted accordingly.

As seen on the following wind zone map, Cass County is located right on the transition between zones with the northern part of the county being in Zone II (160 mph) while the southern half of the county including Fargo lies in Zone III (200mph).

4.5 U.S. Wind Zone Map



Source: FEMA

The potential for tornadoes of that wind speed magnitude highlights how important it is that residences, businesses, and public buildings have interior safe rooms or specially designed shelters. Over time, the building codes created by the International Code Council and subsequently adopted by the State and local jurisdictions have led to structures more resilient to the effects of storms. If a city, county, or township elects to adopt and enforce building codes, it must adopt (with amendments geared towards local conditions) and enforce the State Building Code which is currently comprised of the International Building Code, International Residential Code, International Mechanical Code, and International Fuel Gas Code along with some energy conservation standards.

Home Rule Cities may adopt something other than the State Building Code, but none have done so at this time. It should be noted that even if a structure is compliant with the latest building codes that does not necessarily mean the building will be functional after a natural disaster. Instead, it will only mean the building won't catastrophically fail in a manner that endangers inhabitants.

With that in mind, a method – albeit an imperfect one – to gauge the vulnerability of a community's housing stock is to look at the year houses were built according to Census data. This does not reflect any modifications that have been made to the structure that would make it more resistant, therefore it will overstate the extent of vulnerable structures. Data on commercial and other types of structures were not readily available. For each city in the mitigation actions section, the relative age of houses will be mentioned if it is observed that a higher-

than-normal vulnerability is present. It will also be observed whether there are mobile home parks that will need to be specifically addressed in terms of mitigation action steps.

Specially designated storm shelters for the public are rare throughout the county. Those with the highest potential for being caught unawares of oncoming severe weather are those using municipal parks and campgrounds with no nearby buildings that are normally accessible to the public. Several cities have identified the construction of storm shelters as action items in this plan. The following are towns whose parks do not have storm shelters: Argusville, Davenport, Enderlin, Gardner, Leonard, Tower City.

There are several campgrounds and RV parks throughout the county. People patronizing these locations are especially vulnerable to severe summer weather, particularly so as dangerous storms can develop very quickly. The ones that have adequate buildings or structures nearby are the RV park in Casselton and West Fargo at the fairgrounds. The campground at Lindenwood Park is located near the information center, which functions as a shelter. The RV park in Buffalo has no such structure that guests can turn to.

PREVIOUS OCCURANCES

According to the Hazards and Vulnerability Research Institute at the University of South Carolina there have been 287 occurrences of summer storm phenomena in Cass County since 1960, with thunderstorms being the most common. The most significant instance of severe summer weather to hit Cass County happened June 20, 1957. A F5-level tornado that touched down in north Fargo and had cut a swath of destruction across 100 blocks. 329 homes were destroyed with some of them being completely swept off their foundations. A thousand more were damaged. 12 people were killed, mostly in the working-class Golden Ridge neighborhood that contained modest but cheaply built homes. Only few had basements.

A list of notable summer storm occurrences in the past 30 years is presented below.

Table 4.8 Notable Severe Summer Storm Occurrences since 1989

Date	Description
Thunderstorms (including straight-line winds)	
6/22/1992	Severe thunderstorm producing hail and an F1 tornado caused \$6 million in damages
7/31/1993	Severe thunderstorm with heavy rains causing flash flooding causing nearly \$1 million in damages
7/1/1997	Severe thunderstorm with straight-line winds causing power lines to be blown down causing only \$200,000 in damages
8/5/1997	Thunderstorm with strong winds peaking at 41 knots according to Fargo ASOS. A building under construction was blown down causing only \$200,000 in damages

7/4/1999	Severe thunderstorm affecting a large area of Cass County produced strong winds that knocked down trees, power, lines, and buildings under construction. Significant roof damage occurred to both residential, agricultural and commercial structures. \$85 million in damages was reported.
8/8/2001	Thunderstorm producing strong winds was reported in Fargo, Alice and Grandin. The storm caused down trees, power lines, grain bins and small outbuildings causing near \$100,000 in damages.
6/24/2003	Thunderstorms with downburst winds over 100mph caused damage to power lines, poles, towers and other electrical structures. Trees down and residential damage were reported in Tower City, Buffalo, Ayr, Arthur and Gardner. The Cass County Commission declared a state of emergency, a preliminary damage assessment was done by FEMA but a Presidential Disaster Declaration was not issued. \$1.7 million in damages resulted from the storm.
7/15/2007	Severe thunderstorm that followed a 5-7 mile swath from the northwest passing through Page, Tower City, Buffalo, and Embden areas. Hail and strong winds caused damages indicative of an F1 – F2 tornado in spots. Power lines were down leaving residents without power for hours. Trees, crops, livestock and farm buildings all contributed to significant losses totaling \$3 million. A Presidential Disaster Declaration was declared.
5/20/2011	High winds hit the Fargo metropolitan area, causing trees to blow over and power to be interrupted. The monitoring station at Hector International Airport measured wind gusts up to 72 miles per hour.
6/21/2014	Numerous 3 to 5 inch diameter tree branches were broken in Argusville. Several roof panels flew off a pole shed north of town. The peak winds were estimated at 60-70 miles per hour.
6/13/2017	High wind and rains hit the metropolitan area knocking out power for 3,000 customers. Several roads were blocked by fallen trees or power pole lines.
Hail	
9/7/1997	A storm with three quarter inch hail hit several car dealerships along I-29 in Fargo, causing half million dollars in damages
7/14/1998	1.75 inch hail reported in Horace
7/17/2001	0.75 – 4.5 inch hail was reported in the areas of Lynchburg, Chaffee, Kindred, Alice and Leonard
7/10/2004	0.75 – 1.75 inch hail was reported in Kindred, Chaffee, Horace, Amenia, Casselton, and Fargo
7/12/2004	1 – 1.75 inch hail was reported in the Argusville and Harwood area
8/29/2004	1.5 – 1.75 inch hail was reported 6 miles SW of Fargo
5/20/2005	0.75 – 2.5 inch hail was reported near Casselton, Kindred, Tower City, Embden, and Chaffee
7/4/2011	A few dime to quarter sized hail fell in the Leonard area in a brief but heavy rain.
8/12/2011	A minor amount of walnut-sized hail fell west of Grandin.
8/26/2018	Early morning quarter-size to tennis ball-sized hail caused damage to a few cars and buildings in between Davenport and Oxbow. Crops were affected more so than property with several fields shredded or leveled.
Lightning	
7/1/1997	Lightning struck three workers in a sugar beet field near Davenport resulting in one fatality and two injuries.
6/1/2005	A house near Rose Creek Golf Course, Fargo was hit by lightning causing a fire.
7/6/2017	It is believed that the Casselton Heritage Center in Casselton was struck by lightning that knocked portions of its stone roof onto the ground.
Tornado	
6/5/1996	A F0 (40-72mph) tornado touched down one mile northeast of Gardner. The path was one mile long by 20 yards wide.

6/26/1997	Rapid convection produced several brief tornado touchdowns north of Fargo. A F0 (40-72mph) tornado touched down one mile west of Argusville. The width of the path was 25 yards
8/22/1999	A F0 (40-72mph) tornado briefly touched down five miles northwest of Casselton. The path was one mile long by 25 yards wide
8/28/2002	A F0 (40-72mph) tornado briefly touched down two miles north of Lynchburg. Several large tree tops were broken off. The path was less than one mile long and 25 yards wide
5/19/2004	A F1 (73-112mph) tornado briefly touched down three miles southwest of Durbin. Several trees were uprooted. The path was one mile long by 50 yards wide.
7/10/2004	A F0 (40-72mph) tornado briefly touched down two miles southeast of Horace. Numerous trees and power poles were snapped off at ground level. The path was seven miles long by 25 yards wide.
7/10/2004	A F0 (40-72mph) tornado briefly touched down two miles southwest of Wild Rice heading toward the Red River. The path was one mile long and 25 yards wide.
7/18/2004	A F0 (40-72mph) tornado briefly touched down eight miles southwest of Page. The path was less than a mile long by 25 yards wide.
7/18/2004	A F2 (113-157mph) tornado touched down two miles southeast of Tower City. The tornado knocked down high voltage power lines and three metal towers north of the City. Several farm buildings were also damaged. The path was four miles long by 100 yards wide. It caused \$500,000 in damages.
7/18/2004	A F0 (40-72mph) tornado briefly touched down seven miles southwest of Buffalo. The tornado touched down in an open field with a path one mile wide by 25 yards wide.
5/20/2005	A F1 (73-112mph) tornado touched down seven miles southwest of Casselton through a construction zone on Interstate 94 dislodging temporary lane markers, twisting highway signs and flipping over lighted arrows. Interstate travel was disrupted for over an hour. The path was nearly three miles long and 75 yards wide.
5/20/2005	A F0 (40-72mph) tornado briefly touched down three miles southwest of Kindred. A dust plume was generated as the tornado touched down in an open field. The tornado tracked into Richland County with a path one mile long and 50 yards wide.
6/29/2005	A F0 (40-72mph) tornado touched down four miles southeast Kindred. The path was one mile long by 50 yards wide
9/5/2005	A F2 (113-157mph) tornado touched down two miles north of Hickson. A farmstead was hit with a 30 foot concrete silo being lifted and blown onto a machine shed. Concrete debris demolished half of the shed, trees were snapped off and the house also sustained some exterior damage. The tornado tracked intermittently along a 4 mile path with a width of 200 yards with peak wind speeds estimated at 120mph.
9/5/2005	A F1 (73-112mph) tornado touched down one mile northeast of Wild Rice. The path was two miles long by 100 yards wide that continued from Wild Rice toward the Red River and into Clay County. Signs, fences, and many trees were destroyed with debris being thrown downwind for hundreds of feet.
5/7/2006	A F0 (40-72mph) tornado was reported five miles north east of Gardner by a motorist. The path was less than a mile long by 25 yards wide.

6/5/2006	A F0 (40-72mph) tornado was reported by a deputy two miles southwest of Leonard. The path was less than a mile long by 25 yards wide.
6/14/2008	A tornado originated in Barnes County and continued with intermittent touchdowns into Cass County for about one mile. It ceased about 2 miles north of Tower City.
7/27/2010	A F1 (73-112 mph) tornado was tracked for about 2 miles to the northwest to around 4 miles west of Kindred. Significant tree damage was done to three farmsteads
7/4/2011	A small brief tornado was reported west of Grandin and northwest of Mapleton.
6/21/2014	A small tornado was spotted via radar near Argusville
9/4/2014	A F1 (73-112 mph) tornado formed near Leonard and tracked towards Kindred.
6/8/2018	A tornado was reported as touching down near Tower City and another one touched down near Kindred. No damage was reported.

PROBABILITY OF FUTURE EVENTS

Past experience can serve as a useful start in estimating the annual probability of severe summer weather. From 1960 through 2017, there have been 284 separate instances of severe summer weather leading to an average of approximately 5 events per year. A notable statistic is that 93 tornadoes have occurred in Cass County between 1950 and 2014 which averages out to more than one tornado per year. However, the vast majority of these tornados are either F0 or F1 in strength. Hotter and wetter summers due to climate change are anticipated to exacerbate the severity as well as frequency of severe summer weather. This will tax each city's infrastructure and response systems to a greater extent than before.

RISK CLASS

B	Moderate to high risk condition, risk addressed by mitigation and contingency planning. All areas in Cass County are at the same risk of this hazard. Risk rating is unchanged since last plan.
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Severe Winter Storms

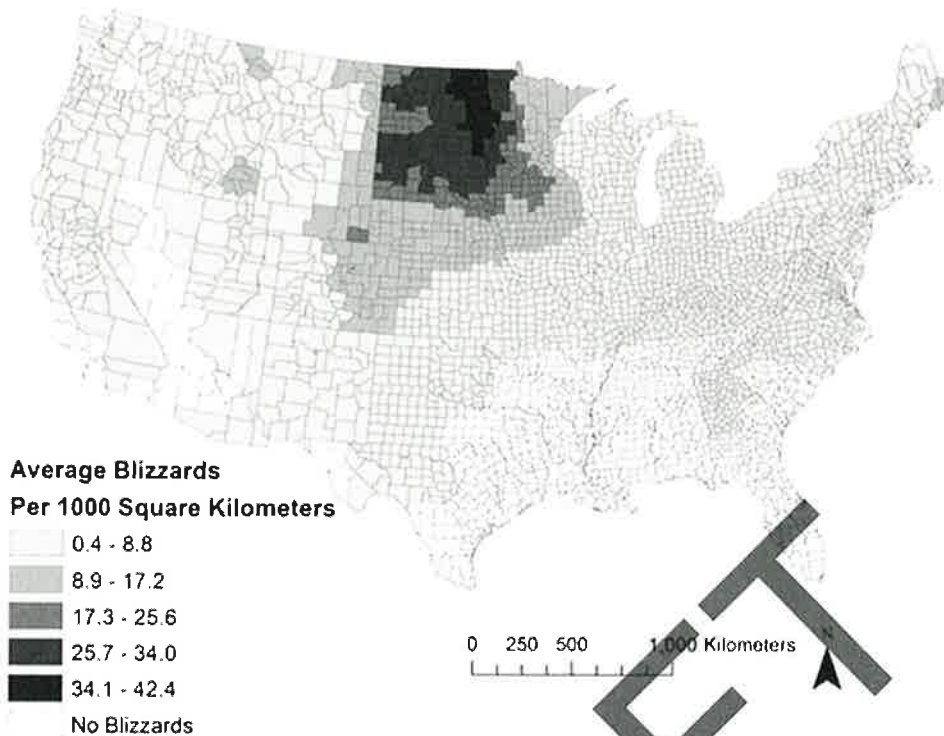
Severe winter weather includes blizzards, heavy snow, ice storms, and extreme cold. Important factors when evaluating the severity of winter storms include temperature, wind, wind chill, rain, sleet, snow, and blowing snow. The winter season can begin as early as September and last into May. The bulk of winter weather conditions occurs between mid-November until early April. Average annual snowfall in Cass County is around 42 inches and the average number of days with one inch or more snow depth is around 54 days per year. Typically winter has the windiest months whereby the winds shift to coming from the north and west, bringing in frigid arctic air.

Blizzard – Blizzards are a combination of sustained winds or frequent gusts of 35 mph or greater and visibilities of less than a quarter mile from falling or blowing snow for a duration 3 hours or more. A blizzard, by definition, does not necessarily indicate heavy amounts of snow, although they can happen together. The falling or blowing snow usually creates large drifts from the strong winds. The reduced visibilities make travel, even on foot, particularly treacherous. The strong winds may also support dangerous wind chills.

Blizzard conditions can also exist without a major storm system. Strong surface winds can blow already fallen snow, which is known as a "ground blizzard." Visibility can be reduced to near zero even though the sun is shining and the tops of power poles and trees are easily seen. These conditions are extremely variable in duration and are usually accompanied by very cold temperatures and wind chill conditions, making them as dangerous as a conventional blizzard.

Based on historical data from 1959-2014, it was found that Cass County had the highest blizzard frequency at 111 identified blizzards, tied only with Traill County to the north. It is surmised that the flat open expanse of the Red River Valley contributes to the number of blizzards that form. The map below from Coleman and Schwartz (2017) illustrates how frequent blizzards are in Cass County compared to the nation as a whole.

Figure 4.6 Average number of blizzards per 1000 km² for the 1959/60-2013/14 seasons.



Source: Coleman, Jill and Robert Schwartz. 2017. "An Updated Blizzard Climatology of the Contiguous United States (1959-2014): An Examination of Spatiotemporal Trends." *Journal of Applied Meteorology and Climatology* 56(1):173-187.

Heavy Snow - Six inches of snow or more in 12 hours or eight inches or more in 24 hours constitutes conditions that may significantly hamper travel or create hazardous conditions. The National Weather Service issues warnings for such events. Smaller amounts can also make travel hazardous, but in most cases, only results in minor inconveniences.

On rare occasions, the weight from excessive snow leads roofs to collapse. This is not normally a cause for concern given that most buildings are built to handle the snow load of a typical winter. Agricultural structures, grain bins are one example, aren't designed to the same standards as habitable buildings since the risk of injury to persons is lower.

Ice Storms – Ice storms develop when a layer of above-freezing moist air aloft collides with a below freezing pool of air at or near the earth's surface. As snow falls into the warm layer of air, it melts and then freezes on contact when hitting the ground, thus creating a slick layer of ice. Extended periods of freezing rain can lead to accumulations of ice on roadways and walkways making any form of travel difficult. Ice will also build up on trees, power lines and communication towers causing dysfunction or in some cases break degradation of the structures. Power lines, if not designed properly, are susceptible to the combination of freezing rain and the high wind that it often coincides with. The swaying of the power lines can cause them to break or touch each

other, resulting in a power outage.

Extreme Cold - Extended periods of cold temperatures frequently occur throughout the winter months in Cass County. When cold temperatures and wind combine, dangerous wind chills can develop. "Wind chill" is a measurement of how cold it feels when outside. Wind chill is based on the rate of heat loss on exposed skin from wind and cold. As the wind increases, it draws heat from the body, driving down skin temperature, and eventually, internal body temperature. Therefore, the wind makes it feel much colder than the ambient temperature. This can be quite dangerous if a person is exposed to the elements for any extended period of time. It may take only minutes before one's skin is frostbitten, not to mention the onset of hypothermia. Figure 4.7 is the National Weather Service Wind Chill Chart.

Figure 4.7 National Weather Service Wind Chill Chart



Source: National Weather Service

Extreme cold can have a disproportionate impact on households with inadequate heating or are not weatherized appropriately. Drafty windows, insufficient insulation, and old furnaces can make it more of a challenge in heating a home within a budget that a household can afford. It is not unheard of for families to use space heaters or ovens as a heating source, even though these present a greater fire risk.

Unsheltered homeless are particularly vulnerable to extreme cold. Fortunately, over the past few years shelter capacity has increased whereby an emergency sheltering program initiated by local churches in 2011 was able to be discontinued.

LOCATION

Severe winter weather events can affect the entire planning area including all participating jurisdictions. Visibility in rural open areas can quickly deteriorate as the wind picks up. The built-up nature of cities tends to mitigate the loss of visibility, but neither they are immune to poor travel conditions. It is not uncommon for “no travel advisories” to be issued and state and federal highways to be closed to vehicular travel.

EXTENT

The impact of a severe blizzard with low visibility, heavy snow, and cold temperatures can bring not only the County but the entire region to a standstill. Utility and communication systems are often interrupted. Road systems are rendered impassable which causes school, workplace, and commercial shutdowns. This in turn magnifies the emergency and medical management needs of the community. Rural residents are especially hard hit if they are not adequately stocked with food and fuel. The livestock industry can be severely impacted. The inability to get feed and water to livestock can become critical quickly. Dehydration is a major cause of livestock casualties.

Strong winds and ice or snow accumulations can take down utility lines. A long-term utility outage becomes more significant during extended cold periods as sheltering and cold weather exposure becomes more challenging. Accessing those in rural areas following heavy snow events to deliver supplies or provide emergency services can be difficult. The need for such services would be compounded by any long-term utility outage. In Cass County, winter seasons with high snowfall can easily translate to flooding problems in the spring.

The lack of adherence to warnings and safety precautions are a significant factor when considering the effects of severe winter weather making education extremely important to combat loss of property, injury or even death.

Hypothermia has often been called “the killer of the unprepared”. It is also the number one killer of outdoor sports enthusiasts. Hypothermia is a condition where the body temperature or core temperature is lowered. The blood is cooled, reducing the oxygen carried to the brain and dulling the senses. The victim becomes fatigued, delirious, and loses dexterity of arms and legs. If the body’s core temperature continues to drop to about 85 degrees Fahrenheit, the victim eventually slips into unconsciousness. If treatment is not started immediately, the end result is arrest of the circulatory and respiratory systems and death.

PREVIOUS OCCURANCES

Every year during the winter months, county residents can expect to be exposed to a variety of winter weather. Cass County has been included in sixteen winter weather declared disasters and emergencies since 1989. These events are listed in Table 4.9. Not all winter storms receive a declaration by the Governor. Nonetheless, any winter storm can easily become disruptive and dangerous. In the winter of 2018-2019, the County saw eight separate named blizzards which is the third-highest total over the past forty years. Typically, the winter season sees two to three blizzard events. Travel became difficult and city and county budgets for snow removal were much higher compared to years past.

Table 4.9 Winter Weather Declared Disasters and Emergencies

Declaration	Location	Date	Other Information	Casualties	Damages
DR 1157	All counties in North Dakota	January 2-31, 1997	Public Assistance. For blizzards and severe winter storms.	8 deaths 91 injuries	\$14,801,246* \$317,000,000 estimated total
DR 1279	34 counties and 3 tribes in Central and Eastern North Dakota	March 1 – July 19, 1999	Public Assistance and Individual Assistance. For snow and ice. Also included impacts from severe storms, tornadoes, flooding, ground saturation, landslides, and mudslides	None	\$124,391,622*~
State EO	North Dakota	2003	State Declared Winter Emergency	Unknown	Unknown
State EO 2005-09	North Dakota	10/6/2005	State declared snow emergency	Unknown	Unknown
State EO 2005-11	North Dakota	10/31/2005	State declared snow disaster	Unknown	Unknown
State EO 2005-12	North Dakota	11/29/2005	State declared snow emergency	Unknown	Unknown
DR 1621	Cass, Ransom, Richland, and Sargent Counties	November 27-30, 2005	Public Assistance for severe winter storms.	None	\$2,728,807* \$3,000,000 estimated total
State EO 2005-13	North Dakota	12/20/2005	State declared snow disaster	Unknown	Unknown

State EO 2009-02	North Dakota	1/22/2009	State declared winter storm emergency	Unknown	Unknown
State EO 2009-03	North Dakota	1/28/2009	State declare winter storm emergency	Unknown	Unknown
State EO 2009-04	North Dakota	2/20/2009	State declared winter storm emergency	Unknown	Unknown
State EO 2010-01	North Dakota	1/22/2010	State declared severe winter storm emergency	Unknown	Unknown
State EO 2010-03	North Dakota	1/27/2010	State declared winter storm emergency	Unknown	Unknown
State EO 2010-16	North Dakota	12/30/2010	State declared winter storm emergency	Unknown	Unknown
State EO 2011-04	North Dakota	3/11/2011	State declared winter storm emergency	Unknown	Unknown
State EO 2011-11	North Dakota	5/13/2011	State declared winter storm emergency	Unknown	Unknown

* Federal Share (includes Individual and Family Grant, Disaster Housing, Manufactured Housing, Crisis Counseling Immediate and Regular Programs, Disaster Unemployment Assistance, Hazard Mitigation Grant Program, Public Assistance, FEMA Mission Assignments, and SBA Home, Business, and Economic Injury Loans.;
 ~ primarily includes flood impacts.

PROBABILITY OF FUTURE EVENTS

The likelihood of the county to experience severe winter weather in some form or another is nearly guaranteed. Under the most likely predicted climate change scenarios, winter precipitation is anticipated to increase 10-30% by century's end. This will translate into more severe winter storms.

RISK CLASS

B	Moderate to high risk condition, risk addressed by mitigation and contingency planning. All areas in Cass County are at the same risk of this hazard. Risk rating is unchanged since last plan.
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Urban Fire

Fire is the result of three components: a heat source, a fuel source, and an oxygen source. When combined, these three sustaining factors will allow a fire to ignite and spread. Urban fires are considered those uncontrolled fires in a residence or building resulting from natural, human or technical causes. Within a structure, a small flame can quickly spread and become out of control and turn into a major fire within a short time. Thick black smoke will fill the structure within minutes. The heat from a fire can be 100 degrees Fahrenheit at floor level and rise to 600 degrees at eye level. In five minutes, a room can become so hot that everything in it ignites at once. This complete engulfment is called a flashover.

Urban fires and any structural collapses that result from the fire can lead to complete building losses in addition to other losses from the causative hazard (e.g. lightning, wildfire, human actions). In higher density areas, there is a greater risk of injuries, loss of life and property in addition to damage to critical infrastructure, all of which hampers a community's ability to function in the short term.

The municipal fire department is one of the oldest continuing institutions in the United States. Professional firefighters are well trained in the latest skills for preserving life and applying their abilities to limit property damages. They attempt to arrive at the fire as soon as possible, direct all people to safety, and suppress the fire as quickly as possible. The amount of lives and property saved from fire by fire departments tremendously exceeds losses which are reported in statistics.

Many rural fire protection districts across the state of North Dakota and even the country are facing the challenge of finding enough people to serve as a volunteer firefighter. The need to be on-call while at the same time balancing one's job and family duties makes it a difficult sell. The depopulation of many rural communities, not to mention the aging of the population, have decreased the pool of potential volunteers.

LOCATION

"Urban fires", for the purpose of this plan are those that happen in a built-up developed area and start due within a structure or on the premises. Therefore, these can occur in any of Cass County's towns. Older buildings that do not conform with the latest building codes are more vulnerable than newer ones. For example, multistory buildings built before the 1950s were often constructed with a framing method that didn't provide as much insulation or fire barriers between floors. Also, those structures that have been abandoned are particularly vulnerable to fire given that maintenance is not kept up and it can attract criminal activity such as arson. If a block or neighborhood has a preponderance of these buildings, extra attention should be paid to those locations.

Urban fires can occur anywhere but are generally most significant in downtown areas. To maintain continuity with the State of ND Multi-Hazard Mitigation Plan communities with 1,000 or more people will be focused on as they generally have a downtown area or other public venue that might be at increased risk of larger scale urban fires. These communities include Fargo, West Fargo, Horace, and Casselton as of the 2010 census.

One man-made source of urban fire is the derailment of trains carrying crude oil. On December 30, 2013, an oil train caught on fire after hitting a derailed grain train a mile outside of Casselton. Most of the community was evacuated as a precaution. If this accident were to occur in the city, the casualties would have been immense. This topic will be covered in more detail in the county's THIRA plan.

EXTENT

Property and the population are at risk from urban fires and structure collapses. Property losses are usually covered by insurance, but can be devastating to the building occupants, particularly for primary residences. These types of events often do not result in community-wide disasters, unless the structure is critically important to the economy. Fires and collapses that result in a significant loss of life or encompass the large part of a downtown or urban area would present the most significant challenges to local and county governments.

Depending on the time and location, a major structure fire could result in the loss of life either to firefighters or building occupants. The potential for this type of loss is difficult to determine due to advances in firefighter safety and the installation of sprinkler and alarm systems in many commercial and apartment structures. Those structures lacking smoke detectors are especially dangerous to the population. Should lives be lost, significant resources could be needed to manage the recovery.

Economic values could be lost if a business district were destroyed in an urban fire or structure collapse. For example, facilities of large employers or central community structures such as grain elevators could lead to significant community losses. Most historic buildings lack sprinkler systems and would lose much of their historical value in a fire or collapse.

Due to the housing density of Cass County being 38.49 per square mile in 2010 The State of ND Multi- Hazard Mitigation plan has given the County a vulnerability rating of high. A lack of County-wide building codes also has an effect on this determination.

Damage can vary greatly based on response time of responders. Cass County is served by twenty fire departments detailed below in Table 4.10.

Table 4.10 Cass County Fire Departments by City

City	Fire Department	City	Fire Department
Argusville	Argusville Fire Protection District	Harwood	Harwood Area Fire & Rescue
Arthur	Arthur Volunteer Fire Department	Hunter	Hunter Fire Protection District
Buffalo	Buffalo Fire Department	Kindred	Kindred Community & Rural Fire Protection
Casselton	Casselton Fire Department	Leonard	Leonard Fire Protection District
	Casselton Rural Fire Department	Mapleton	Mapleton Fire Department
Davenport	Davenport Rural Fire Protection	Page	Page Fire Department
Erie	Erie Rural Fire Department	Tower City	Tower City Rural Fire Protection District
Fargo	Fargo Fire Department	West Fargo	West Fargo Fire Department
Grandin	Grandin Fire Department		West Fargo Rural Fire Department

Source: North Dakota State Auditor's Office

PREVIOUS OCCURANCES

All jurisdictions experience fires every year. The majority of these are minor and occur at residences. Even though Fargo experiences numerous fires every year, in the past 25 years there have been only two that have extended beyond the property where the fire started. The potential for catastrophic loss is highest in those areas built before adoption of modern building and fire codes. The properties most at risk are those in close proximity to one another, those with inadequate fire separations or common basements, and large multi-family apartment buildings constructed without adequate fire protection before the adoption of the latest International Fire Code.

Notable fires in the planning region include the June 7, 1893 fire that destroyed the majority of Fargo including city hall, the business district, and homes of most of Fargo's then 6,000 residents. On Fargo's Broadway street alone, there have been six fire incidents which led to the complete destruction of the building since 1967. Most of these occurred in the 1960s and 1970s.

On October 11, 2010 nearly 150 residents were displaced after a massive fire destroyed an apartment building at Galleria Apartments on 42nd Street. Two firefighters had to be rescued when a third floor roof collapsed during a fight that lasted more than four hours. No casualties or serious injuries were reported.

On February 18, 2018 at the Magellan Midstream Partners tank farm in West Fargo, approximately 1,200 barrels of leaked diesel fuel caught fire. Area residents were told to shelter in place to avoid exposure to the smoke that was generated. Fortunately, with the design of the fuel tank and the type of fuel firefighters knew there wouldn't be a catastrophic failure of the tank or an explosion. Once equipment was set up, the fire was out in 10 minutes.

PROBABILITY OF FUTURE EVENTS

The probability of multiple urban fires in any given year is very high. There is also a high probability that at least one fire in any given year will require resources beyond the capability of the on-duty shift or first wave of

volunteer fire fighters in the rural communities. Generally, the more frequent events have a low impact such as a single vehicle or partial residence fire, while high impact events affecting a large number of people or property like an apartment building or office complex occur rarely.

RISK CLASS

D	Low risk condition with limited potential for impacts. Risk rating is unchanged since last plan.
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DRAFT

Wildfire

A wildland fire are those uncontrolled fires occurring in undeveloped and vegetated areas. These are a natural process of the ecosystem's cycle. However, if left unwatched these can grow to a point that threaten property and lives.

It is estimated that up to 90% of wildfires are caused by humans, mostly by accident. Faulty electrical lines, negligently discarded cigarettes, campfires that were not completely extinguished, and sparks generated from farm equipment or trains are a few notable examples. Environmental conditions contribute to the incidence and severity of wildfire. Warm, dry, and windy conditions can easily spread the fire. Accumulation of fuel (i.e. vegetation) over time can also lead to larger and more intense fires.

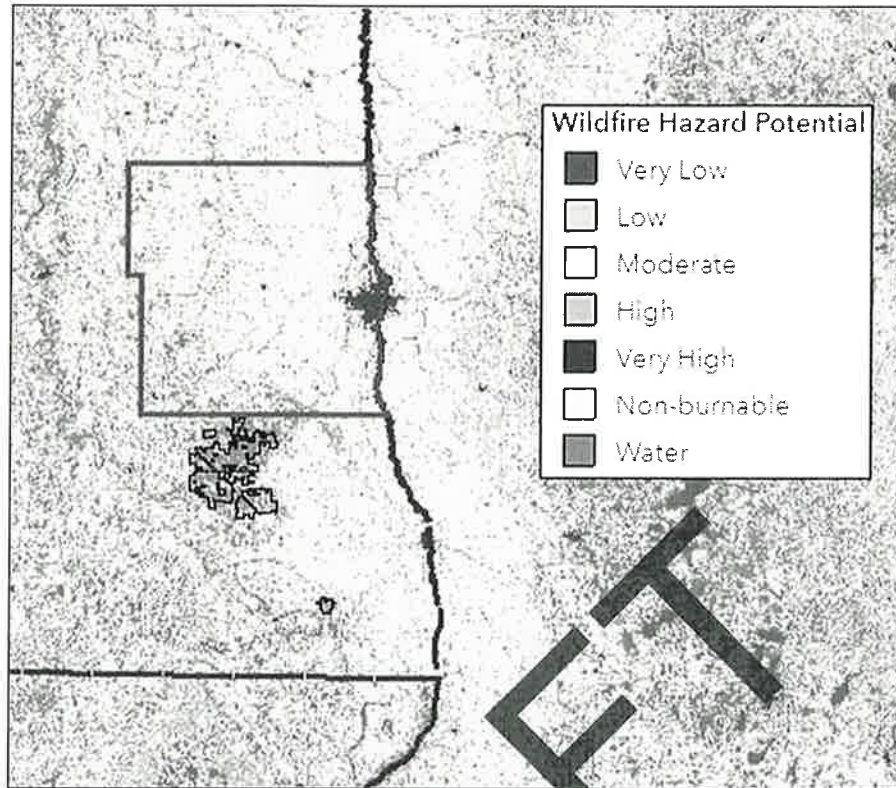
The peak fire hazard season usually begins in April after the snow melt when persistent spring winds dry out vegetation. Besides the potential for damage to crops and properties, the secondary effects of wildfires are the smoke that contains different compounds which can be harmful at high concentrations. Fine particulate matter can travel long distances and move deeply into the lungs during breathing. People more sensitive to this smoke are the elderly, young children, and those with reduced respiratory and heart function.

With the vegetative cover being burned off, erosion and soil runoff are more likely to occur. This will negatively affect surface water resources.

LOCATION

According to the US Forest Service's Fire Modeling Institute, Cass County has minimal risk of wildfire as seen in the following map:

Figure 4.8 Wildfire Hazard Potential Map (2018 Version)



The International Wildland-Urban Interface code describes vegetation consisting of herbaceous plants and round wood less than a quarter inch in diameter as being a lighter type of fuel. Grasslands would fall into this category. The majority of the grasslands in Cass County are agricultural acres temporarily enrolled in the Conservation Reserve Program. Grasslands and shrub lands should be managed in order to prevent the accumulation of vegetation that can serve as a fuel source.

Agriculture comprises the majority of Cass County's land cover. The flammability of planted acres depends upon the crop and its moisture content during the growing season. The dearth of forested acres means that the most potent of fuel is not present in large enough amounts to merit extra attention. Trees in rural areas are found mostly along the rivers and streams or are planted by farmers as a shelterbelt.

All in all, the risk of an uncontrolled wildfire in Cass County is very low.

EXTENT

Agricultural losses are typically the most significant measure of a wildland fire. Crop insurance can cover these losses, but depending on the acres burned, time of year and possibility of a fire spreading to outbuildings and equipment it could be devastating to owners. Crop cover, time of year and the terrain, including fire breaks such as streams or roads, can greatly impact the characteristics exhibited by a wildland fire.

The extent of damage caused by wildfire can be lessened through a quick and adequate response from firefighters. In the rural areas of Cass County, the fire districts typically cover a wide geographical area and are entirely staffed by volunteers. There is a delay in response resulting from the need for people to leave their homes or places of employment and travel to the fire station before putting on the requisite equipment and boarding the fire truck or tanker. A common issue found in many rural fire departments across North Dakota is the challenge in finding enough volunteers. Rural depopulation and the aging of residents has limited the pool of potential volunteers.

PREVIOUS OCCURANCES

Cass County experiences wildland fires nearly every year although there have been no wildland fires 1,000 acres or more in Cass County since 1989. According to the North Dakota Forest Service from 2009-2012 thirty wildland fires were reported in Cass County burning 269 acres. This is an average of less than nine acres per incident. A recent occurrence was on April 18, 2015 when two separate fires near Page spread from one acre to over a hundred. This was the result of an attempted controlled burn. The last time a red flag warning was in 2015.

PROBABILITY OF FUTURE EVENTS

The probability of a wildland fire occurring in Cass County in any given year can be high if conditions are dry enough. However, a fire of significant magnitude or one that would require additional resources beyond that of the first responding fire department is much less likely. Education is a key component of reducing all types of fires as most are caused by human error. Paying attention to key burn warnings can prevent unnecessary losses.

RISK CLASS

D	Low risk condition with minor impacts. Risk rating adjusted from a C in the previous plan. Although small wildland fires are likely every year the ground cover in Cass County and the rapid response time of emergency responders has only allowed for negligible damage.
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SECTION V: GOALS AND OBJECTIVES

Goal 1: Encourage County and local planning related to hazard mitigation

- Incorporate a focus on mitigation throughout community planning efforts. These efforts include strategic, comprehensive, economic development, housing, and other types of plans.
- Utilize hazard mitigation plan data when seeking grant opportunities and writing applications.
- Assist townships and small cities with adopting and enforcing land use regulation which recognizes natural hazards and mitigates the effects thereof.
- Integrate mitigation data in business continuity, school district, transportation and park district planning.

Goal 2: Enhance the public's awareness of hazards

- Continue to support and enhance current tools such as education campaigns through local media and Code Red system.
- Provide training on mitigation-related topics to all of Cass County's communities.
- Continue to update and provide public access to online interactive flood stage maps.
- Increase the use of social media as a method to educate stakeholders.
- Continue public meetings during events and add post-disaster briefings to gather feedback on performance and future mitigation actions.

Goal 3: Reduce the impact future development has upon potential losses and vulnerabilities

- Require new roads be built no more than 6" below Base Flood Elevation (BFE) and that the top of the curb be at or above BFE.
- Encourage cities to require new structures be built at or above BFE.
- Encourage a stricter building code that requires new structures be built 2 ½ feet above BFE throughout the County.
- Conduct studies to better define risk exposure.
- Continue to work with FEMA in improving floodplain maps and ensure building ordinances recognize the mapped floodplains.
- Enforce protective ordinances.
- Educate small cities and townships on building codes and the benefits of implementing such codes.
- Encourage tornado preparedness in new construction including evacuation plans and safe room identification.
- Enforce current setback requirements as they relate to drains or rivers and encourage adoption of stricter setbacks where necessary.

Goal 4: Reduce impacts of flooding and geotechnical hazards to people and property

- Continue identifying forms of permanent flood protection for areas continually affected by flooding.
- Continue creating, enforcing, and updating as needed ordinances, planning, and zoning requirements.
- Assist cities in applying for and participating in the Community Rating System program.
- Continue acquiring properties in flood prone areas.
- Identify basin-wide areas available for water storing and retention.
- Support levee accreditations and dam emergency plans.
- Coordinate planning and strategies existing and being developed by other entities and agencies.
- Distribute Cass County mitigation plans and activities to other interested parties.

Goal 5: Mitigate the effects severe summer and winter weather has upon people and property

- Continue public education and awareness for severe weather.
- Continue enhancing and promoting warning systems.
- Encourage burying power lines or trimming trees to avoid downed power lines where possible.
- Increase public awareness of safety actions during severe weather.
- Examine potential shelter challenges in cases of prolonged electrical interruptions.

Goal 6: Mitigate the effects strong winds have upon people and property

- Promote the construction of safe rooms.
- Encourage wind engineering measures and construction techniques that protect against structural failure.
- Conduct outreach activities to increase awareness of tornado risk.
- Promote the use of weather warning systems.

Goal 7: Reduce impacts of drought and wildland fires on communities

- Develop a drought emergency plan
- Continue to monitor drought conditions and water supplies
- Support the Lake Agassiz Water Authority in their efforts to provide a high-quality water supply to the Red River Valley in times of drought
- Support local fire districts and include these entities in trainings and exercises
- Educate residents on water saving techniques
- Educate farmers on soil and water conservation practices
- Encourage farmers to utilize crop insurance

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SECTION VI: MITIGATION STRATEGY

The prioritization of action items was driven by each city's leadership. They were instructed to consider the social, technical, administrative, political, legal, economic, and environmental factors that would determine the overall feasibility of alternative actions. Cities were encouraged to think through all of the hazards and potential projects that could improve the community's resiliency. In order to be as comprehensive as possible and not to circumscribe the range of actions, projects were listed even though it was readily apparent they were not feasible in the near-term. Those that were recognized as being realistic in the short-term and which would have an appreciable impact were designated as higher priorities. Flooding tended to be the hazard that had more of these higher prioritizations. This is not a surprise given the recent history of floods in Cass County.

A simple system was used to prioritize projects. Those deemed "high" address the most significant hazard(s) in a jurisdiction and therefore have the most potential for saving lives and property. It is surmised that these will score the best in the cost-benefit analysis used by FEMA for its grant programs. Projects that are in the "medium" category address the lesser probable hazards or protect fewer lives and properties. "Low" projects are those that may not have the best cost-benefit ratios or are those that deal with hazards that have a less probability of occurring or do not cause as much damage.

HAZARD PROFILE VARIABLE EXPLANATION

Each jurisdiction's hazard profile was compiled through an examination of factors known to either contribute to or reduce the risk exposure to the various natural hazards. The summary below provides an explanation on why and how those factors were evaluated.

Land Use and Growth Patterns

As a county that is growing in population, the areas in which new development is allowed to be built is a critically important set of policy decisions. Restricting building in flood-prone areas is an extremely cost-effective measure of prevention that would reduce the need for future infrastructure investments. In Cass County, building too close to streams and rivers is problematic in that riverbank erosion is not an uncommon occurrence.

The manner by which cities' footprints have expanded was looked at with the aim of determining whether adequate protections were put in place before development occurred, as well as the future plans for where development is prioritized.

If there were policy statements specific to appropriate locations, this was noted. Many of the smaller towns do not have explicit guidelines or plans for growth, since they do not experience the development pressures like the larger cities do.

Socio-Economic

The magnitude by which people are exposed to natural hazards and their ability to prepare for and respond to such events is mediated by their access to resources and their place in society. Extra attention was given to those segments of the population considered more vulnerable, where they predominately live, and what mitigation actions would fit their needs.

Households with incomes on the lower end of the spectrum are financially less capable of engaging in disaster preparedness or mitigation activities for themselves. Additionally, it is not an uncommon occurrence across the nation to find that lower-income households live the more vulnerable locations and occupy older buildings less able to withstand disasters. This is due mainly to the lower costs of living there which better fit the household's budget.

The elderly, defined hereafter as those 62 years or older, are more vulnerable due to a series of factors. First, the rate of physical impairments is higher among this segment of the population. This hinders their ability to quickly and safely evacuate by themselves during disasters. Relatedly, those who utilize a wheelchair may need a paratransit option provided for them in lieu of regular buses.

Nursing homes and related assisted living facilities typically contain those with very limited mobility and those with poor health. Evacuations of nursing homes are an extensive affair that can place undue stress upon residents. Measures to harden these facilities can ensure evacuations are less likely to be needed. This basic concept is applicable for other mobility-restricted groups such as jail inmates, children in daycares or schools, those staying at a homeless shelter, and those with complex health needs living in a group home facility.

Cass County has seen an increase in diversity over the years as immigrants have made it their home. This segment of the population can be considered more vulnerable due to an initial lack of familiarity with the hazards present in their new home as well as having a limited proficiency in English. Tailoring outreach regarding the natural hazards here to New Americans will aid in the process of acclimation.

Housing

Over the years, building codes have been amended and strengthened in response to disasters. In this plan, the age of the housing stock was used as a proxy measure to gauge how well it will withstand extreme weather events. This is not a perfect measurement, since it does not account for older houses which have been renovated and retrofitted to current standards. Nonetheless, it is a way to determine the overall condition of housing units and to pinpoint areas within cities that merit more attention.

While there may not be anything inherently more vulnerable about a multi-unit rental building vis a vis a single-unit house, the fact that the impetus for undertaking steps to mitigate the effects of disasters rests with the property owner and not the resident. Owners based elsewhere may not be as familiar with the hazards present in Cass County, thus necessitating the need to tailor outreach towards those companies. Also, renters tend to have higher rates of being cost-burdened, defined as having to spend more than a third of one's monthly income on housing costs, compared to those who own their home.

Mobile homes, also known as manufactured housing, are a vitally important source of affordable housing. However, these structures have notable shortcomings when it comes to its ability to withstand severe and damaging weather events. This is particularly the case when it comes to mobile home units constructed before the adoption of the more stringent wind design criteria, those set upon unreinforced piers, and those with inadequate anchoring. Additionally, a lack of a basement or sturdy interior room means residents cannot adequately secure shelter during tornados.

Emergency Services

Maintaining the operation of emergency response services – defined herein to include law enforcement, ambulance, and fire – is vital during disasters. For this plan, the facilities of these departments were looked at to find if there were any excessive exposure to the hazards which would impact their ability to deliver services. For example, if a fire hall was located within the mapped floodplain, this would indicate that mitigation measures should be explored and implemented. In the rural portions of the county, staffing is a common concern. The rural fire districts are typically volunteer-run and thus required a notable commitment of time from local residents.

Health Care

Health care providers, particularly their trauma units, play an important role in disaster response. Therefore, the capability of those facilities to maintain operations during major and disruptive events was looked at. Essentia Health and Sanford Health are the two major health care providers in Cass County. The Veteran's Administration hospital provides care but does not have a trauma center. Significant preparations have been made by these entities when it comes to disasters.

Those living in the outlying communities and rural areas are further away from the hospitals, all of which are located in Fargo. The time it takes for EMS services to arrive at a location and then travel to a hospital is higher for those areas. This increases the probability of an undesired outcome.

Critical Facilities and Infrastructure

Ideally publicly-owned and operated facilities and infrastructure will remain operational during disasters to the greatest extent possible. Those that are exposed to the hazards which would reduce or eliminate their functionality were closely examined for this plan. The condition of the infrastructure and its capacity to accommodate the increased demands associated with disasters was also taken into consideration.

An installed underground stormwater drainage system is found in the more developed communities, otherwise ditches and culverts are utilized. City leaders were asked if they had issues with their systems in instances of both riverine flooding and flash flooding. The adequacy of the water supply and distribution systems were assessed in order to determine a city's ability to withstand drought conditions.

In Cass County, electricity is provided by either Xcel Energy or by Cass County Electric Cooperative. Both entities were contacted for this plan. While numerous mitigation steps have been taken over the years – principally in response to flooding – additional mitigation measures underway include burying overhead powerlines, upgrading to more waterproof transformers, continuing an active tree pruning program.

Elements of the transportation network examined for this plan are municipal roads, highways, rail, and public transit. Special attention was paid to those areas where flooding would inundate roads and cut off access. The streets in small towns are often unpaved, which are more prone to being washed-out compared to paved streets.

According to the railroad companies who own and operate lines in Cass County – BNSF and Red River Valley and Western – flooding is the hazard that is of most concern given that bridges are exposed to high water levels and the debris that comes with. Hardening bridges and doing preventative debris clearance along rivers are viable actions that would reduce the risk greatly.

MATBUS is the public transit provider for Fargo and West Fargo. During emergencies the buses, including those that are handicap-accessible, can be utilized for evacuations. According to MATBUS staff, the central garage for where the fleet is stored and undergoes maintenance is well protected from flash flooding. When the Red River reaches a high stage, the buses can be moved towards higher ground.

Buildings spread throughout the county have been designated as potential emergency shelters and operation centers by the county emergency management department. These are often community centers, schools, and fire halls. It was noted whether these buildings were in good condition, were located outside of the floodplain, and had backup power generators. For those cities with designated shelters, city leaders were asked what can be done to better protect and harden said buildings. For those without identified shelters, they were asked what existing buildings could serve that purpose or if a shelter needs to be built.

Businesses and Employers

Destroyed manufacturing plants or offices, inaccessible logistical routes, and employees who must deal with the disruptions in their personal lives all contribute to an economic disruption that makes the recovery process much more challenging. In this plan, attention was paid to those economic sectors that are more vulnerable. Agriculture is a large component of Cass County's economy. Crops are damaged by hail, tornados, high wind, flooding, and drought. Agricultural producers would not be the only ones economically harmed. Businesses in rural towns that serve farmers are affected, not to mention the retail and restaurants that will see decreased patronage.

Cass County has a few large employers listed here in declining order: Sanford Health, North Dakota State University, Noridian Mutual Insurance Company, Essentia Health, US Bank, Microsoft, and Integrity Windows. When possible, these entities were contacted to find out if they experience any vulnerabilities. Not surprisingly, flooding was a top concern. There are few seemingly feasible and cost effective options to floodproof their facilities. Rather, city-wide flood protection measures are seen as more effective.

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1. Cass County

Areas outside of incorporated cities face their own vulnerabilities to hazards and capacities to prepare and respond. The following list has projects for those areas as well as projects that are best done for across county as a whole.

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

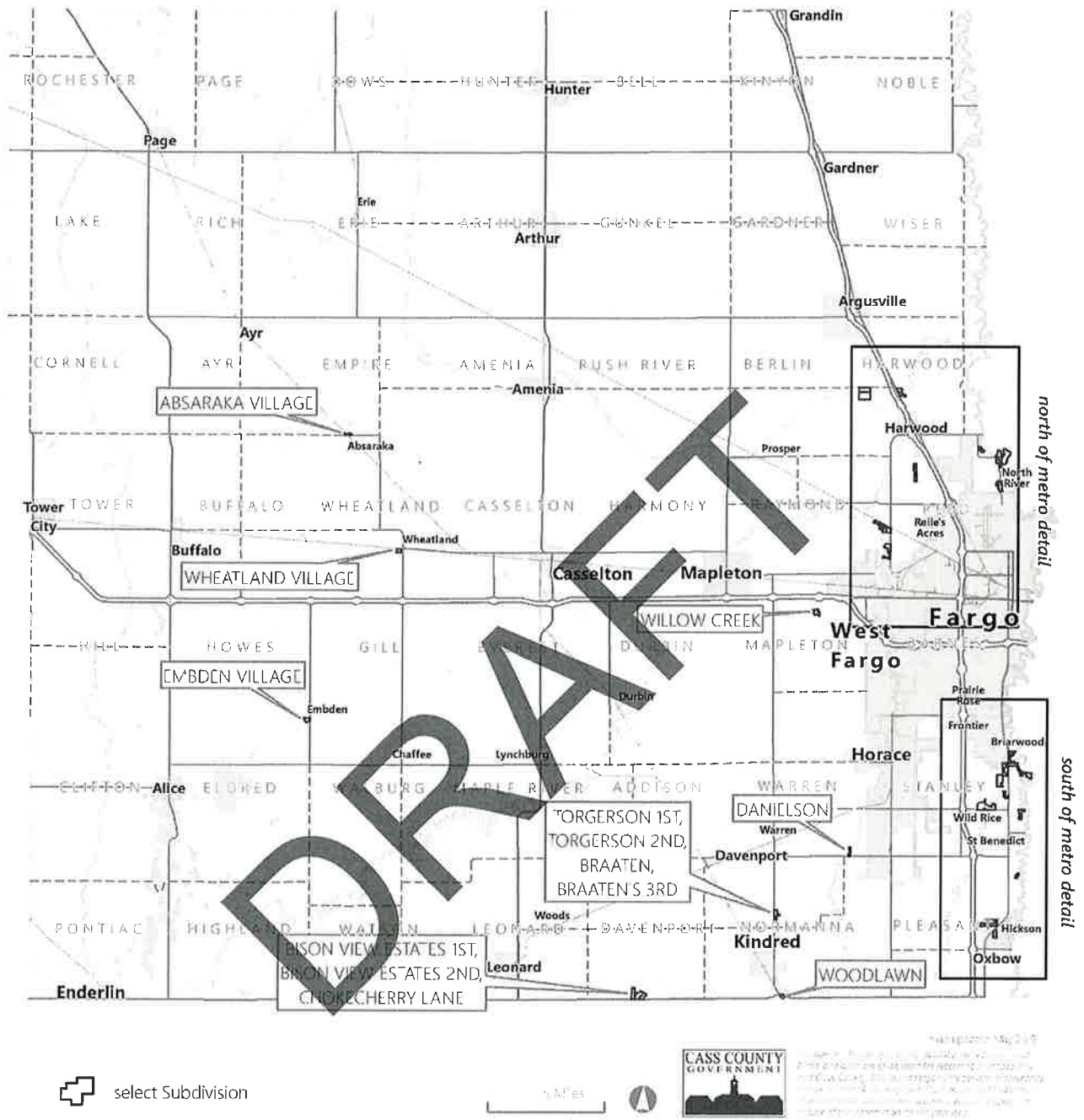
Most of unincorporated Cass County consists of farmland, although several residential subdivisions – some of which are Census Designated Places (CDP) - are found throughout. These subdivisions, their flooding vulnerabilities according to the current FEMA floodplain maps, the year they were platted, and whether they are within the extraterritorial of a city are listed below. Farmsteads and lone houses are not included in this table. Adjacent subdivisions that are clustered are listed together in the table.

Table 5.1 Vulnerabilities of Rural Residential Subdivisions

Subdivision	Year Platted	Within ET Zone	Flooding Vulnerabilities
Millers 1 st Quams 1 st and 2 nd Woodlawn Estates Sunrise Acres 1 st and 2 nd	1978 1961 and 1994 2006 1977 and 1992	✓	500-year = 36 homes 100-year = 6 homes Elevated above floodplain = 8 homes
Drewelow Elmber Bakke 1 st and 2 nd	1994 1975 and 1977	✓	500-year = 27 homes 100-year = 31 homes Elevated above floodplain = 0 homes
Danielson	2004		500-year = 0 homes 100-year = 5 homes Elevated above floodplain = 0 homes
Hickson	1883	✓	500-year = 15 homes 100-year = 1 home Elevated above floodplain = community center
Braaten 1 st and 3 rd Torgerson 1 st and 2 nd	1975 and 1996 2006 and 2008		Not located within mapped flood zone
Bison View Estates 1 st and 2 nd Choke Cherry Lane Woodlawn	2006 2007 1975		500-year = 0 homes 100-year = 25 homes Elevated above floodplain = 0 homes
Embden (CDP)			Not mapped but near dam and Buffalo Creek. Approximately 30 houses, several business, and public hall are in the community.
Butch-R-Block	1977		Within floodway = 1 home Elevated out of floodplain = 4 homes 4 homes have been removed
Siebels 1 st and 2 nd	1977		500-year = 8 homes

			100-year = 15 homes Elevated above floodplain = 0 homes
Riverview Estates 1 st and 2 nd Selbergs 1 st -4 th	1973 and 2017 1962-2009	✓	500-year = 18 homes 100-year = 12 homes Elevated above floodplain = 11 homes Within floodway = 3
Willow Creek	1975	✓	500-year = 0 homes 100-year = 10 homes
Wheatland (CDP)	1879-2004		Unmapped by FEMA
Melby's Amber Plains 2 nd Granbergs	1962 1996 1975	✓	500-year = 55 homes 100-year = 20 homes
Chrisan 1 st and 2 nd	1960 and 1969	✓	500-year = 4 homes 100-year = 1 home 16 homes have been removed
Forest River 1 st -3 rd	1960-1974	✓	500-year = 22 homes 100-year = 6 homes 30 homes have been removed
Round Hill Estates	1975	✓	500-year = 17 homes
Ulphie	1983	✓	500-year = 14 homes 100-year = 1 home
Wild Rice River Estates	1993	✓	500-year = 3 homes Elevated above floodplain = 6 homes
Kensington Place 1 st -3 rd	1993-1996	✓	500-year = 8 homes 100-year = 0 homes Elevated above floodplain = 6 homes 5 homes have been removed
Absaraka (CDP)			Not in a mapped floodplain but near dam and Swan Creek. Approximately 12 homes and grain elevator are in the community.
Stockmans Curriers	1961 1978	✓	500-year = 20 homes 100-year = 2 homes
Highland Park Harris Homestead McCormick Addition	1989 1978 2000	✓	500-year = 92 homes 100-year = 5 homes Elevated above floodplain = 2 Removed structures = 2 homes
Northwood 1 st – 3 rd	1964-1977	✓	500-year = 4 homes 100-year = 10 homes Removed structures = 6 homes
Lake Shure Estates	1975		500-year = 11 homes 100-year = 14 homes Elevated above floodplain = 2 homes
Brooktree Park (CDP)	1962 – 1966		100-year = 26 homes

Figure 5.1 Location of Rural Subdivisions



These rural areas may also be outside the audible range of warning sirens. Although it should be noted technology nowadays allows for prompt notification of incoming storms through one's cell phone. Maintaining road access is key for these subdivisions, in that they often do not have the same redundant road network which permits alternative routes to and from one's home. Finally, since they may not be connected to a city's storm drain system the potential for internal localized flooding is higher. Many of these homes are serviced by private water wells, which is the responsibility of the homeowner to maintain.

Socio-Economic

Data specific for residents living outside of incorporated jurisdictions are not available, aside from Census Designated Places. Therefore, only the four CDPs (i.e. Embden, Erie, Wheatland, and Brooktree Park) will be profiled here. The median age for these places is slightly above the County average, ranging from 35 to 45 years old. Income data and poverty rates are not available due to the small sample size. Additionally, the residents living there are principally of Caucasian origin.

Transportation

The Cass County Highway Department is responsible for the planning, design, construction, and maintenance of highways and bridges. The County's highway system consists of 634 miles of roadway covering more than 1,700 square miles as well as 541 bridges of which 240 span a distance of 20 feet in length or greater. Bridges are designed to the 5-year storm standard.

The county's road network does have vulnerabilities, primarily when it comes to flooding. Gravel roads may be washed out by heavy storms or by overland flooding. Additionally, several residential subdivisions can become blocked off by floodwaters. For example, Lake Shure Estates had this problem until a new elevated bridge structure was built. Roads close to riverbanks or streams are at risk of erosion.

Health Care

Health care facilities are found throughout the county within towns. Therefore, the vulnerabilities of those facilities are addressed in each city's section. Cass County and the City of Fargo jointly operate Fargo Cass Public Health, an entity that provides to all residents a range of services including clinical care; administer the Women, Infants and Children (WIC) nutrition program; enforcement of environmental health regulations, substance abuse prevention, response to public health emergencies, and operates a shelter and drop-in center for homeless individuals. Fargo Cass Public Health's building is located at the intersection of 25th St S and 13th Ave S in Fargo. The building is situated within the 500-year floodplain. The homeless shelter (Gladys Ray Shelter and Veteran's Drop-In Center) is too located within the 500-year floodplain.

While not a nonprofit per se but rather a governmental agency, Cass County Social Services administers child protective services, economic assistance programs, and services for adults. It is located inside the annex building attached to the Courthouse. This building is located within the 500-year floodplain.

Critical Facilities and Infrastructure

The Courthouse functions as the central administrative building for the county containing various departmental offices and the courtrooms themselves. It is an historic building that has undergone expansions and renovations over the years. It is located within the currently mapped 500-year floodplain. Other department offices are housed at the Highway Department building on Main Avenue in West Fargo. It is protected via the Sheyenne River Diversion.

The county jail is located within a primarily industrial area of Fargo. As a type of facility with a population that is extremely difficult to evacuate in emergencies, attention can be paid towards how to harden these facilities appropriately. The jail is located adjacent to a drain and is mostly within the 500-year floodplain.

In the state of North Dakota, water resource districts are the local entity that oversees field drainage, flood control structures and improvements, and manages water in rural areas. Cass County has four such organizations: Maple River, North Cass, Rush River, and Southeast Cass. The four coordinate on issues under the Cass County Joint Water Resource District. Wider river basin issues are addressed under the Red River Joint Water Resource District.

Several vulnerabilities that exacerbate flooding were identified by the water resource districts. The capacity of several drain channels has been found to be inadequate in handling the increasing amount of precipitation. Debris on rivers have built up over time causing flow to be hindered and backups to occur.

The Red River Regional Dispatch Center is the public safety and dispatch service for not only Cass County but also Clay County in Minnesota. It is located on NP Avenue in downtown Fargo and is within the 500-year floodplain.

Businesses and Employers

Outside the boundaries of local jurisdictions, the major economic activity is farming. According to the 2017 Census of Agriculture, 784 farms produced around \$440 million of agricultural products. Agriculture is highly susceptible to drought, floods, and severe weather. Crop insurance can mitigate to a point the risk inherent in operating a farm.

Natural Hazards

Dam Failure	As mentioned, there are five dams deemed high hazard. If those were to fail, structures in cities and rural areas will be inundated. Most dams are in the low hazard class, meaning only crop or pastureland would be affected.
Drought	<p>Drought can have a severe effect upon the agricultural sector by reducing yields significantly. Since Cass County historically has received enough moisture from snow melt and summer rains, only 32 farms in 2017 were irrigated. That means most farms will not be able to readily draw upon a secondary source of water in times of drought.</p> <p>The rural areas of the county are served either by Cass Rural Water Users District or by wells specific to the property. Representatives from the former indicated no major concern with the adequacy of the water supply. Drought is self-regulating to a certain extent given that most of the summer demand is through crop spraying. After years of crop failures, farmers will pull back their planting and therefore their water usage. The St. Benedict "A" well taps the West Fargo South Aquifer, the Phase 2 plant "E" well the Sheyenne Delta Aquifer, the Phase 3 plant "K" well south of Page the Page Aquifer, and approximately 30% is purchased from the City of Fargo.</p>
Flooding	Recently the county has been in a wetter-than-normal climatic cycle. Overland flooding has resulted leading to delayed planting and reduced yields.
Geological Hazards	Roads near rivers and streams may be susceptible to erosion, creating the need for relocation of those roads. The planning department enforces a setback ordinance to prevent structures from being built too closely to rivers.
Severe Summer Weather	<p>Hail, tornados, straight-line winds, and excessive rain can easily damage crops.</p> <p>Census data shows that rural areas tend to be of higher income compared with the metropolitan area proper. Concurrently, the poverty rates are lower. However, the housing stock is on the older side. These households will have the means to strengthen their homes against disaster, but the amount of work needed to do so may be higher. There are no mobile home parks in rural Cass County, although there may be individual mobile homes scattered throughout.</p> <p>Cass County leases and operates a park at Brewer Lake by Erie. Facilities include sites for campers, tents, restrooms with showers, a swimming area and boat ramp. There is no separate storm shelter built to FEMA standards at this park.</p> <p>Cass County is recognized as a StormReady community by the National Oceanic and Atmospheric Association.</p>
Severe Winter Weather	<p>High wind is common during winter, easily leading to white-out conditions that make driving dangerous.</p> <p>Census data shows that rural areas tend to be of higher income compared with the metropolitan area proper. Concurrently, the poverty rates are lower. However, the housing stock is on the older side. These households will have the means to strengthen their homes against disaster, but the amount of work needed to do so may be higher. There are no mobile home parks in</p>

	<p>rural Cass County, although there may be individual mobile homes scattered throughout.</p> <p>Cass County is recognized as a StormReady community by the National Oceanic and Atmospheric Association.</p>
Urban Fire	<p>Building fires are limited towards single structures in rural Cass County.</p>
Wildfire	<p>Grassfires are possible, particularly in times of drought when the ground vegetation is devoid of moisture. During droughts, burn bans are issued by the County. Wildfires affect namely farm fields and grasslands.</p> <p>Structures can be at risk if the wildfire spreads rapidly as the result of high winds and if responding firefighters are unable to adequately contain the growing blaze. Historically however, this has not been a significant concern recently. Prolonged and severe drought could exacerbate the conditions that contribute to wildfires.</p>

PROGRESS SINCE LAST PLAN

Discrete items identified in the 2014 plan which have been completed are the following:

- Floodwater detention improvements at the Upper Maple River Dam
- Grade raising of 57th Street South along with upgrades to culverts
- Enhancing water management in Pontiac Township

Ongoing efforts that remain relevant since the previous plan are:

- The acquisition of floodprone properties have continued, albeit at a reduced number due to immense amount of work that had already occurred by the time the last plan was adopted. In total, since the 2009 flood the City of Fargo has bought out 222 homes for a total of \$81.5 million. Cass County has spent \$51.3 million to purchase 193 homes. The Diversion Authority have acquired 73 homes worth \$55.3 million and 6 businesses for about \$15.9 million throughout the county. More buyouts, separate from the diversion project, are in the works. On those properties, local jurisdictions have been able to build out the levee and floodwall protection system, not to mention provide space for habitat and recreational opportunities.
- For the Red River Valley Water Supply Project, the state has begun appropriation money towards the design and initial construction to the tune of \$30 million for the 2017-2019 biennium. State funding is one component of this project with federal and local dollars involved as well.
- Encouraging homeowners to take protective measures that will prevent floodwater from entering their homes.
- Bridges are to be elevated and better protected against flooding when due for replacement.

MITIGATION ACTIONS

Mitigation Action	1] Assist cities and townships with the process of entering the Community Rating System program
Hazards Addressed	Flooding
Responsible Agency	Individual cities and townships, Cass County Emergency Management department, and Cass County Planning department
Cost	To be determined
Description	<p>Smaller communities may be interested in participating in the CRS for the mitigation and cost savings benefits, but they may not have the resources or knowledge on where to begin. The County can offer assistance or connect cities with entities that can.</p> <p>Ongoing administration CRS beyond that of the Class 9 or 8 level may or may not be beyond the capabilities of small jurisdictions. However, entering into the program at those levels will allow residents to take advantage of a small price discount on their flood insurance premiums. A cost-benefit analysis comparing the staff time necessary to enroll in the program with the cost savings to property owners will help jurisdictions determine whether to participate or not.</p>
Potential Funding Sources	Cass County
Timeline	Ongoing over the next five years
Priority	Medium

Mitigation Action	2] Engage in public education efforts that will increase awareness of natural hazards and the steps people can take to mitigate their own risks.
Hazards Addressed	All hazards
Responsible Agency	Cass County and each city
Cost	To be determined based on the communication methods
Description	<p>There are many actions that are solely within the purview of property owners. The best role for government in those situations would be to share ideas and provide assistance, as appropriate, to as many people as possible as they carry out their own mitigation-related efforts. Examples of relevant topics include best practices for living adjacent to the river, the necessity of purchasing flood insurance, and the benefits of retrofitting structures adequately to withstand floods and storms.</p> <p>Method of outreach can include social media, in-person workshops, or mailing literature, to name a few examples.</p>
Potential Funding Sources	County and city funding combined with any grant funding that will allow for more people to be reached.
Timeline	Ongoing over the next five years
Priority	Low

Mitigation Action	3] Build permanent levy structures
Hazards Addressed	Flooding
Responsible Agency	Cass County Government
Cost	\$10.5 million

Description	The County will continue to build out the levee system.
Potential Funding Sources	FEMA (PDM), North Dakota (State Water Commission), and County (Flood Sales Tax)
Timeline	Ongoing over next five years
Priority	High

Mitigation Action	4] Build ring dike around Sheldon Subdivision
Hazards Addressed	Flooding
Responsible Agency	Cass County Joint Water Resource District
Cost	\$650,000
Description	The Sheldon Subdivision, comprised of 14 homes, is located between West Fargo and Mapleton on County Road 10. It is at risk of overland flooding being located between the Maple River and a tributary of the Sheyenne River.
Potential Funding Sources	FEMA (PDM), North Dakota (State Water Commission), and County (Flood Sales Tax)
Timeline	Within 5 years
Priority	Medium

Mitigation Action	5] Construct dry impoundments in Minnie Lake Township and Ellsburly Township (Barnes County)
Hazards Addressed	Flooding
Responsible Agency	Cass County Joint Water Resource District
Cost	\$25,000,000
Description	<p>The first project will consist of an impoundment pond with an embankment approximately 2.3 miles long with a base varying between 20 and 185 feet wide, an 8 foot wide top, 3:1 side slopes. A dam will be embedded within the levee to release water as needed. An emergency spillway will consist of two concrete spillway drop structures. A levee will be constructed around two farmsteads. This project will reduce peak flows of a 100-year, 24-hour rain event by approximately 30% in areas downstream of impoundment.</p> <p>The second project will consist of a dry impoundment pond that will reduce peak flows of a 100-year, 24-hour rainfall event by approximately 26% in downstream areas. The embankment will be around 3.4 miles long with a base that varies between 20 and 175 feet wide, an 8 foot wide top, and 3:1 side slopes. The emergency spill way will consist of two concrete spillway drop structures. A levee approximately 1 mile northwest will be built to protect farmland from overland flooding.</p>
Potential Funding Sources	FEMA (PDM), North Dakota (State Water Commission), and County (Flood Sales Tax)
Timeline	Within 5 years
Priority	Medium

Mitigation Action	6] Increase greenway buffer zone
Hazards Addressed	Flooding, foundation failures, riverbank slumping, erosion
Responsible Agency	Cass County
Cost	\$4 million
Description	Ensuring that development remains an adequate distance from rivers and streams will remedy most of the problems associated with erosion as well as prevent building in the most flood prone areas. Over the years, properties

	that were bought out had structures removed or relocated and were turned into restored habitats and park facilities.
Potential Funding Sources	FEMA (PDM, FMA), County (Flood Sales Tax)
Timeline	Short term (1-5 years)
Priority	Low

Mitigation Action	7] Increase protective measures for residences
Hazards Addressed	Flooding, specifically sewer backup into homes
Responsible Agency	Cass County
Cost	To be determined based on outreach methods
Description	Homeowners can take preventative measures to stop stormwater and sewage from entering their basements. This can include plugging or capping all sewer openings (e.g. floor drains, toilets, sinks, showers, etc.). Homeowners need to be educated about the proper ways of preventing backups.
Potential Funding Sources	County
Timeline	Ongoing over the next five years
Priority	Medium

Mitigation Action	8] Acquisition of flood-prone properties
Hazards Addressed	Flooding
Responsible Agency	Cass County Government
Cost	\$3 million
Description	Continuing acquiring identified flood-prone properties will remove high-risk structures as well, help restore the width of the natural floodplain, as well as provide space for habitat restoration and recreational amenities.
Potential Funding Sources	FEMA (PDM, FMA, HMGP), Cass County (Flood Sales Tax)
Timeline	Short Term (1-5 years)
Priority	Medium

Mitigation Action	9] Create permanent access in and out of flood-prone areas
Hazards Addressed	Flooding
Responsible Agency	Cass County Highway Department
Cost	\$2 million
Description	Low-lying roads can easily become impassible during flood events. Access for first responders is hindered in these scenarios.
Potential Funding Sources	FEMA (PDM, FMA, HMGP) with local match including Cass County's flood sales tax.
Timeline	Short term (1-5 years)
Priority	High

Mitigation Action	10] Road washout mitigation
Hazards Addressed	Flooding
Responsible Agency	Cass County Highway Department
Cost	\$2 million
Description	Roads that are submerged by floodwaters can have the roadbed eroded away by the movement of water. Roadbeds and banks can be reinforced to

	better prepare for flood events.
Potential Funding Sources	FEMA (PDM, FMA, HMGP) with local match including Cass County's flood sales tax.
Timeline	Short term (1-5 years)
Priority	High

Mitigation Action	11] Retention projects that support the Red River Basin Commission (RRBC) goals for flood protection
Hazards Addressed	Flooding
Responsible Agency	Cass County
Cost	\$150 million
Description	<p>The RRBC has identified the following projects in its <i>Long Term Flood Solutions for the Red River Basin</i> document from September 2011:</p> <ul style="list-style-type: none"> • Complement current levee system with upstream retention. • In partnership with NRCS and water resource districts, implement demonstration projects to analyze the benefits of small distributed and culvert-sizing retention. • With cooperation of NRCS and RRRRA, draw down wetlands in the autumn to enable spring storage. • Refurbish flood control dams to provide additional storage capacity. <p>Reach out to property owners to gauge interest in storing water on their land.</p>
Potential Funding Sources	FEMA (PDM, FMA, HMGP), Cass County (Flood Sales Tax)
Timeline	Long term (beyond 5 years)
Priority	Low

Mitigation Action	12] Elevate bridge structures
Hazards Addressed	Flooding
Responsible Agency	Cass County Government
Cost	\$3 million
Description	Elevating bridges will ensure they remain open during floods for responders and emergency responders, as well as preventing the need for post-disaster reconstruction. This is an ongoing process as bridges are slated to be replaced.
Potential Funding Sources	FEMA (PDM, FMA, HMGP) with local match
Timeline	Long term (beyond 5 years)
Priority	Low

Mitigation Action	13] Protection of bridge structures
Hazards Addressed	Flooding
Responsible Agency	Cass County and Water Resource Districts
Cost	\$600,000
Description	Bridges are vulnerable to damage caused by debris and ice carried by floodwaters. This can backup, thus exacerbating flooding. Water Resource Districts receive state funding for tree log clearance measures.
Potential Funding Sources	State through legislative appropriation
Timeline	Ongoing over the next five years

Priority	Medium
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Mitigation Action	14] Secure permanent and long-term alternate source of water
Hazards Addressed	Drought
Responsible Agency	Lake Agassiz Water Authority (LAWA) and Garrison Diversion Conservancy District (GDCCD)
Cost	\$1.1 billion
Description	The selected option for constructing an alternate source of water is the Red River Valley Water Supply Project. This will entail bringing water from the Missouri River over to the Red River Valley via 165 miles of transmission lines. 20 cities and 15 rural water systems have signed on to the project, which would serve approximately 50% of the state's population in times of severe drought. It will be jointly owned by LAWA and GDCCD and operated by the latter.
Potential Funding Sources	State Water Commission appropriations
Timeline	Anticipated construction timeline of 8 to 10 years
Priority	High

Mitigation Action	15] Property acquisitions in landslide prone areas
Hazards Addressed	Geologic hazard (landslide)
Responsible Agency	Cass County
Cost	\$2 million
Description	Buying out properties along rivers and streams susceptible to erosion will reduce environmental disturbance and prevent future damage and injury.
Potential Funding Sources	FEMA (FMA and HMGP), Cass County (Flood Sales Tax)
Timeline	2-4 years
Priority	High

Mitigation Action	16] Realign roads at risk from slumping
Hazards Addressed	Geologic Hazard (landslide)
Responsible Agency	Cass County
Cost	\$4 million
Description	The realignment of roads away from rivers and streambanks will prevent damage from happening and ensure they remain operational.
Potential Funding Sources	Local funds
Timeline	2-4 years
Priority	Medium

Mitigation Action	17] Snag and clear rivers
Hazards Addressed	Flooding
Responsible Agency	Water Resource Districts
Cost	\$3,110,000
Description	Snagging and clearing rivers and their banks is a method to reduce the frequency and duration of flooding. It entails the removal of fallen trees and other organic debris in order to improve flow and prevent backup. Standing trees should remain, except those whose roots are exposed due to erosion and are at-risk of falling in.

Potential Funding Sources	State Water Commission, Cass County (flood sales tax)
Timeline	Ongoing over next 5 years
Priority	Medium

Mitigation Action	18] Drain channel improvements throughout the county
Hazards Addressed	Flooding
Responsible Agency	Water Resource Districts
Cost	\$12,150,000
Description	<p>Various drain channels can be improved to provide additional conveyance capacity and correct ongoing issues with slope stability and erosion. The projects per responsible water resource districts are as follows:</p> <p><i>Maple River Water Resource District</i></p> <ul style="list-style-type: none"> • Drain 46 • MR-2 • MR-1 • Buffalo-Lynchburg (phase 2) <p><i>North Cass Water Resource District</i></p> <ul style="list-style-type: none"> • Drain 18 (NC-1) including outlet reach improvement and bridge upgrades • Drain 26 • Drain 31 (NC-1) <p><i>Rush River Water Resource District</i></p> <ul style="list-style-type: none"> • Drains 2 and 12 (Lower Rush and Rush Rivers) <p><i>Southeast Water Resource District</i></p> <ul style="list-style-type: none"> • Drain 40 • Drain 53
Potential Funding Sources	ND State Water Commission and Cass County Flood Sales Tax
Timeline	5 years
Priority	Medium

Mitigation Action	19] Review model zoning ordinance offered to townships and adjust as needed to reflect best practices in the avoidance of development in risky areas.
Hazards Addressed	Flooding
Responsible Agency	Cass County Planner
Cost	Staff time built within annual appropriation to planning department
Description	<p>The exposure of people and structures to hazards can easily be prevented through proper land use planning and regulations. With flooding, development in the mapped floodplains can be prevented or at least held to a higher standard that incorporates measures such as floodproofing, building higher than the base flood elevation, prohibiting critical facilities from being sited in the 100 or 500 year flood plain, or allowing cluster pattern of development to permit flexibility in layout of subdivisions. Development can be limited in dam failure inundation zones.</p>

	North Dakota law allows townships to enact and administer their own zoning ordinance, unless they decide to grant that authority to the county. Township officers are volunteer positions and they may lack expertise in land use planning. Assistance to townships by reviewing their ordinances and offering suggestions can go a long way towards strengthening the regulatory regime.
Potential Funding Sources	Staff time contributed by Cass County Planner
Timeline	Short term (1-2 years)
Priority	Medium

Mitigation Action	20] Develop regulations preventing development from occurring in areas prone to soil stability problems, preventing land uses accelerating the inherent problem, and protecting the riverfront vegetation that helps stabilize soils.
Hazards Addressed	Geological hazards
Responsible Agency	Cass County planner, townships, and cities
Cost	To be determined
Description	The county, each city, and each township should examine its subdivision and/or zoning ordinances to ensure they are stringent enough to prevent or limit development in areas at risk to erosion and stability problems. Examples of options include establishing setbacks, requiring soil studies for intensive uses, or requiring vegetated buffers.
Potential Funding Sources	Can be completed within budgeted staff time
Timeline	Short term (1-2 years)
Priority	Low

Mitigation Action	21] Consider the cost and benefits of the County participating in the National Fire Protection Association's Firewise USA program.
Hazards Addressed	Wildfire
Responsible Agency	Cass Fargo Emergency Management as lead agency with assistance from fire departments and the North Dakota Forest Service
Cost	Minimal expenditures and staff time
Description	This program is an effort to reduce the damage caused by wildfires through the completion of a dedicated risk assessment by the state's forestry service and local fire departments. A local committee will then prepare and implement a plan that relies heavily upon property owners voluntarily implementing risk reduction actions. These can include the choosing of appropriate landscaping methods, thinning overgrown vegetation, creating spatial barriers, and selecting ignition-resistance building materials. An annual review by the committee will ensure continued improvement and participation in the program.
Potential Funding Sources	Can be completed within budgeted staff time
Timeline	Short term (1-2 years)
Priority	Low

Mitigation Action	22] Conduct repairs to the principal spillways at the Elm River and Maple River dams and upgrade spillway capacity at Swan Buffalo Detention Dam.
Hazards Addressed	Dam failure

Responsible Agency	North Cass Water Resource District and Cass County Joint Water Resource District
Cost	To be determined
Description	The spillway outlet pipes at the first two dams have deteriorated and will need repairs in the future. The spillway capacity at the Swan Buffalo Detention Dam's spillway capacity met the standards at the time of construction. However, upgrading it to meet modern standards will ensure it can function during severe precipitation events that are more common nowadays.
Potential Funding Sources	North Dakota State Water Commission with local funding match
Timeline	3-5 years
Priority	Low

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2. Alice

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Alice is a very small community consisting of single-family homes and a seed storage operation with several bins. New construction is not a common occurrence.

Socio-Economic

A little more than a quarter of the population (27.5%) is older than 62 years and the median age is 45.5 years, which is on higher end for Cass County communities. The median household income is \$38,750, which is lower than the county as a whole. Best practices indicate those individuals should be given extra attention in all phases of emergency management. In mitigation, this may mean assistance to help retrofit their residences to withstand hazards.

Housing

The housing stock is chiefly detached single-family. It is estimated that approximately 80% of the houses are older than 1950, indicating they may not be up to the latest building codes and disaster safety features.

Emergency Services

Alice is home to the Alice Rural Fire District’s two-stall fire station. The station is a standard steel structure. Around 25 people are signed up as volunteers. Ambulance services are covered by the Buffalo Area Quick Response Unit based out of Buffalo.

Health Care

Alice does not have a health care or nonprofit facilities. The nearest hospital is in Valley City.

Critical Facilities and Infrastructure

Alice is served by Cass Rural Water Users District. The city does not have an installed storm sewer system.

Businesses and Employers

The notable employer is the seed dealership. Alice is a farm community and is therefore susceptible to the impacts flooding and drought can have upon the farming economy.

Natural Hazards

Dam Failure	Alice has no risk from dam failure.
Drought	The city is serviced by Cass Rural Water District who said water supplies are adequate. Its businesses are in agriculture, which is highly vulnerable to drought.
Flooding	The City does not have a designated flood risk given that it remains unmapped. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations.

Geological Hazards	There are no significant geological hazards affecting the town.
Severe Summer Weather	Alice faces the same severe summer weather risk as other jurisdictions. The older homes may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town. In 2009, a storm bearing straight-line winds hit the town causing damage.
Severe Winter Weather	Alice faces the same severe summer weather risk as other jurisdictions. The older homes may experience higher heat loss compared to newer homes.
Urban Fire	The seed storage business presents the highest fire risk of any building in town.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

The population of Alice is very small, sitting at approximately 40 people. They do not have the personnel nor financial resources to execute significant mitigation projects by themselves. They turn to the County, State, and other agencies for assistance. Alice Rural Fire District has its fire hall in Alice.

The City does not have a contracted engineer who can act as project lead. There is no adopted building code nor zoning ordinance.

PROGRESS SINCE LAST PLAN

The only item in the last plan was the installation of warning sirens. This has not been accomplished since then and remains an action item for this plan.

MITIGATION PROJECTS

Mitigation Action	1] Installation of warning sirens
Hazards Addressed	Severe weather
Responsible Agency	City of Alice and Red River Regional Dispatch
Cost	\$50,000
Description	Advanced warning will allow for increased preparedness with potential to reduce property damage and lessen the potential of loss of life
Potential Funding Sources	FEMA (PDM and HMGP) with local match
Timeline	1-2 years depending on funding availability
Priority	Medium

Mitigation Action	2] Install emergency generator at fire hall
Hazards Addressed	All hazards
Responsible Agency	Alice Rural Fire District
Cost	To be determined
Description	The fire hall is in good shape and can serve as an emergency shelter or staging point for disaster response. A generator for backup power will allow it to remain operation in case a storm disrupts power.
Potential Funding Sources	FEMA (PDM and HMGP) with local match

Timeline	2-3 years depending on funding availability
Priority	Low

Mitigation Action	3] Procure weather radios for residents and the fire hall
Hazards Addressed	Severe summer weather
Responsible Agency	City of Alice
Cost	To be determined
Description	NOAA weather radios are a valuable tool to warn residents of an incoming severe storm or tornado. Procuring these and offering to residents will ensure everyone is made aware and seek appropriate shelter.
Potential Funding Sources	FEMA (PDM and HMGP) with local match
Timeline	2-3 years depending on funding availability
Priority	Low

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3. Amenia

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Amenia consists mostly of single-family houses and a few businesses including a grain elevator. New development is rare.

Socio-Economic

Amenia is a very small town, sitting at approximately 100 residents. This has remain roughly constant over the years. However, the median age has been increasing. In 2011 it was 34.8 years; in 2017, 55.5 years. The median household income is relatively high at \$76,375 in 2017. The mean household income (\$67,202), which is typically higher than the median, is actually lower than the median household income. This may be a statistical artifact resulting from the inevitable small sample size given the population.

Housing

The housing stock is chiefly detached single-family with most constructed before 1950 (estimated at 56%). There are no mobile homes readily apparent in the city.

Transportation

All of the streets are gravel except Reed Street/County Highway 32 and 3rd Ave NW/County Highway 18.

Emergency Services

Amenia is serviced by Casselton Rural Fire District, a department with 26 volunteer firefighters. EMS service is also based out of Casselton, an 11 minute drive from Amenia.

Health Care

The City has no health care facilities of its own, but rather the nearest hospitals are an approximately 40 minute drive to Fargo.

Critical Facilities and Infrastructure

The City of Amenia is connected to Cass Rural Water and has its own City sewer system. A single sewer lift station and pump house are the only critical infrastructure.

Businesses and Employers

Alongside one restaurant, the businesses are agricultural-based (grain elevator and seed company). Therefore, the town is susceptible to the impacts natural hazards may have upon the agricultural economy.

Natural Hazards

Dam Failure	Amenia has no risk from dam failure.
Drought	The city is serviced by Cass Rural Water District who said water supplies are adequate. Its businesses are in agriculture, which is highly vulnerable to drought.
Flooding	The City's flood risk comes from the Rush River to the north. The last updated FEMA floodplain map shows that the majority of town in in either the 100-year or 500-year floodplain. Inadequate drainage also presents a problem in that the system is unable to adequately handle severe precipitation events. There are no nursing homes, daycares, jails, schools, or other such concentrations of immobile populations.
Geological Hazards	There are no significant geological hazards affecting the town.
Severe Summer Weather	Amenia faces the same severe summer weather risk as other jurisdictions. The older homes may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.
Severe Winter Weather	Amenia faces the same severe summer weather risk as other jurisdictions. The older homes may experience higher heat loss compared to newer homes.
Urban Fire	The grain elevator presents the highest fire risk of any building in town.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

They have maintained a contract for outside engineering services. However, Amenia does not have resources to accomplish significant projects independently. The City has adopted the 2017 ND State Building Code and also has zoning regulations in place.

PROGRESS SINCE LAST PLAN

Warning sirens were identified in the previous plan. Since then, these have been installed and the city is now covered.

The levee project is closer now to getting started. A feasibility study examining options has been completed as of spring 2019. The next step would be to begin the design of the levee and putting together of detailed cost estimates. The rough cost estimate, as of this point in time, has risen to \$2 million.

MITIGATION ACTIONS

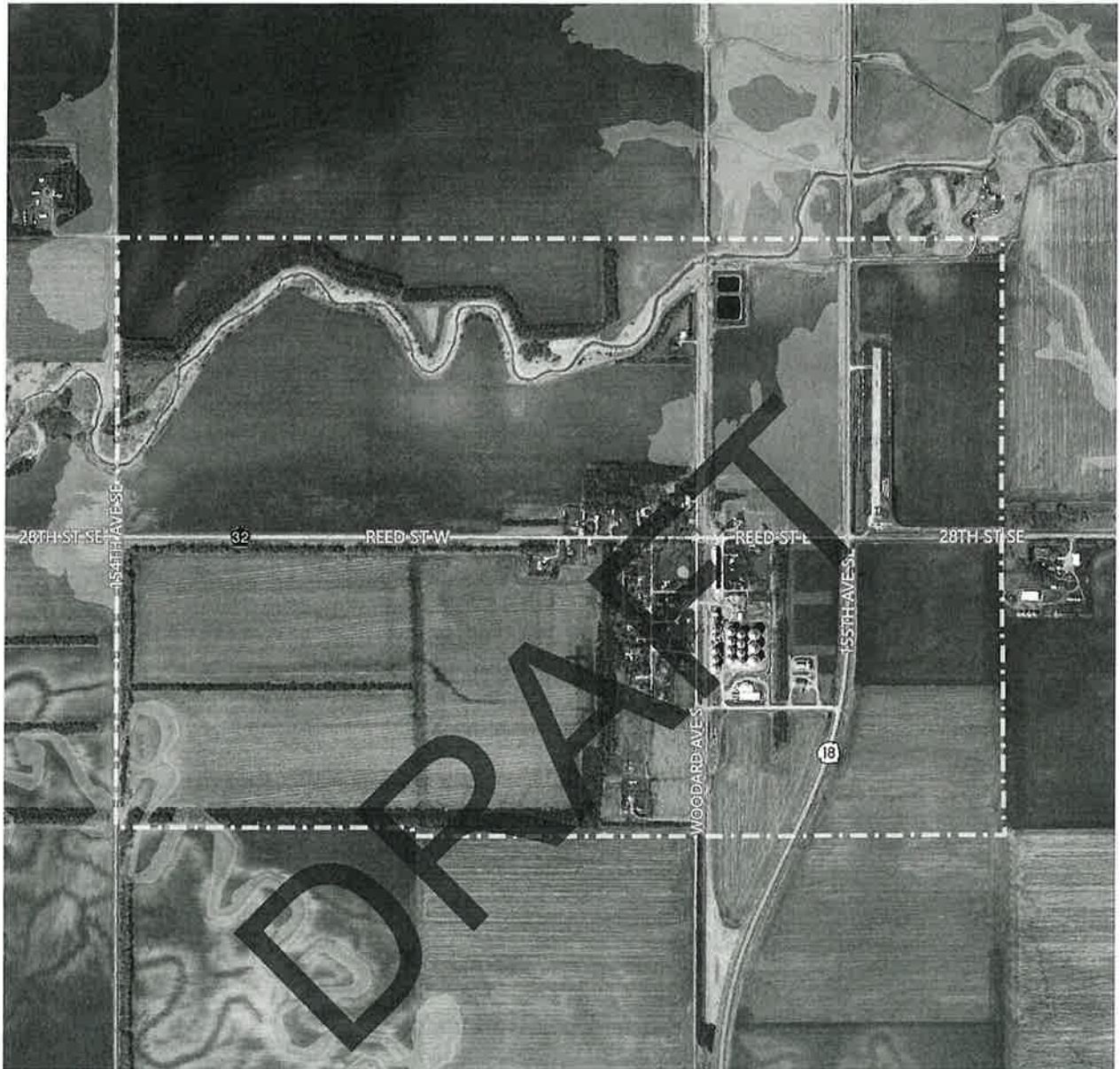
Mitigation Action	1] Build dike to protect against the Rush River
Hazards Addressed	Flooding
Responsible Agency	City of Amenia and Cass County Joint Water Resource District
Cost	\$2,000,000

Description	Amenia is affected from the north by overland flooding from the Rush River. Constructing a levee will protect the city and reduce the need to implement emergency measures.
Potential Funding Sources	FEMA (HMGP, PDM, and FMA) with local match, ND State Water Commission, Cass County flood sales tax
Timeline	5 years
Priority	High

Mitigation Action	2] Installation of storm sewer and a storm sewer lift station
Hazards Addressed	Overland Flooding
Responsible Agency	City of Amenia
Cost	\$500,000
Description	Upgrading Amenia's internal drainage capacity will prevent localized flooding and damage to property.
Potential Funding Sources	ND State Water Commission, ND Department of Health (CWSRF loan), USDA Rural Development (Water & Waste Disposal Loan and Grant)
Timeline	5 years
Priority	Medium

DRAFT

FLOODPLAIN MAP



100 Year Floodplain
Amenia City Limits



100 Year Floodplain Map
Amenia City Limits
Cass County Government
2018

4. Argusville

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Argusville is bifurcated between the original townsite east of Interstate 29 and the newer Leonards Way subdivision to the west. The new subdivision led to substantial growth in the city's population, rising from 147 in the 2000 Census to 475 people in 2010. The city serves as a bedroom community to the metropolitan area, with the majority of the buildings being single-family housing.

Socio-Economic

Argusville is one of the higher-income communities in Cass County, with a median household income of \$105,313. It is believed, however, that the eastern portion of town has those with lower-incomes. Census data shows that unemployment is nearly non-existent.

Argusville is a relatively young town with a median age of 31 years and approximately 45% of the population being 18 years or younger. Just 4% of the residents are older than 62.

Housing

Argusville saw significant housing development in the 2000s in the new western subdivision. The houses in the eastern part are generally older with many built either before the 1940s or in the 1970s. Argusville consists solely of single-family houses. The incidence of being cost-burdened is minimal, at least according to available Census data.

Transportation

Interstate 29 passes through with a convenient exit on 25th St SE. The roads in the western half are fully paved; in the eastern part most are gravel except the county highways. A BNSF rail line passes through the town, presenting a man-made hazard which is addressed in other County plans.

Emergency Services

Argusville is serviced by its own rural fire district. Around 25 people volunteer for the department. EMS service is provided by F-M Ambulance Service, which is an approximately 20 minute drive away.

Health Care

Argusville does not have any medical or social service facilities of its own. The nearest hospitals are in the metropolitan area.

Critical Facilities and Infrastructure

Important infrastructure to the community includes a building with the community center and fire department, two sanitary sewer lift stations, one storm sewer lift station and a pump house where the Cass Rural Water lines enter town. Recently culverts have been redone, thus improving internal drainage, but more sections of culverts remain to be addressed.

The community center and fire department are located within the protected portion of Argusville.

In the original part of town on the east side, the sanitary sewer and water distribution infrastructure was installed in the 1970s. The City is in the process of gradually replacing this infrastructure. Fortunately, the city has not been experiencing water main breaks. The sanitary sewer, however, does have portions that have been recently replaced or will need to be soon.

Businesses and Employers

Argusville can accurately be described as a “bedroom community” given that most residents commute to work in the metropolitan area. There are no significant employers within the town.

Natural Hazards

Dam Failure	Argusville has no risk from dam failure.
Drought	The city is serviced by Cass Rural Water District who said water supplies are adequate. CRWD has a drought response plan. There are no users in Argusville with a more pronounced exposure to the impacts of drought.
Flooding	Argusville has a history of fighting floods. Past experience has shown that the western Leonards Way subdivision is susceptible to overland flooding, a fact that is not shown in the currently in-effect floodplain maps. A few of the houses there are elevated enough to be out of harms way, but many are not. An earthen berm was built to protect those houses and reduce the amount of sandbagging, albeit not to FEMA standards. The older portion of Argusville east of the Interstate is protected by overland flooding via a levee, which was recertified in 2012. Roads have been washed out in the past, necessitating the need for repairs the cost of which may not always be reimbursed. There are no nursing homes, daycares, jails, schools, or other such concentrations of immobile populations.
Geological Hazards	There are no significant geological hazards affecting the town.
Severe Summer Weather	Argusville faces the same severe summer weather risk as other jurisdictions. The older homes may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.
Severe Winter Weather	Argusville faces the same severe summer weather risk as other jurisdictions. The older homes may experience higher heat loss compared to newer homes.
Urban Fire	The highest potential for fire is the abandoned and condemned old school building.

Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.
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JURISDICTIONAL CAPACITY

The city staff size is small with only an auditor and a water superintendent employed, both on a part-time basis. Although they do not have a public works department, they do have a contract for outside engineering services. In addition to the city council, there is an active park district and planning and zoning committee. The City has adopted and enforces the 2017 ND State Building Code. Given the city’s small population, there is a greater need for financial and technical assistance to carry out mitigation projects.

PROGRESS SINCE PREVIOUS PLAN

The 2014 version of this plan listed the installation of warning sirens and the levees around Richwood Estates and Leonard's Way as action steps. For the latter, the uncertainty surrounding the update of the floodplain maps halted progress, since it was unclear how extensive the floodplains will be. FEMA is closer now to issuing new floodplain maps. This will greatly aid the decision on how to proceed with the levees.

MITIGATION PROJECTS

Mitigation Action	1] Installation of warning sirens
Hazards Addressed	Severe weather
Responsible Agency	City of Argusville and Red River Regional Dispatch Center
Cost	\$50,000
Description	Advanced warning will allow for increased preparedness with potential to reduce property damage and lessen the potential of loss of life
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	1-2 years depending on funding availability
Priority	Low

Mitigation Action	2] Build storm shelter
Hazards Addressed	Severe weather
Responsible Agency	City of Argusville with assistance of Moore Engineering
Cost	\$80,000 for standalone; to be determined if co-located with new fire hall.
Description	Constructing a storm shelter according to FEMA’s engineering standards will offer residents who may not have an adequate structure and those caught outside at the onset of a storm a place of refuge and safety. Currently, the fire department rents space in the Community Center from the city. A new separate fire hall would be ideal. Incorporating a storm shelter, that is readily available to the public, could lead to cost savings.
Potential Funding Sources	FEMA (HMGP and PDM), USDA Rural Development (Community Facilities Loan and Grant)
Timeline	1-2 years depending on funding availability for standalone; 3-5 years for co-located shelter

Priority	Medium
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Mitigation Action	3] Generator for the two lift stations' backup pumps
Hazards Addressed	All hazards
Responsible Agency	City of Argusville with assistance of Moore Engineering
Cost	\$150,000
Description	These will ensure the two lift stations (located in the west and east portions of the city) remain operational during power outages that are often the result of severe weather.
Potential Funding Sources	FEMA (HMGP and PDM)
Timeline	2-3 years
Priority	High

Mitigation Action	4] Ensure community center/fire hall is able to withstand natural hazards
Hazards Addressed	All hazards
Responsible Agency	City of Argusville and Argusville Fire Department
Cost	To be determined post inspection
Description	Given that the community center and fire hall need to remain operational in case of emergencies, it is recommended that a throughout examination by a professional is conducted in order to find out what alterations or hardening is needed.
Potential Funding Sources	Local funds
Timeline	1-2 years
Priority	Medium

Mitigation Action	5] Assist households with vulnerable individuals in carrying out mitigation actions on their own properties
Hazards Addressed	All hazards
Responsible Agency	City of Argusville
Cost	To be determined
Description	Argusville has areas of town with older style houses as well as modular homes where more vulnerable individuals (e.g. lower income, elderly) may live. Older homes tend not to comply with the latest building codes and have maintenance issues which increase their vulnerability to severe storms. The City can look for grant funding to help those households update their homes, remedy code deficiencies, and harden the structures thus providing protection.
Potential Funding Sources	USDA Rural Development (Housing Preservation Grant)
Timeline	2-3 years
Priority	Low

Mitigation Action	6] Upgrade culverts that are not draining properly in storm events
Hazards Addressed	Flooding and severe summer weather
Responsible Agency	City of Argusville with assistance of Moore Engineering
Cost	To be determined
Description	There are several culverts that are incapable of draining in an adequate time. Replacing these sections will increase the capacity and thus prevent water from backing up into lawns and buildings. The previous culvert project was

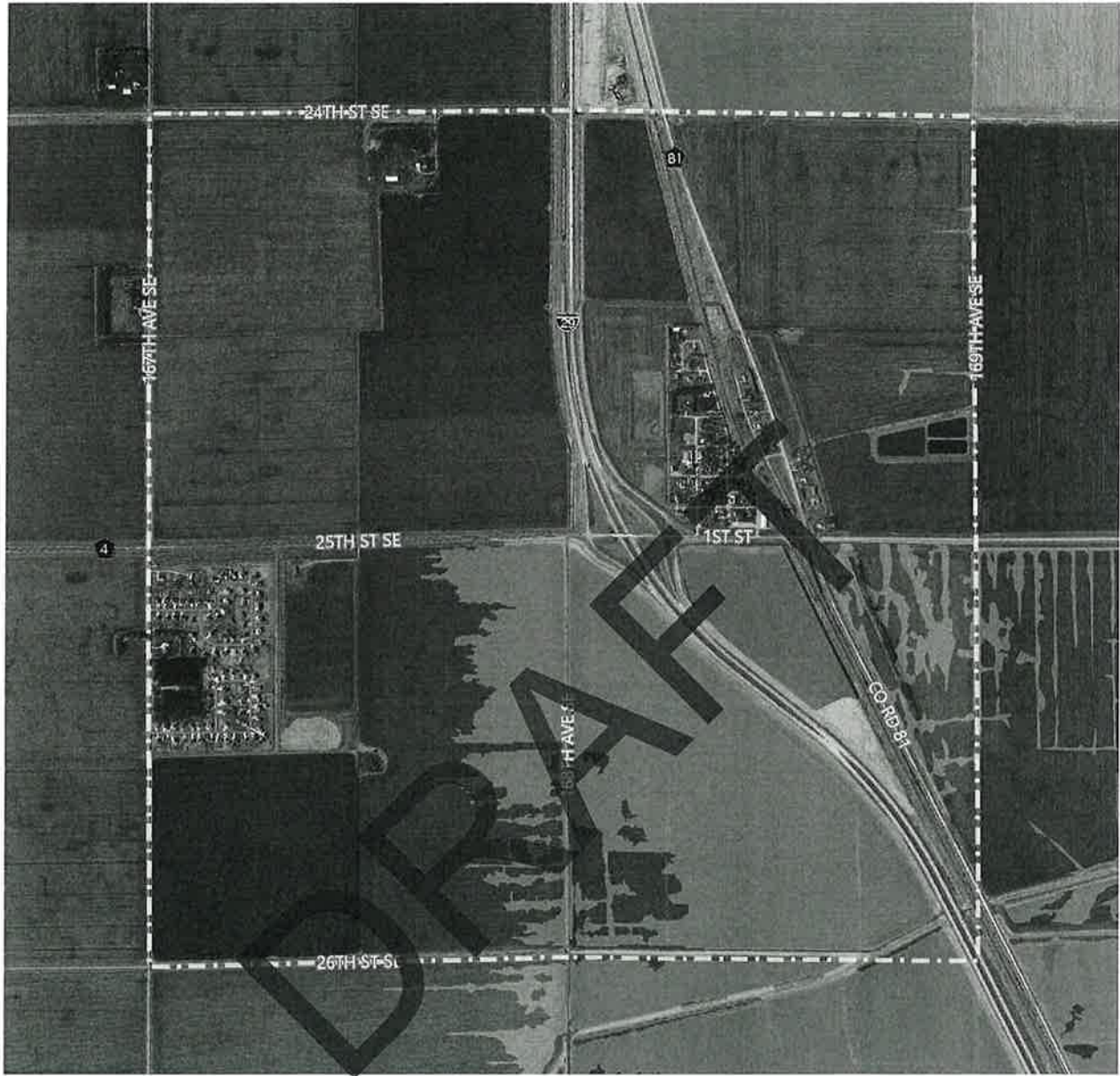
	about 10 to 12 years ago. These will be evaluated upon the completion of a currently underway sewer project.
Potential Funding Sources	FEMA (PDM, HMGP, and FMA) with local funding match, USDA Rural Development (Water & Waste Disposal Loan and Grant)
Timeline	2-3 years
Priority	Medium

Mitigation Action	7] Raise and certify the levee around Richwood Estates/Leonards Way
Hazards Addressed	Flooding
Responsible Agency	City of Argusville with assistance of Moore Engineering
Cost	\$500,000
Description	The earthen berm for the west portion of the city will be examined as part of a certification process. Alterations to the levee may be necessary to obtain this certification. In the end, this will reduce the flood risk to housing development of approximately 85 homes.
Potential Funding Sources	ND State Water Commission, Cass County Flood Sales Tax Fund
Timeline	5 years
Priority	High

Mitigation Action	8] Install backup generator for the water pump at the reservoir
Hazards Addressed	All hazards
Responsible Agency	City of Argusville
Cost	To be determined
Description	If the power to the pump at the reservoir goes out, city residents will go without water. A backup generator would ensure continued operation during severe weather.
Potential Funding Sources	FEMA (PDM and HMGP)
Timeline	2-3 years
Priority	Medium

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FLOODPLAIN MAP



100 Year Floodplain
Argusville City Limits

1000 Feet



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5. Arthur

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Most of Arthur consists of single-family houses. Main Avenue is the commercial street with several ag-related businesses – most notably the grain elevator – as well as the city mall where the city council meetings occur. New construction does not occur frequently in Arthur; therefore, the city has not significantly expanded horizontally speaking.

Socio-Economic

In terms of socio-economic vulnerability, Arthur has an older than average population with a median age of 43.8 years. This can be partly explained by the presence of the Good Samaritan Society's assisted living and nursing home facility in the north of town.

The median household income is only slightly below that of the county's (\$57,222 compared to \$58,026).

Housing

77.3% of the housing units in Arthur were built before 1980. This may indicate those structures are not compliant with the latest building codes. There is one street with six mobile home units.

Transportation

The residential streets are primarily gravel; Main Street and 21st St SE/County Highway 34 are paved. A rail line used to pass through Arthur but was closed. Currently, the cities of Arthur and Hunter are working towards turning it into a trail.

Emergency Services

The Arthur Volunteer Fire Department is collocated with the community center. There are around 15 volunteer firefighters. The Hunter Ambulance Service, whose facility is around a 10 minute drive on County Highway 18, covers the city of Arthur.

Health Care and Nonprofits

Arthur does not have health care facilities by itself. The nearest hospitals would be in Fargo.

Critical Facilities and Infrastructure

Arthur's critical infrastructure includes a pumping station that connects the city to Cass Rural Water's system, a water tower, and one sanitary sewer lift station. The city has been going through the process of updating its infrastructure, some of which is aged and therefore is in need of replacement. The main lift station was installed in 1973 with new pumps in 2008, the north lift station in 1996, the water tower around 1961, and a large portion of the sanitary sewer mains (comprised mostly of vitrified clay pipe) installed in 1961 or earlier.

Businesses and Infrastructure

The two sizable employers are Arthur Companies' operations and the Good Samaritan Society senior care facility. Like other rural communities, the stores and restaurant can acutely feel the effects of downturn in the agricultural sector. Therefore, the businesses in Arthur can be indirectly affected by severe weather, flooding, and drought.

Natural Hazards

Dam Failure	Arthur has no risk from dam failure.
Drought	The city is serviced by Cass Rural Water District who said the water supply is adequate. Businesses will be economically affected in times of drought.
Flooding	<p>Arthur's flood risk comes from overflow from the drainage ditch that runs along State Highway 18. The FEMA FIRM adopted in September 1993 shows that the coulee and drain that passes through town has a potential for flooding that will inundate several streets. As of the writing of this plan, the City is updating the storm sewer system that will increase its capacity which could take land out of the mapped floodplain.</p> <p>The nursing home houses an elderly population with limited mobility in instances where evacuation is required.</p>
Geological Hazards	There are no significant geological hazards affecting the town.
Severe Summer Weather	<p>Arthur faces the same severe summer weather risk as other jurisdictions. The older homes may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.</p> <p>The most vulnerable population in Arthur would be the residents of the nursing home, who live in a well-maintained and safe facility.</p>
Severe Winter Weather	Arthur faces the same severe winter weather risk as other jurisdictions. The older homes may experience higher heat loss compared to newer homes.
Urban Fire	The highest potential for fire is the grain elevator, since any uncontrolled dust can become engulfed.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

Arthur is a small community of around 340 people. Therefore, financial resources are limited given the small tax base and the lack of economies of scale. Arthur employs only a few people who must cover a range of tasks, so the capacity to pursue mitigation action steps by themselves is limited. Contracted engineering services are in place to help identify and carry out improvement projects. The city is connected to Cass Rural Water and has its own sewer and storm sewer system.

PROGRESS SINCE PREVIOUS PLAN

The three mitigation action items listed below were in the 2014 version of the plan. These have not been

completed in the meantime. Therefore, they will remain in this plan. The cost estimates were increased to account for inflation.

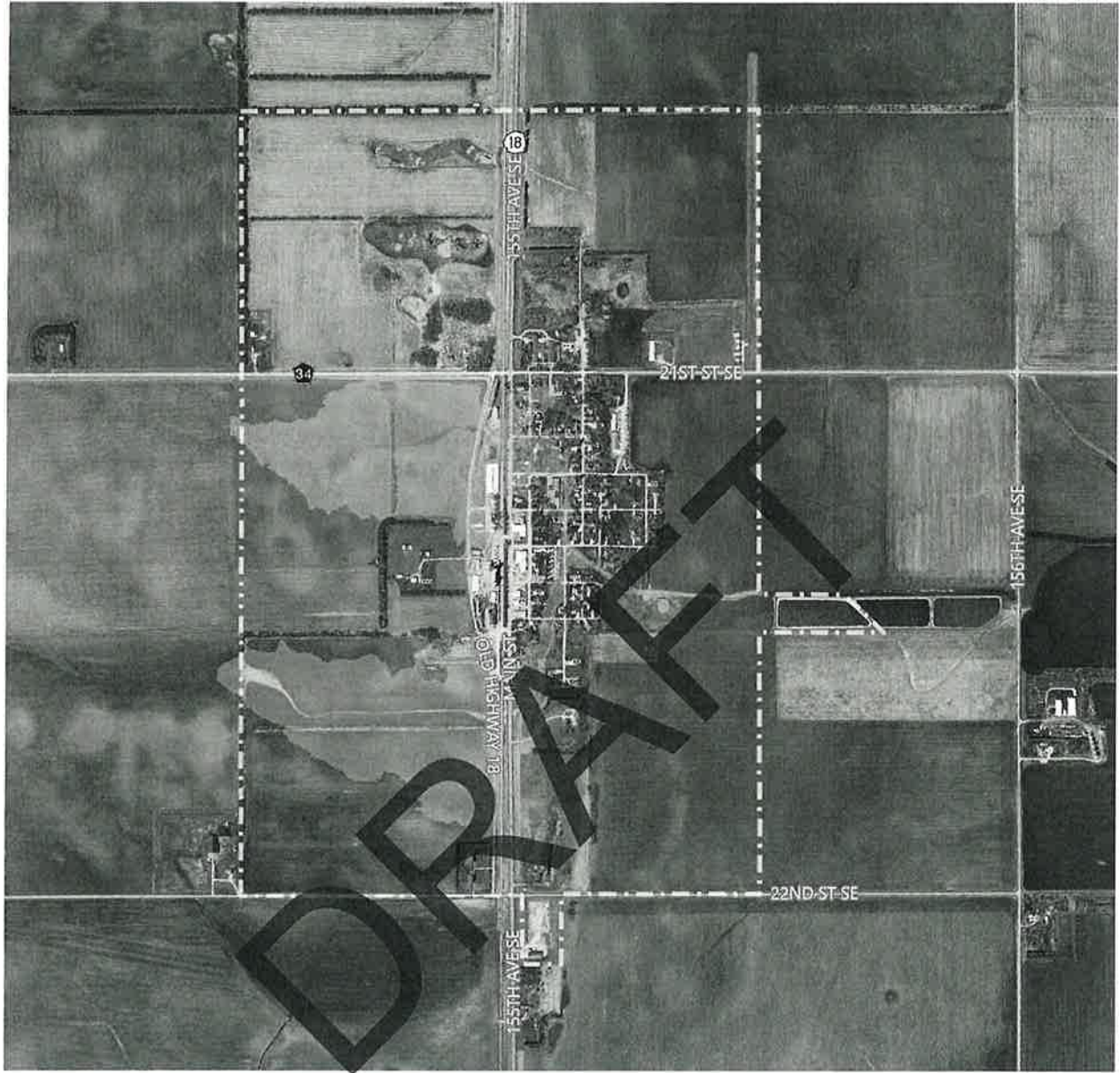
MITIGATION ACTIONS

Mitigation Action	1] Installation of warning sirens
Hazards Addressed	Severe weather
Responsible Agency	City of Arthur and Red River Dispatch Center
Cost	\$50,000
Description	Advanced warning of oncoming storms will allow for timely action on the part of residents.
Potential Funding Sources	FEMA (HMGP and PDM), local match funds
Timeline	1-2 years depending on funding availability
Priority	Low

Mitigation Action	2] Create a new legal drain to move water north of City limits
Hazards Addressed	Flooding
Responsible Agency	City of Arthur
Cost	\$1,000,000
Description	A new drain will reduce flood risk to the entire community, thus protecting public and private property
Potential Funding Sources	ND State Water Commission, Cass County Flood Sales Tax, local match funds, USDA Rural Development (Water & Waste Disposal Loan and Grant)
Timeline	5-10 Years
Priority	Medium

Mitigation Action	3] Install a backup generator at lift stations
Hazards Addressed	Flooding
Responsible Agency	City of Arthur
Cost	\$200,000
Description	Ensuring continued operation of lift stations reduces the chance for sewer backups and flooding to occur
Potential Funding Sources	ND State Water Commission, Cass County Flood Sales Tax, FEMA (HMGP and PDM), local matching funds
Timeline	1-2 years
Priority	High

FLOODPLAIN MAP



100 Year Floodplain
Arthur City Limits



This map is a reproduction of the original map prepared by the Cass County Engineer's Office in April 2016. It is not intended to be used for any purpose other than the original purpose for which it was prepared. The user assumes all responsibility for the accuracy and completeness of the information shown on this map. The Cass County Engineer's Office is not responsible for any errors or omissions on this map.

6. Ayr

UNIQUE VULNERABILITIES

Land use and Growth Patterns

Ayr is a very small town of around 20 people. Aside from the residences, it is home to one of Arthur Company's grain terminals. This terminal is served by a BNSF rail line. New buildings are a rare occurrence.

Socio-Economic

The availability of socio-economic data is restricted due to the small nature of the town. According to the 2010 Census the median age is 56.3 years, significantly older than the county average.

Housing

Data on the housing is limited due to the small sample size. An analysis through Google Earth would indicate that there are several mobile homes in addition to a few more stick-built houses. Several houses are in fair to poor condition and therefore may have issues withstanding severe weather.

Transportation

As mentioned, a rail line passes through town serving the grain terminal. Aside from Main Avenue which trucks utilize to access the grain terminal, all of the roads in town are gravel.

Emergency Services

Ayr is served by the Page Fire Department, which is an approximately 16-20 minute drive away. It is also served by the Page Ambulance Service.

Health Care and Nonprofits

Ayr does not have any such facilities in town. The nearest hospital is located in Valley City (CHI Mercy Health) around 45 minutes away.

Critical Facilities and Infrastructure

The City is hooked up to Cass Rural Water, but no sewer system is in place. Instead, residents have their own individual septic systems. The town doesn't have a central community facility from which to gather or to disseminate information.

Business and Employers

Arthur Company's grain terminal is the sole business in Ayr. Being in the agricultural sector, it is susceptible to the impacts drought, flooding, and severe weather can bring.

Natural Hazards

Dam Failure	Ayr has no risk from dam failure.
Drought	The city is serviced by Cass Rural Water District who said the water supply is adequate. The grain terminal will be economically affected in times of drought.
Flooding	The City of Ayr is not within a mapped floodplain but does experience issues with its internal drainage system. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	There are no significant geological hazards affecting the town.
Severe Summer Weather	Ayr faces the same severe summer weather risk as other jurisdictions. The older homes may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.
Severe Winter Weather	Ayr faces the same severe summer weather risk as other jurisdictions. The older homes may experience higher heat loss compared to newer homes.
Urban Fire	The grain storage facility would be the one with the highest risk of fire that would cause damage to surrounding properties.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

Ayr is the smallest incorporated community in Cass County with a population of 17 according to the 2010 Census. Due to their very small size, capacity is limited and the community must rely on state and local governments for assistance.

PROGRESS SINCE LAST PLAN

No progress has been made since the last plan update in 2014 that listed the two items below. City leaders indicated these remain relevant and therefore will be kept in.

MITIGATION ACTIONS

Mitigation Action	1] Installation of warning sirens
Hazards Addressed	Severe weather
Responsible Agency	City of Ayr and Red River Regional Dispatch Center
Cost	\$25,000
Description	Advanced warning will allow for increased preparedness with potential to reduce property damage and lessen the potential of loss of life
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	1-5 years depending on funding availability
Priority	Low

Mitigation Action	2] Dredging ditches and replacing 4 culverts in town
Hazards Addressed	Flooding (drainage issues)
Responsible Agency	City of Ayr
Cost	TBD

Description	Will reduce standing water and impacts to private property and city infrastructure. Streets have been improved with gravel recently and the it would also reduce the risk of have to redo it in a short time
Potential Funding Sources	FEMA (HMGP and PDM) with local match, Cass County flood sales tax, USDA Rural Development (Water & Waste Disposal Loan and Grant)
Timeline	1-5 years depending on funding availability
Priority	High

DRAFT

7. Briarwood

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Briarwood is located adjacent to the Red River to the east and Fargo to the west. Fargo's continued growth southward has limited the ability for Briarwood to annex more land away from the river, essentially locking in Briarwood's growth potential. The city has only single-family residences.

Socio-Economic

Briarwood is the city with the highest mean household income in the county, sitting at \$330,225. Three quarters of the households make more than \$75,000 annually. Residents are slightly older than the county average with a median age of 41.9.

Housing

The houses were built primarily in the 1970s through 1990s. Many individual homes have generators. Since the 2009 flood, eight properties have been acquired and removed through a Hazard Mitigation Grant-funded project. This grant removed the homes most at-risk of flooding.

Transportation

Briarwood has one entrance on University Drive/US Highway 81. The road branches off into two cul-de-sacs with the eastern one mostly bought out and the western one containing most of the city's homes. These roads are paved.

Emergency Services

Briarwood is served by FM Ambulance Service, Fargo Fire Department, and Cass County Sheriff's Department.

Health Care and Nonprofits

The nearest hospital (Essentia Health) is around 11 minutes away.

Critical Facilities and Infrastructure

Briarwood does not have an installed storm sewer system. City leaders did not indicate any pieces of infrastructure that merit attention in terms of mitigation.

Business and Employers

Briarwood does not have any stand-alone businesses. Residents often commute to work elsewhere in the metropolitan area.

Natural Hazards

Dam Failure	Briarwood has no risk from dam failure.
Drought	Briarwood obtains its water from the City of Fargo. The City consists of around 20 homes and does not have any land uses particularly vulnerable to drought.
Flooding	According to the current FEMA floodplain maps, Briarwood is significantly exposed to flooding from the Red River with the streets and open areas in the 100-year floodplain. Houses are elevated to the point where they are in the 500-year flood zone. The city experienced flooding in springs of 2009, 2010, and 2011. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	The risk of erosion comes mainly from the effects of overland flooding, and not necessarily due to the Red River.
Severe Summer Weather	Briarwood faces the same severe summer weather risk as other jurisdictions. The houses are well-kept and able to withstand severe weather. There is no public storm shelter in town.
Severe Winter Weather	Briarwood faces the same severe summer weather risk as other jurisdictions. The houses are well-kept and able to withstand severe weather.
Urban Fire	There are no land uses which present a higher than normal risk of building fire.
Wildfire	The risk of wildfire reaching the city is very low given that the city is within the developed metropolitan area. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

The City has an active Mayor and City Council. However, it does not have the staff and technical capacities on hand to accomplish significant projects independently.

PROGRESS SINCE LAST PLAN

The previous plan only had the installation of a warning siren as an action item. Since that time, new sirens have provided adequate coverage. Additionally, many of the residents receive weather alerts via the Code Red system. Since it was not deemed relevant any longer, that action item was taken out for this update.

MITIGATION PROJECTS

Mitigation Action	1] Address erosion caused by overland flooding
Hazards Addressed	Geological hazards
Responsible Agency	City of Briarwood, Southeast Cass Water Resources District, Cass County (if cooperation needed), and City of Fargo (if cooperation needed)
Cost	To be determined

Description	New subdivisions near Briarwood have changed the drainage dynamics, resulting in flooding and subsequent erosion. The City will work with the relevant entities to find an amiable solution.
Potential Funding Sources	Dependent upon course of action taken
Timeline	1-2 years
Priority	High

DRAFT

8. Buffalo

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Buffalo is a town of nearly 200 people. Public buildings and businesses are found mainly along Main Avenue and also County Highway 28. There are roughly 27 blocks of residential with religious land uses mixed within. New development that necessitates the extension of infrastructure does not occur often.

Socio-Economic

Buffalo has a higher median household income than the county as a whole (\$68,472 versus \$58,026). The poverty rate is undetermined due to the small sample size. In regard to age, the median is roughly in line with the County.

The Buffalo Development Corporation owns and operates an eight-unit affordable housing apartment along Main Street. This building is slated to undergo extensive rehabilitation in 2020.

Housing

Buffalo has an older housing stock with nearly 40% built before 1960 and 30% between 1960 and 1990. This may indicate those houses may be less able to withstand hazards given the likelihood they will not conform to the latest building codes.

Transportation

Buffalo is nearly 3 miles north of Interstate 94. A BNSF rail line passes through the town and serves a grain elevator there. Aside from the county highway and Main Street, all of the roads are gravel.

Emergency Services

Buffalo is served by the Cass County Sheriff's Department and the Buffalo Fire Department. There are 29 active volunteer firemen on the roster. The department also houses the Buffalo Area Quick Response Unit. Two firemen are EMT Basic trained and nine others BLS certified. Additional EMS service can be provided by Casselton Ambulance Service. It is around a 25 minute drive from Casselton to Buffalo.

Health Care

Buffalo does not have any health care or social services located within the city. The nearest hospital is in Valley City to the west.

Critical Facilities and Infrastructure

City leadership deems the community center, pump house, lift station, fire hall, and water tower as

all to be critical facilities. Several of these have action items related to their resiliency and continued operation during disasters.

Businesses and Employers

Aside from several service businesses located along Main Street, one other employer is the grain elevator and terminal. Being a rural community, Buffalo will feel the impact of an agricultural downturn resulting from severe weather, flooding, and drought.

Natural Hazards

Dam Failure	Buffalo has no risk from dam failure.
Drought	Briarwood obtains its water from Cass Rural Water who said its water supplies are adequate. As a rural community in an agricultural area, Buffalo's economy will be affected by drought if it were to occur.
Flooding	The City of Buffalo is not in a mapped floodplain and doesn't have an apparent risk from overland flooding. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	Buffalo does not have any notable risk from geological hazards.
Severe Summer Weather	Buffalo faces the same severe summer weather risk as other jurisdictions. The older houses may be less able to withstand severe weather. There is no public storm shelter in town.
Severe Winter Weather	Buffalo faces the same severe summer weather risk as other jurisdictions. The older houses may be less able to withstand severe weather. In early 1997, the City went four days without power and water due to a large ice storm.
Urban Fire	The only land uses which would present a higher than normal risk of building fire is the grain elevator.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

Buffalo has numerous boards and commissions, which are an indicator of an engaged citizenry. These are the Job Development Authority, the Historic Preservation Commission, Zoning Board, and Park Board.

Buffalo has an adopted zoning ordinance, albeit one that does not directly reference hazard mitigation directly. A separate ordinance deals with substandard, unsafe, dilapidated, and fire hazardous structures and the process for enforcement.

The city's staff consists of an auditor, a public works maintenance worker, and a custodian for the

community center. The city has a contract with an engineering firm who is able to apply for and lead the implementation of mitigation projects.

PROGRESS SINCE LAST PLAN

The city council conducted a thorough self-examination of its vulnerabilities. The two items from the previous plan (the backup generator for the lift station and the construction of a storm shelter) have not been undertaken, but nonetheless remain relevant today. The inclusion of new and higher priority items has pushed those two to the bottom of the action item list.

MITIGATION ACTIONS

Mitigation Action	1] Upgrade lift station
Hazards Addressed	Flooding
Responsible Agency	City of Buffalo
Cost	To be determined
Description	The current lift station, built in the 1960s, is unable to handle the in-flows and therefore need an exemption to pump into a nearby ditch to relieve pressure, lest it will backup into people's properties. A new lift station with greater capacity will prevent backups and internal flooding from occurring.
Potential Funding Sources	FEMA (PDM, FMA, HMGP) with local match (can include CDBG)
Timeline	1-2 years
Priority	#1 (Highest)

Mitigation Action	2] Purchase tractor for city's PTO generator
Hazards Addressed	Power outages due to severe weather
Responsible Agency	City of Buffalo
Cost	To be determined
Description	The city already owns a power take-off (PTO) generator, but does not have a tractor from which to connect it to or transport it around the city as needed.
Potential Funding Sources	FEMA (PDM, HMGP) with local match
Timeline	1-3 years
Priority	#2

Mitigation Action	3] Installation of a backup generator at the lift station
Hazards Addressed	Power outages due to severe weather
Responsible Agency	City of Buffalo
Cost	\$100,000
Description	Reduces the risk of the lift station going down during any number of incidents.
Potential Funding Sources	FEMA (PDM, HMGP) with local match
Timeline	1-2 years depending on funding availability
Priority	#3

Mitigation Action	4] Installation of backup generator at community center
Hazards Addressed	Severe weather

Responsible Agency	City of Buffalo
Cost	To be determined
Description	The community center currently serves as shelter and space for organizing disaster response. Installing a backup generator would ensure power remains during a critical time.
Potential Funding Sources	FEMA (PDM, HMGP) with local match
Timeline	1-2 years depending on funding eligibility
Priority	#4

Mitigation Action	5] Building a Storm Shelter
Hazards Addressed	Severe summer weather
Responsible Agency	City of Buffalo
Cost	To be determined
Description	Provides a safe place for residents in times of a tornado or other severe weather. During power outages the community center has served as a make shift shelter but is not specially designed for this purpose.
Potential Funding Sources	FEMA (PDM, HMGP) with local match
Timeline	5-10 years
Priority	#5 (Lowest)

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9. Casselton

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Casselton has seen healthy growth over the years, rising from 2,329 residents in 2010 to 2,773 residents in 2017. New development has expanded the city's footprint including new residential subdivisions in the southern part of town. An industrial area immediately north of Interstate 94 by the exit has sprung up. In the north of town, the school has greatly expanded over the years to accommodate the increase in student enrollment. A residential subdivision was built to the east of the school adjacent to the leveed drain.

Socio-Economic

Casselton's median household income is higher than the County average, sitting at \$69,858 in 2017. The poverty rate is low with 3.3% of individuals being in that status. These two data points indicate that Casselton is a wealthier community, relatively speaking compared to others in Cass County.

The median age – 32.9 years of age - is in line with the County. A large share (32.7%) of the residents are below 18 years of age. Additionally, 39.6% are between 15 and 44 years of age. These data can lead to the reasonable conclusion that there are many younger families in Casselton.

Housing

As mentioned earlier, Casselton has seen increases in its housing stock. In 2010, there were 912 units; in 2017 it has increased to 1,062. Around 70% of the housing units are single-family detached. Almost 40% of the housing units were built before 1970. These older homes should receive special attention when it comes to hardening them to withstand severe weather.

Casselton has two mobile home parks: the one on the on 2nd Street south adjacent to the drain has spots for 8 homes; the one north of the railroad tracks west of downtown has spots for 16 homes. Neither has a dedicated shelter rated to withstand high winds and airborne debris.

The Housing Authority of Cass County has a low-rise apartment building for those with limited means. These structures do not have basements into which residents can seek shelter during tornados and high winds.

Transportation

Casselton has easy access to Interstate 94 and all of its city roads are paved, meaning that it has a better road network than many of the non-metropolitan communities.

In 2013, an oil-carrying train derailed a few miles outside of town. If it were to happen in Casselton, the results would have been catastrophic. This man-made hazard is addressed in the county’s THIRA plan.

Emergency Services

The City is home to Casselton Ambulance Service, who cover an area of over 740 square miles of rural Cass County. It is also home to Casselton Rural Fire District, which has around 26 volunteer firefighters signed up.

Health Care

Other than Essentia Health’s clinic, Casselton doesn’t have any other health care facilities. The nearest hospital is the Sanford Medical Center 20-25 minutes away in Fargo.

Casselton is home to two non-profit organizations: Community of Care and the Cass County Rural Community Emergency Food Pantry. The former provides services for the elderly and the latter offers food assistance to families in need. Both serve an area greater than Casselton itself.

Critical Facilities and Infrastructure

The City is connected to Cass Rural Water but has their own sewer, storm sewer and city-run sanitation services. Critical infrastructure and facilities include a relatively new water treatment plant, nine sanitary sewer lift stations, four storm sewer lift stations, two water towers, and an Otter Tail Power Company substation and CenturyLink cell tower.

Business and Employers

A cluster of manufacturing businesses, all involved in the agricultural sector, sits adjacent to Interstate 94 on the south end of Casselton. These businesses will feel the ripple effect that droughts, floods, and severe weather can have upon producers. This industrial park does have a storm sewer system installed. To the west of town sits the Tharoldson Ethanol plant that can produce 150 million gallons per year. The plant does not use area groundwater resources given that it uses Fargo’s wastewater in its operations.

Natural Hazards

Dam Failure	Casselton has no risk from dam failure.
Drought	Casselton obtains its water from Cass Rural Water who said the water supply is adequate. As a rural community in an agricultural area, Casselton’s economy will be affected by drought if it were to occur.
Flooding	Flooding has been a concern in Casselton. The floodplain map adopted in 1989 as well as direct observation show that flooding occurs by the Casselton Reservoir and along the drain which circumvents most of the town. Further south in the city’s extraterritorial zone the Wheatland Channel can flood potentially affecting access to Interstate 94 as well as some farmsteads and a winery. The successful completion of mitigation projects has improved the

	protection against flooding. Additionally, many property owners have applied for and received Letters of Map Revisions from FEMA. None of the eight licensed daycares nor the school are located within the mapped floodplain.
Geological Hazards	Casselton does not have any notable risk from geological hazards.
Severe Summer Weather	Casselton faces the same severe summer weather risk as other jurisdictions. The older houses may be less able to withstand severe weather. There is no public storm shelter in town.
Severe Winter Weather	Casselton faces the same severe winter weather risk as other jurisdictions. The older houses may be less able to withstand severe weather.
Urban Fire	The only land uses which would present a higher than normal risk of building fire are the grain elevators.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

At a population of around 2,700, Casselton has greater capacity than most of the towns in Cass County. The City employs an auditor, assessor, and forester. It has adopted zoning ordinances, stormwater discharge ordinance, and water use restriction policy. Casselton has adopted the 2017 North Dakota State Building Code and enforces it through requiring of building permits for new buildings and significant renovations of existing buildings.

Casselton is a participating jurisdiction in FM Metro COG, the area’s metropolitan planning organization. This allows for better transportation and development coordination with nearby cities.

PROGRESS SINCE LAST PLAN

The only action step in the previous plan was the northside levee, which remains an action step in this plan as well. The issuance of new floodplain maps by FEMA will affect how this levee is to be designed and built. Progress will remain halted until updated floodplain data is released.

MITIGATION ACTIONS

Mitigation Action	1] Raising levee on north side of town
Hazards Addressed	Flooding
Responsible Agency	City of Casselton with assistance from engineering firm
Cost	\$1.6 million
Description	The city will consider raising the levee on the north side of town depending on FEMA’s update of the floodplain map.
Potential Funding Sources	FEMA (PDM, HMGP, and FMA) with local match
Timeline	5 years
Priority	High, although contingent upon new floodplain data

FLOODPLAIN MAP



100 Year Floodplain
Casselton City Limits



Cass County, North Dakota, is a public body corporate and political subdivision of the State of North Dakota, created by Chapter 10, Section 10-01, North Dakota Century Code, and is a political subdivision of the State of North Dakota. The County is a political subdivision of the State of North Dakota and is a public body corporate and political subdivision of the State of North Dakota. The County is a political subdivision of the State of North Dakota and is a public body corporate and political subdivision of the State of North Dakota.

10. Davenport

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Davenport is a primarily residential community a little more than eight miles southwest of Horace. The City has seen moderate growth over the years rising from 230 residents in 2010 to 274 in 2017. Most employed residents commute towards Fargo.

Socio-Economic

The median household income for 2017 is \$66,250, which is higher than the county's average. 7.5% of individuals fall below the poverty line. The median age of 36.6 years is not significantly higher than the county's. Additionally, around 33.2% of the population is under 18 years of age, indicating that there are numerous younger families in Davenport, a fact that many rural communities do not share.

Housing

The majority (approximately 80%) of houses are single-family detached, although there are a few multi-family apartment buildings. According to Census data, many homes were built between the 1960s and 80s. A significant share were built before 1950. This may indicate the houses may not conform to current building codes and therefore will need special attention when it comes to house-specific mitigation actions that can be taken.

Transportation

Davenport's sits at the intersection of two rail lines owned and operated by Red River Valley and Western. These lines serve a grain elevator located at the west end of Davenport. The city's roads are paved.

Emergency Services

The city is served by the Davenport Rural Fire Protection District, whose fire hall is co-located with the community center. The district has around 20 volunteer firefighters. It is also served by the Kindred Area Ambulance Service, which is based around 12 minutes away.

Health Care

Davenport does not have any health care facilities of its own. The nearest emergency hospital is located in Fargo.

Critical Facilities and Infrastructure

Davenport does have a sanitary sewer system with a lagoon to the east of town. It does not have a storm water sewer system instead, instead relying on ditches. As mentioned earlier, the community center and fire hall are located under the same building. The building is in good condition, although a backup power generator would

be useful for its continued operation as a fire hall and potential emergency shelter during power outages. The city uses the old school for its council meetings.

Businesses and Employers

The city does not have many businesses. In addition to a restaurant, the other notable employer would be the grain elevator. The City is a little more than half-hour from the metropolitan area, showing that commuting is feasible for most residents.

Natural Hazards

Dam Failure	Davenport has no risk from dam failure.
Drought	Davenport obtains its water from Cass Rural Water who said its water supply is adequate. As a rural community in an agricultural area, it's economy will be affected by drought if it were to occur.
Flooding	The preliminary floodplain map for Davenport shows the majority of the City will be in the 100-year or 500-year floodplain. Many homes would be affected by flooding and road access cut off. The City is looking at options for permanent flood protection which would negate the need for property owners to purchase flood insurance. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	Davenport does not have any notable risk from geological hazards.
Severe Summer Weather	Davenport faces the same severe summer weather risk as other jurisdictions. The older houses may be less able to withstand severe weather. There is no public storm shelter in town.
Severe Winter Weather	Davenport faces the same severe winter weather risk as other jurisdictions. The older houses may be less able to withstand severe weather.
Urban Fire	The only land uses which would present a higher than normal risk of building fire are the grain elevator and the 30,000 gallon propane storage tank. The City indicated it had no concerns about those facilities, as long as proper safety procedures are followed.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

The City of Davenport has a population of 275 people, which means obtaining economies of scale and spreading project costs across the tax base is hindered. Due to limited financial and technical resources, the City will turn to on the state and county for larger scale projects.

Davenport is not a participant in the National Flood Insurance Program but may decide to do so after the approval of FEMA's new floodplain maps. This will entail designating a floodplain administrator and adopting regulations that meet NFIP minimums.

PROGRESS SINCE LAST PLAN

The two items in the 2014 version of the mitigation plan was the installation of a warning siren and improvements that would aid the city's drainage. These have not been accomplished since then and will remain items for this new version of the plan.

MITIGATION ACTIONS

Mitigation Action	1] Installation of warning sirens
Hazards Addressed	Severe weather
Responsible Agency	City of Davenport and Red River Regional Dispatch Center
Cost	\$50,000
Description	Advanced warning will allow for increased preparedness with potential to reduce property damage and lessen the potential of loss of life. In the meantime, residents will be encouraged to sign up to Code Red to receive alerts via their cell phones.
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	1-5 years depending on funding availability
Priority	Low

Mitigation Action	2] Improvements to city's drainage system
Hazards Addressed	Flooding
Responsible Agency	City of Davenport and State Water Commission
Cost	To be determined
Description	The city does not have a storm sewer system, so the drainage system is inadequate causing localized flooding issues.
Potential Funding Sources	FEMA (PDM and HMGP) with local match, Cass County flood sales tax, State Water Commission, ND Department of Health (CWSRF), USDA Rural Development (Water and Waste Disposal Loan and Grant Program), USDA Rural Development (Water & Waste Disposal Loan and Grant)
Timeline	5-15 years
Priority	Medium

Mitigation Action	3] Install permanent flood protection
Hazards Addressed	Flooding
Responsible Agency	City of Davenport and State Water Commission
Cost	\$3,800,000 to 5,000,000
Description	The city is at risk at of local overland flooding and overland flooding caused by breakout flows from the Sheyenne River. A levee system will reduce the flood risk for the city and reduce or eliminate the need for emergency measures.
Potential Funding Sources	FEMA (HMGP, PDM, and FMA) with local match, Cass County flood sales tax, State Water Commission
Timeline	1-3 years depending on funding availability
Priority	High

Mitigation Action	4] Install permanent backup generator for the community center
Hazards Addressed	All hazards

Responsible Agency	City of Davenport
Cost	To be determined
Description	Davenport's community center and city hall was a former school. It has adequate space in the gym to function as an emergency shelter. A backup generator would allow for the center to function in that role even if power remains out for an extended period of time.
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	3-5 years
Priority	Medium

FLOODPLAIN MAP



100 Year Floodplain
Davenport City Limits



City of Davenport, Iowa
 Planning and Development Department
 1000 16th Street, SE
 Davenport, IA 52002
 Phone: 563.325.3333
 Fax: 563.325.3334
 Website: www.davenportia.gov

11. Enderlin

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Enderlin was founded alongside the Maple River. A small business district of a few blocks is located between Railway Street and Center Street. Besides the rail line that passes through the city are a grain elevator and an agriculture processing plant owned by Archer Daniels Midland. The town's population has fortunately been itching upwards, rising from 886 in 2010 to 963 in 2017.

Socio-Economic

Enderlin's median age of 47.1 is notably higher than the county's. In terms of median household income, Enderlin is roughly in line with the county sitting at \$52,500. At 10%, Enderlin's poverty rate is also in line with the county as a whole.

Housing

The majority of the housing stock, of around 73%, is detached single-family structures. Census data shows that a bit over half of the houses were built before 1950, indicating that many may not be up to the latest building codes or can have maintenance issues, both of which lead to a reduced ability to withstand severe weather.

Transportation

Enderlin is home to a crew-change and yard office for the Canadian Pacific Railway. The rail has crossings at ground level, except for an overpass for Highway 46. Issues of parked trains blocking city streets for extended periods of time have come up. The city's roads are paved.

Emergency Services

Enderlin has a building for the Enderlin Rural Fire Protection District, an entity which has around 20 volunteer firefighters. The eastern half of the fire hall building is located in a high-risk floodplain. EMS is provided by First Medic Ambulance of Ransom County, based 20-30 minutes away in Lisbon.

Health Care

Aside from a Sanford Health clinic, Enderlin does not have any other health care facilities. The nearest hospital is CHI Lisbon Health, a 25-bed Critical Access Hospital with a 24-hour Emergency Level V Trauma Center, in Lisbon.

Critical Facilities and Infrastructure

Enderlin's critical infrastructure includes a school, city hall, fire hall, five water supply wells, five sanitary lift

stations, two water towers, five lagoon cells. A new water well is forthcoming. Of those only the fire hall is located in Cass County. Building permanent flood protection throughout the city will protect the fire hall as well as other properties.

Business and Employers

As alluded to earlier, the ADM processing plant and CP rail yard are significant employers. In the downtown district, one will find restaurants, bars, a butcher shop, banks, a motel, among others. As a rural community with numerous ag-related businesses, Enderlin’s economy is susceptible to downturns in the commodities markets resulting from macroeconomic considerations in addition to natural disasters.

Natural Hazards

Dam Failure	Enderlin has no risk from dam failure.
Drought	Enderlin obtains its water via five wells that tap into the Enderlin Aquifer. One of the wells is not producing due to age, therefore a new well is being dug. As a rural community in an agricultural area, it’s economy will be affected by drought if it were to occur.
Flooding	The Maple River runs along the eastern boundary of the city and is the main source of flooding. For the small portion of the city which lies in Cass County, the fire hall is located within the mapped floodplain. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate located within the Cass County portion of Enderlin. There are such uses within the Ransom County portion of Enderlin however.
Geological Hazards	The City did not state there were erosion concerns for the hill that extend from the northwest to the southeast of the town.
Severe Summer Weather	Enderlin faces the same severe summer weather risk as other jurisdictions. The older houses may be less able to withstand severe weather. There is no public storm shelter in town.
Severe Winter Weather	Enderlin faces the same severe summer weather risk as other jurisdictions. The older houses may be less able to withstand severe weather.
Urban Fire	The only land uses which would present a higher than normal risk of building fire are the grain elevator and the ADM processing plant. The City indicated it had no concerns about those facilities, as long as proper safety procedures are followed.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town or the trees that line the Maple River.

JURISDICTIONAL CAPACITY

The City of Enderlin has a full time auditor, public works staff and contracted engineering services to assist with the identification and execution of public projects. The City, like others of its size, does rely on state and county resources and assistance for large scale improvements.

PROGRESS SINCE LAST PLAN

The sole item from the 2014 plan was the installation of new storm water pumps, which has been completed. Enderlin lies mostly in Ransom County, who had completed its own multi-hazard mitigation plan in 2015. The following items were listed within that plan. The City indicated these remain relevant and thus are inserted.

MITIGATION PROJECTS

The majority of Enderlin is south of Highway 46 in Ransom County with only a small portion extending into Cass County. Therefore, the Ransom County Multi-Hazard Mitigation Plan addressed most of the city's exposure to natural hazards and the actions that can be taken to mitigate it.

Mitigation Action	1] Flood mitigation workshop to educate public
Hazards Addressed	Flooding
Responsible Agency	City of Enderlin in conjunction with FEMA and county emergency management staff
Cost	Up to \$500 for materials and staff time per workshop
Description	The majority of Enderlin is located within the 0.2% floodplain (X Zone). Encouraging homeowners and business owners to consider purchasing flood insurance is worthwhile, particularly as the city is continuing to find a permanent flood protection solution. The workshop can cover examples of higher building standards, elevation certificates, and activities the city is doing that would enhance its CRS rating.
Potential Funding Sources	Allocate cost staff time and materials out of city budget
Timeline	Ongoing activity over planning period. Ideally conduct workshop every year or two years.
Priority	Medium

Mitigation Action	2] Enroll in the Community Rating System
Hazards Addressed	Flooding
Responsible Agency	City of Enderlin
Cost	To be determined
Description	Obtaining one of the lower-level classifications in CRS would entail enacting readily achievable action steps that will reduce the impacts of flooding as well as lead to savings for property owners on flood insurance.
Potential Funding Sources	City of Enderlin
Timeline	1-2 years and ongoing maintenance of CRS status
Priority	Medium

Mitigation Action	3] Permanent levees along Maple River
Hazards Addressed	Flooding
Responsible Agency	City of Enderlin
Cost	To be determined by engineering professional
Description	Constructing a levee will protect most of the city. Within the part of Enderlin in Cass County, the levee will protect the rural fire district's building.
Potential Funding Sources	FEMA (HMGP and PDM)
Timeline	5-15 years
Priority	High

12. Fargo

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

As the largest city in North Dakota, Fargo has a diverse economy and population that presents a unique set of vulnerabilities. Over the past few decades, Fargo has been experiencing a high rate of growth both in terms of population and jobs. The city has spread outward mainly to the south, due to being constricted by West Fargo to the west and Minnesota to the east.

Lateral growth in the north part of the city has been minor due to the airport and lagoons. Historical satellite imagery from the mid-1980s shows that there were only a few subdivisions south of Interstate 94. Currently, the farthest subdivision is now 5 miles south of the Interstate.

While Fargo's comprehensive plan prioritizes infill development, new greenfield development is anticipated to occur mainly in the southern reaches of the city.

Socio-Economic

Socio-economic variations can present a range of vulnerabilities across Fargo's neighborhoods. In terms of racial and ethnic makeup, the downtown core and the neighborhoods surrounding West Acres Mall (e.g. Willow Park, Village West, and West Acres neighborhoods) are more diverse. The latter has become home to New Americans over the past few decades.

Of the over 10,000 residents who speak a language other than English, 38.4% speak English less than "very well". The most common foreign languages spoken include Kurdish, Arabic, Nepali, Somali, Creole, and Bosnian. The communication of emergency management information needs to take into account the variety of languages spoken in the community.

Lower-income neighborhoods are found downtown and adjacent to downtown, the areas around West Acres Mall, and around NDSU. The latter is the result of the presence of college students. Poverty rates correlate to those income levels.

As the urban hub for the region, Fargo has numerous income-restricted housing developments found throughout the city. The Fargo Housing and Redevelopment Authority is the lead agency providing affordable rental units through the administering of the Housing Choice Vouchers program as well as the direct operation of apartment complexes. The hazard of flooding is ever present in Fargo and thus presents a risk for many of these complexes. Continued buildout of the city's flood wall and levee system over time has given a sizable

measure of safety.

One subsidized housing building to make note of is the Lashkowitz High Rise located in downtown Fargo near the Red River. Aside from flooding, the tower had issues with access for emergency personnel as well as sustained some fire damage in the winter of 2018. The building will be demolished given that it cannot be fixed. A new building with affordable housing units will be built adjacent to the property.

Housing

Rental housing units are a higher share of the housing stock in downtown, area around NDSU, and around West Acres Mall. In Fargo, approximately 55% of residential units are renter-occupied. This is a much higher proportion compared to most cities in the region.

Fargo also has five mobile home parks, three of which are north of Main Avenue. While a valuable source of affordable housing, manufactured housing does not fare as well in severe storms. For example, the lack of a basement or an interior room without windows means residents have less protection during tornados and high-wind storms. None of the five mobile home parks have dedicated storm shelters available to the residents.

The City has added a local amendment to the International Building Code whereby all new and substantially improved manufactured housing units must either be elevated or anchored according to specifications in order to prevent being carried away by floodwaters. Additionally, tie-downs are required for all new and substantially improved mobile homes. Units that were grandfathered in the new ordinances are at a higher risk to storms and floods.

The older houses are found in the core neighborhoods and in north Fargo. The City administers several housing rehabilitation programs for low-to-moderate income households. These fix code deficiencies and therefore improve the condition of houses to withstand natural hazards. Widespread development to the south has meant those houses are built to more recent building codes.

Among renters, a sizable share (36% in 2017) are deemed cost burdened in that 35% or more of their monthly income goes towards housing costs. The areas with the highest concentrations of cost-burdened renters are around NDSU and in the four neighborhoods south of Interstate 94 and near the Red River: Brunsdale, Southpointe, Lincoln, and River Drive. The cost-burden rate is much lower for those who own their homes. Among those with mortgages it is approximately 11%; among those with no mortgages it is 6%. The Village West neighborhood has the highest share of cost-burdened homeowners. This can be explained in part to the sizable mobile home park within that neighborhoods.

Transportation

Fargo and the metropolitan area as a whole is a commercial center for the region. It sits at the cross roads of Interstates 94 and 29, contains an international airport, and BNSF rail lines that carry up to 100 trains daily. Hazardous materials such as oil and anhydrous ammonia travel on those rails. Risks related to transportation incidents and other man-made hazards are discussed in the county's THIRA plan. According to BNSF, the bridges and approaches are designed to withstand the 100-year flood level. Jams resulting from ice and debris can present issues.

Health Care and Nonprofits

As the regional hub, Fargo has multiple medical facilities and elderly care facilities. In 2018, the new Sanford Medical Center was verified as a Level 1 Adult Trauma Center. Essentia Health's hospital in Fargo has a Level 2 rating.

Sanford Health's emergency management staff said that flooding is not a concern for their facilities, except for the Broadway location that is closest to the river. All of their hospitals have sufficient generator capacity while the clinics will just close in the event of a power outage. The new facilities have been built to modern standards, therefore they were hardened against severe storms.

The Veterans Administration hospital is located in north Fargo adjacent to the Red River. It is protected via a floodwall. The hospital had problems in 2016 and 2017 with power outages caused by old infrastructure and untrimmed trees. For each brownout a fuse in one elevator blows out which over time cost hundreds of thousands of dollars to replace. Xcel Energy has fixed this issue in north Fargo neighborhoods.

Because of the proximity to health care and as the hub for the region, the Fargo metro has numerous nursing homes and other similar assisted living facilities for older adults. In emergencies with advanced notice, it takes time and is detrimental to the residents' health to evacuate. Since the 2009 flood, local senior care facilities have upgraded their evacuation plans and procedures. Since flooding is the top concern, the mitigation actions Fargo has or will undertake have greatly reduced the risk and therefore likelihood of needing to evacuate.

A network of nonprofit agencies provides shelter and assistance to those individuals and families experiencing homelessness. However, unsheltered people are particularly vulnerable to the often harsh winters found in Cass County. Fortunately, shelter capacity has increased over the years allowing safe accommodations for people during the coldest months of the year.

Emergency Services

In 2017, Sanford Health opened a 284-bed, 1-million square foot hospital that offers a range of services. It is the only Level I Adult Trauma Center between Minneapolis and Seattle and between Denver and Omaha. Sanford Health's emergency management staff said that all of their locations are either already protected, the flood risk is undefined, or properties will be protected by the Diversion if it comes to pass. Their new facilities are built according to modern standards, therefore there was little concern about withstanding the effects of severe weather.

Essentia Health also has a Level II Trauma Center hospital on 32nd Avenue South. EMS is provided by FM Ambulance Services. 911 calls are answered and processed at the Red River Regional Dispatch Center.

Critical Facilities and Infrastructure

The City of Fargo has been able to invest significantly into its infrastructure to not only accommodate the growth it has experienced, but also to be better prepared for natural disasters and flooding in particular.

Fargo's wastewater treatment plant serves not only its own residents but also the residents of Frontier, Prairie Rose, Briarwood, Oxbow, Reile's Acres, North River, Harwood, Horace, and various rural residential subdivisions. 67 lift stations pump wastewater into the collection system that culminates at the treatment plant in far north Fargo. Over time and as the budget allows, Fargo has been installing backup power generators at its lift stations. Several generator projects are listed in the mitigation action list. Given that the wastewater treatment plant is adjacent to the Red River, it is at risk of flooding. If it were to be inundated, the consequences would be dire for public health and safety. The time necessary to get the plant back online would mean significant pollution of the Red River and lead to widespread property damage. As of writing, Fargo is pursuing a FEMA grant for the construction of a permanent levee.

Fargo's 75 storm sewer lift stations are a crucial component of the city's flood protection efforts, in that it protects the interior of the city by pumping rainfall and snowmelt into the river when the gravity flow no longer works when the Red River is high. Along 2nd Street and Main Avenue near the Veterans Memorial Bridge the oldest storm sewer lift station in the city is being replaced, along with the installation of a removable floodwall that ties into said bridge and the levee near the Lashkowitz High Rise.

The City obtains its drinking water from both the Red and Sheyenne rivers. Recently, an expansion to the water treatment plan has been completed which added membrane treatment technology. This will allow for the removal of sulfate and bromide, a capability that wasn't present before. Additional projects related to hazard mitigation include installing backup power generators and raising the intake pumphouse above base flood elevation.

Businesses and Employers

Fargo is home to several large employers whose impact is felt throughout the county and region. It is not uncommon for people living in the rural, small communities to commute to Fargo for work. As 2017, the largest employers in Fargo were in descending order were Sanford Health, North Dakota State University, Fargo Public Schools, Noridian Mutual Insurance Company, and Essentia Health. The Fargo metropolitan area has become a regional hub for health care, education, technology, and manufacturing sectors. This leads to a more resilient economy overall that can better withstand disruptions and downturns. In terms of natural hazards, flooding and drought are the two that arguably can have the greatest impact upon Fargo’s businesses. The economic impact of severe floods are found in the need to divert resources towards flood preparations and also in the disruptions in the supply chain in case transportation routes are cut off by floodwaters. For drought, the impacts to the agricultural sector can nonetheless have a significant impact, even with Fargo’s relatively more diverse economy.

Natural Hazards

Dam Failure	Fargo has several low-head dams on the Red River. Failure of these will lead to only minor impacts.
Drought	<p>Fargo obtains its water via the Red River, which is vulnerable to drought. If needed, a secondary intake on the Sheyenne River can be used. The most significant effort aimed at drought mitigation is the project to divert water eastward from the Missouri River.</p> <p>The city has adopted a four-phase drought response plan which elevates the restrictions depending upon the severity of the drought.</p>
Flooding	<p>Fargo has a significant flood risk, as evidenced in the past decade with record or near-record flood stages. In the 2009 flood, the City was close to issuing an evacuation order as the river levels continued to rise. At the time, officials estimated up to 100,000 people were in the evacuation zone. Fortunately, that order did not need to be issued. The experience did emphasize to elected leaders and the public at large the imperative of implementing permanent flood protection measures. Climatic changes, including the present wetter-than-normal cycle, will only aggravate this risk.</p> <p>To prepare against flooding of that magnitude, numerous measures are being pursued. The most notable of these is the Fargo-Moorhead Diversion. This \$2.75 billion project will consist of an upstream embankment that will hold back water and direct it westward to a 30 mile long channel, approximately 1,500 feet wide, that will route water around the metropolitan area. Coupled with in-town protection such as floodwalls, levees, and retention, this project will ultimately reduce a 100-year flood event from the current 42.4 feet to 37 feet river level.</p> <p>Other efforts include active enforcement of robust floodplain ordinances including water course setbacks, issuance of floodplain development permits, and building floodproofing codes. Fargo is a participant in CRS at a Class 5 level. Also, FEMA has granted an exemption to Fargo that allows new homes in the 100-year floodplain to have a basement. This was originally approved in 1975 but was recently given an extension.</p>

	<p>Over the last decade, Fargo has bought out 235 homes to the tune of \$84.5 million. The city intends to buy at least 28 more homes to allow for the construction of floodwalls and levees.</p>
<p>Geological Hazards</p>	<p>Riverbank slumping has been a concern for many years. Homes built too closely to the river were at risk of compromised structural integrity. Fargo's flood buyout program has removed the vast majority of those buildings which were at risk. Restrictive covenants now ensure that land remains undeveloped in perpetuity.</p>
<p>Severe Summer and Winter Weather</p>	<p>Fargo can face extreme weather throughout the year from weeks of temperatures below zero and whiteout blizzards in the winter to drenching downpours and suddenly forming tornados in the summer. One's ability to engage in steps to reduce the extent of damage possible to one's property, not to mention keep themselves safe during the events, can be constrained by the aforementioned socio-economic factors.</p> <p>Lower-income households do not typically have the wherewithal in their budget to retrofit their houses, if they own their house that is. Those households are more often than not renters, so the onus to undertake mitigation retrofits rests with the property owner and management company. One example is for developers to consider communal safe rooms where residents are better protected compared to the bathrooms of their units.</p> <p>The Fargo Park District indicated that not all of its parks have structures which can serve as storm shelters. Those with buildings have safety areas identified and staff are trained where those are located. At Lindenwood Park, the informational center is capable of serving as a storm shelter for park patrons.</p> <p>Fargo is recognized as a StormReady community by the National Oceanic and Atmospheric Association.</p>
<p>Urban Fire</p>	<p>The Fargo Fire Department updated its Standard of Response Coverage in 2016. This contained a risk assessment of the fire hazards in the city, specifically looking at what areas of the city pose the maximum fire risk, the properties that would be a critical or economic loss, and the greatest non-fire risks. The high risk properties include hospitals, nursing homes, schools, apartment buildings greater than four units, commercial buildings greater than one story or greater than 6,500 square feet, public assemblies, manufacturing, and businesses that store or use reportable amounts of hazardous materials.</p> <p>Denser areas of the city pose a greater fire risk. Downtown Fargo has undergone a revitalization that has meant many buildings have been remodeled and updated according to most current fire codes. In the same vein, the older apartments typically found in the core and northern neighborhoods represent a higher fire risk given they were not built to the stricter codes.</p> <p>At the time, the Standard of Response Coverage found that 30 hydrants in single-family residential areas did not meet the requirement of 1,000 gallons</p>

	<p>per minute standard and 227 hydrants in multi-family/commercial areas did not meet the 3,500 gallons per minute standard. Most of these were found in the older portions of the city, but the Fire Department does not feel these areas are large or isolated enough that they couldn't be reached by water tanker trucks in a timely manner.</p> <p>In November 2018, the City of Fargo was upgraded by the Insurance Services Office from an ISO Class 2 to a rating of ISO Class 1. This has placed Fargo in the top half-percent of all communities nationwide for the fire suppression delivery system. The Fargo Fire Department was judged on emergency communications, water supply, and department operations. It is one of 72 departments that have achieved an ISO Class 1 designation in addition to being Internationally Accredited.</p>
<p>Wildfire</p>	<p>The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town. The forested areas along the Red River can also be an ignition source for wildfires.</p>

JURISDICTIONAL CAPACITY

The City of Fargo has significantly more resources than many of the smaller communities in the County. A large staff including specialties in engineering, GIS, public works, planning, zoning, accounting and legal. An inspections department enforces codes adopted by the City of Fargo (i.e. 2015 International Codes with local amendments), as well as some of the city's ordinances.

The City has an active ongoing planning program which engages the public in an inclusive manner. These efforts provide a roadmap for elected officials and other community leaders as policy is enacted and implemented. Plans that have been done include a comprehensive plan, a plan specific to the downtown core, a housing study, and action plans for the annual allocation of CDBG and HOME funds. The planning department will soon be in the process of working with the leaders of the core neighborhoods in updating plans specific to those areas.

A substantial budget, comparatively speaking, places Fargo in a better position to accomplish top ranking projects. A local two percent sales tax provides a funding stream for replacing, upgrading, or expanding infrastructure. An infrastructure sales tax of 1% is authorized until 2028; a flood control sales tax is authorized until 2084. Larger scale projects still require assistance from federal and state resources.

PROGRESS SINCE LAST PLAN

Fargo has continued making progress towards building a resilient city that is better equipped to respond to disasters. Since flooding remains the prominent concern, the projects mentioned in

previous plan which have been completed or are no longer relevant include:

- The relocation of lift stations #13, 18, and 19
- The completion of the 2nd Street floodwall by the new city hall
- Headworks improvements at the water treatment plant to more effectively manage flows
- Installation of west side overflow interconnects to allow sewage to be pumped to lagoons during heavy rain events
- Relocation of storm sewer lift station and installation of permanent generator at lift station #65
- Convert portable lift station to permanent with generator at lift station #64
- Installation of emergency generators at lift stations #26, 46, and 2

As previously mentioned, the City is one entity among multiple working to make progress on the FM Diversion and Red River Water Supply Project.

MITIGATION ACTIONS

Mitigation Action	1] Install failsafe traffic signals, street lighting and message boards along designated emergency routes.
Hazards Addressed	All hazards
Responsible Agency	City of Fargo
Cost	\$5 million
Description	This updated equipment will ensure traffic can still flow along key evacuation routes during hazard-caused power outages.
Potential Funding Sources	Infrastructure sales tax
Timeline	10-50 years
Priority	Low

Mitigation Action	2] Remove structures from slough and cutbank areas along Red River
Hazards Addressed	Flooding (riverine and flash)
Responsible Agency	City of Fargo
Cost	\$15-20 million
Description	Continuing with property acquisition along rivers and streams will remove structures at-risk of erosion.
Potential Funding Sources	Infrastructure sales tax
Timeline	5-15 years
Priority	Low

Mitigation Action	3] Execute Fargo's Revised Comprehensive Flood Mitigation Plan
Hazards Addressed	Flood
Responsible Agency	City of Fargo
Cost	\$80 million

Description	Completely implementing Fargo's comprehensive flood control plan will save nearly a billion dollars in structural losses as well as removes threats to life and property by reducing reliance on emergency flood protection measures. This plan identifies buyouts and levees in areas hardest to provide emergency protection for. It also seeks to avoid loss of housing because of construction of freeboard purely for the purpose of obtaining certification in areas that have not experienced flooding in the past.
Potential Funding Sources	Flood control sales tax
Timeline	1-10 years
Priority	High

Mitigation Action	4] Bury electrical power and communication lines
Hazards Addressed	Wind, Thunderstorms, Winter storms
Responsible Agency	Private utility companies
Cost	\$50 million
Description	Coordinate with electric and telecommunications companies in identifying appropriate areas where lines can be buried.
Potential Funding Sources	Private companies' capital workplans
Timeline	10-25 years
Priority	Low

Mitigation Action	5] Elevate, floodproof, or fill basements of residential structures in the Special Flood Hazard Area
Hazards Addressed	Flood
Responsible Agency	Private
Cost	\$150 million
Description	Structures that can not be feasibly acquired and moved can be retrofitted instead according to FEMA standards that ultimately lead to a reduced flood insurance premiums for the property owners.
Potential Funding Sources	Flood control sales tax
Timeline	15-30 years
Priority	Low

Mitigation Action	6] Floodplain storage areas in select locations citywide (250 acre footprint or larger)
Hazards Addressed	Flood
Responsible Agency	City of Fargo
Cost	\$20 million for three ponds for total of \$60 million
Description	Floodwalls and levees alone cannot control flooding, unless combined with a water retention strategy.
Potential Funding Sources	Infrastructure sales tax
Timeline	1-10 years
Priority	High

Mitigation Action	7] Storm water retention ponds in select locations citywide
Hazards Addressed	Flooding (localized)
Responsible Agency	City of Fargo

Cost	\$5 million
Description	This will provide relief to the City's storm sewer system during heavy rainfall events, thus minimizing damage to properties as well as maintaining traffic flow for emergency personnel.
Potential Funding Sources	Infrastructure sales tax
Timeline	1-10 years
Priority	High

Mitigation Action	8] Install relief storm sewer in select locations citywide
Hazards Addressed	Flooding (localized)
Responsible Agency	City of Fargo
Cost	\$10 million
Description	In areas where the existing storm sewer is undersized, a relief storm sewer can provide extra capacity for peak flows during extreme precipitation events.
Potential Funding Sources	Infrastructure sales tax
Timeline	1-10 years
Priority	High

Mitigation Action	9] Install permanent generator at STS LS #8 (Drain 10: 32nd Street south of Main Avenue)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	This will ensure pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. The lift station has free flow gates but if water downstream of the lift station is at a higher elevation the pumps are needed.
Potential Funding Sources	Infrastructure sales tax.
Timeline	5-15 years
Priority	Medium

Mitigation Action	10] Install permanent generator at STS LS #9 (Drain 40: 45th Street at Main Avenue)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	This will maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. The lift station has free flow gates but if

	water downstream of the lift station is at a higher elevation the pumps are needed.
Potential Funding Sources	Infrastructure sales tax
Timeline	5-15 Years
Priority	Medium

Mitigation Action	11] Install permanent generator at STS LS #16 (Drain 10 south of 2nd Avenue South)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	This will maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. The lift station has free flow gates but if water downstream of the lift station is at a higher elevation the pumps are needed.
Potential Funding Sources	Infrastructure sales tax
Timeline	5-15 Years
Priority	Medium

Mitigation Action	12] Install permanent generator at STS LS #21 (Drain 3: West of 18th Street and north of 12th Avenue North)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	This will maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. The lift station has free flow gates but if water downstream of the lift station is at a higher elevation the pumps are needed.
Potential Funding Sources	Infrastructure sales tax
Timeline	5-15 Years
Priority	Medium

Mitigation Action	13] Install permanent generator at STS LS #33 (East of Dakota Drive on 19th Avenue North)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	This will maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The

	potential for property damage along with street flooding is present if this lift station was to become inoperable. The lift station has free flow gates but if water downstream of the lift station is at a higher elevation the pumps are needed.
Potential Funding Sources	Infrastructure sales tax
Timeline	5-15 Years
Priority	Medium

Mitigation Action	14] Install permanent generator at STS LS #50 (45th Street South of 3rd Avenue North)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	This will maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. The lift station has free flow gates but if water downstream of the lift station is at a higher elevation the pumps are needed.
Potential Funding Sources	Infrastructure sales tax
Timeline	5-15 Years
Priority	Medium

Mitigation Action	15] Raise gatewell and install permanent generator at STS LS #1 (2nd Street South at Main Avenue)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Raise gatewell: \$100,000 Permanent generator: \$150,000
Description	This will maintain traffic for civilian, city and emergency personnel and also from river flooding. This lift station pumps water from the underpass on 2nd Street north of Main Avenue. If this lift station lost power the underpass would be impassable to citizens, city maintenance workers and emergency vehicles during rain events. The top of the gatewell elevation is below the flood of record and needs to be ringed with sandbags during high flood events to keep river water from expelling out of the lift station.
Potential Funding Sources	Infrastructure and/or flood control sales taxes
Timeline	1-10 years
Priority	High

Mitigation Action	16] Install permanent generator at STS LS #3 (25th Street at Main Avenue)
Hazards Addressed	Flooding, Thunderstorms
Responsible Agency	City of Fargo
Cost	\$150,000
Description	Maintaining traffic for civilian, city and emergency personnel. This lift station pumps water from the underpass on 25 th Street north of Main Avenue. If this

	lift station lost power the underpass would be impassable to citizens, city maintenance workers and emergency vehicles during rain events.
Potential Funding Sources	Infrastructure sales tax
Timeline	1-10 years
Priority	Medium

Mitigation Action	17] Install permanent generator at STS LS #6 (45th Street at 19th Avenue North)
Hazards Addressed	Flooding, Thunderstorms
Responsible Agency	City of Fargo
Cost	\$150,000
Description	This will maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water in Cass County Drain 40 that collects water from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. Lift station has free flow gates but if water downstream of the lift station is at a higher elevation the pumps are needed.
Potential Funding Sources	Infrastructure sales tax.
Timeline	5-15 years
Priority	Medium

Mitigation Action	18] Install permanent generator at STS LS #11 Trollwood (east lift)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	This will maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable.
Potential Funding Sources	Infrastructure sales tax
Timeline	1-10 years
Priority	High

Mitigation Action	19] Install permanent generator at STS LS #14 (West of 25th Street at 26th Avenue South)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	This will maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift

	station was to become inoperable. This lift station is critical to pump storm water out of Bluemont Lakes in the event of heavy rainfall/large runoff.
Potential Funding Sources	Infrastructure sales tax
Timeline	1-10 years
Priority	High

Mitigation Action	20] Relocate lift station and install permanent generator at STS LS #15 (East of 9th Street at 26th Avenue South - Country Club)
Hazards Addressed	Flood
Responsible Agency	City of Fargo
Cost	Relocate lift station: \$2 million Install permanent generator: \$150,000
Description	This will maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. The location of the lift station makes it susceptible to river flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	5-15 years
Priority	Medium

Mitigation Action	21] Install permanent generator at STS LS #16 (Cass County Drain 10 south of 2nd Avenue South)
Hazards Addressed	Flooding, Thunderstorms
Responsible Agency	City of Fargo
Cost	\$150,000
Description	This will maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable.
Potential Funding Sources	Infrastructure sales tax
Timeline	5-15 years
Priority	Medium

Mitigation Action	22] Install permanent generator at STS LS #17 (University Drive at Main Avenue)
Hazards Addressed	Flood
Responsible Agency	City of Fargo
Cost	\$150,000
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water from the underpass on University Drive north of Main Avenue. If this lift station lost power the underpass would be impassable to citizens, city maintenance workers and emergency vehicles during rain events.

Potential Funding Sources	Infrastructure sales tax.
Timeline	1-10 years
Priority	High

Mitigation Action	23] Install permanent generator at STS LS #20 (Island Park)
Hazards Addressed	Flood
Responsible Agency	City of Fargo
Cost	\$150,000
Description	This will maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable.
Potential Funding Sources	Infrastructure sales tax.
Timeline	1-10 years
Priority	High

Mitigation Action	24] Upgrade to duplex pumping station for redundancy and install permanent generator at STS LS #24 (Wastewater treatment plant)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$2 million
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. This lift station also pumps runoff from around the wastewater treatment plant. The potential for property damage, wastewater plant flooding along with street flooding is present if this lift station was to become inoperable.
Potential Funding Sources	Infrastructure sales tax, flood sales tax
Timeline	1-10 years
Priority	High

Mitigation Action	25] Install permanent generator at STS LS #26 (Ridgewood Addition)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable.
Potential Funding Sources	Infrastructure sales tax
Timeline	10-20 years
Priority	Low

Mitigation Action	26] Relocate lift station at STS LS #30 (Milwaukee bike trail south of 40th Avenue)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$200,000
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	1-3 years
Priority	High

Mitigation Action	27] Install permanent generator at STS LS #34 (West of Elm Street on Forest Avenue)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable.
Potential Funding Sources	Infrastructure sales tax.
Timeline	1-10 years
Priority	High

Mitigation Action	28] Install permanent generator at STS LS #35 (Cass County Drain 10 south of 6th Avenue South)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable.
Potential Funding Sources	Infrastructure sales tax
Timeline	1-10 years
Priority	High

Mitigation Action	29] Relocate lift station and install permanent generator at STS LS #39 (VA Hospital)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo

Cost	Relocate lift station: \$2 million Install permanent generator: \$150,000
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. Location of the lift station makes it susceptible to river flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax
Timeline	5-15 years
Priority	Low

Mitigation Action	30] Relocate lift station and install permanent generator at STS LS #40 (East of Eagle Street on 32nd Avenue North)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Relocate lift station: \$2 million Install permanent generator: \$150,000
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. Location of the lift station makes it susceptible to river flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	10-20 years
Priority	Low

Mitigation Action	31] Raise gatewell at STS LS #41 (10th Street North – 3700 Block)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$10,000
Description	Minimize river flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the gatewell is close to the flood of record. If water was to expel out of the gatewell it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	10-20 Years
Priority	Low

Mitigation Action	32] Relocate lift station and install permanent generator at STS LS #42 (5th Street South at 21st Avenue South)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Relocate lift station: \$2 million Install permanent generator: \$150,000

Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. Location of the lift station makes it susceptible to river flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	1-10 years
Priority	High

Mitigation Action	33] Relocate lift station and install permanent generator at STS LS #43 (West side of University Drive at Rose Coulee)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Relocate lift station: \$2 million Install permanent generator: \$150,000
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. Location of the lift station makes it susceptible to river flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	5-15 years
Priority	Medium

Mitigation Action	34] Elevate lift station cover slab, pump and control panel at STS LS #47 (38th Street south of Cass County Drain 27)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	Contain river water in the lift station structure and maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the lift station is lower than emergency levees installed in 2009. If water was to expel out of the gatewell side of the lift station it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax
Timeline	5-15 years
Priority	Medium

Mitigation Action	35] Raise gatewell at STS LS #48 (38th Street north of Cass County Drain 27)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$50,000
Description	Contain river water in gatewell and maintain pumping to minimize flooding damages to commercial properties along with maintaining traffic for civilian,

	city and emergency personnel. The top of the gatewell elevation is below the flood of record elevation. If water was to expel out of the gatewell it would lead to flooding commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	5-15 years
Priority	Medium

Mitigation Action	36] Raise gatewell and install permanent generator at STS LS #49 (45th Street north of Cass County Drain 27)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Raise gatewell: \$50,000 Install permanent generator: \$150,000
Description	Contain river water in gatewell and maintain pumping to minimize flooding damages to commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the gatewell elevation is below the flood of record elevation. If water was to expel out of the gatewell it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax
Timeline	5-15 years
Priority	Medium

Mitigation Action	37] Raise lift station at STS LS #52 (East of Broadway at Kandi Lane)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$100,000
Description	Contain river water in gatewell side of the lift station while maintaining pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable. The top cover of the lift station is above the 2009 highwater elevation however, the risk of flood water expelling out of the gatewell on a larger flood event is possible.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	10-20 years
Priority	Low

Mitigation Action	38] Install permanent generator at STS LS #53 (Drain 10 at 40th Avenue North- CC20)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$200,000
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water in Cass County Drain 10 that collects water from both residential and commercial properties. The

	potential for property damage along with street flooding is present if this lift station was to become inoperable.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	10-20 years
Priority	Low

Mitigation Action	39] Raise gatewell and install permanent generator at STS LS #54 (36th Street north of 40th Avenue South)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Install permanent generator: \$150,000
Description	This lift station pumps water from the underpass on 40 th Avenue South at 129. If this lift station lost power the underpass would be impassable to citizens, city maintenance workers and emergency vehicles during rain events.
Potential Funding Sources	Infrastructure sales tax.
Timeline	1-10 years
Priority	High

Mitigation Action	40] Raise gatewell and install permanent generator at STS LS #55 42nd (Street north of Cass County Drain 27)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$50,000
Description	Contain river water in the gatewell and maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the gatewell elevation is below the flood of record elevation. If water was to expel out of the gatewell it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	5-15 years
Priority	Medium

Mitigation Action	41] Raise lift station and install permanent generator at STS LS #56 (42nd Street south of Cass County Drain 27)
Hazards Addressed	Flooding, Thunderstorms
Responsible Agency	City of Fargo
Cost	Raise lift station: \$150,000 Install permanent generator: \$150,000
Description	Contain river water in gatewell side of lift station and maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the lift station is lower than emergency levees installed in 2009. If water was to expel out of the gatewell side of the lift station it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	5-15 years

Priority	Medium
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Mitigation Action	42] Raise lift station and install permanent generator at STS LS #57 (Trollwood - west lift)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Raise lift station: \$150,000 Install permanent generator: \$150,000
Description	Contain river water in gateway side of lift station and maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the lift station is lower than emergency levees installed in 2009. If water was to expel out of the gateway side of the lift station it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	1-10 years
Priority	High

Mitigation Action	43] Raise lift station at STS LS #58 (University Drive at 64th Avenue South)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	Contain river water in gateway side of lift station and maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the lift station is lower than emergency levees installed in 2009. If water was to expel out of the gateway side of the lift station it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	1-10 years
Priority	High

Mitigation Action	44] Install permanent generator at STS LS #59 (36th Street at 9th Avenue South)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$150,000
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water primarily from commercial areas and from the 9 th Avenue South underpass at Interstate 29. If this lift station lost power the underpass would be impassable to citizens, city maintenance workers and emergency vehicles during rain events.
Potential Funding Sources	Infrastructure sales tax, flood sales tax
Timeline	5-15 years
Priority	Medium

Mitigation Action	45] Raise lift station and install permanent generator at STS LS #61 (East side of 5th Street at 18th Avenue South)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Raise lift station: \$150,000 Install permanent generator: \$150,000
Description	Contain river water in gateway side of lift station and maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the lift station is lower than emergency levees installed in 2009. If water was to expel out of the gateway side of the lift station it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax.
Timeline	5-15 years
Priority	Medium

Mitigation Action	46] Raise lift station and install permanent generator at STS LS #67 (Osgood lift station - east side Cass County Drain 27)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Raise lift station: \$150,000 Install permanent generator: \$150,000
Description	Contain river water in gateway side of lift station and maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the lift station is lower than emergency levees installed in 2009. If water was to expel out of the gateway side of the lift station it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	5-15 years
Priority	Medium

Mitigation Action	47] Raise lift station and install permanent generator at STS LS #68 (Osgood lift station - west side Cass County Drain 27)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Raise lift station: \$150,000 Install permanent generator: \$150,000
Description	Contain river water in gateway side of lift station and maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the lift station is lower than emergency levees installed in 2009. If water was to expel out of the gateway side of the lift station it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax
Timeline	5-15 years
Priority	Medium

Mitigation Action	48] Raise lift station and install permanent generator at STS LS #70 (45th Street south of Cass County Drain 27)
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Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Raise lift station: \$150,000 Install permanent generator: \$150,000
Description	Contain river water in gatwell side of lift station and maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the lift station is lower than emergency levees installed in 2009. If water was to expel out of the gatwell side of the lift station it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	5-15 years
Priority	Medium

Mitigation Action	49] Raise lift station and install permanent generator STS LS #71 (Cass County Drain 53 at 52nd Avenue South)
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	Raise lift station: \$150,000 Install permanent generator: \$150,000
Description	Contain river water in gatwell side of lift station and maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. The top of the lift station is lower than emergency levees installed in 2009. If water was to expel out of the gatwell side of the lift station it would lead to flooding residential and commercial property along with street flooding.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	5-15 years
Priority	Medium

Mitigation Action	50] Install permanent generator at STS LS #75 (2nd Street North at 15th Avenue)
Hazards Addressed	Flooding, Thunderstorm
Responsible Agency	City of Fargo
Cost	\$150,000
Description	Maintain pumping to minimize flooding damages to residential and commercial properties along with maintaining traffic for civilian, city and emergency personnel. This lift station pumps water that collects in the storm sewer system from both residential and commercial properties. The potential for property damage along with street flooding is present if this lift station was to become inoperable.
Potential Funding Sources	Infrastructure sales tax, flood sales tax.
Timeline	5-15 years
Priority	Medium

Mitigation Action	51] Emergency generator for lift station #58
Hazards Addressed	Thunderstorms, heavy rainfall intensity
Responsible Agency	City of Fargo

Cost	\$1 million
Description	Power supply to Lift Station #58 in event of grid power loss, allowing the city to continue sewer operations thus minimizing flooding, overflows, and sewer backup damages to properties.
Potential Funding Sources	Infrastructure Sales Tax
Timeline	1-10 years
Priority	High

Mitigation Action	52] Emergency generators for wastewater treatment plant
Hazards Addressed	All hazards
Responsible Agency	City of Fargo
Cost	\$2 million
Description	The installation of four backup power generators will ensure the water treatment plant continues operation during disasters.
Potential Funding Sources	FEMA (HMGP or PDM) with local match including infrastructure sales tax
Timeline	1-5 years
Priority	High

Mitigation Action	53] Effluent force main improvements
Hazards Addressed	Thunderstorms, Flooding
Responsible Agency	City of Fargo
Cost	\$4 million
Description	Modify existing force main to more efficiently manage flows, which potentially minimizes flooding, overflows and sewer backup damages to commercial and residential properties.
Potential Funding Sources	Infrastructure sales tax
Timeline	1-10 years
Priority	Low

Mitigation Action	54] Storm Lift Station Upgrade - Wastewater Treatment Plant
Hazards Addressed	Thunderstorms, heavy rainfall intensity, flooding
Responsible Agency	City of Fargo
Cost	\$500,000
Description	Install a new pump and retrofit the existing pump station to allow the Storm Lift Station to operate correctly during high flow and high water events at the Wastewater Treatment Plant preventing surcharging of the storm sewer system.
Potential Funding Sources	Infrastructure sales tax
Timeline	1-10 years
Priority	Low

Mitigation Action	55] Emergency standby generator at Sheyenne River Pump Station
Hazards Addressed	All hazards
Responsible Agency	City of Fargo
Cost	\$1 million
Description	Power supply to the Sheyenne River Pumping Station in event of grid power loss allowing the City to continue to provide raw water to the treatment

	plant to be treated for fire protection and to serve users
Potential Funding Sources	Infrastructure sales tax
Timeline	1 year (2019)
Priority	High

Mitigation Action	56] Relocation of the Sheyenne River Pump Station
Hazards Addressed	Flooding
Responsible Agency	City of Fargo
Cost	\$15 million
Description	New location to remove loss of service due to flood event
Potential Funding Sources	Infrastructure sales tax
Timeline	1-3 years
Priority	High

Mitigation Action	57] Emergency standby generator at Red River Pump Station
Hazards Addressed	All hazards
Responsible Agency	City of Fargo
Cost	\$1 million
Description	Power supply to Red River Pumping Station in event of grid power loss allowing the City to continue to provide raw water to the treatment plant to be treated for fire protection and to serve users
Potential Funding Sources	Infrastructure sales tax
Timeline	1-5 years
Priority	Low

Mitigation Action	58] Emergency Standby Generator at High Service Pump Station
Hazards Addressed	All hazards
Responsible Agency	City of Fargo
Cost	\$1 million
Description	Power supply to High Service Station in event of grid power loss allowing the City to continue to provide potable water for fire protection and to serve users and maintain pressure within the distribution system to prevent contamination
Potential Funding Sources	Infrastructure sales tax
Timeline	5-10 years
Priority	High

Mitigation Action	59] Electric Actuated Valve for Water Source
Hazards Addressed	All hazards
Responsible Agency	City of Fargo
Cost	\$350,000
Description	The City of Fargo utilizes two surface water sources. The two sources come together in the yard of the Water Treatment Plant and currently a manual valve needs to be adjusted to switch water sources, this actuated valve would provide a near instantaneous transfer allowing the City to maintain their treatment process in the event of the loss of a raw water station

Potential Funding Sources	Infrastructure sales tax
Timeline	5-10 years
Priority	Low

Mitigation Action	60] Expand dry chemical storage capacity
Hazards Addressed	All hazards
Responsible Agency	City of Fargo
Cost	\$500,000
Description	The City of Fargo currently has 7 days capacity for dry chemical storage at water treatment plant. This requires additional chemical deliveries weekly to provide for water treatment. This project would allow for 30 days' worth of storage.
Potential Funding Sources	Infrastructure sales tax
Timeline	1-3 years
Priority	Low

Mitigation Action	61] Permanent floodwalls at High Service Pump Station
Hazards Addressed	Flood
Responsible Agency	City of Fargo
Cost	\$500,000
Description	Floodwalls around the High Service Pump Station to protect against a flood allowing the High Service Station to stay in service allowing the City to continue to provide potable water for fire protection. serve users and maintain pressure within the distribution system to prevent contamination
Potential Funding Sources	Infrastructure sales tax
Timeline	5-10 years
Priority	High

Mitigation Action	62] Red River Pump Station flood prevention and flood wall construction
Hazards Addressed	Flood
Responsible Agency	City of Fargo
Cost	\$5,810,750
Description	Reconstructing the intake pump house at the water treatment plant will raise all pumps, controls, and electrical components above base flood elevation flood wall height. Also, install a flood wall to tie into the existing flood wall north of the pump stations as well as tying to Phase III of the Belmont Flood protection project on the south. This will protect the Red River Pump Station intake and the Water Treatment plant.
Potential Funding Sources	FEMA Pre-Disaster Mitigation (75%), Water Utility (25%)
Timeline	1-2 years
Priority	High

Mitigation Action	63] Permanent levee for Wastewater Treatment Plant
Hazards Addressed	Flood
Responsible Agency	City of Fargo
Cost	\$4,900,000
Description	The construction of permanent, long-term flood protection consisting of

	levees, sheet piles, and road raises will protect the wastewater treatment plant up to a 500-year flood without the need for a temporary enclosure.
Potential Funding Sources	Flood Mitigation Assistance (FMA)
Timeline	Begin construction 2020
Priority	High

Mitigation Action	64] Relocation of Red River Intake Screens
Hazards Addressed	Drought
Responsible Agency	City of Fargo
Cost	\$1.5 million
Description	Relocating the intake screens from the side channel to the deeper center channel of the River would allow prolonged use of the Red River during drought periods.
Potential Funding Sources	Infrastructure sales tax
Timeline	5-10 years
Priority	Low

Mitigation Action	65] Emergency Water Supply Line Improvements
Hazards Addressed	Drought
Responsible Agency	City of Fargo
Cost	\$12 million
Description	Provide water source Shyenne River to the Water Treatment Plant for treatment in the event of the Red River being too low.
Potential Funding Sources	Infrastructure sales tax
Timeline	5-10 years
Priority	High

Mitigation Action	66] Encourage rooftop retention on buildings and parking garages in downtown Fargo
Hazards Addressed	Severe weather (heavy precipitation events)
Responsible Agency	City of Fargo, private developers
Cost	Dependent on building
Description	Mitigates stormwater quantity and quality as well as storage of water for fire suppression if stored on high elevation. It is estimated in downtown Fargo there are enough flat roofs to have approximately 875,000 cubic feet of capacity.
Potential Funding Sources	Building owners
Timeline	Ongoing
Priority	Low

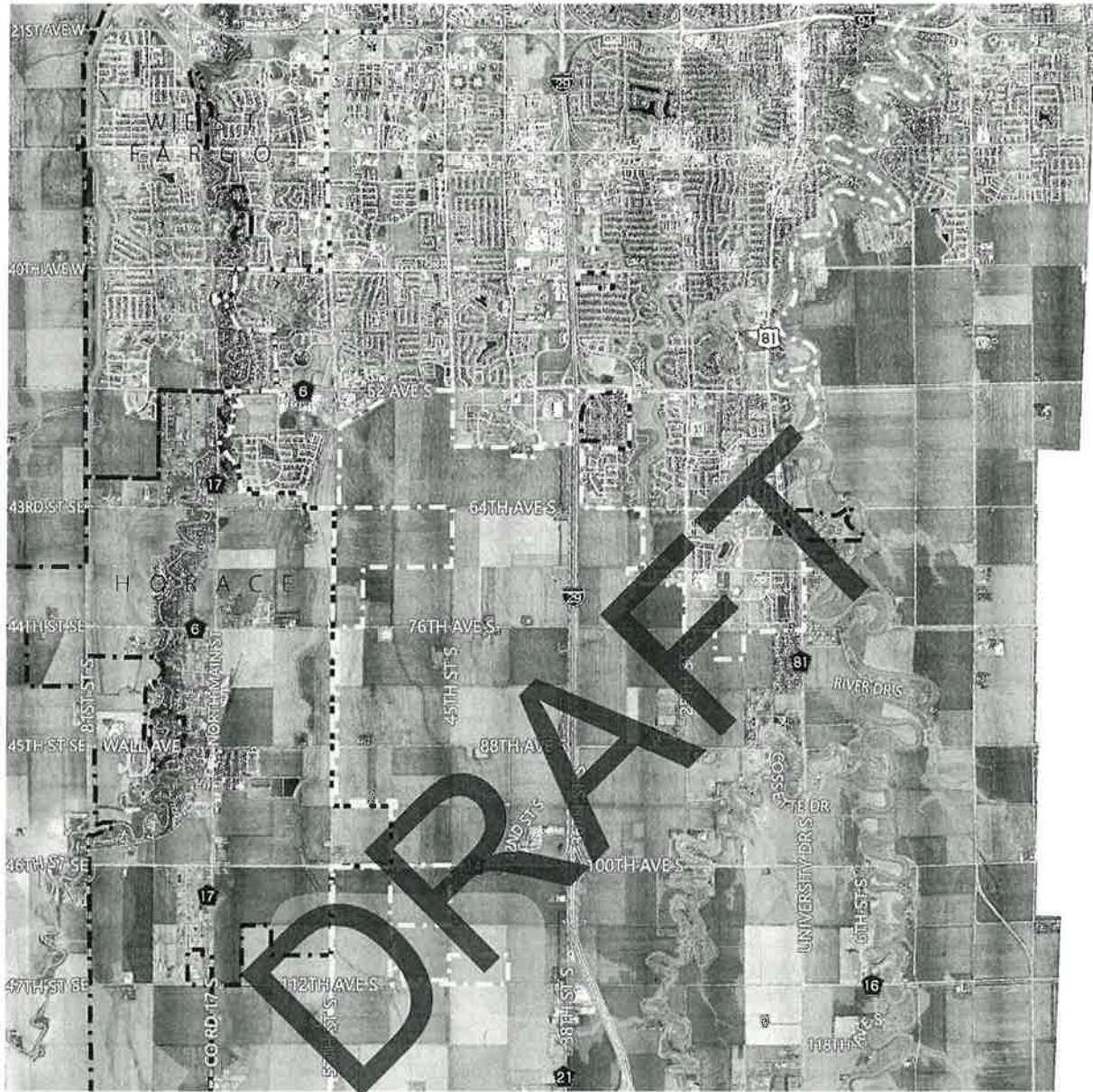
Mitigation Action	67] Retain rainwater on street through green infrastructure methods
Hazards Addressed	Thunderstorms, heavy rainfall
Responsible Agency	City of Fargo, private developers
Cost	To be determined according to location and method
Description	The installation of storage capacity underground (i.e. under sidewalks and roads where space is available) can provide rainwater retention in an area where large-scale detention/retention basins are infeasible such as the more densely built downtown.

Potential Funding Sources	Incorporate within normal road construction budget and funding sources, North Dakota Department of Health (CWSRF)
Timeline	Ongoing
Priority	Low

Mitigation Action	68] Increase tree canopy coverage downtown to reduce urban heat island effect
Hazards Addressed	Excessive heat
Responsible Agency	City of Fargo Forestry Department, private property owners
Cost	To be determined
Description	Having adequate shade can reduce temperatures in the downtown core, thus alleviating somewhat the urban heat island effect. Air conditioning costs are reduced and the aesthetic value of street trees will increase property values.
Potential Funding Sources	Incorporate within Forestry Department budget paired with grants from National Fish and Wildlife Foundation, ND Forest Service, and other funders.
Timeline	Ongoing
Priority	Low

Mitigation Action	69] Support the establishment of a day center for homeless individuals
Hazards Addressed	Extreme cold and heat
Responsible Agency	Social service agencies with support from City of Fargo
Cost	To be determined
Description	Most of the homeless shelters in the area are only open in the evenings and overnights. A center whereby people can visit during the day will not only provide a space to access services but will also be a place to warm up or cool down during extreme temperatures.
Potential Funding Sources	Foundation grants, City of Fargo's CDBG allocation and social service funding
Timeline	To be determined, but within five years
Priority	Low

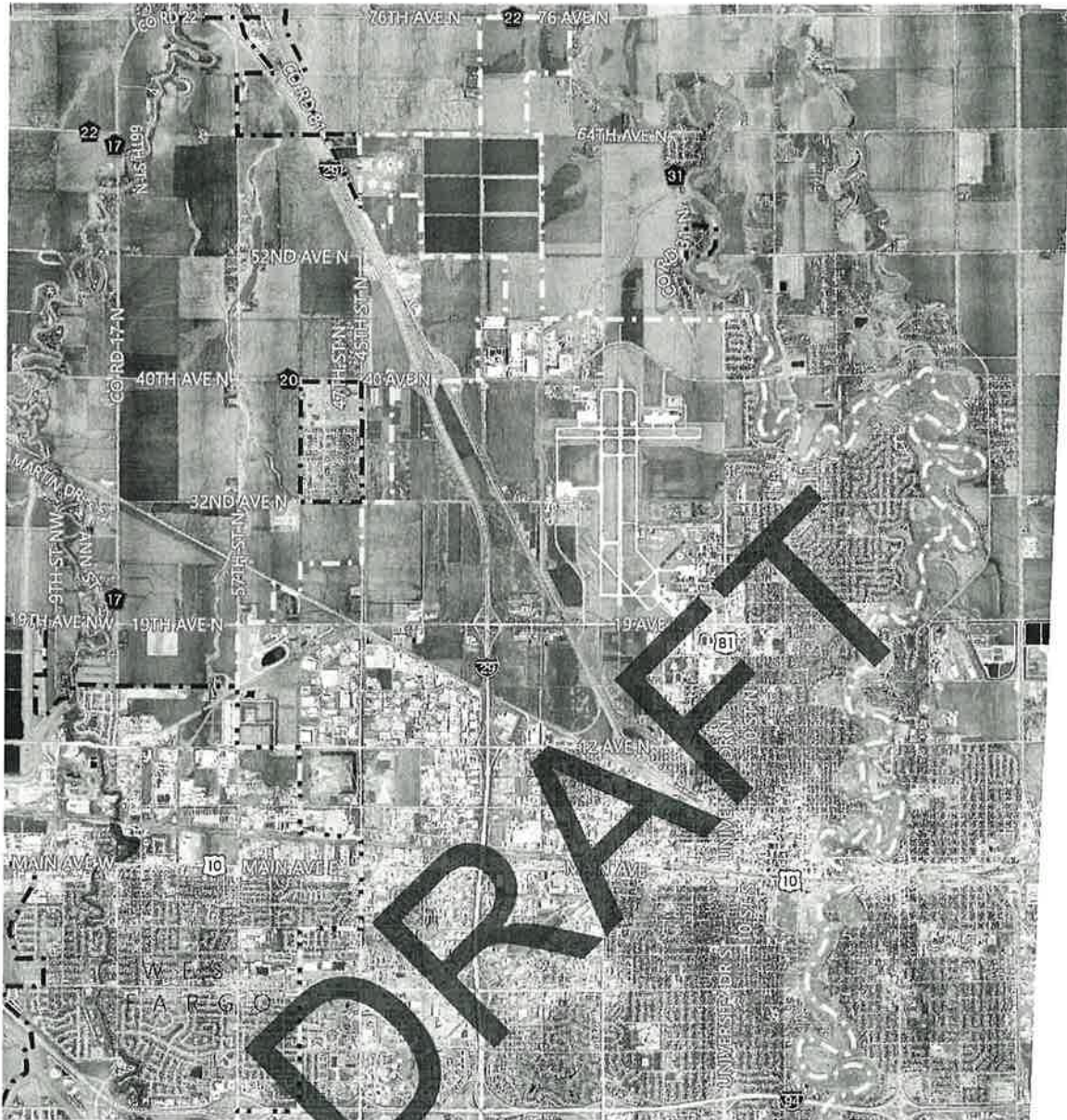
FLOODPLAIN MAP



100 Year Floodplain
Fargo City Limits



Source: Flood Insurance Rate Study (FIRMS) National Flood Inventory (NFI) for the Fargo area, prepared by the National Flood Insurance Program (NFIP) in 2007. Last updated January 2015.

Cass County Government
1000 1st St S, Fargo, ND 58102
701.785.4400
www.casscountygov.com



100 Year Floodplain
Fargo City Limits

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CASS COUNTY
GOVERNMENT

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13. Frontier

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Frontier is a small but fully built-out community of 214 that is landlocked by Fargo on all sides. Therefore, growth is effectively stunted. Six businesses line 36th Street South adjacent to Interstate 29. The remainder of the city are single-family homes.

Socio-Economic

Frontier is a wealthier community with a median household income of \$123,750 and no registered levels of poverty. Its median age of 46.9 years is higher than that of the county.

Housing

As stated earlier, all of the housing stock is single-family, owner-occupied detached homes. 54% of the homes were built in the 1970s, with the remainder built between 1980 and 2000. While the houses are older, the higher income level of the community would show that the households will have more resources towards implementing mitigation projects.

Transportation

Frontier has quick access to Interstate 29 with an onramp on Fargo's 52nd Avenue. All of the city's roads are paved.

Emergency Services

Frontier is served by FM Ambulance and the Cass County Sheriff's Department.

Health Care and Nonprofits

The nearest hospital is Essentia Health's hospital on 32nd Avenue South. Frontier does not have any health care or social service operators in town.

Critical Facilities and Infrastructure

Frontier has its own sewer system but is connected to Fargo's who ultimately treats the wastewater. It does not have a stormwater system installed. Water is provided by Cass Rural Water, although a few properties still have a private well.

Businesses and Employers

Most residents commute elsewhere for work. However, there are several businesses on the west end of town including a farm equipment supplier, auto body shop, fireworks retailer, and an automobile dealership.

Natural Hazards

Dam Failure	Frontier has no risk from dam failure.
Drought	Frontier obtains its water from Cass Rural Water District who said its water supply is adequate. There are no water users within Frontier that are particularly susceptible to the effects of drought.
Flooding	Per the existing floodplain maps, the northeast quadrant of the city is in the area for 1% annual chance for flooding with the remainder of the city in the 0.2% annual chance flood hazard area. Fortunately, many homes are elevated above the 100-year flood mark along with the roads in the community. In 2012, Frontier became a participant in NFIP thus allowing property owners to purchase flood insurance. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	Frontier has no risks from geological hazards.
Severe Summer Weather	Frontier faces the same severe summer weather risk as other jurisdictions. The older houses may be less able to withstand severe weather. There is no public storm shelter in town.
Severe Winter Weather	Frontier faces the same severe summer weather risk as other jurisdictions. The older houses may be less able to withstand severe weather.
Urban Fire	The only land uses which would present a higher than normal risk of building fire would be the fireworks retailer.
Wildfire	The risk of wildfire reaching the city is very low, given that it is within the developed metropolitan area. These are typically contained before putting any structures in danger.

JURISDICTIONAL CAPACITY

Frontier has a small population and limited staff capacity. Therefore, they may turn to county and state resources for financial and technical assistance. There is a community center from which for people to gather and disseminate information.

Frontier has an adopted zoning ordinance that includes a section, applied to the entirety of the city, that addresses flood damage prevention. This section requires development permits that show construction is not in risky areas nor would aggravate flooding issues. Other provisions include structures needing to be anchored, flood-resistant building materials to be used, utility equipment being elevated, and elevating the first floor of buildings on earthen fill.

PROGRESS SINCE LAST PLAN

The warning sirens and permanent flood protection items were in the 2014 plan, neither of which were completed. The solution for flooding will invariably be one regional in nature which can include the proposed diversion project.

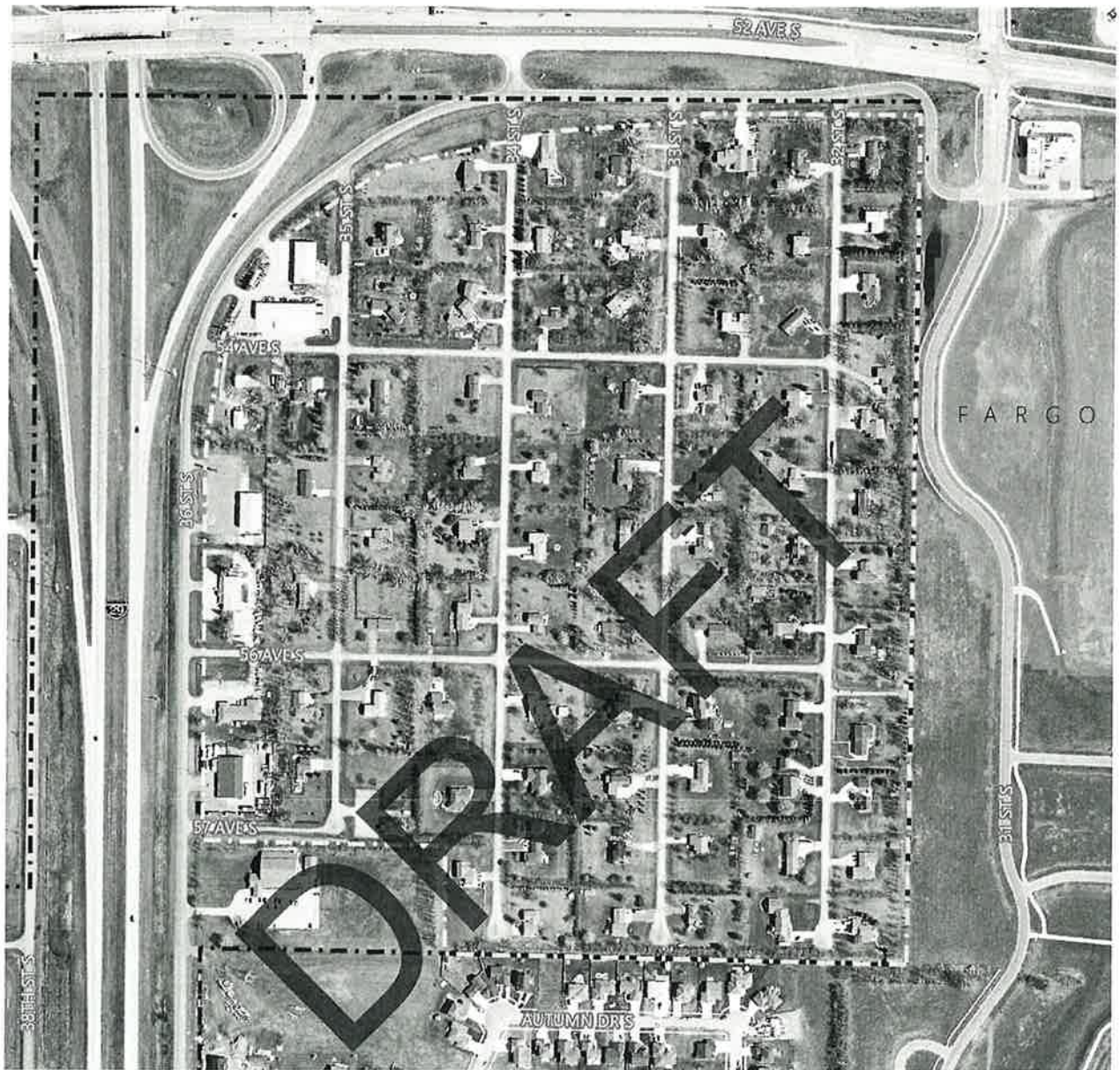
MITIGATION ACTIONS

Mitigation Action	1] Installation of warning sirens
Hazards Addressed	Severe weather
Responsible Agency	City of Frontier and Red River Dispatch Center
Cost	\$50,000
Description	Advanced warning will allow for increased preparedness with potential to reduce property damage and lessen the potential of loss of life
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	1-5 years depending on funding availability
Priority	Low

Mitigation Action	2] Upgrade storm sewer system
Hazards Addressed	Flooding
Responsible Agency	City of Frontier
Cost	To be determined
Description	The storm sewer system was installed in the early 1990s. It will need to be upgraded in order to handle storm water adequately.
Potential Funding Sources	(ND Department of Health) Clean Water State Revolving Fund
Timeline	3-5 years depending on funding availability
Priority	Medium

Mitigation Action	3] Create permanent flood protection around the City
Hazards Addressed	Flooding
Responsible Agency	City of Frontier and Cass County
Cost	To be determined
Description	This would reduce damages to public and private property and allow a more resilient community to without the frequent emergency flood preparations that have recently plagued the area.
Potential Funding Sources	Federal, state, and county
Timeline	5-10 years
Priority	High

FLOODPLAIN MAP



100 Year Floodplain
Frontier City Limits

Scale: 1 inch = 100 feet



**CASS COUNTY
GOVERNMENT**

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14. Gardner**UNIQUE VULNERABILITIES***Land Use and Growth Patterns*

The majority of Gardner consists of single-family houses. Other uses are a grain elevator, warehouse, parkland, and civic and religious buildings. The City is amidst farmland and has Interstate 29 on its western side. Several new homes have recently been built or are currently under construction on 4th, 5th, and 6th Streets.

Socio-Economic

Census data indicates that Gardner's median age is slightly under that of the county as a whole: 31.0 years compared to 32.2. This can be explained by the increase in the number of young families. The median income is \$33,750; although it should be noted that among those who are not retired mean earnings are \$52,347 per household. Even though younger families have been moving into town, approximately 17% of Gardner is 62 years or older.

Housing

Around 56% of the houses in Gardner are older than 1950, meaning that many houses may not be able to withstand severe weather like a newer house can. As previously noted, numerous new houses have been built in the past few years. There are no mobile home units in the city.

Transportation

Gardner is adjacent to and has an exit on Interstate 29. A BNSF rail line passes through the city and services Hunter Grain Co.'s elevator. The city's streets are unpaved.

Emergency Services

It is home to a fire hall of the Grandin Fire District, of which consists of 24 volunteer firefighters. The fire hall can serve as an emergency shelter if the need arises. It is a steel structure with room for two small-sized fire trucks.

Health Care and Nonprofits

Gardner has no health care or social services within the city. The nearest hospitals are in the Fargo metropolitan area.

Critical Facilities and Infrastructure

Gardner’s critical infrastructure includes a fire station, a water pump station where the community connects to Cass Rural Water, sanitary lift station, and lagoon ponds. The city does not have an underground storm water system installed; rather, it utilizes ditches and culverts. There is a slight, but sufficient, slope across the city that has led to improperly graded culverts. The result has been areas of town which have issues with water drainage.

Businesses and Employers

The two notable employers in Grandin are Hunter Grain Company and Winfield United. Both are in the agricultural sector and therefore susceptible to the impacts of severe weather and fluctuations in the commodities market. Most residents commute for work, presumably to Fargo-Moorhead, given the mean commuting time is 28.3 minutes according to Census data. Maintaining access to Interstate 29 is vitally important to ensure residents can get to and from work.

Natural Hazards

Dam Failure	Gardner has no risk from dam failure.
Drought	The city is serviced by Cass Rural Water District who said its water supply is adequate. Its two businesses are in agriculture, which is highly vulnerable to drought.
Flooding	Gardner has not been mapped by FEMA, however the city can be affected by overland flooding from poor water drainage near Interstate 29. Portions of town have inadequate drainage leading to the potential of localized flooding. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	There are no significant geological hazards affecting the town.
Severe Summer Weather	Gardner faces the same severe summer weather risk as other jurisdictions. The older homes may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.
Severe Winter Weather	Gardner faces the same severe summer weather risk as other jurisdictions. The older homes may experience higher heat loss compared to newer homes.
Urban Fire	The grain elevator presents the highest fire risk of any building in town.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

As a town of around 70 to 100 people, Gardner has limited financial and technical resources upon which to draw from. Assistance from the State and County is necessary for carrying out mitigation projects. They do have a contract with an engineering firm who can assist with various improvement projects.

PROGRESS SINCE LAST PLAN

The two items from the 2014 plan remain uncompleted but are still relevant for Gardner. Therefore, they remain for this plan update albeit with important updates.

MITIGATION ACTIONS

Mitigation Action	1] Installation of generators at the water station and sanitary sewer lift station
Hazards Addressed	Severe Weather that may impact power
Responsible Agency	City of Gardner
Cost	\$100,000
Description	The water intake station and sanitary sewer lift station are critical to homes and business in town having basic services. Back-up generators would reduce the threat of discontinued service in the event of a power outage Not directly related to hazard mitigation, Gardner needs a larger lift station to accommodate recent and projected growth. The estimated cost of this will be around \$250,000. Additional pond capacity is also needed.
Potential Funding Sources	FEMA (PDM and HMGP) with local match
Timeline	1-5 years
Priority	High

Mitigation Action	2] Drainage improvement project
Hazards Addressed	Flooding
Responsible Agency	City of Gardner with assistance of City Engineer
Cost	\$2 million
Description	The installation of storm sewer and a storm sewer lift station would reduce flooding issues in town and the associated damages to private property and public infrastructure. Currently, the culverts are improperly graded and therefore unable to adequately remove water.
Potential Funding Sources	State Water Commission, Cass Flood Sales Tax, ND Health Dept. HMGP, USDA Rural Development, USDA Rural Development (Water & Waste Disposal Loan and Grant)
Timeline	5-15 years
Priority	Medium

15. Grandin

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Grandin consists primarily of single-family homes along with a few businesses, including a grain elevator. The population has remained around 190 people since the 2010 Census, showing that growth is minimal or nonexistent.

Socio-Economic

Grandin's socio-economic makeup shows that the median household income is higher than the county's, sitting at \$65,625 while the poverty rate is near zero. In terms of age, the median is roughly in line with the county's being at 37.1 years. It is estimated that only 9.2% of residents are over 62 years of age.

Housing

As far as the condition of the housing stock goes, many homes were built before 1970 (approximately 60.3% according to Census data). This may entail the structures do not meet the stricter safety standards and are thus more vulnerable to severe weather.

Transportation

Grandin is adjacent to Interstate 29. Many of Grandin's residents may commute to the Fargo metropolitan area for work, therefore it is imperative to maintain access to the onramp to Interstate 29. A BNSF rail line passes through town which services the grain elevator located there.

Emergency Services

Grandin is in the service area of the Hunter Ambulance Service, which is located nearly 20 minutes away. The Grandin Rural Fire Protection District has its fire hall in town and is a volunteer-based fire department.

Health Care and Nonprofits

Grandin does not have any health care or nonprofit operations of its own. The nearest hospital would be in Sanford Health's in Hillsboro that is nearly 20 minutes away.

Critical Facilities and Infrastructure

The city's critical infrastructure includes a fire station, water pump station where the community connects to Cass Rural Water, and a sanitary lift station.

Businesses and Employers

Most residents who work commute elsewhere. Besides the aforementioned grain elevator, the other businesses are a bar and a bank.

Natural Hazards

Dam Failure	Grandin has no risk from dam failure.
Drought	The city is serviced by Cass Rural Water District who indicated their water supplies are sufficient. Its businesses are in agriculture, which is highly vulnerable to drought.
Flooding	Grandin has not been mapped by FEMA. Nonetheless, the city can have problems with overland flooding from the Elm River to the north as well as insufficient internal drainage. The City functions as a small agricultural service center that would be affected by flood damage to nearby farm fields. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	There are no significant geological hazards affecting the town.
Severe Summer Weather	Grandin faces the same severe summer weather risk as other jurisdictions. The older homes may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town. The fire hall does have a backup power generator which enhances its role as an emergency shelter.
Severe Winter Weather	Grandin faces the same severe winter weather risk as other jurisdictions. The older homes may experience higher heat loss compared to newer homes.
Urban Fire	There are several abandoned houses in town that present a fire risk. The grain elevator is the other use which has a higher than normal fire risk. In fact, one had caught fire and was destroyed in the past.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

Grandin has limited financial and technical resources as a town of around 175 to 200 people. Assistance from the State and County is necessary for funding and carrying out large scale projects. The City does contract for engineering services to assist with identifying and carrying out improvement projects.

PROGRESS SINCE LAST PLAN

The 2014 plan listed a warning siren as an action item. Elected officials have indicated that the siren at the fire hall has good coverage and therefore is adequate. This item has been removed from this version of the plan.

MITIGATION ACTIONS

Mitigation Action	1] Replace ditch system with storm sewer
Hazards Addressed	Flooding (localized)

Responsible Agency	City of Grandin with assistance of city's contracted engineer
Cost	\$2 million
Description	The installation of storm sewer and a storm sewer lift station would reduce overland flooding issues in town and associated damages to private property and public infrastructure.
Potential Funding Sources	ND Department of Health (Clean Water State Revolving Fund), USDA Rural Development (Water and Waste Disposal Loan and Grant Program), State Water Commission, Cass County Flood Sales Tax, USDA Rural Development (Water & Waste Disposal Loan and Grant)
Timeline	5-15 years
Priority	Medium

Mitigation Action	2] Address abandoned buildings
Hazards Addressed	Urban fire
Responsible Agency	City of Grandin
Cost	To be determined
Description	The city has around three abandoned buildings in town which present a threat to health and safety as well as a higher fire risk. Acquiring those properties and demolishing the buildings will address blighted conditions.
Potential Funding Sources	CDBG
Timeline	3-5 years
Priority	Medium

DRAFT

16. Harwood

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

The City of Harwood has seen strong population growth since 2000, increasing from a shy over 600 people to nearly 800 by 2017. Growth has occurred mostly on the western side of Interstate 29, although new residences have been built on the east nearer to the Sheyenne River.

Socio-Economic

Harwood is a higher income community with a median household income of \$93,750 in 2017. Accordingly, the poverty rate is extremely low (1.1%). In regard to median age, at 38.1 years is not too much greater than the county's. 14.7% of residents are 62 years or older while a notable share of 25.7% are under 18 years old.

Housing

A significant share of the housing was built during the 1970s (41%) with many others built in the decades after. Nearly all of the housing stock are single-family detached units.

Transportation

Interstate 29 bisects the town. Given its proximity to Fargo, it is safe to presume that many residents use I-29 to commute to jobs there. All of the roads in Harwood are paved.

Emergency Services

Harwood is served by FM Ambulance Service for EMS needs. Harwood Area Fire and Rescue is an all-volunteer department, consisting of 25 active volunteers, whose fire hall has been built to withstand high winds and tornado events. Additionally, the building is easily cleanable if flooded.

Health Care and Nonprofits

The nearest hospital with an emergency department would be Sanford Health's on Veterans Boulevard or Essentia Health's on 32nd Avenue South, both in Fargo.

Critical Facilities

Harwood's critical infrastructure includes its city hall, community center, and an elementary school. The city obtains its water from the West Fargo Aquifer. It has a water treatment and storage plant and two 200' deep wells. The water plant has a detection, aeration, and iron manganese removal filtration system.

Storm water is managed via ditches instead of an installed underground system.

Businesses and Employers

Harwood is primarily a bedroom community with a few home-based and service businesses. CHS Dakota Plains has a location in Harwood.

Natural Hazards

Dam Failure	Harwood has no risk from dam failure.
Drought	The city obtains its own water via a series of wells, which have found to be adequate. An adopted drought management plan guides how the city will respond to drought conditions.
Flooding	Flooding is a pertinent issue for the City as they have seen overland flooding originating from the Sheyenne River. The floodplain map currently in effect has almost the entirety of Harwood in a Special Flood Hazard Area. The Plan B design of the FM Diversion runs north of Harwood and would take the city mostly out of the floodplain. Harwood has a school and one licensed in-home daycare, both of which are located within the mapped floodplain.
Geological Hazards	There are no significant geological hazards affecting the town.
Severe Summer Weather	Harwood faces the same severe summer weather risk as other jurisdictions. The older homes may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.
Severe Winter Weather	Harwood faces the same severe winter weather risk as other jurisdictions. The older homes may experience higher heat loss compared to newer homes.
Urban Fire	The grain elevator presents the highest fire risk of any building in town.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town. The forested areas along the Sheyenne River can also be an ignition source for wildfires.

JURISDICTIONAL CAPACITY

The City of Harwood has an active City Council, mayor, auditor and public works superintendent in town and is contracted with an engineering firm. The City will need to turn to state and county resources for undertaking larger scale mitigation projects. Harwood has adopted and enforces the ND State Building Code, zoning ordinances, and a flood damage prevention ordinance.

PROGRESS SINCE LAST PLAN

The principle issue identified during the last planning process, that also remains the most important now, is flooding. Permanent flood protection was listed as an action step. The exact details on how this is to be done, if at all, remained undetermined as the Fargo-Moorhead Diversion was in the planning and approval processes. As of this writing, the Diversion is further along but construction has not begun in earnest. Therefore, the City remains in a holding pattern regarding if it needs to implement flood protection measures on its own or not.

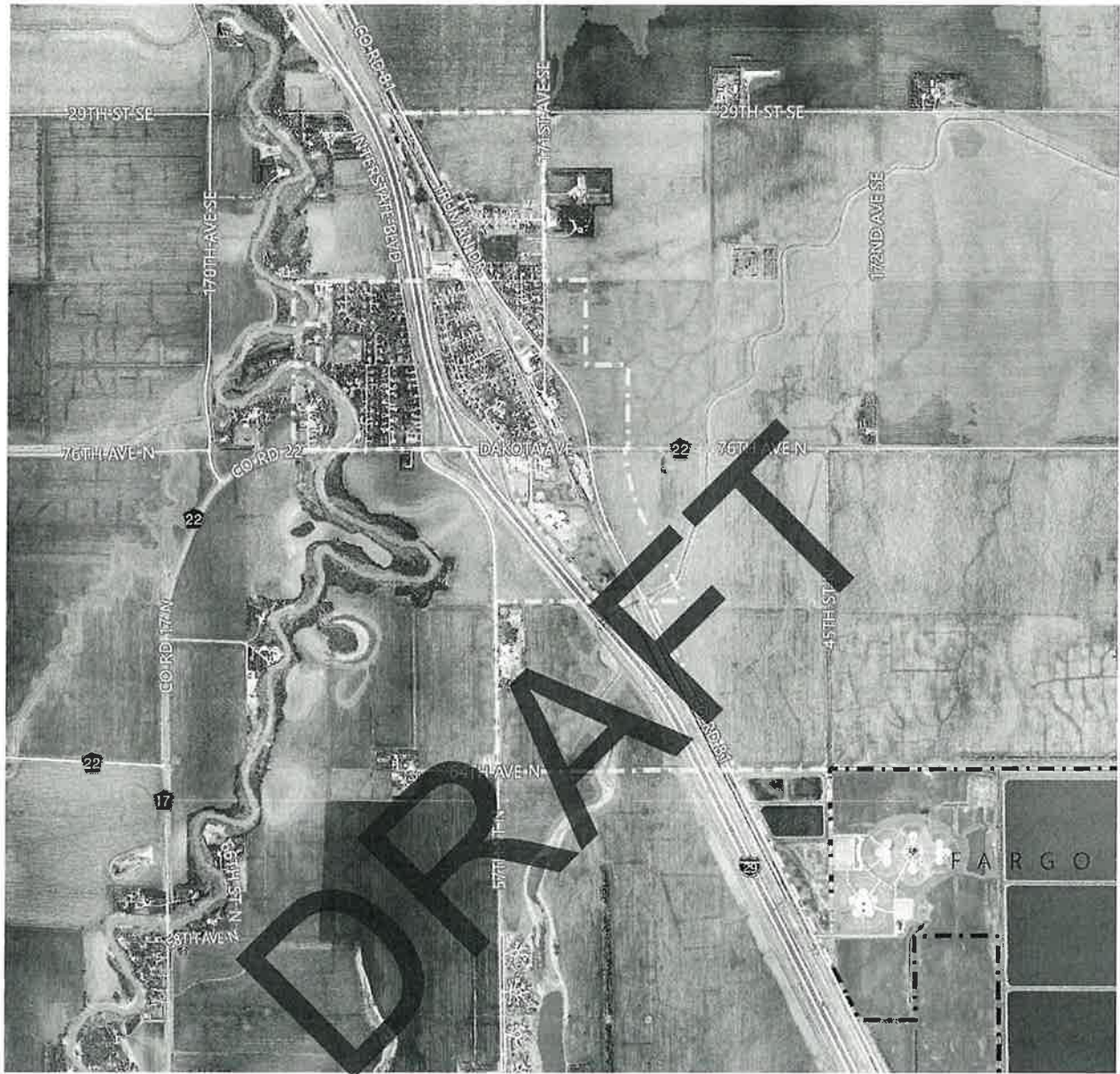
MITIGATION ACTIONS

Mitigation Action	1] Increase permanent flood protection throughout Harwood
Hazards Addressed	Flooding
Responsible Agency	City of Harwood
Cost	To be determined
Description	The City is waiting to see whether or not the FM Diversion will begin construction before examining what flood protection measures would be appropriate.
Potential Funding Sources	FEMA (PDM, HMGP, or FMA) with local match, ND State Water Commission, Cass County flood control sales tax
Timeline	5 years
Priority	High

Mitigation Action	2] Install backup power generators at lift station
Hazards Addressed	All hazards
Responsible Agency	City of Harwood
Cost	\$200,000
Description	A back-up generator at the lift station would reduce the threat of discontinued service in the event of a power outage.
Potential Funding Sources	FEMA (PDM or HMGP) with local match
Timeline	5 years
Priority	High

Mitigation Action	3] Install backup power generator at fire hall
Hazards Addressed	All hazards
Responsible Agency	Harwood Fire Department
Cost	\$50,000
Description	The fire hall is a critical facility in that it houses the department's trucks and equipment. It also serves as a staging area for disaster response efforts. Ensuring it remains powered is vitally important.
Potential Funding Sources	FEMA (PDM or HMGP) with local match
Timeline	5 years
Priority	Medium

FLOODPLAIN MAP



100 Year Floodplain
Harwood City Limits

Map of 100 Year Floodplain and Harwood City Limits. This map was prepared by Cass County GIS and Planning Department in March 2017. The map is for informational purposes only and does not constitute a warranty of any kind. Cass County is not responsible for any errors or omissions on this map. For more information, please contact the Cass County GIS and Planning Department at 701.785.3333 or visit our website at www.casscountymn.gov.

CASS COUNTY GOVERNMENT

1000 FEET

17. Horace

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Horace has been growing at a brisk pace, increasing 184% from 2000 to 2017. New subdivisions were platted adjacent or near the Sheyenne River to accommodate new residents who desired the aesthetic amenity presented by the river. In response to ever increasing enrollment, the West Fargo Public School District will build a new high school within the city limits of Horace at Sheyenne Street and 76th Ave S. This new school will be able to accommodate 1,000 students upon opening, with room for future expansion. Additionally, the Horace Elementary will be undergoing an expansion to accommodate new students.

The city is undertaking an update to its long-term comprehensive and transportation plan with a horizon looking towards 2045. This document, once completed by the end of 2019, will guide the city's zoning and subdivision ordinances, capital improvements plan, and annual budget as it deals with continued growth.

Socio-Economic

Horace is among the wealthiest cities in the county with a median household income of \$110,870. Not surprisingly, poverty registers at an extremely low rate (1.8%). A sizable share of people, 43.1%, have a four-year post-secondary degree or higher.

Housing

For the most part, the condition of the housing stock is good. The mobile homes located at Sheyenne Trailer Court and Willow Court (approximately 38 spots in total) may require more attention when it comes to hazard mitigation. Horace does require manufactured homes to be elevated, anchored, or tied down to resist the flow of floodwater. Also, mobile homes tend to present a higher fire risk. There is no public storm shelter in the mobile home park.

Transportation

County Highway 17 bisects Horace. Most of the city's roads are paved.

Emergency Services

Horace is in the boundary FM Ambulance Service. The Horace Rural Fire Protection District covers the city and an area east towards the Red River. A new modern fire hall was built in 2016.

Health Care and Nonprofits

The nearest hospitals would be the Sanford Medical Center and Essentia Health, both in Fargo.

Critical Facilities and Infrastructure

Critical infrastructure in the City of Horace includes city hall, community center, and an elementary school. The city's water utility covers most users, but some portions of the city are connected to Cass Rural Water instead.

Horace is in the process of installing a sanitary sewer line that will connect to Fargo's regional sanitary system. Once completed, the process of decommissioning the lagoons can begin.

Businesses and Employers

Horace has a few businesses along County Highway 17. Most residents, it can be presumed, commute for work since it is close to Fargo.

Natural Hazards

Dam Failure	Horace has no risk from dam failure.
Drought	Horace sources its own water while some properties are served by Cass Rural Water District. There are no land uses in Horace that are extra vulnerable to the effects of drought.
Flooding	<p>Flooding has been a challenge for the City of Horace. While the Sheyenne Diversion has eliminated flood risk from the river, the land along County Drain 27 has a lower elevation than adjacent areas. Any future development in this area must require a minimum of 50 feet set back to ensure properties are beyond the drain's right-of-way. Newly developed areas will also require retention ponds to be installed when built out.</p> <p>The Adelman, Ironwood, and Chestnut neighborhoods can potentially experience flash flooding conditions, given they have drainage issues currently.</p> <p>The Horace Elementary School is located just outside of the area protected by the Sheyenne River Diversion. There are seven licensed daycare operations in town; three are not protected by the Sheyenne River Diversion. There are no other properties where vulnerable populations live or congregate.</p>
Geological Hazards	There have been minimal problems associated with riverbank slumping. The setback requirement of at least 150 feet from any drain or watercourse, if not more based upon the recommendations of the City Engineer, for structures has prevented conditions whereby the normal riverine erosion would present a concern.
Severe Summer Weather	Horace faces the same severe summer weather risk as other jurisdictions. The mobile homes may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.
Severe Winter Weather	Horace faces the same severe winter weather risk as other jurisdictions. The mobile homes may experience higher heat loss compared to newer homes.
Urban Fire	One facility that may present a higher than typical risk of fire are the liquified petroleum gas storage tanks located on the southern end of Main Street at

	the intersection with Liberty Lane. Nearby land uses are several homes, industrial businesses, and farm fields.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. The forested areas along the Sheyenne River can also be an ignition source for wildfires.

JURISDICTIONAL CAPACITY

Horace has an active city council, planning and zoning committee, park board, and public works department. The city contracts with a firm for engineering services. It is home to the Horace Rural Fire Protection District’s fire hall, a modern facility that was recently built in 2016.

The city has the capacity to engage in long-range and capital improvement planning. The city’s ordinances contain provisions for storm water management as well an overlay zoning district for the floodplain that delineates appropriate uses therein. The ND State Building Code, with local modifications, is enforced.

PROGRESS SINCE LAST PLAN

The only action item from the previous plan was to enhance the existing storm sewer and lift station capacity. This item remains for this plan as it has not been accomplished yet.

MITIGATION ACTIONS

Mitigation Action	1] Enhance existing storm sewer and lift station capacity
Hazards Addressed	Flooding
Responsible Agency	City of Horace
Cost	To be determined
Description	Increasing the capacity of the city’s storm sewer system and installing new lift stations as needed, particularly as the city continues to grow and build out, will be necessary to deal with severe precipitation events.
Potential Funding Sources	Special assessments levied against properties, Cass County Flood Sales Tax
Timeline	1-5 years
Priority	High

FLOODPLAIN MAP



100 Year Floodplain
Horace City Limits

Scale: 1" = 100' (1:12,500)



CASS COUNTY
GOVERNMENT

This map was prepared by the Cass County Planning Department and is for informational purposes only. It is not intended to be used as a legal document. The information on this map is based on the best available data as of the date of publication. The Cass County Planning Department is not responsible for any errors or omissions on this map. For more information, please contact the Cass County Planning Department at 360 North Main Street, Horace, MN 56545. Phone: 507-368-2222. Fax: 507-368-2223. Email: planning@co.cass.mn.us

18. Hunter

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Hunter is a small rural community in north central Cass County of a little over 300 people, a tally that has remained roughly the same over the years. Several buildings are located along Main Street/County Highway 18 including a grain elevator, café, retail, and agricultural-related services. The remainder of town is residential.

Socio-Economic

Hunter's median household income of \$64,821 is high for the county. However, the poverty rate is roughly the same compared to the county at 12.4%. The median age of 40.3 is higher than the county average, but in line with other rural towns.

Housing

It is estimated that 56% of the houses were built before 1960, potentially indicating that many may not be up to the latest building codes. The vast majority of the housing stock is single-family detached.

Transportation

County Highway 18 passes through the middle of town. Most of the town's roads are paved, but there are some unpaved gravel roads that can be more prone to being washed out.

Emergency Services

For EMS coverage, Hunter is served by Hunter Ambulance Service right in town. The all-volunteer Hunter Fire Protection District is also located in town.

Health Care and Nonprofits

The nearest hospital is located 25 to 30 minutes away in Hillsboro.

Critical Facilities

Critical infrastructure includes a pump house that connects the city to Cass Rural Water and a sanitary sewer lift station.

Businesses and Employers

With most of the businesses in Hunter being small, there is no one notable employer. As a small rural community, the effects of downturns in the agricultural sector will be felt by some of those local businesses.

Natural Hazards

Dam Failure	A high-hazard dam is located on the west side of town. Were to fail or be overtopped, buildings may be inundated. This dam does not meet current safety standards for spillway capacity but did meet the conditions in effect at the time of construction. There have not been any problems in the past related to the spillway capacity.
Drought	Hunter receives its water from the Cass Rural Water District who indicated its water supplies are sufficient in normal times. As a rural community, its businesses will feel the ripple effect of farmers' reduced income during drought. The grain elevator, in particular, is vulnerable.
Flooding	The City of Hunter has exposure to flooding risk via the south branch of the Elm River. The potential exists for flood waters to inundate the Main Street bridge and a few properties along the south edge of town. Internal drainage issues have arisen as a result of heavy rain. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	The city has no areas that are prone to erosion or other geological failures.
Severe Summer Weather	Hunter faces the same severe summer weather risk as other jurisdictions. The older housing stock may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.
Severe Winter Weather	Hunter faces the same severe summer weather risk as other jurisdictions. The older housing stock may experience higher heat loss compared to newer homes.
Urban Fire	The one facility that may present a higher than typical risk of fire is the grain elevator. There are several older houses in town that the City has encouraged the owners of to fix up. Older houses typically do not meet modern fire codes. On April 26, 2018, an early morning fire destroyed the municipally-owned bar.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town. The forested areas by the dam reservoir and along the stream can also be an ignition source.

JURISDICTIONAL CAPACITY

The City of Hunter has an active City Council, mayor, auditor and a maintenance provider in town and a contract with outside engineering services to assist the community in identifying and carrying out improvement projects. Hunter follows the latest ND State Building Code. The City will have to rely on state and county resources for larger scale projects.

PROGRESS SINCE LAST PLAN

The two action items listed below were in the 2014 version of the plan. These have yet to be completed and therefore remain action items for this update.

MITIGATION ACTIONS

Mitigation Action	1] Installation of generators at the water pump house and sanitary sewer lift station
Hazards Addressed	Severe Weather that may impact power
Responsible Agency	City of Hunter
Cost	To be determined
Description	The water intake station and sanitary sewer lift station are critical to homes and business in town having basic services. Generators would reduce the threat of discontinued service in the event of a power outage
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	1-5 years
Priority	Medium

Mitigation Action	2] Dredging ditches and replacing culverts in town
Hazards Addressed	Flooding (localized due to drainage issues)
Responsible Agency	City of Hunter
Cost	To be determined
Description	This will increase capacity, reduce issues of standing water, and impacts to property and infrastructure.
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	1-5 years depending on funding availability
Priority	High

Mitigation Action	3] Upgrade the spillway capacity of the Hunter Dam to modern standards.
Hazards Addressed	Dam failure
Responsible Agency	City of Hunter
Cost	To be determined
Description	The dam's spillway capacity was built to the standards at the time. Upgrading it to modern standards will ensure it can function during the severe precipitation events that are more common nowadays.
Potential Funding Sources	North Dakota State Water Commission with local match
Timeline	4-5 years
Priority	Low

FLOODPLAIN MAP



100 Year Floodplain
Hunter City Limits

1,000 Feet



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19. Kindred

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Kindred is a town of around 780 residents situated in far south Cass County near the Sheyenne River. Serving as a bedroom community 20 miles southwest of the metropolitan area, it has seen growth over the years. A residential subdivision has been recently built on the east end of town adjacent to the airport.

Socio-Economic

Kindred has a higher median household income (\$81,000) and a poverty rate that is near Cass's level (10.6% for the city compared to 11.2% for the county). Data indicates the presence of many young families given the lower median age of 30.3 years and the fact that 32.3% of residents are under the age of 18.

Housing

The vast majority of housing units are single detached (71%), but there is a notable share of triplexes or quadplexes (15%). Along Rustad Court between Dakota Street and Spruce Street are spots for 13 mobile homes. Most of the housing stock was built between the 1980s and 2010s.

The Housing Authority of Cass County has a low-rise apartment building for those with limited means. These structures do not have basements into which residents can seek shelter during tornados and high winds.

Transportation

Kindred is located just off of County Highway 46 on the very south edge of Cass County. Within town all of the roads are paved. Odegaard Field at Kindred Davenport Regional Airport has a 3,300 by 60 foot concrete lighted runway. Several aircraft service businesses and flight instruction are held at the airport.

Emergency Services

EMS is provided by Kindred Area Ambulance Service. The Kindred Rural Fire Protection District, a department consisting of 19 volunteer firefighters, serves the town and surrounding rural area. An expansion to the fire hall was completed in 2018.

Health Care

The nearest hospitals would be in Fargo which is an approximately 30 minute drive away.

Critical Facilities and Infrastructure

Critical infrastructure includes the school, city hall, a public works building, the airport, a water pump house, a water tower, three sanitary lift stations, two storm sewer lift stations, and the fire hall.

The older part of town does not have a storm sewer system, although installing a system is on the city’s project list.

Businesses and Employers

Kindred is a town of small businesses, a lot of whom serve the local population. Many residents commute to places of employment in the metropolitan area. A notable employer is the Kindred Public School who employ 115 full-time equivalent.

Natural Hazards

Dam Failure	Kindred does not have any risk from dam failure.
Drought	Kindred receives its water from the Cass Rural Water District who indicated adequate supplies. The businesses serving the agricultural sector will feel the effects of drought.
Flooding	<p>Flooding is the most prominent hazard for Kindred. Experience has shown overland flooding has come from southwest of the city but has not ever reached any structures. FEMA has not included the city itself within its floodplain maps. Rather, it has mapped the surrounding area. County Highway 15 can become inundated which blocks off Kindred’s southern entrance. 24 homes are located adjacent to the Sheyenne River and therefore are in the SFHA. However, those are outside of the city limits of Kindred.</p> <p>The two school buildings and four daycare operations are not located within the mapped floodplain. There are no other facilities where vulnerable populations live or congregate.</p>
Geological Hazards	County Highway 46 is close enough to the Sheyenne River to be at risk of riverbank slumping.
Severe Summer Weather	Kindred faces the same severe summer weather risk as other jurisdictions. The older housing units may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.
Severe Winter Weather	Kindred faces the same severe summer weather risk as other jurisdictions. The older housing units may experience higher heat loss compared to newer homes.
Urban Fire	The one facility that may present a higher than typical risk of fire is the grain elevator.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

Kindred employs an auditor and public works superintendent. It contracts with a firm for engineering services. An active planning and zoning committee oversees the enforcement of the city’s zoning ordinances. For larger

scale projects, they will have to turn to county, state, and federal entities for assistance.

PROGRESS SINCE LAST PLAN

The new levee and slope stabilization projects from the 2014 plan remain unfinished and are included in this update as well.

MITIGATION ACTIONS

Mitigation Action	1] Build a new levee on the south of Highway 46
Hazards Addressed	Flooding
Responsible Agency	City of Kindred with assistance from the City Engineer
Cost	\$500,000
Description	A levee built on the south end of town will address overland flooding coming from the Sheyenne River
Potential Funding Sources	FEMA (PDM, HMGP, and FMA) with local match, Cass County flood control sales tax, ND State Water Commission
Timeline	5 years
Priority	Medium

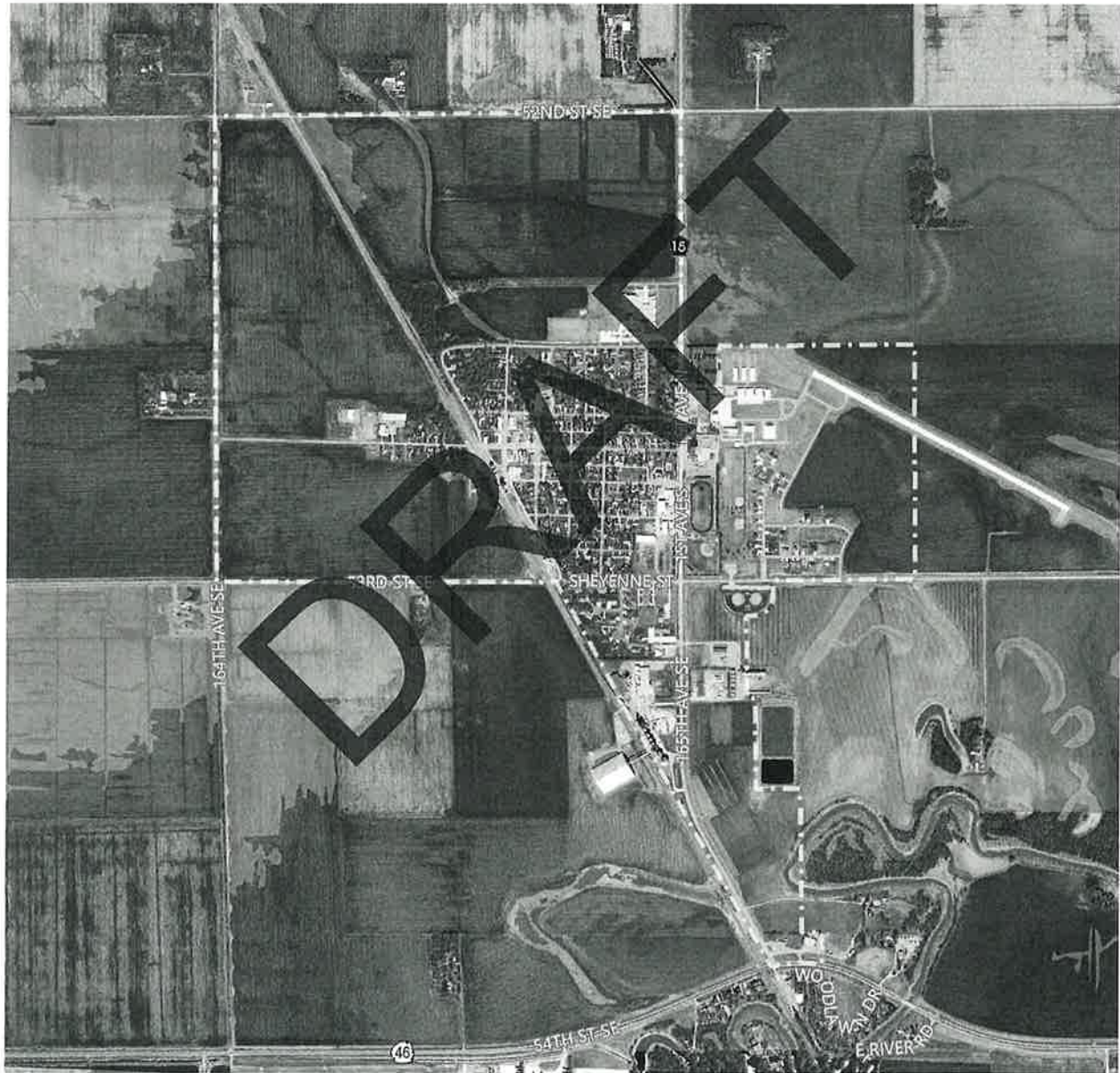
Mitigation Action	2] Stabilize the slope south of Highway 46 along the bank of the Sheyenne River
Hazards Addressed	Geological hazard
Responsible Agency	Cass County
Cost	\$250,000
Description	Implementing stabilization measures will reduce the risk of damages to the county highway and nearby private property
Potential Funding Sources	FEMA (PDM and HMGP) with county match
Timeline	3 years
Priority	Medium

Mitigation Action	3] Backup generators for three lift stations
Hazards Addressed	Flooding
Responsible Agency	City of Kindred
Cost	\$200,000
Description	Ensuring these remain operational during power outages will allow continued service and prevent damage caused by backups.
Potential Funding Sources	FEMA (PDM and HMGP) with local match
Timeline	5 years
Priority	High

Mitigation Action	4] Install storm sewer system and lift station in the original townsite.
Hazards Addressed	Flooding
Responsible Agency	City of Kindred
Cost	To be determined
Description	Periodic internal flooding has occurred because of the city's poor drainage. The very high water table, likely caused by many homes having their sump pumps connected to the sewer system, has caused significant inflow and

	infiltration problems. Requiring homeowners to pump water above ground would only contribute to the existing drainage issues. Installing a storm sewer system and lift station would rectify these problems.
Potential Funding Sources	FEMA (PDM and HMGP) with local match, ND Department of Health (CWSRF), USDA Rural Development (Water & Waste Disposal Loan and Grant)
Timeline	5 years
Priority	Medium

FLOODPLAIN MAP



100 Year Floodplain
Kindred City Limits

Scale 1" = 1000 Feet

Source: Western Cass Flood Insurance Study, adopted May 4, 2015. Map is dated January 2016.
This map is for informational purposes only. It is not intended to be used for any other purpose. The map is not a warranty, representation, or agreement of any kind. The map is provided as is, without any liability for errors or omissions. The map is not to be used for any purpose other than that for which it was prepared. The map is not to be used for any purpose other than that for which it was prepared.

20. Leonard

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Leonard is a community of around 300 residents. The population has remained relatively stable over the years. New development does not occur often. A few businesses line Railroad Avenue while the remainder of town is residential.

Socio-Economic

Leonard has a higher than average median household income sitting at \$60,125. Not unrelated, the poverty is quite low at 5.1%. The median age is 38.2 years. 26.1% of residents are under 18 years of age; 21% are 62 years or older.

Housing

The housing stock in Leonard is aging and some homes are becoming run-down. According to Census data, approximately 80% of the houses were built before 1980. In fact, 33% of the homes in Leonard were built before 1950. This indicates that many may not be built according to the stricter safety building codes. Additionally, there are several old structures which have been abandoned and thus present a risk to the public through vandalism and fire.

Transportation

County Highway 18 bounds Leonard on the eastern side. Within town, the majority of roads are unpaved gravel. Overall, the condition of the roads are good. Separating the town in half is a Red River Valley Western rail line, which serves the grain elevators.

Emergency Services

Leonard is jointly covered by Casselton Ambulance Service and Kindred Area Ambulance Service; both are around 20-minute drive away from town. The Leonard Fire Department has a steel structure fire hall with six-stall garage.

Health Care

Leonard does not have any health care facilities of its own. Rather, the nearest hospitals are in Fargo around 45-minute drive away.

Critical Facilities and Infrastructure

In 2018, Leonard was fully hooked up to Cass Rural Water. Previously most residents had their own wells. The City does not have an installed storm sewer system, but rather relies on ditches and culverts for stormwater management. It has been found through experience that the culverts' capacity will need to be expanded to handle increasingly stronger rains. A new pump station would help remove standing water quicker.

Businesses and Employers

Leonard has several small retail and service businesses in addition to the aforementioned grain elevator owned by Maple River Grain and Agronomy.

Natural Hazards

Dam Failure	Leonard does not have any risk from dam failure.
Drought	Leonard has recently been connected to Cass Rural Water District who has adequate supply of water. The businesses serving the agricultural sector will feel the effects of drought.
Flooding	Leonard is not within a mapped floodplain but the potential for flash flooding still exists. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	Leonard has no risk of geological hazards.
Severe Summer Weather	Leonard faces the same severe summer weather risk as other jurisdictions. The older housing units may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.
Severe Winter Weather	Leonard faces the same severe summer weather risk as other jurisdictions. The older housing units may experience higher heat loss compared to newer homes.
Urban Fire	The one facility that may present a higher than typical risk of fire is the grain elevator.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

The City of Leonard has an active City Council and a contract with outside engineering services to assist the community in identifying and carrying out improvement projects. Due to its size, it does turn to state and county resources for larger scale projects. The city employs only one staff member: the auditor. In addition to the city council, there is an active planning and zoning committee.

PROGRESS SINCE LAST PLAN

The previous plan had the installation of a warning siren as an action item. Leonard does, in fact, have a warning siren. That item has been removed for this plan. Progress has not been made on the drainage improvement project but is still one Leonard will pursue.

MITIGATION ACTIONS

Mitigation Action	1] Improve drainage by installing pump station to move water to legal drain approximately 1 mile south
Hazards Addressed	Flooding (localized)
Responsible Agency	City of Leonard
Cost	\$1 million
Description	The development of a permanent system to move standing water out of town by utilizing an already existing legal drain would reduce damages to public and private property and lessen strains on city infrastructure.
Potential Funding Sources	FEMA (HMGP and PDM) with local match, County Flood Sales Tax
Timeline	5-10 years depending on funding availability
Priority	Low

Mitigation Action	2] Permanent backup generator for lift station
Hazards Addressed	Flooding
Responsible Agency	City of Leonard
Cost	\$50,000
Description	Installing a permanent generator saves time and effort in hooking up the portable generator the city already owns.
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	1-3 years depending of funding availability
Priority	Medium

Mitigation Action	3] Tear down dilapidated structure located on Railroad Avenue
Hazards Addressed	Urban fire
Responsible Agency	City of Leonard
Cost	To be determined
Description	A building on Railroad Avenue that used to house a hardware store has fallen into disrepair and will need to be demolished.
Potential Funding Sources	CDBG with local match
Timeline	1-2 years
Priority	High

Mitigation Action	4] Harden the city shop to better withstand natural hazards
Hazards Addressed	All hazards
Responsible Agency	City of Leonard
Cost	To be determined
Description	The city shop building was acquired via tax forfeiture and is inadequately prepared against disasters. For example, it has no heat and is insufficiently insulated. An evaluation of the facility by a qualified professional will determine what can be done in terms of mitigation. This may include the installation of a backup generator.
Potential Funding Sources	Dependent upon specific items identified
Timeline	2-3 years
Priority	Low

Mitigation Action	5] Install new or upgrade existing culverts around Leonard
Hazards Addressed	Flooding (localized)

Responsible Agency	City of Leonard
Cost	To be determined
Description	The city's internal drainage can be enhanced by replacing culverts around town with those that are greater capacity.
Potential Funding Sources	ND Department of Health (Clean Water State Revolving Fund loan), USDA Rural Development (Water & Waste Disposal Loan and Grant)
Timeline	3-4 years depending on funding availability
Priority	Low

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21. Mapleton

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Mapleton has an estimated population of around 900 people, an increase of nearly 40% since 2010. New residential subdivisions have sprung up on the south side of town. Over the years, new industrial operations have opened near interstate. Continued growth in that southeastern industrial area is limited due to inadequate flood protection.

Socio-Economic

Mapleton's median household income of \$78,487 is higher than the county's. Only around 15% of the population earns less than \$50,000 per year. Concurrently, the poverty rate is low at 1.6%. The median age is 31 year which is in line with Cass County. Around 35.1% of people are under 18 years of age, indicating the presence of young families. The town does have Mapleton Elementary School.

Housing

Nearly all of housing units are 1-unit detached structures, with most built between the 1980s and now. The level of households being cost burdened is negligible.

Transportation

Mapleton is located directly north of Interstate 29 with easy access to the metropolitan area. All of the roads are paved. A BNSF rail line passes through with two at-grade crossings.

Emergency Services

Mapleton is covered by Casselton Ambulance Service, which is located around 15 minutes away. The Mapleton Volunteer Fire covers the city and nearby rural areas. The department has been designated as ISO Class 6.

Health Care and Nonprofits

Mapleton does not have any health care facilities of its own, but rather the nearest hospital would be the Sanford Medical Center about a 15-minute drive away.

Critical Facilities and Infrastructure

Mapleton's critical infrastructure includes two water towers, a city hall and community center, a water pumping station where the city is connected to Cass Rural Water, six sanitary lift stations, and four storm sewer lift stations.

Businesses and Employers

Mapleton is not only a bedroom community to Fargo, but also has a relatively sizeable employment base in its own right with several manufacturing and agricultural enterprises located there.

Natural Hazards

Dam Failure	Mapleton does not have any risk from dam failure.
Drought	Mapleton is connected to Cass Rural Water District. The businesses serving the agricultural sector will feel the effects of drought.
Flooding	<p>FEMA's floodplain map adopted in 2002 shows the city is well protected by a levee system but is surrounded by the Maple River whose floodplain limits where future development can be directed. There are several spots within the city that have problems with localized flooding. Maple Drive has an undersized storm sewer system and there is no detention ponds for larger storm events. The I-94 Industrial Park does have a storm sewer system but no detention pond, leading to those streets being flooded under heavy precipitation. Finally, Prairie View Estates in the northwest of Mapleton has drainage issues which does not affect structures or roads, but still poses a health risk with the amount of standing water that takes a long time to drain away.</p> <p>Mapleton Elementary School and the one licensed daycare are outside of the mapped floodplain. There are no other facilities where vulnerable populations live or congregate.</p>
Geological Hazards	Mapleton has no risk of geological hazards.
Severe Summer Weather	Mapleton faces the same severe summer weather risk as other jurisdictions. The few older housing units may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.
Severe Winter Weather	Mapleton faces the same severe winter weather risk as other jurisdictions. The few older housing units may experience higher heat loss compared to newer homes.
Urban Fire	Fires at businesses with grain storage are a rare occurrence in general. However, those would be the land uses in Mapleton with a higher risk of fire.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

Mapleton employs an auditor plus several public works staff and is contracted with an engineering firm who can work on the larger scale mitigation projects. The City may turn to county and state resources for financing said projects.

The Mapleton Volunteer Fire Department serves the city and the surrounding rural area. The department has an ISO Class Rating of 6. In the review last issued 2015, the department scored well in the emergency communications and the water supply categories. It did not score well when the engines, pumpers, and other equipment capacities were analyzed. Although, this is attributable to the small size of the department and the smaller population it serves relative to other departments.

The ordinances regulate development in the floodplain with a separate zoning category (F – Flood Plain District) that prohibit residential and commercial uses. In other zoning districts, those seeking to build have to obtain a permit that examines the location of the structure as it relates to the floodplain. The floodproofing code requires buildings to be elevated or resistant to water intrusion. Mapleton also enforces the ND State Building Code and International Fire Code.

PROGRESS SINCE LAST PLAN

The two items from the previous plan were the repair and recertification of the existing levee and the building of a new levee to protect the industrial area in the southeast part of town. The former has been completed; the latter has not and thus will remain an action item in this plan.

MITIGATION ACTIONS

Mitigation Action	1] Permanent backup generators for lift stations
Hazards Addressed	Flooding
Responsible Agency	City of Mapleton
Cost	\$100,000
Description	Replacing the current temporary generators with permanently installed ones will save time and effort in getting backup power going, thus preventing interruptions in service.
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	1-3 years
Priority	High

Mitigation Action	2] Build levee to protect the southeast industrial area
Hazards Addressed	Flooding
Responsible Agency	City of Mapleton
Cost	\$500,000
Description	This would protect the industrial park area from overland flooding coming from the nearby creeks and channels, thus allowing for future development.
Potential Funding Sources	ND State Water Commission, Cass County flood control sales tax, local match
Timeline	5 years

Priority	Medium
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Mitigation Action	3] Storm sewer improvements along Maple Drive
Hazards Addressed	Flooding
Responsible Agency	City of Mapleton
Cost	\$500,000
Description	The storm sewer system in the Maplewood neighborhood is undersized and there is no storm water detention in the area for larger precipitation events, thus leading to streets becoming flooded.
Potential Funding Sources	ND Department of Health (CWSRF), FEMA (PDM and HMGP) with local match
Timeline	5 years
Priority	Medium

Mitigation Action	4] Storm sewer improvements in I-94 Industrial Park
Hazards Addressed	Flooding
Responsible Agency	City of Mapleton
Cost	\$750,000
Description	The industrial park on the east side of the city south of the railroad tracks has a storm sewer system, but no storm water detention pond. Roads can be inundated during storms.
Potential Funding Sources	ND Department of Health (CWSRF), FEMA (PDM and HMGP) with local match
Timeline	5 years
Priority	Medium

Mitigation Action	5] Improve drainage in the Prairie View Estates neighborhood
Hazards Addressed	Flooding
Responsible Agency	City of Mapleton
Cost	To be determined
Description	In the northeast quadrant of town, inadequate drainage does not necessarily cause flooding but it does lead to a large amount of standing water that poses a health and safety risk.
Potential Funding Sources	ND Department of Health (CWSRF)
Timeline	5 years
Priority	Low

22. North River

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

North River is a small community of around 60 residents located adjacent to the Red River and immediately north of Fargo. The town is entirely single-family residential. The potential for growth is limited since Fargo's boundaries extend around the town.

Socio-Economic

North River has a high median household income of \$122,500. The median age is 35.3 years. A little over a third of residents are under 18 years of age; a shy over 11% is 62 years or older.

Housing

There are 23 houses in the city with nearly all built in the 1970s or 80s. Most of the homes are elevated so as to be out of the 100-year floodplain level, albeit are still in the 500-year level.

Transportation

The roads are all gravel. Visibility along County 31 leading into North River can easily become comprised during winter as snow blows across from the adjacent farm field.

Emergency Services

North River is in the coverage area for FM Ambulance Service and West Fargo Fire Department, the latter of which has received an ISO Class 3 designation.

Health Care

The nearest hospital to North River would be the Sanford Medical Center in southwest Fargo.

Critical Facilities and Infrastructure

The city does not have an installed storm sewer system, instead utilizing ditches and culverts. Mobile pumps are used to remove excess water as needed.

Businesses and Employers

There are no businesses in North River aside from any home-based businesses that may exist. Residents commute elsewhere for employment.

Natural Hazards

Dam Failure	North River does not have any risk from dam failure.
Drought	North River is connected to Fargo's system. There are no users that are more susceptible to drought than normal.
Flooding	<p>North River is currently within the mapped floodplain. A levee protects the city to a major extent. Maintenance of the levee will ensure this protection remains for the future.</p> <p>There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.</p>
Geological Hazards	Some riverbank slumping has occurred over the years, especially on the south end where the Red River bends. Trees have fallen into the river, but homes remain far away enough to not cause a concern.
Severe Summer Weather	North River faces the same severe summer weather risk as other jurisdictions. The few older housing units may be less likely to withstand high winds compared to newer homes. There is no public storm shelter in town.
Severe Winter Weather	<p>North River faces the same severe winter weather risk as other jurisdictions. The few older housing units may experience higher heat loss compared to newer homes.</p> <p>Due to the open fields to the west, winter storms easily lead to dangerous driving conditions that can cause accidents. Measures to reduce blowing snow should be explored by the County.</p>
Urban Fire	There are no higher than normal risk of urban fire in North River.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from a dried-out farm field to the west of town as well as the forested areas along the Red River.

JURISDICTIONAL CAPACITY

Due to its small size and tax base, North River has limited financial and technical resources at its disposal. It will turn to county and state entities for assistance in the implementation of any mitigation-related activity.

PROGRESS SINCE LAST PLAN

The 2014 version of the mitigation plan had a warning siren as the sole action item. This was removed for the current version, since the City agreed that residents are able to adequately hear nearby sirens.

While not necessarily within the city limits of North River, floods have constricted access by inundating County Road 31. This road has been rerouted in 2016 to be further from the river.

MITIGATION ACTIONS

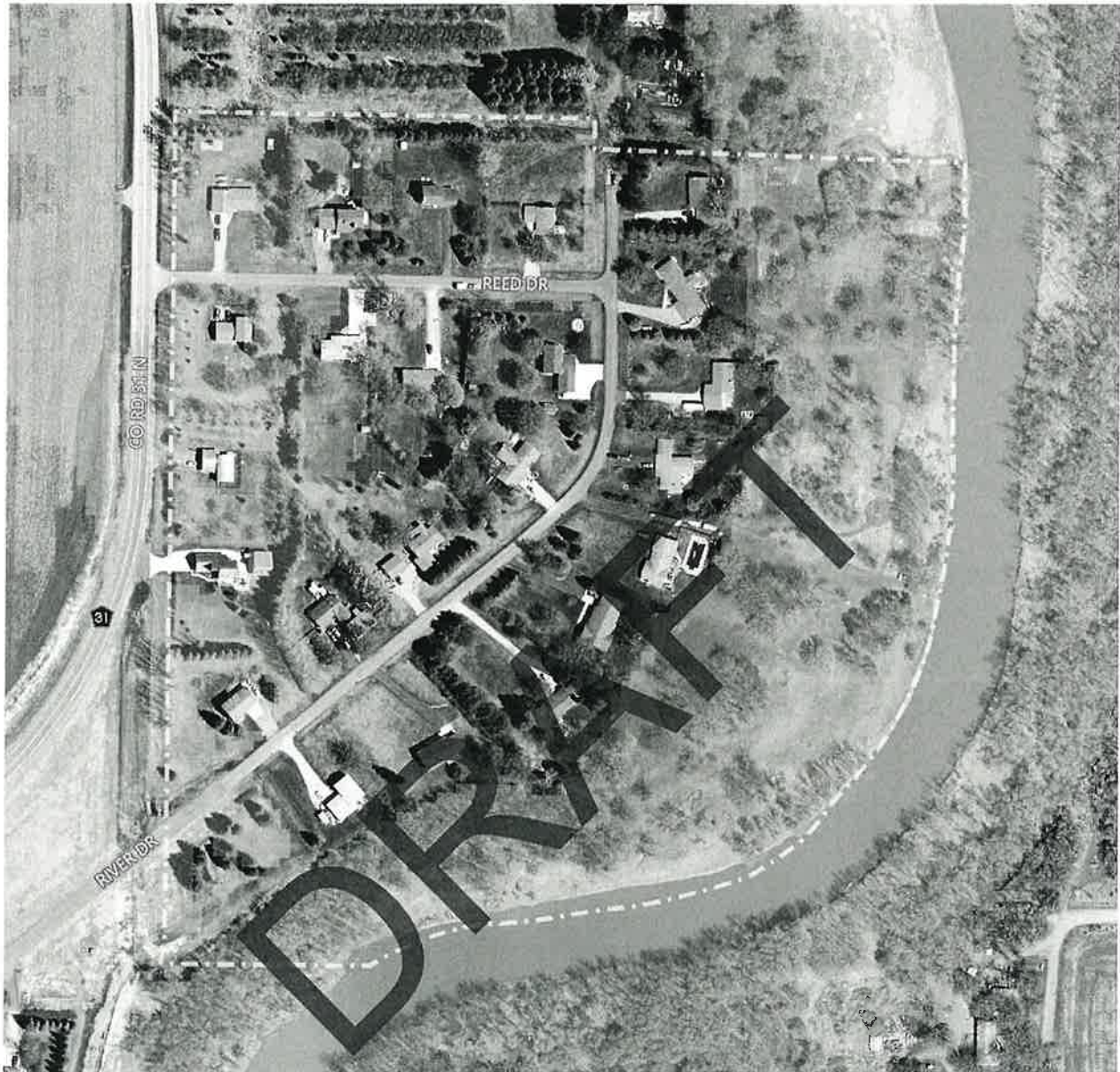
Mitigation Action	1] Perform dike maintenance and repair
Hazards Addressed	Flooding

Responsible Agency	City of North River
Cost	To be determined
Description	Portions of the existing dike have developed low spots over time and trees have grown on the dike. Removing those trees would leave their roots in which is a weak spot for water intrusion. Portions of the dike may need to be replaced and the dike recertified and reaccredited.
Potential Funding Sources	FEMA (HMGP, PDM, and FMA) with local match, Cass County flood sales tax
Timeline	1-3 years
Priority	High

Mitigation Action	2] Install living snow fence along County Road 31
Hazards Addressed	Severe winter weather
Responsible Agency	Cass County Highway Department
Cost	To be determined
Description	Visibility is problematic along County Road 31 during winter given that snow blows across from the adjacent farm field. This is the primary road that residents use when traveling to and from Fargo. Drivers can easily enter the ditch or get into accidents with other drivers.
Potential Funding Sources	Cass County
Timeline	1-2 years
Priority	Medium

Mitigation Action	3] Purchase new pump
Hazards Addressed	Flooding
Responsible Agency	City of North River
Cost	To be determined
Description	One of the city's storm water pumps was stolen while the other two are undersized. A new pump of sufficient capacity and rate will provide better protection for residents.
Potential Funding Sources	FEMA (HMGP, FMA, and PDM) with local match, Cass County flood sales tax
Timeline	1-3 years
Priority	Medium

FLOODPLAIN MAP



100 Year Floodplain
North River City Limits

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100 Feet



23. Oxbow

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Oxbow is situated south of Fargo alongside the Red River. Due to its proximity, it is connected to a few of Fargo's services such as the sewer system. Since the 2011 flood, Oxbow has undergone notable changes including homes along Schnell Drive and Oxbow Drive being bought out, the relocation of the clubhouse and several holes at the Oxbow Country Club, and a new residential subdivision were built. Growth would be limited to land within the ring dike, the construction of which was a condition of approval for the Fargo-Moorhead Diversion project.

Socio-Economic

Oxbow has a very high median household income at \$136,932. Given the fact that only 2% of residents earn less than \$50,000 as well as home values starting at \$300,000 and going upwards to over a million dollars indicates that residents have the financial wherewithal to implement mitigation actions for their own properties.

Housing

Oxbow has only single-family housing, most of which are detached although there are attached units. Majority have been built since the 1980s. A new residential subdivision has opened allowing for more housing construction.

Transportation

US Highway 81 brushes Oxbow's west boundary. There is easy access to Interstate 29. All of the roads in town are paved.

Emergency Services

Oxbow is within the service boundaries of Kindred Area Ambulance Service, which is a 20-minute drive away. The Horace/Hickson Fire Department has its second fire station in Hickson, an unincorporated community next to Oxbow. The fire hall is a standard steel structure with two garage bays. Law enforcement is provided by the Cass County Sheriff department.

Health Care

The nearest hospital would be Essentia Health's on 32nd Avenue in Fargo. It is located roughly 20 minutes away.

Critical Facilities and Infrastructure

The City of Oxbow's critical infrastructure are the municipal well, a sanitary sewer system, and the storm sewer system that primarily diverts water back into the Red River.

Businesses and Employers

Aside from the golf course, Oxbow does not have any standalone businesses.

Natural Hazards

Dam Failure	Oxbow does not have any risk from dam failure.
Drought	Golf courses tend to be a heavy user of water. Drought would negatively impact the country club.
Flooding	The city would be highly exposed to the risk of flooding if protective infrastructure were not in place. The acquisition of properties along Schnell Drive and Oxbow Drive and the construction of levees has provided a measure of safety for the community. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	Homes along the Red River have been bought out over the years, reducing greatly the risk of riverbank slumping.
Severe Summer Weather	Oxbow faces the same severe summer weather risk as other jurisdictions. The residents being of higher incomes would mean they are more financially able of preparing their homes against severe weather. There is no public storm shelter in town.
Severe Winter Weather	North River faces the same severe winter weather risk as other jurisdictions. The residents being of higher incomes would mean they are more financially able of preparing their homes against severe weather.
Urban Fire	There are no higher than normal risk of urban fire in Oxbow.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that to the west of town or the forested areas along the Red River to the east.

JURISDICTIONAL CAPACITY

The City of Oxbow has an active City Council, a Planning and Zoning Board, and contracts with outside engineering services to assist the community in identifying and carrying out improvement projects. Due to its small population size, Oxbow may need to turn to federal, state, and county resources for larger-scaled projects.

PROGRESS SINCE LAST PLAN

The two mitigation action items below were in the 2014 version of the plan. They remain uncompleted and therefore will be kept in this update.

MITIGATION ACTIONS

Mitigation Action	1] Relocate lift station
Hazards Addressed	Flooding

Responsible Agency	City of Oxbow
Cost	\$300,000
Description	Relocation will reduce the potential for the lift station to be inundated and discontinue functioning during floods.
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	2-3 years
Priority	High

Mitigation Action	2] Installation of backup power generator
Hazards Addressed	All hazards
Responsible Agency	City of Oxbow
Cost	\$100,000
Description	A generator at the lift station would reduce the threat of discontinued service during power outages.
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	3-5 years
Priority	Medium

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FLOODPLAIN MAP



100 Year Floodplain
Oxbow City Limits

1:10,000



CASS COUNTY
GOVERNMENT

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UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Page is a town of approximately 300 residents in northwest Cass County. It has experienced moderate growth since 2010, seeing an increase in population of around 20%. Along Morton Avenue are several businesses such as a café, bank, grocery, bar, and churches. The rest of the city is mostly single-family with a few apartment buildings as well as the elementary school for Hope-Page School District.

Socio-Economic

Page's median housing income is slightly below that of the county's (\$56,607 compared to \$58,026). However, the poverty rate, sitting at 4.5%, is much lower than that of the county's 11.2%. Page's median age is very young at 23.7 years. This is a marked change since 2010 when the median age was 36.8. This change can be explained by the increase in the number of children under 18 years of age. In 2010, they comprised 10.7% of the population; in 2017 it was closer to 40.6%.

Page Housing Development owns and operates a 16-unit apartment complex with income-restricted units. These buildings are undergoing an extensive rehabilitation in 2019.

Housing

Around 80% of the housing stock is single-family detached with the remainder being a selection of small apartment buildings. Not uncommon with the other rural communities, most of the housing stock was built before 1950, potentially indicating that those units do not meet the latest building codes that allow for better protection against natural hazards.

Transportation

Page's roads are all paved. A rail line owned and operated by BNSF passes through the west side of town and serves a grain elevator.

Emergency Services

EMS is provided by Page Ambulance Service based out of a building shared with the Page Fire District.

Health Care and Nonprofits

The nearest hospital would be CHI Mercy Health in Valley City, a roughly 45-minute drive away.

Critical Facilities and Infrastructure

Page is connected to Cass Rural Water and maintains its own sanitary sewer and storm sewer systems. Critical infrastructure includes its elementary school, community center, and the hall for Page Fire Protection District.

Businesses and Employers

The elementary school is the largest employer in town. Along Morton Avenue are several retail and service businesses. Arthur Companies operates a grain elevator on the town’s westside.

Natural Hazards

Dam Failure	Page does not have any risk from dam failure. To the north and west of Page are several homes that would be in the inundation zone for the Upper Maple River Dam.
Drought	As a rural community with some agriculture related businesses, Page will feel the economic impacts of drought. The city obtains its water from the Cass Rural Water District, who said that supplies are adequate.
Flooding	Page is not located in a mapped floodplain nor is it within the boundaries of the Upper Maple River Dam floodplain map study. However, past experience shows that there are areas within town with poor drainage that flood. The elementary school is the only facility where a vulnerable population more difficult to evacuate, in this instance youth, congregate.
Geological Hazards	Page does not have any risk exposure to geological hazards.
Severe Summer Weather	Page faces the same severe summer weather risk as other jurisdictions. The older homes are less likely to withstand severe weather or maintain a cool temperature in heat waves. There is no public storm shelter in town.
Severe Winter Weather	Page faces the same severe winter weather risk as other jurisdictions. The older homes are less likely to withstand severe weather or maintain a warm temperature in cold snaps.
Urban Fire	The grain elevator would be the structure in town with the higher risk of fire.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

As a city of around 250 people, the financial capacity upon which to implement mitigation actions is limited. Assistance from the county and state will be necessary for carrying out larger scale efforts. Page is contracted with an engineering firm, who can identify, design, and lead the construction of various projects.

PROGRESS SINCE LAST PLAN

A new backup generator for the lift station was listed as an action step in the previous plan. This has been installed in the meantime.

MITIGATION ACTIONS

Mitigation Action	1] Additional storm sewer installation and new lift station
Hazards Addressed	Flooding
Responsible Agency	City of Page
Cost	\$500,000
Description	Increasing the city's storm sewer capacity will better protect against flash flooding.
Potential Funding Sources	FEMA (HMGP, PDM, and FMA) with local match, ND State Water Commission, Cass County flood sales tax, CDBG
Timeline	5 years depending upon funding availability
Priority	High

Mitigation Action	2] Installation of warning sirens
Hazards Addressed	Severe weather
Responsible Agency	City of Page and Red River Regional Dispatch Center
Cost	\$50,000
Description	Installing a warning siren in town will allow for better response to severe weather as it arises
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	1-5 years depending upon funding availability
Priority	Medium

DRAFT

25. Prairie Rose

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Prairie Rose is a small community, both in population and spatially, of around 70 people in 21 single-family homes. It is completely surrounded by the City of Fargo and therefore has no room for growth.

Socio-Economic

Prairie Rose has among the highest median household incomes in the county at \$113,125. This implies a lesser need to assist homeowners financially with mitigation actions for their properties.

Housing

Most of the housing stock was built in the 1970s with a few in the 1990s and 2000s. Census data indicates there are no households who are deemed cost-burdened by having 35% or greater of monthly income being devoted towards mortgage or rent.

Transportation

Prairie Rose is bounded by 40th Ave S to the north and 36th St S and Interstate 29 to the west. All of those roads are within Fargo. In Prairie Rose, all of the roads are paved.

Emergency Services

EMS is provided by FM Ambulance Service. Prairie Rose is within the service area of Horace Fire Department, of which the fire hall is up to a 20-minute drive away.

Health Care and Nonprofits

The nearest hospital would be Essentia Health's on 32nd Ave S, a 10-minute drive from the town.

Critical Facilities and Infrastructure

Prairie Rose obtains its water from the City of Fargo. It is also connected to Fargo's sanitary sewer system. Prairie Rose does not have an installed storm sewer system, instead relying upon ditches and culverts.

Businesses and Employers

Prairie Rose does not have any businesses other than any home-based ones that may exist.

Natural Hazards

Dam Failure	Prairie Rose does not face any risks from dam failure.
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Drought	Prairie Rose does not have any water users particularly susceptible to the effects of drought. The city is connected to Fargo’s water system.
Flooding	Under the current floodplain map, the streets of Prairie Rose would be inundated during a 100-year flood event while the homes are elevated enough to be affected in 500-year floods. The City is completely encased by the city limits of Fargo, meaning that decisions on flood protection made by them will determine how Prairie Rose is protected. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	Prairie Rose does not have any risk exposure to geological hazards.
Severe Summer Weather	Prairie Rose faces the same severe summer weather risk as other jurisdictions. The older homes are less likely to withstand severe weather or maintain a cool temperature in heat waves. There is no public storm shelter in town.
Severe Winter Weather	Prairie Rose faces the same severe winter weather risk as other jurisdictions. The older homes are less likely to withstand severe weather or maintain a warm temperature in cold snaps.
Urban Fire	There are no buildings in the city that are particularly susceptible to fire.
Wildfire	The risk of wildfire reaching the city is very low, given that it is located within the developed metropolitan area. These are typically contained before putting any structures in danger.

JURISDICTIONAL CAPACITY

Due to its small population base, Prairie Rose does not have the financial and technical resources at its disposal, therefore it may turn to state and county entities for assistance with larger scale projects.

PROGRESS SINCE LAST PLAN

The previous iteration of the plan listed a warning siren as the only action step. This has not been completed and will therefore remain.

MITIGATION ACTIONS

Mitigation Action	1] Increase capacity of ditches and culverts
Hazards Addressed	Flooding
Responsible Agency	City of Prairie Rose
Cost	To be determined
Description	Increasingly heavier precipitation events may create the need for the city’s internal drainage capacity to be increased.
Potential Funding Sources	FEMA (HMGP and PDM) with local match, Cass County flood sales tax
Timeline	5 years depending on funding availability
Priority	Medium

Mitigation Action	2] Installation of warning sirens
Hazards Addressed	Severe weather

Responsible Agency	City of Prairie Rose and Red River Regional Dispatch Center
Cost	\$50,000
Description	Installing a warning siren in town will allow for better response to severe weather as it arises
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	2-3 years depending upon funding availability
Priority	Low

FLOODPLAIN MAP



100 Year Floodplain
Prairie Rose City Limits

250 feet

CASS COUNTY GOVERNMENT

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26. Reile's Acres

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

The City of Reile's Acres has doubled in size since 2000, growing from 254 to 520 by 2017. It is located north of Fargo's city limits and west of the airport and Interstate 29. New residential development is occurring on the north half of the town. Spatially speaking, this will expand the city's footprint by roughly 40%. Due to this growth, several hazard mitigation action steps are to be undertaken.

Socio-Economic

Reile's Acres' median household income was high at approximately \$130,000 in 2017. Those older than 62 years of age constituted only 6.3% of the population. Those under 18 were 34%, indicating many younger families choose Reile's Acres as home.

Housing

The entire housing stock is single-family detached. Around a quarter was built in the 1970s while a little over half was built in the 2000s. The number of cost-burdened households is under about 8% for those with mortgages and 4% for those without.

Transportation

Reile's Acres is about a mile away from Interstate 29 and has easy access to the rest of the metropolitan area. All of the roads within town are paved.

Emergency Services

FM Ambulance covers the city while the West Fargo Rural Fire Department provides firefighting protection and all-hazard emergency response. The Central Station on the intersection of 1st St and 1st Ave E serves all areas north of Interstate 94, which includes Reile's Acres. It is an approximately 10 to 15 minute drive away.

Health Care and Nonprofits

The nearest hospitals would be Sanford Medical Center or Essentia Health, both in Fargo.

Critical Facilities and Infrastructure

Critical infrastructure in Reile's Acres include three lift stations, sanitary and storm sewer systems, and the community center. The water lines have insufficient pressure for adequate fire suppression capabilities.

Businesses and Employers

There are no standalone businesses within city limits. Residents often commute to jobs elsewhere in the metropolitan area.

Natural Hazards

Dam Failure	Reile’s Acres does not face any risks from dam failure.
Drought	Reile’s Acres does not have any water users particularly susceptible to the effects of drought. It obtains its water from Fargo’s system.
Flooding	Localized flooding has become less of a concern due to work done on the city’s storm sewer system. Riverine flooding can be addressed through region-wide protection in lieu of city-specific protection. There are no nursing homes, daycares, schools, jails, or other such concentrations of immobile populations who are more difficult to evacuate.
Geological Hazards	Reile’s Acres does not have any risk exposure to geological hazards.
Severe Summer Weather	Reile’s Acres faces the same severe summer weather risk as other jurisdictions. The older homes are less likely to withstand severe weather or maintain a cool temperature in heat waves. There is no public storm shelter in town.
Severe Winter Weather	Reile’s Acres faces the same severe winter weather risk as other jurisdictions. The older homes are less likely to withstand severe weather or maintain a warm temperature in cold snaps.
Urban Fire	There are no buildings in the city that are particularly susceptible to fire.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

In addition to the city council, Reile’s Acres has a planning and zoning commission who administer the land use ordinances. These ordinances include provisions that deal with building standards for floodproofing and floodplain management. A development permit shall be obtained before construction is to begin within any of the designated special flood hazard areas.

Reile’s Acres has adopted and enforces the 2017 North Dakota State Building Code. While smaller-scale mitigation projects may be within the city’s capacities, larger-scale projects will require the assistance of county, state, and federal entities.

PROGRESS SINCE LAST PLAN

Permanent flood protection was a priority in 2014 and remains so. Numerous action step items have been added to the plan due to the city’s continued growth.

MITIGATION ACTIONS

Mitigation Action	1] Increase permanent flood protection from the Red River
Hazards Addressed	Flooding

Responsible Agency	City of Reile's Acres for the localized flooding issues
Cost	To be determined
Description	Providing permanent flood protection for the entire city will reduce the potential for damages, reduce flood insurance costs for property owners, and encourage the continued development of the city. This includes protecting against flash flooding resulting from severe summer storms. The method for protection will be better determined upon the progress of new FEMA floodplain maps as well as the FM Diversion.
Potential Funding Sources	Federal (FEMA and USACE), Cass County, ND State Water Commission
Timeline	To be determined
Priority	High

Mitigation Action	2] Purchase and install backup power generators for three pump stations
Hazards Addressed	All hazards
Responsible Agency	City of Reile's Acres
Cost	\$150,000
Description	Installing permanent generators saves time and effort in hooking up a portable generator to the pump stations, thus ensuring continued operation during events.
Potential Funding Sources	FEMA (HMGP) with local match
Timeline	1-3 years
Priority	High

Mitigation Action	3] Install warning siren on north side of the city
Hazards Addressed	All hazards
Responsible Agency	City of Reile's Acres
Cost	\$50,000
Description	The city has expanded to the north with a new subdivision. Installing a warning siren there would ensure the entire city is within audible distance.
Potential Funding Sources	FEMA (HMGP) with local match
Timeline	1-3 years
Priority	Medium

Mitigation Action	4] Purchase and install an ICC 500 compliant storm shelter at the new public park in the north side of Reile's Acres.
Hazards Addressed	Severe weather
Responsible Agency	City of Reile's Acres
Cost	To be determined
Description	Building a storm shelter according to FEMA requirements will offer a safe space for park guests if a tornado or other dangerous storm were to hit.
Potential Funding Sources	FEMA (HMGP) with local match
Timeline	1-3 years
Priority	Low

Mitigation Action	5] Improve the city's fire protection capabilities by installing infrastructure that will increase the pressure of the water lines to accommodate fire hydrants or a pumper truck.
Hazards Addressed	Urban fire
Responsible Agency	City of Reile's Acres
Cost	To be determined
Description	Approximately 40% of the city's water lines cannot accommodate fire hydrants or pumper trucks, leaving it more difficult to respond adequately to fires. The city will consider a water tower that will pressurize water for distribution.
Potential Funding Sources	City
Timeline	3-5 years
Priority	Low

DRAFT

FLOODPLAIN MAP



100 Year Floodplain
Reile's Acres City Limits

100 Feet



Map of the 100 Year Floodplain for the City of Fargo, ND, prepared by the Cass County Engineer's Office, 2015. The map is for informational purposes only and does not constitute a warranty of any kind. The user assumes all liability for any use of the map. The map is not to be used for any other purpose without the express written consent of the Cass County Engineer's Office. The map is not to be used for any other purpose without the express written consent of the Cass County Engineer's Office.

27. Tower City

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

Tower City is located on the very western edge of Cass County immediately north of Interstate 94. Its population of 275 has remain roughly the same since 2010 but that is a small increase from 252 in the 2000 Census. It is mostly residential in nature with a few businesses.

Socio-Economic

The median household income of \$47,212 is lower than that of the county's. Its poverty rate sits at 7.6%. One thing to note is that Tower City's median age is higher at 42.5 years. Nearly a quarter of the population is 62 years or older.

Housing

Three-fourths of the housing stock is single-family detached. Regarding the year these homes were built a little over 20% were built before 1950, 20% were built in the 1970s, and in the 2000s there was a noticeable building boom as well. Tower City Development Corporation owns and operates apartment buildings on the south end of town that are available for low-to-moderate income households.

Transportation

As noted, Tower City is directly by Interstate 94. Within town, other than the principal streets the local roads are gravel. A BSNF rail line passes through the north side and serves a grain elevator.

Emergency Services

Tower City is covered by Casselton Ambulance Service which is around half-hour away. Cass County Sheriffs Department provides law enforcement.

Health Care

CHI Mercy Hospital in Valley City would be the closest one to Tower City. According to the Barnes County Multi-Hazard Mitigation Plan, the hospital is in the inundation zone.

Critical Facilities

Tower City's critical infrastructure includes a sanitary sewer system with attendant lift stations. A community hall is a public space for gatherings and city council meetings. Tower City obtains its water through Cass Rural Water District. There is no installed underground storm sewer system; instead, drainage is provided via ditches.

Businesses and Employers

Tower City has a few retail and service businesses as well as a company in the agricultural sector. Maple Valley High School is the largest employer in Tower City.

Natural Hazards

Dam Failure	Tower City does not face any risks from dam failure.
Drought	As a rural community, Tower City will feel the ripple effects of drought's impact upon agriculture. The city obtains its water from Cass Rural Water District, who have said the adequacy of the water supply is not a concern.
Flooding	Tower City has not been mapped by FEMA, therefore the potential risk is undetermined. Past experience has shown that flooding is not a concern. As far as places where vulnerable populations congregate, the school would be the only such facility.
Geological Hazards	Tower City does not have any risk exposure to geological hazards.
Severe Summer Weather	Tower City faces the same severe summer weather risk as other jurisdictions. The older homes are less likely to withstand severe weather or maintain a cool temperature in heat waves. There is no public storm shelter in town.
Severe Winter Weather	Tower City faces the same severe winter weather risk as other jurisdictions. The older homes are less likely to withstand severe weather or maintain a warm temperature in cold snaps.
Urban Fire	There are no buildings in the city that are particularly susceptible to fire.
Wildfire	The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town.

JURISDICTIONAL CAPACITY

As a small community, Tower City may turn to county, state, and federal entities for assistance in carrying out larger-scale projects. A contract with an engineering firm allows for capacity to design projects and to pursue funding opportunities.

The city regulates development that can be affected by flooding by restricting or prohibiting development in risky areas or by requiring structural floodproofing measures. A designated building administrator reviews all development applications for compliance with all of Tower City's ordinances.

PROGRESS SINCE LAST PLAN

The warning sirens were the only item in the 2014 version of the plan. This has not been completed and will remain in this plan albeit with an increase in the estimated cost.

MITIGATION ACTIONS

Mitigation Action	1] Installation of warning sirens
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Hazards Addressed	Severe weather
Responsible Agency	City of Tower City and Red River Regional Dispatch
Cost	\$50,000
Description	Advanced warning will allow for increased preparedness with potential to reduce property damage and lessen the potential of loss of life
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	1-5 years depending on funding availability
Priority	Low

Mitigation Action	2] Backup generators for sanitary lift station
Hazards Addressed	Flooding
Responsible Agency	City of Tower City
Cost	\$100,000
Description	Installing permanent backup generators at the two lift stations will ensure continued service through an incidence of power loss, thus preventing
Potential Funding Sources	FEMA (HMGP and PDM) with local match
Timeline	2-3 years
Priority	Medium

Mitigation Action	3] Procure weather radios for residents and the fire hall
Hazards Addressed	Severe summer weather
Responsible Agency	City of Tower City
Cost	To be determined
Description	NOAA weather radios are a valuable tool to warn residents of an incoming severe storm or tornado. Procuring these and offering to residents will ensure everyone is made aware and seek appropriate shelter.
Potential Funding Sources	FEMA (PDM and HMGP) with local match
Timeline	2-3 years depending on funding availability
Priority	Low

28. West Fargo

UNIQUE VULNERABILITIES

Land Use and Growth Patterns

West Fargo is the second largest city in Cass County and has been through phenomenal growth over the past few decades. From 1990 to 2017, the city's population has increased from 12,400 to 35,700 residents. This growth has manifested mainly in suburban-style patterns of development. Historical satellite imagery shows that in the mid-1980s, West Fargo extended no more than one and a half miles south from the intersection of Sheyenne Street and Main Avenue. In 2018, developments reached six miles south of said intersection, comprised mostly of commercial and residential. To the north of Main Avenue, manufacturing and other industrial uses were built.

Socio-Economic

West Fargo has a few areas of concentrated vulnerable populations. The core neighborhoods of River West, Francis, Sukuts, Southdale, and Eastwood have a higher share of non-white households compared to the rest of the city. Francis and Sukuts are a lower-income area vis-à-vis other neighborhoods. The City of West Fargo is in the process of examining the condition of infrastructure in these core neighborhoods. The infrastructure there – including the sanitary sewer, storm sewer, water distribution lines and roads - are old and needs to be replaced. However, this will place a significant cost upon lower-income households. Therefore, the City is looking into methods of assisting those households with the costs.

Housing

Many apartment buildings have been built south of Interstate 94 as the city has continued to grow in that direction. These buildings are relatively new and thus built to the more recent building codes. The Westwood, Charleswood River Estates, and West Charleswood neighborhoods have a higher prevalence of elderly households. For the latter two, this is attributable to the large nursing home facility found there.

West Fargo has one large mobile home community (Brookwood Mobile Home Park) with spots for around 380 units. Over the years, the park has seen several fires that have led to complete loss of the unit. While the park may not necessarily experience more fires compared to other neighborhoods, the severity of the fires is often greater. That mobile home park does not have a tornado shelter.

As of 2017, a shy over half of housing units were single-family detached. The second most common are apartment buildings of 20-units or greater. Over the years, several very large apartment complexes have been built. These larger and taller structures have made the Fire Department look at its capabilities to ensure adequate fire suppression and evacuation protocols can be carried out.

City staff are searching for grant funding that will help households in the aforementioned core neighborhoods – which contain the most number of older housing units - conduct necessary repairs and fix code violation issues. Incorporated within this program can be property-specific measures related to hazard mitigation.

The Housing Authority of Cass County administers the Housing Choice Vouchers program outside the city limits of Fargo. The organization also owns and operates affordable housing for those 55 years of age and upwards, as well as a public housing complex along Sheyenne Street. The complex will be undergoing an complete reconstruction with a modern and up-to-date facility.

Transportation

West Fargo was founded at the intersection of the Northern Pacific Railway and the Sheyenne River. Today the rail line, owned and operated by BNSF, remains a notable presence by serving numerous manufacturing and warehouse businesses in the northern part of the city. The construction of the Interstate had a direct effect upon West Fargo's growth trajectory.

Flooding is the natural hazard that presents the greatest threat to the city's transportation network. The Sheyenne River Diversion has greatly reduced the risk of riverine flooding that would inundate roads and block off access. Road segments near the river have experienced or can reasonably experience erosion as the result of riverbank slumping. Realigning certain roads further from the river are being explored.

Emergency Services

West Fargo is covered by FM Ambulance Service for paramedic services.

In 2018, the West Fargo Fire Department completed a four-year review for its Insurance Service Office (ISO) Rating. It achieved an ISO Rating of Class 3, the best rating the city has ever received. It places the department in the top 2 percent of all departments in North Dakota and top 10 percent in the country. There are two fire stations, one serving all areas north of the Interstate and the other serving to the south.

The West Fargo Police Department had 61 sworn officers, two K9 units, and 13 civilian employees as of 2018. The department is colocated in the same building as city hall.

Health Care

Sanford Health and Essentia Health have hospitals with emergency departments in Fargo.

Critical Facilities and Infrastructure

As mentioned, the Sheyenne River Diversion is a critical piece of infrastructure that has protected the city

numerous times from riverine flooding over its nearly three decades of operation. Internal drainage is provided by an extensive stormwater management system. The city employs detention and retention ponds for managing excess stormwater.

Currently, West Fargo utilizes a 460-acre network of waste stabilization ponds to treat wastewater. However, sewage is now being sent to Fargo’s treatment plant. By 2025, the lagoons will have been completely decommissioned.

Prior to June 2016, West Fargo drew its water solely from the West Fargo Aquifer through nine production wells. The City’s water mains were connected with Fargo’s system, allowing for it to purchase water from the Fargo Water Treatment Plant. The old wells can work as a backup in instances of severe drought, however it will take months in order to bring them back online.

Businesses and Employers

As mentioned earlier, the area north of Main Avenue contains many industrial and warehouse-type operations. 13th Avenue South is a principal commercial corridor with numerous big-box retail outlets. These areas are protected by flooding via the Sheyenne River Diversion.

Natural Hazards

Dam Failure	West Fargo does not face any risks from dam failure.
Drought	West Fargo is connected to Fargo’s water system and therefore follows Fargo’s as well as Lake Agassiz Water Authority’s drought management plans. West Fargo is a participating jurisdiction in the effort to bring Missouri River water to the Red River Valley in instances of severe drought. The City’s old wells are not currently being utilized. However, they can be brought back online albeit with a timeframe of several months and at great expense.
Flooding	Flood risk within the City of West Fargo was more or less eliminated upon the completion of the Sheyenne River Diversion in 1992. It consists of 6.8 miles of diversion channel, 12.7 miles of protection levees, 4 diversionary structures, 2 pumping stations, and bridges for railroads and highways. Throughout its history it hasn’t failed and it protected West Fargo during the record high floods of 1997 and 2009. Outside of the diversion in West Fargo’s extraterritorial zoning, flooding remains a hazard. Flash flooding can still be an issue if drainage is inadequate in some spots.
Geological Hazards	There are problem spots along the Sheyenne River where structures are at risk of riverbank slumping. Targeted acquisition and removal would eliminate that risk. Over time, it appears that riverbanks are becoming more unstable in locations. The Southeast Cass Water Resource District and West Fargo will be undertaking an inventory of the banks and its vegetation. Trees that would take chunks of land with them when they collapse can be selectively removed.
Severe Summer Weather	West Fargo faces the same severe summer weather risk as other jurisdictions. The older homes are less likely to withstand severe weather or maintain a cool temperature in heat waves.

	<p>Among the parks in West Fargo only Armour, North Elmwood, South Elmwood, Herb Tintes, Rendezvous, Westside, and Shadow Wood have enclosed structures that can serve as shelter in dangerous weather. West Fargo Park District does not have any shelters that meet ICC 500 standards.</p> <p>West Fargo is recognized as a StormReady community by the National Oceanic and Atmospheric Association.</p>
Severe Winter Weather	<p>West Fargo faces the same severe winter weather risk as other jurisdictions. The older homes are less likely to withstand severe weather or maintain a warm temperature in cold snaps.</p>
Urban Fire	<p>Like other jurisdictions, older buildings are more susceptible to fires because of the lack of modern protective features. The oldest homes in West Fargo are in the core neighborhoods.</p> <p>West Fargo does have some industrial facilities that merit extra attention: the Magellan Pipeline Co. tank farm; Cargill's oilseed processing facility that has a hexane tank, ammonia tank, and combustible oil seed; and Busch Agricultural Resource's barley and grain storage facility. The West Fargo Fire Department has an active inspection program that routinely examines these and other facilities to ensure proper practices are followed and safety plans are being adhered to.</p>
Wildfire	<p>The risk of wildfire reaching the city is very low. These are typically contained before putting any structures in danger. Any wildfires would come from dried-out farm fields that surround the town to the north, west, and south. The trees along the Sheyenne River can also be considered an ignition source.</p>

JURISDICTIONAL CAPACITY

Second in population to Fargo, the City of West Fargo has the financial and technical resources to accomplish many high ranking priorities on its own. Larger scale projects still require assistance from federal, state, and county entities. Staff capacity is robust with departments dedicated to planning and zoning, economic development, emergency management, finance, and fire. An inspection department enforces the 2012 International Building Code and the North Dakota State Plumbing Code.

West Fargo recently engaged in a thorough update of its comprehensive plan. This document includes the strategies which shall increase the community's resiliency: managing inland flooding, improving emergency preparedness, consideration of a zero waste initiative, increasing energy conservation and efficiency, and considering climate's impact in evaluating infrastructure investments. To further increase West Fargo's planning capabilities, it is also a participating jurisdiction in FM Metro COG.

West Fargo has an adopted and enforced flood damage prevention ordinance. This policy restricts or prohibits development in areas exposed to flood waters and erosion hazards, as well as development that increases erosion, flood heights, or velocities. It also controls the alteration of land features that help accommodate or channel flood waters. Flood barriers that will unnaturally divert flood waters or will increase flood hazards in other areas are regulated.

PROGRESS SINCE LAST PLAN

The City has continued to diligently prepare for and mitigate against flooding by building out new and hardening existing infrastructure. Items from the last plan that have been completed include replacing three storm sewer outfalls along the Sheyenne River, replacing the flap-gate at an outfall and repairing the force main, replacing PTO pump stations at 2nd Avenue South and 21st Avenue South, installing new discharge structures with sluice gates, extending and connecting culverts at Hayden Heights, and establishing paved turnarounds at several diversion crossing sites.

While infrastructure-related projects remain important for this new iteration of the plan, more attention was given towards the role of policy in reducing risk and enhancing resilience. This includes potential adjustments to policy which shall affect where and how individual property owners construct or substantially improve their buildings. This need not be restrictive in nature, but rather additional flexibility can permit property owners to utilize innovative strategies.

MITIGATION ACTIONS

Mitigation Action	1] Replace storm sewer outfalls along Sheyenne River and rehabilitate storm force-main and stabilize river bank at 9 locations
Hazards Addressed	Geological hazard (river bank sloughing)
Responsible Agency	City of West Fargo
Cost	\$1,500,000
Description	This action will reduce future losses of land due to sloughing in the area and maintain integrity of infrastructure and private property in the area
Potential Funding Sources	FEMA (PDM and HMGP) with local match
Timeline	1-2 years
Priority	High

Mitigation Action	2] Acquire and remove around 12 residential homes along the Sheyenne River followed by stabilization of the riverbank and restoration of green space.
Hazards Addressed	Geological hazard (river bank sloughing)
Responsible Agency	City of West Fargo
Cost	\$3.5 million
Description	Will reduce future damages to the removed structures as well as allow additional green way in for emergency protection in case of a future event. Bank stabilization would be an added benefit to land beyond the immediate project area.
Potential Funding Sources	FEMA (PDM, HMGP, FMA)
Timeline	1-2 years
Priority	High

Mitigation Action	3] Acquire and demolish condominiums at 530 6th Ave W and remove or repair attendant utilities.
Hazards Addressed	Geological hazard (river bank sloughing)
Responsible Agency	City of West Fargo
Cost	\$2-3 million
Description	This will remove residences currently at-risk from flooding. The additional green way can provide space for emergency protection if needed. Bank stabilization and utility rehabilitation or removal would be an added benefit to the entire system.
Potential Funding Sources	FEMA (PDM, HMGP, FMA) with local match
Timeline	1-2 years
Priority	High

Mitigation Action	4] Riverbank stabilization by Main Avenue Self Storage
Hazards Addressed	Geological hazard (riverbank sloughing)
Responsible Agency	City of West Fargo
Cost	\$200,000
Description	This will prevent future erosion in the area and maintain the integrity of infrastructure and private property in the area
Potential Funding Sources	FEMA (PDM and HMGP) with local match
Timeline	1-2 years
Priority	High

Mitigation Action	5] Address land subsidence along Center Street by stabilizing the riverbank and possibly realigning the road.
Hazards Addressed	Geological hazard (riverbank sloughing)
Responsible Agency	City of West Fargo
Cost	\$750,000
Description	This will prevent future erosion in the area and maintain the integrity of infrastructure and private property in the area
Potential Funding Sources	FEMA (PDM and HMGP) with local match
Timeline	1-2 years
Priority	High

Mitigation Action	6] Restore all dike tops (outside and inside including tieback levees) by grading compaction and seeding.
Hazards Addressed	Flooding
Responsible Agency	City of West Fargo
Cost	\$150,000
Description	Maintenance of the dikes will preserve functionality for future flood events.
Potential Funding Sources	FEMA (PDM, FMA, and HMGP) with local match
Timeline	1-2 years
Priority	High

Mitigation Action	7] Amend landscape ordinances that encourage the use of xeriscaping and plants native to the region.
Hazards Addressed	Drought
Responsible Agency	City of West Fargo with assistance from NDSU Extension and other technical assistance providers, if needed
Cost	To be determined

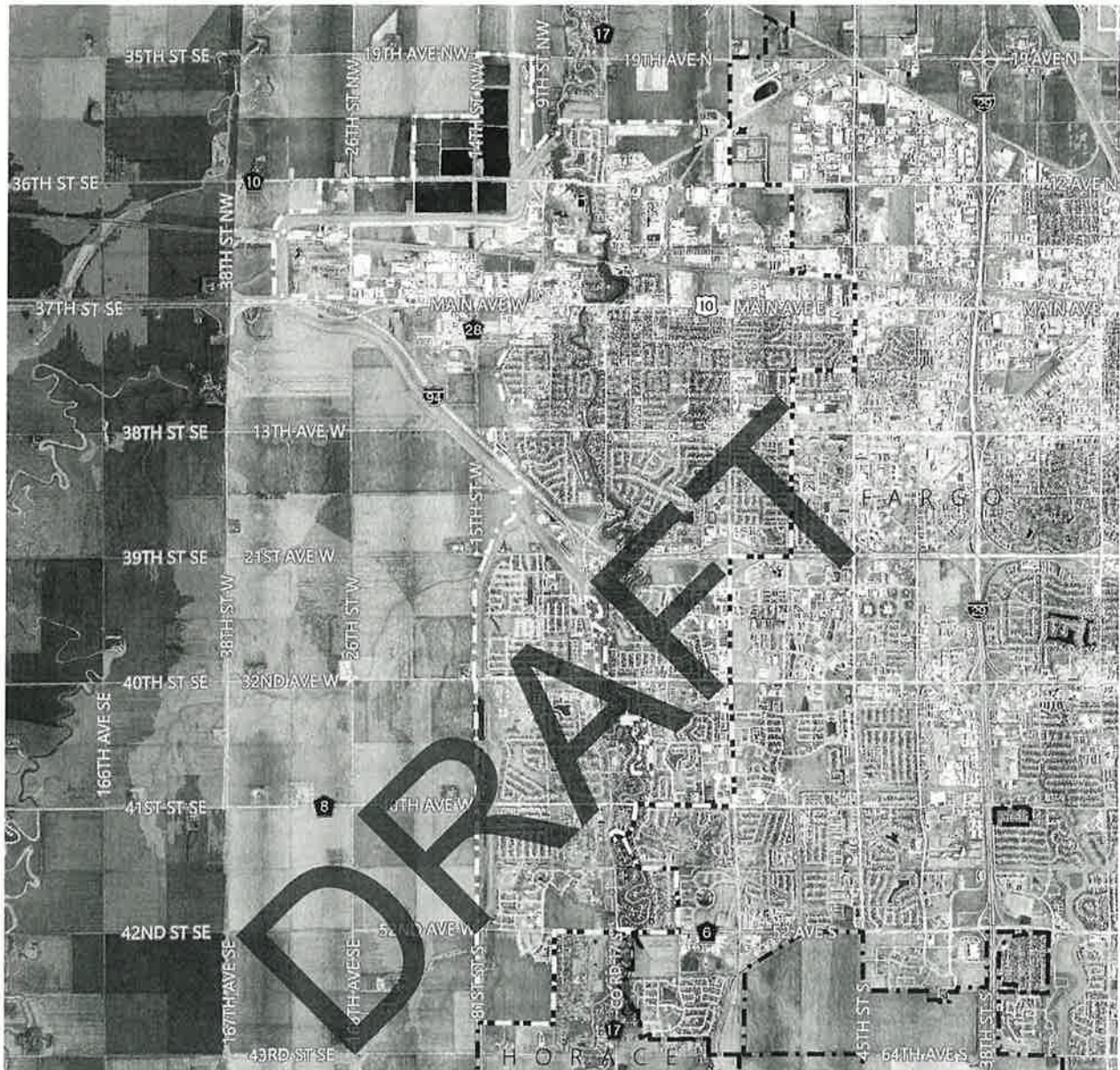
Description	Allowing property owners to use less water-demanding landscaping methods can lead to noticeable changes in overall water consumption if implemented on a wide-enough scale. This would be helpful during times of drought.
Potential Funding Sources	Incorporate within future department budgets
Timeline	2-3 years
Priority	Low

Mitigation Action	8] Upgrade lift stations by installing onsite permanent generators, purchasing dedicated portable generators, and design lift stations with pads for installation of generators or pads for portable generator access.
Hazards Addressed	Flooding
Responsible Agency	City of West Fargo
Cost	\$200,000
Description	This will improve the system's existing capacity by ensuring efficient and effective removal of sewage in lines during disasters, thus reducing health issues and improving treatment capability.
Potential Funding Sources	FEMA (PDM and HMGP) with local match
Timeline	1-2 years
Priority	High

Mitigation Action	9] Enroll West Fargo in the Community Rating System by implementing methods of educating the public with useful maps and introducing potential flood damage reduction methods.
Hazards Addressed	Flooding
Responsible Agency	City of West Fargo
Cost	\$200,000
Description	This will reduce the cost of flood insurance for residence and commercial property owners, as well as enhance the understanding among the community of flooding and ways they can better protect themselves.
Potential Funding Sources	Local
Timeline	3-4 years
Priority	High

Mitigation Action	10] Evaluate river stabilization techniques and potentially remove residential homes in the Riverside and Chateau Cheyenne area
Hazards Addressed	Geological hazard (riverbank sloughing)
Responsible Agency	City of West Fargo
Cost	\$1,000,000
Description	Depending on what methods are needed, this will reduce future damages by removing structures as well as allowing additional green way in for emergency protection in case of a future event.
Potential Funding Sources	FEMA (PDM, FMA, and HMGP) with local match
Timeline	1-2 years
Priority	High

FLOODPLAIN MAP



100 Year Floodplain
West Fargo City Limits

Scale: 1 Mile



**CASS COUNTY
GOVERNMENT**

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APPENDIX A: JURISDICTION COMMITMENT LETTERS

DRAFT

APPENDIX B: JURISDICTIONAL PARTICIPATION

The following tables lists the extent of participation for each jurisdiction. This does not include the phone conversations, email correspondence, or meetings held with the stakeholder groups listed on Table

Jurisdiction	Extent of Participation
Cass County	<ul style="list-style-type: none"> • Department representation on steering committee • Requested input from county commission members specifically
Alice	<ul style="list-style-type: none"> • Phone conversations and email correspondence with Lori Schmidt, who conferred with city council members
Amenia	<ul style="list-style-type: none"> • Phone conversation with William Stansbery
Argusville	<ul style="list-style-type: none"> • Email correspondence with Mary Howatt • Attended post-flood debrief meeting May 9th, 2019
Arthur	<ul style="list-style-type: none"> • Email correspondence with Greg Nelson
Ayr	<ul style="list-style-type: none"> • Mail correspondence with Diane Hovland
Briarwood	<ul style="list-style-type: none"> • Email and phone conversation with Mike Fritz
Buffalo	<ul style="list-style-type: none"> • Email and phone conversations with council members • Attended city council meetings on November 12th, 2018 and March 11th, 2019.
Casselton	<ul style="list-style-type: none"> • Email correspondence with Sheila Klevgard
Davenport	<ul style="list-style-type: none"> • Attended city council meeting May 6th, 2019
Enderlin	<ul style="list-style-type: none"> • Email correspondence with Cyndee Chesley
Fargo	<ul style="list-style-type: none"> • Department representation on steering committee • Requested input from city commission members specifically
Frontier	<ul style="list-style-type: none"> • Email correspondence with BJ Blanchette
Gardner	<ul style="list-style-type: none"> • Email correspondence Todd Kalm • Attended post-flood city council meeting June 10th, 2019
Grandin	<ul style="list-style-type: none"> • Conference call with city council May 14th, 2019
Harwood	<ul style="list-style-type: none"> • Email correspondence with Casey Eggermont • Attended city council meeting May 6th, 2019
Horace	<ul style="list-style-type: none"> • Email correspondence with Matt Lower

Hunter	<ul style="list-style-type: none"> • Email correspondence with Ben Olson
Kindred	<ul style="list-style-type: none"> • Email correspondence with Tabitha Arnaud
Leonard	<ul style="list-style-type: none"> • Phone conversation and email correspondence with Greg Wessels
Mapleton	<ul style="list-style-type: none"> • Attended city council meetings on February 12th and June 11th, 2019.
North River	<ul style="list-style-type: none"> • Attended city council meeting April 23rd, 2019.
Oxbow	<ul style="list-style-type: none"> • Email correspondence with Stacey Fett
Page	<ul style="list-style-type: none"> • Email correspondence with Judy Johnson
Prairie Rose	<ul style="list-style-type: none"> • Email correspondence with Rick Callens and Bob Staloch
Reiles Acres	<ul style="list-style-type: none"> • Email correspondence with Shane Amundson
Tower City	<ul style="list-style-type: none"> • Email correspondence with Jody Haselu
West Fargo	<ul style="list-style-type: none"> • Department representation on steering committee • Requested input from city commission members

DRAFT

APPENDIX C: EXECUTED RESOLUTIONS OF ADOPTION

DRAFT

12

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. FM-15-K1 Type: Change Order #9
 Location: Rosewood Addition Date of Hearing: 8/19/2019

<u>Routing</u>	<u>Date</u>
City Commission	8/26/2019
PWPEC File	X
Project File	Roger Kluck

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, for Change Order #9 in the amount of \$13,532.20 for additional work.

Staff is recommending approval of Change Order #9 in the amount of \$13,532.20, bringing the total contract amount to \$3,794,880.31.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #9 to Industrial Builders, Inc.

RECOMMENDED MOTION

Approve Change Order #9 in the amount of \$13,532.20 Industrial Builders, Inc.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Flood Sales Tax

	Yes	No
Developer meets City policy for payment of delinquent specials	<u>N/A</u>	<u> </u>
Agreement for payment of specials required of developer	<u>N/A</u>	<u> </u>
50% escrow deposit required	<u>N/A</u>	<u> </u>

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u><input checked="" type="checkbox"/></u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Bruce Grubb, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tom Knakmuhs
Kent Costin, Finance Director	<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: Roger E. Kluck, PE, CFM Civil Engineer II, Storm Water

Date: August 14, 2019

Re: Project No. FM-15-K1 – Change Order #9
Rosewood Area Flood Risk Management

Background:

Project No. FM-15-K1 was bid on May 30, 2018, with the project awarded by the City Commission to Industrial Builders on June 4, 2018. Construction began on June 25, 2018. This is a two-year project due to requirements to meet Federal Wetland Standards. The project completion date is October 18, 2019. The project continues construction of flood control on the north side of Rose Coulee across from the Rosewood neighborhood.

During final connection of the power and control systems for the new pump station, it was found that the amperage provided by the rural electric did not match the pump and control system specifications. In order to make the two systems compatible, a fused disconnect converter needed to be added. The total cost was \$13,532.20 and is being paid for with Sales Tax Funds-Flood Control-460. The requested Change Order item has been reviewed and is reasonable.

Recommended Motion:

Approve Change Order #9 in the amount of \$13,532.20 to Industrial Builders.

REK/klb
Attachment

C: Brenda Derrig, City Engineer
Jody Bertrand, Division Engineer



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Project No FM-15-K1 **Change Order No** 9
Project Name Rosewood Area Flood Risk Management Project
Date Entered 8/14/2019 **For** Industrial Builders Inc

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

EXPLANATION OF CHANGE: Add power converter

The electrical contractor found that the power being provided by the rural electric was not compatible with the pumps supplied. A fused disconnect converter was added to correct the compatibility

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 Lift Station	93	Install Electrical Service	LS	0.00	0.00	0.00	1.00	1.00	13,532.20	13,532.20
Storm Sewer Lift Station Sub Total (\$)										
13,532.20										

Summary

Source Of Funding Sales Tax Funds - Flood Control - 460
Net Amount Change Order # 9 (\$) 13,532.20
Previous Change Orders (\$) 331,654.21
Original Contract Amount (\$) 3,449,693.90
Total Contract Amount (\$) 3,794,880.31

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

CONTRACT TIME

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
08/16/2019	10/18/2019	16.00	0.00	09/01/2019	10/18/2019

APPROVED

[Signature]

APPROVED DATE

Department Head *[Signature]* 8/20/19



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Title

Vice President Engineering

Mayor

Attest

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Type: Storm Easement

Location: 5565 & 5513 14 Ave N

Date of Hearing: 8/5/2019

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/26/2019</u>
PWPEC File	<u>X</u>
Project File	<u>Roger Kluck</u>

The Committee reviewed a communication from Civil Engineer, Roger Kluck, regarding a request from Heiser and Miller Insulation for a storm sewer easement. The easement is to cross City land for purposes of storm sewer outfall into a City owned Regional pond.

On a motion by Kent Costin, seconded by Ben Dow, the Committee voted to recommend approval of the easement.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the easement.

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)

<u>Yes</u>	<u>No</u>
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>

COMMITTEE

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
			<u><input checked="" type="checkbox"/></u>
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	<u>Ryan Erickson</u>
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	
<u><input checked="" type="checkbox"/></u>	<u><input checked="" type="checkbox"/></u>	<u><input type="checkbox"/></u>	

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


 Brenda E. Derrig, PE
 City Engineer

ATTEST:

C: Kristi Olson

Memorandum

To: PWPEC

From: Roger E. Kluck, PE, CFM Civil Engineer II

CC: Jody Bertrand, Division Engineer; Tom Knakmuhs, Assistant City Engineer

Date: July 30, 2019

Re: Heiser & Miller Insulation Development Site 5565 & 5513 14 Ave N Storm Easement

Heiser and Miller Insulation have been working with Engineer Andrew Thill of Lowry to develop site plans for development of 5565 and 5513 14th Avenue N in Fargo for their business facilities. In order to meet storm water mitigation and water quality requirements the City has been working with Engineer Thill to design a storm sewer system to tie into a City regional pond (see attached). Heiser and Miller are crossing a public utility easement, which they have secured an easement for, and they need to cross City owned land to reach the detention pond. We have enclosed the proposed easement and plat prepared by Attorney Morris.

This request is for PWPEC and City Commission approval to grant the storm sewer easement and to authorize the Mayor to sign the easement document.

Recommended Motion:

Approve easement across City land for purposes of storm sewer outfall into a City owned regional pond, and further to authorize the Mayor to sign the attached easement document.stpor

EASEMENT
(Storm Sewer and Outfall)

KNOW ALL MEN BY THESE PRESENTS that **THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as "Grantor", "City" or "Fargo", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO HEISER & MILLER, LLC**, a North Dakota limited liability company, its successors and assigns, hereinafter referred to as "Grantee", an easement over, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a storm sewer, together with the customary appurtenances, including a rip rap outfall to the city of Fargo existing retention pond on Fargo's property, said tract being more particularly described as follows, and as depicted on Exhibit A hereto:

PART OF LOT 1 BLOCK 3 OF COMMERCE ON 12TH ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA. AN EASEMENT BEING 10 FEET IN WIDTH, 5 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE.

COMMENCING FROM THE NORTHEAST CORNER OF LOT 1 BLOCK 3 COMMERCE ON 12TH ADDITION; THENCE S01°25'14"W ALONG THE EAST LINE OF SAID LOT 1 A DISTANCE OF 51.10 FEET TO THE POINT OF BEGINNING; THENCE S64°44'41"W A DISTANCE OF 164.94 FEET AND THERE TERMINATING. SAID EASEMENT CONTAINS ±1649.43 SF.

Grantor, its successors and assigns, hereby covenant to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient

GRANTEE:

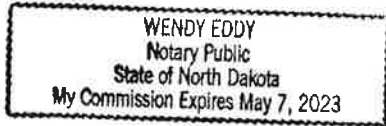
Heiser & Miller, LLC, a North Dakota
Limited Liability Company

By: Bradley I Miller
Its: Bradley I Miller
partner

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

On this 8th day of August, 2019, before me, a notary public in and for said county and state, personally appeared Bradley I. Miller, the Partner of Heiser & Miller LLC to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL)



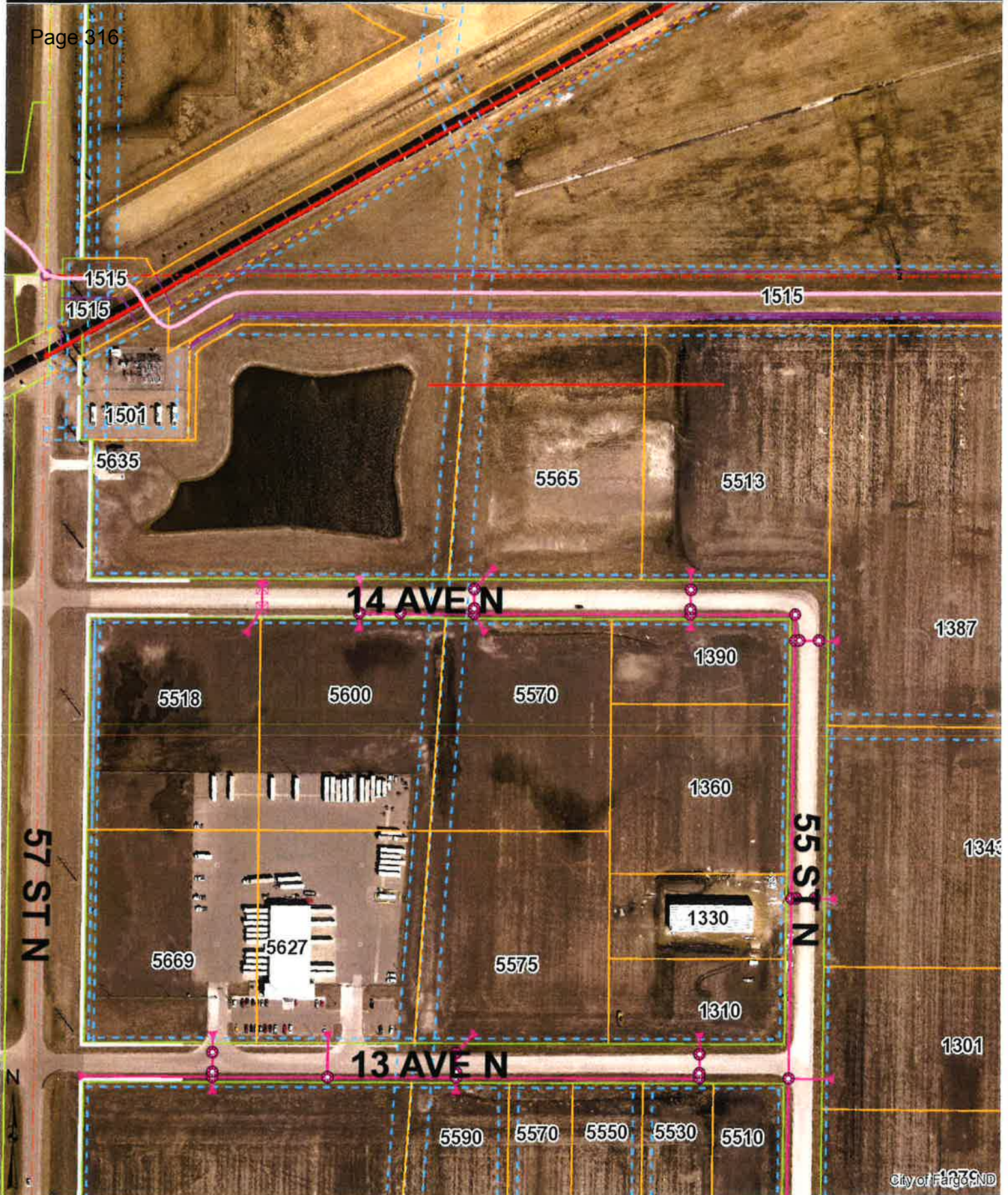
Wendy Eddy
Notary Public
Burleigh County, North Dakota

The legal description was prepared by:

Andrew Thrill, PE
Lowry Engineering
1111 Westrac Drive, Suite 108
Fargo, ND 58103
701-235-0199
athill@lowryeng.com

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



These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Miller Insulation - Storm

1:4,514

7/29/2019 10:47:04 AM

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.



City of Fargo, ND

EASEMENT
(Storm Sewer and Outfall)

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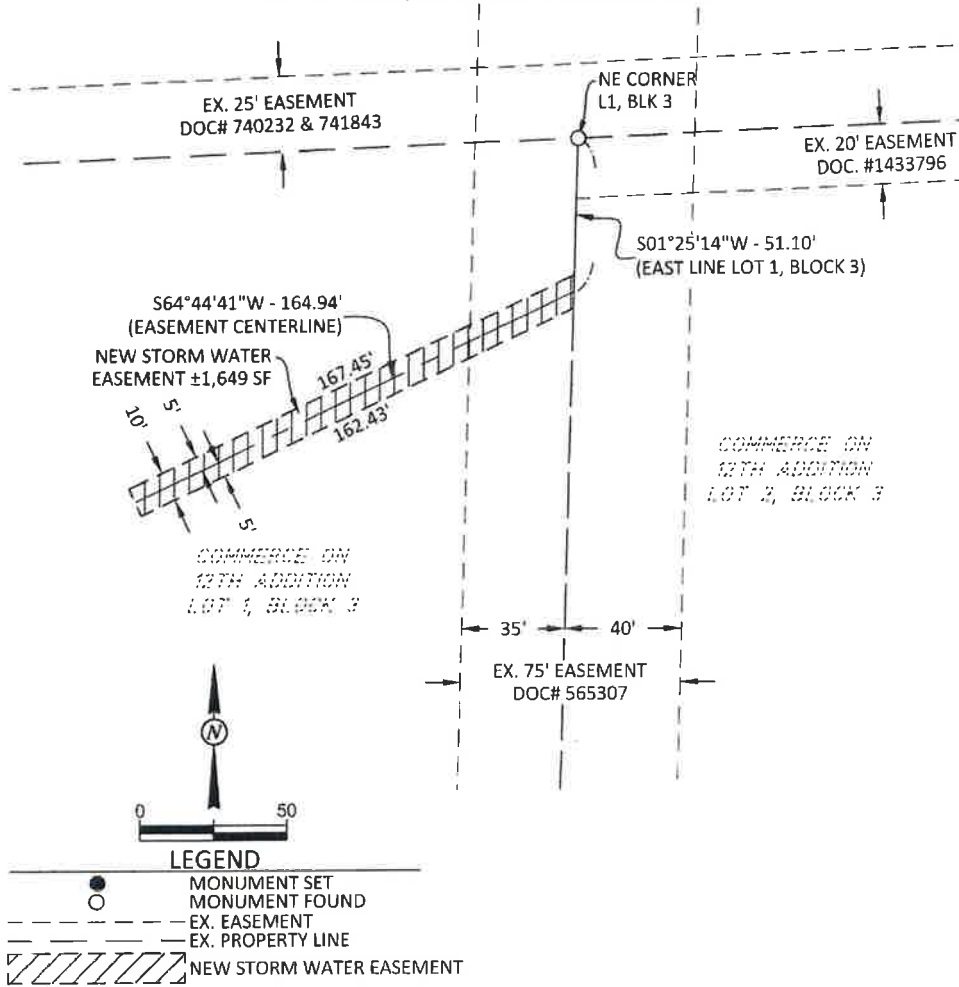
Grantor, its successors and assigns, hereby covenant to and with Grantee that Grantee's officers, contractors, agents and employees may at any and all times when necessary or convenient

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.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said storm sewer and customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said storm sewer including customary appurtenances, provided that 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 constructing of said storm sewer and customary appurtenances was begun.

Grantee further understands and agrees that the maintenance of the storm sewer, outfall and customary appurtenances is Grantee's sole responsibility, at Grantee's sole cost. Failure to maintain the storm sewer, outfall and appurtenances to acceptable City standards, or repair any degradation to the retention pond caused by the storm sewer and outfall, shall result in termination of this easement, at City discretion. Further, should the City discontinue the use of the retention pond, or the use of the City property change for any reason, City may terminate this easement upon 30 days' notice to Grantee.

EXHIBIT A
STORM WATER EASEMENT
PART OF LOT 1, BLOCK 3 OF COMMERCE ON 12TH ADDITION
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA



DESCRIPTION

PART OF LOT 1 BLOCK 3 OF COMMERCE ON 12TH ADDITION TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA. AN EASEMENT BEING 10 FEET IN WIDTH, 5 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE.

COMMENCING FROM THE NORTHEAST CORNER OF LOT 1 BLOCK 3 COMMERCE ON 12TH ADDITION; THENCE S01°25'14\"W A DISTANCE OF 51.10 FEET TO THE POINT OF BEGINNING; THENCE S64°44'41\"W A DISTANCE OF 164.94 FEET AND THERE TERMINATING. SAID EASEMENT CONTAINS ±1,649 SF.

SURVEYORS CERTIFICATE

I COLE A. NESET HEREBY CERTIFY THAT THIS SURVEY, PLAN, AND/OR REPORT WAS PREPARED UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA.

Cole A. Neset

 COLE A. NESET
 REGISTERED LAND SURVEYOR
 ND REG. NO. 7513

7-26-19

 DATE:



DRAWN BY: RJW
 CHECKED BY: CAN
 DATE: 07/26/2019



EASEMENT
(Storm Sewer and Outfall)

KNOW ALL MEN BY THESE PRESENTS that **THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as "Grantor", "City" or "Fargo", for and in consideration of the sum of One and no/100 Dollars (\$1.00) and other valuable consideration, to it in hand paid the receipt whereof is hereby acknowledged, **HEREBY GRANTS UNTO HEISER & MILLER, LLC**, a North Dakota limited liability company, its successors and assigns, hereinafter referred to as "Grantee", an easement over, upon and in the land hereinafter described for the purpose of constructing, operating, maintaining and repairing a storm sewer, together with the customary appurtenances, including a rip rap outfall to the city of Fargo existing retention pond on Fargo's property, said tract being more particularly described as follows, and as depicted on Exhibit A hereto:

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Grantor, its successors and assigns, hereby covenant 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.

Grantor, its successors and assigns, further agrees that it will not disturb, injure, molest or in any manner interfere with said storm sewer and customary appurtenances, or with material for laying, maintaining, operating or repairing the same, in, over or upon the above-described premises, and Grantor expressly warrants and states that no buildings or other obstacles of any kind shall be placed or located upon the tract so as to interfere in any manner with the construction, operation, maintenance or repair of said storm sewer including customary appurtenances, provided that 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 constructing of said storm sewer and customary appurtenances was begun.

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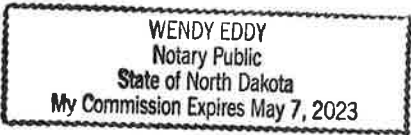
GRANTEE:

Heiser & Miller, LLC, a North Dakota
Limited Liability Company

Bradley I Miller
By: Bradley I Miller
Its: partner

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

On this 8th day of August, 2019, before me, a notary public in and for said county and state, personally appeared Bradley I Miller, the Partner of Heiser & Miller LLC to me known to be the persons described in and who executed the within and foregoing instrument, and acknowledged to me that he/she executed the same.

(SEAL) 

Wendy Eddy
Notary Public
Burleigh County, North Dakota

The legal description was prepared by:

Andrew Thrill, PE
Lowry Engineering
1111 Westrac Drive, Suite 108
Fargo, ND 58103
701-235-0199
athill@lowryeng.com

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

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Fire Department

637 NP Avenue
Fargo, ND 58102
www.ci.fargo.nd.us/fire
Phone: 701-241-1540
Fax: 701-241-8125

TO: BOARD OF CITY COMMISSIONERS
FROM: STEVE DIRKSEN, FIRE CHIEF
RE: INCREASE IN PERMIT FEES
DATE: AUGUST 22, 2019

Adoption of the 2018 International Fire Code by the City of Fargo is scheduled to take place in 2019. In conjunction with the adoption of the updated fire code, I recommend an increase in fire permit fees beginning January 1, 2020 and am submitting an updated fire permit fee schedule for your approval.

Suggested Motion:

Approve the request for an increase to the 2019 fire permit fee schedule as proposed.



Fargo Fire Department			
Permit Fee Schedule		Current Fee	Proposed Fee
Annual Operational Permits	code		
105.6.1 Aerosol products 5101.2	AER	\$ 50.00	\$ 60.00
105.6.2 Amusement Buildings	AMB	\$ 50.00	\$ 60.00
105.6.3 Aviation Facilities 2001.3	AVF	\$ 50.00	\$ 60.00
105.6.4 Carnivals and Fairs	CAR	\$ 50.00	\$ 60.00
105.6.5 Cellulose nitrate film 301.2	CNF	\$ 50.00	\$ 60.00
105.6.6 Combustible dust-producing operations 2201.2	CDO	\$ 50.00	\$ 60.00
105.6.7 Combustible Fibers 3701.3	CF	\$ 50.00	\$ 60.00
105.6.8 Compressed Gases 5301.2	CG	\$ 50.00	\$ 60.00
105.6.9 Covered and open mall buildings with open flames	CMB	\$ 50.00	\$ 60.00
105.6.10 Cryogenic fluids 5501.2	CRY	\$ 50.00	\$ 60.00
105.6.11 Cutting and Welding 3501.2	CW	\$ 50.00	\$ 60.00
105.6.12 Dry Cleaning w/hazardous solvent 2101.2	DC	\$ 50.00	\$ 60.00
105.6.13 Exhibits and trade shows	ETC	\$ 50.00	\$ 60.00
105.6.14 Explosives 5601.2	EXP	\$ 50.00	\$ 60.00
105.6.15 Fire hydrants and valves 501.2	HYD	\$ 50.00	\$ 60.00
105.6.16 Flammable and combustible liquids 5701.4	FL	\$ 50.00	\$ 60.00
105.6.17 Floor finishing	FRF	\$ 50.00	\$ 60.00
105.6.18 Fruit and crop ripening 2501.2	FR	\$ 50.00	\$ 60.00
105.6.19 Fumigation and insecticidal fogging 2601.2	FU	\$ 50.00	\$ 60.00
105.6.20 Hazardous materials 5001.5	HM	\$ 100.00	\$ 120.00
105.6.21 HPM facilities 2701.5	HPM	\$ 100.00	\$ 120.00
105.6.22 High piled storage (exceeding 500sf) 3201.2	HPS	\$ 50.00	\$ 60.00
105.6.23 Hot Work operations 3501.2	HW	\$ 50.00	\$ 60.00
105.6.24 Industrial Ovens 3001.2	IO	\$ 50.00	\$ 60.00
105.6.25 Lumber yards and woodworking plants (>100,000 bf) 2801.2	LYW	\$ 50.00	\$ 60.00
105.6.26 Liquid or gas fueled vehicles or equipment in assembly buildings	LGV	\$ 50.00	\$ 60.00
105.6.27 LP-gas 6101.2	LPG	\$ 50.00	\$ 60.00
105.6.28 Magnesium (>10lbs) 5901.2	MA	\$ 50.00	\$ 60.00
105.6.32 Open burning 307.2	BF	\$ 50.00	\$ 60.00
105.6.33 Open flames and torches 308.2	TOF	\$ 50.00	\$ 60.00
105.6.34 Open flames and candles 301.2	COF	\$ 50.00	\$ 60.00
105.6.35 Organic coatings 2901.2	OC	\$ 50.00	\$ 60.00
105.6.37 Places of assembly	PA	\$ 50.00	\$ 60.00
105.6.39 Private Fire hydrants	PFH	\$ 50.00	\$ 60.00
105.6.40 Pyrotechnic special effects materials 5601.2	PYR	\$100 + \$70/hr min. 2hrs**	\$120 + \$85/hr min. 2hrs**
105.6.41 Pyroxylin plastics 6501.2	PXP	\$ 50.00	\$ 60.00
105.6.42 Refrigeration equipment 601.2	MR	\$ 50.00	\$ 60.00
105.6.43 Repair Garages 2301.2	MVR	\$ 50.00	\$ 60.00
105.6.44 Rooftop Heliports	RTH	\$ 50.00	\$ 60.00
105.6.45 Spraying or dipping 2401.3	SP	\$ 50.00	\$ 60.00
105.6.46 Storage of scrap tires and tire byproducts 3401.2	SST	\$ 50.00	\$ 60.00
105.6.47 Temporary membrane structures and tents 3103.4	TAS	\$ 50.00	\$ 60.00
105.6.48 Tire rebuilding plants 3401.2	TRP	\$ 50.00	\$ 60.00
105.6.49 Waste Handling	WH	\$ 50.00	\$ 60.00
105.6.50 Wood Products 2801.2	WP	\$ 50.00	\$ 60.00

Construction Permits		
901.2 Automatic fire-extinguishing systems (Plan review and inspection) no permit	\$70 + (\$1x0.1%(Total Fire Flow Calculation Area))	\$85 + (\$1x0.1%(Total Fire Flow Calculation Area))
105.7.5 Cryogenic fluids	\$70 + (0.1%(Project cost))	\$85 + (0.1%(Project cost))
105.7.6 Emergency Responder radio coverage system	\$70 + (0.1%(Project cost))	\$85 + (0.1%(Project cost))
901.2 Fire alarm and detection system and related equipment (Plan review and inspection) no permit	\$70 + (\$1x0.1%(Total Fire Flow Calculation Area))	\$85 + (\$1x0.1%(Total Fire Flow Calculation Area))
105.7.9 Flammable and combustible liquids	\$70 + (1%(Project cost))	\$85 + (1%(Project cost))
105.7.10 Fuel cell power systems	\$70 + (1%(Project cost))	\$85 + (1%(Project cost))
105.7.13 Hazardous materials	\$70 + (0.1%(Project cost))	\$85 + (0.1%(Project cost))
105.7.11 Industrial Ovens	\$70 + (0.1%(Project cost))	\$85 + (0.1%(Project cost))
105.7.16 LP-gas	\$70 + (0.1%(Project cost))	\$85 + (0.1%(Project cost))
105.7.23 Spraying or dipping	\$70 + (0.1%(Project cost))	\$85 + (0.1%(Project cost))
Construction permit fee schedule		
	\$85 + (\$1x0.1%(Total Fire Flow Calculation Area))	
	\$85 + (0.1%(Project cost))	
	\$85 + (1%(Project cost)) Flammable and combustible liquid tanks	
Cost includes plan review and inspection during normal business hours		
**Inspections outside of normal business hours (minimum charge - two hours) - \$85 per hour		

2018 International Fire Code as adopted by City of Fargo

(15)

To: Board of City Commissioners

From: Luke Lindberg, Safety Manager, Jill Minette, Director of Human Resources and Desi Fleming, Public Health Director

Re: Extension Employee Health Program Provider Professional Services Agreement

Date: August 20th, 2019

The City of Fargo would like to continue the existing Professional Services Agreement with Essentia Health who currently supplies occupational medicine and medical director services to the Employee Health program.

Following a RFP process in 2015, Essentia Health was selected to deliver professional provider and medical directorship services. We are requesting extension of existing contract by seventeen months (17) to December 31st 2020. Approval of the attached agreement with the intent to execute the agreement August 27th, 2019.

The cost of the services is not to exceed \$110,000 USD per year which will be paid through existing budgeted funds. The agreement addendum has been reviewed by the Assistant City Attorney.

Suggested Motion:

Approve extension of the Professional Services Agreement with Essentia Health.

**FIRST AMENDMENT
TO
THE AGREEMENT FOR THE PROVISION OF PROFESSIONAL SERVICES
Occupational Medicine and Medical Director Services**

This First Amendment to the Agreement for the Provision of Professional Occupational Medicine and Medical Director Services effective November 9, 2016 ("Agreement") by and between Innovis Health, LLC, dba Essentia Health West ("Essentia"), and the City of Fargo, ("Fargo"), is made effective August 2, 2019 ("Effective Date").


The Agreement is modified as follows:

1. Section 13 is modified to extend the term through December 31, 2020.
2. Exhibit B is modified to remove Professional "Andrew Bader" and insert Professional "Marjie Masten, DNP, APRN, CNP".

All other terms of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this amendment as of the Effective Date set forth above.

Innovis Health, LLC, dba Essentia Health West City of Fargo

By: 
Print name: CHUCK ULRICH
Title: OPERATIONS MANAGER
Date: 8/13/2019

By: _____
Print name: _____
Title: _____
Date: _____

Approved as to form and execution by
City of Fargo Attorney

By: _____
Print Name: _____
Title: _____
Date: _____

**AGREEMENT FOR THE PROVISION OF
PROFESSIONAL SERVICES
Occupational Medicine and Medical Director Services**

This Professional Services Agreement ("Agreement") is made and entered into as of **the last date signed** ("Effective Date") by and between **Innovis Health, LLC, dba Essentia Health West** ("Essentia"), and **City of Fargo** ("Fargo").

RECITALS

- A. Essentia is a Delaware limited liability company qualified to conduct business in Minnesota and North Dakota and exempt from federal income tax as an entity described in section 501(c)(3) of the Internal Revenue Code, and an organization whose purposes include advancement of healthcare in the region that it serves.
- B. Fargo is a North Dakota municipal corporation. As part of its mission, Fargo provides occupational health services to its employees and operates a municipal fire department.
- C. Fargo wishes to obtain, and Essentia wishes to provide, occupational medicine and medical director services to be provided by one or more Essentia-employed health care professionals as set forth in this Agreement.

AGREEMENT

- 1. Occupational Medicine and Medical Director Services.** Beginning on the Effective Date, Essentia-employed physicians or advanced practice clinicians ("Professionals"), as applicable, will provide the occupational medicine services and fire department medical director services described in Exhibit A (individually, "OccMed Services" and "Medical Director Services"; collectively, "Services"). Essentia will ensure that Professionals perform the Services in compliance with applicable statutes, regulations, and standards of federal, state and other governmental and regulatory bodies having jurisdiction over the Professionals.
- 2. Administrative Decisions.** Essentia and Fargo acknowledge that all final decisions as to funding, staffing, operations, budgets and other administrative matters related to Services shall be within Fargo's sole authority and discretion.
- 3. Professionals; Qualifications of Professionals.** The Professionals providing Services under this Agreement shall be those individuals designated in Exhibit B, or such other individuals mutually agreed to by the parties. At all times during this Agreement, the Professionals shall:
 - a. have a current and unrestricted license to practice in the state of North Dakota as a physician, physician assistant, or nurse practitioner;
 - b. obtain and maintain a valid Drug Enforcement Agency registration number allowing Professional to legally prescribe controlled substances;
 - c. be a participating provider in the Medicare and Medicaid programs;

- d. in the case of a physician Professional, be board-certified or board-eligible in a relevant medical specialty;
 - e. in the case of Professionals providing OccMed Services, be, or within eight months of the Effective Date become, a Federal Motor Carrier Safety Administration Certified Medical Examiner, listed as such with the FMCSA national registry;
 - f. as applicable, maintain current knowledge and experience in occupational medicine and municipal fire department medical management; and
 - g. if necessary in order to provide Services, maintain membership in good standing, with appropriate privileges, with the medical staffs of such facilities as reasonably requested by Fargo.
- 4. Schedule.** The parties anticipate that Professionals will collectively spend approximately 1040 hours per year providing both OccMed Services and Medical Director Services; provided, however, that Essentia will be compensated for all time during which Professionals provide Services. The scheduling of such time shall be as mutually agreed by the parties. Actual hours worked shall be recorded in a log in a form mutually acceptable to Essentia and Fargo. If the parties are unable to agree on the scheduling of Services, either party may terminate this Agreement as set forth in Section 13.
- 5. Contact Person.** Essentia and Fargo shall each designate a contact person from their respective organizations to be responsible for communication between the parties, and for administration of this Agreement.
- 6. Space, Equipment, Staff Services and Supplies.** Essentia will provide Services at Fargo's Employee Health Clinic. Fargo shall make available to Professionals all such space, equipment, staff services and supplies as may be necessary for Professionals to provide the Services hereunder.
- 7. Payment.** Fargo shall pay Essentia the following rate ("Rate"): During the initial one year term of this Agreement, \$97.51 per hour per advanced practice clinician, and \$202.80 per hour per physician. Thereafter, for each one-year renewal term, the Rate shall increase three percent (3%) from the Rate paid during the immediately preceding one-year term. Essentia shall invoice Fargo on a monthly basis for Services provided under this Agreement, and Fargo shall pay such invoices within thirty (30) days of receipt. In the event of termination of this Agreement for any reason, Fargo will promptly make to Essentia a final payment for all Services rendered through the date of termination.
- 8. Relationships.**
- a. Relationship between Essentia and Fargo. The parties to this Agreement are at all times performing as independent contractors. Nothing in this Agreement shall constitute or be construed as the creation of an employment relationship, partnership, or joint venture between Fargo and Essentia and/or Professionals, or any of their agents or employees. Neither Essentia nor any of its agents or employees is to be considered an agent or employee of Fargo for any purpose. Fargo and Essentia shall each be solely responsible for acts and omissions of itself, its employees and its agents.

b. Relationship to Fargo Employees. This Agreement does not create an express or implied contract to provide health care to Fargo's current, former, or prospective employees. Individuals who are the beneficiaries of Services provided by Professionals hereunder are being served as employees of Fargo and not as patients of Essentia. The provision of Services hereunder does not create a Professional-patient relationship, and Services are not being provided for treatment purposes. Essentia and Professionals have no clinical obligation to such employees beyond the provision of Services, except to the extent that Professionals may be reasonably expected to respond to an emergent situation which is identified through or which results from the provision of Services. It is each employee's responsibility to obtain any follow-up medical care that may be necessary/appropriate.

9. Employee Health Records; Retention. Essentia shall not retain any medical documentation related to Professionals' provision of Services hereunder. Information related to the provision of Services will be provided to Fargo for maintenance in its employee health records. Fargo assumes all responsibility for ensuring that any such information created by Professionals is maintained in a manner that complies with applicable federal and state laws and regulations.

HIPAA. Fargo represents and warrants that under this Agreement it is not a Covered Entity within the meaning of the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations ("HIPAA"). Accordingly, Essentia is not a Business Associate within the meaning of HIPAA and no business associate agreement is required by virtue of any Services provided by Essentia to Fargo.

10. Confidentiality. During the course of providing Services hereunder, the parties may have access to or become acquainted with confidential information relating to each other's business operations. Both parties, on their own behalf and on behalf of their employees and agents, acknowledge the importance to the other party of maintaining the confidentiality of such information and agree never to use or disclose such information except as necessary to carry out their obligations under this Agreement. Upon termination of this Agreement, both parties agree to return to each other all copies of data, records or other tangible documents which contain, embody or disclose, in whole or in part, any confidential information. The provisions of this section shall survive the termination of this Agreement.

For purposes of this section, "confidential information" shall not include: (a) information generally known to the public; (b) information which becomes known to the public through no action of either Essentia or Fargo; or (c) information for which the disclosure has been consented to by each of the parties.

11. Insurance. Essentia shall, at its expense, carry general and professional liability insurance, or provide self-insurance, covering its acts and omissions under this agreement with limits of at least \$1 million per claim and \$3 million in the annual aggregate. Fargo shall, at its expense, carry liability and professional liability insurance, or provide other state-sponsored coverage, covering its acts and omissions under this agreement, with limits of at least \$250,000 per person and \$1 million per claim. The parties agree that when Professionals are providing Medical Director Services described in Exhibit A, Fargo's policy or program of insurance shall apply.

12. Indemnification. The parties are each responsible for their own acts or omissions, and are not liable for the acts or omissions of, or the costs of defending, others. Nothing in this section shall preclude a finding of liability on the part of either party based on the doctrines of equitable indemnity, comparative negligence, contribution, or other statutory or common law basis for liability.

13. Term and Termination. Unless sooner terminated as provided for herein, this Agreement shall continue in effect for three (3) years from the Effective Date, terminating on **June 30, 2019**, and shall not automatically renew. Either party may terminate this Agreement by giving the other party thirty (30) days prior written notice of such termination.

14. Notices. All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, by certified mail or via recognized overnight courier service, to the other party at the address set forth below, or to such other address as such party may designate by notice pursuant to this section. Notice shall be effective when received if delivered by hand, or on the date shown on the return receipt, if by certified mail or courier service.

If to Essentia:

Innovis Health, LLC
Attn: Occupational Medicine Manager
3000 32nd Avenue S
Fargo, ND 58104

With a copy to:

Office of General Counsel
Essentia Health
502 East Second Street
Duluth, MN 55805

If to Fargo:

City of Fargo
Attn: Luke Lindberg
200 3rd Street N
Fargo, ND 58102

15. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the state of North Dakota, without regard to the choice of law principles thereof.

16. No Assignment. Neither party may assign this Agreement without the prior written consent of the other.

17. Entire Agreement. This Agreement constitutes the entire contract between the parties with respect to the subject matter hereof. It may be executed in any number of counterparts, each of which will be deemed to be the original.

18. Amendment; Consent to Amendment. No amendment to this Agreement or any exhibit shall be effective unless in writing and signed by both parties. The parties agree to amend this Agreement as necessary to comply with any changes in applicable laws and regulations.

19. No Waiver. The waiver by either party of a breach of any provision of this Agreement will not be deemed a waiver of any subsequent breach of the same or a different provision.


- 20. Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, that provision shall be fully severable. The remaining provisions shall remain in effect, and this Agreement shall be construed and enforced as if the illegal, invalid or unenforceable provision had never been a part of this Agreement.
- 21. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Essentia and its successors, and Fargo and its successors.
- 22. Section Headings.** Section headings are provided solely for the convenience of the parties and shall not affect the interpretation of this Agreement.
- 23. Corporate Compliance.** Each party has in place a compliance program ("Program"), the goal of which is to ensure that all federal, state and local laws and regulations are followed. Each party's Program includes a commitment to uphold a high standard of ethical and legal business practices to prevent misconduct. Through the implementation of this Agreement, each party acknowledges its commitment to corporate compliance and agrees to conduct all transactions which occur pursuant to this Agreement in accordance with all applicable laws, rules and regulations and with the underlying philosophy and objectives of each party's Program. By signing this Agreement, each party represents and warrants that it is not, and has not been, excluded from participation in any federally or state funded healthcare programs, including Medicare and Medicaid. In the event that either party is excluded from participation in any federally or state funded healthcare programs during the term of this Agreement, that party agrees to notify the other party within five (5) business days or less of the exclusion.
- 24. Affirmative Action Notice.** Both parties shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 CFR Part 471, Appendix A to Subpart A with respect to affirmative action program and posting requirements, and that these requirements are incorporated herein. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.


Signature Page Follows

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date set forth above.

Innovis Health, LLC

City of Fargo

By: 
Print name: Mark B. Walden
Title: VP Primary Care & Div. Clinics
Date: 10-5-16

By: 
Print name: Timothy J Mahoney
Title: Mayor
Date: 10/24/16

**Approved as to Form and Execution:
City of Fargo Attorney**


By: 
Print Name: ERIK R JOHNSON
Title: CITY ATTORNEY
Date: 11-9-2016

EXHIBIT A SERVICES

A. Occupational Medicine Services.

1. As needed by occupation, conduct direct employee-contact exams to include annual, periodic, pre-employment, return to work, and fitness for duty exams
2. Use the Fargo Employee Health Clinic electronic medical record
3. Advise Fargo regarding program and plan development consistent with workplace health and wellness best practices
4. Provide program and protocol oversight for employee health
5. Assess trends in workforce health and wellness, develop and maintain rapport with Fargo leadership, and advise on best practices for health and wellness

B. Medical Director Services.

1. Understand the physiological, psychological, and environmental demands placed on fire fighters
2. Evaluate fire department candidates and members to identify medical conditions that could affect their ability to safely respond to and participate in emergency operations
3. Utilize the essential job task descriptions supplied by the fire department to determine a candidate's or a member's medical certification
4. Identify and report the presence of Category A or disqualifying Category B medical conditions if present in candidates
5. Inform the fire chief or his/her designee whether or not the candidate or current member is medically certified to safely perform the essential job tasks
6. Report the results of the medical evaluation to the candidate or current member, including any medical condition(s) identified during the medical evaluation, and the recommendation as to whether the candidate or current member is medically certified to safely perform the essential job tasks
7. Forward copies of any abnormal results along with recommendations, if and as appropriate, regarding follow-up to candidates or current members
8. Review results of the annual occupational fitness evaluations
9. Assist in arranging for a prescriptive rehabilitation and/or fitness program when indicated to aid a member's recovery from illness or injury and enhance his/her ability to safely perform essential job tasks
10. When medical evaluations are conducted by a physician or medical provider other than an Essentia Professional, the evaluation shall be reviewed and approved by the Professional
11. Review individual medical evaluations and aggregate data from member evaluations in order to detect evidence of occupational exposure(s) or clusters of occupational disease.
12. Provide supervision for the fire department infection control program as required by NFPA 1581, Standard on Fire Department Infection Control Program.

**EXHIBIT B
PROFESSIONALS**

The following Professionals will provide Services under this Agreement:

Andrew Bader, PA-C

Craig Kuhlmann, MD

16

MEMORANDUM

TO: Board of City Commissioners
FROM: Nicole Crutchfield, Planning Director *NC*
Tia Braseth, Community Development Planning Coordinator *TB*
DATE: August 22, 2019
RE: Approve Proposed Amendments to Community Development Block Grant (CDBG)/HOME 2019 Action Plan

The City Commission is asked to approve the following Community Development Block Grant (CDBG)/HOME actions:

- Adopting proposed amendments to the City of Fargo's Community Development Block Grant (CDBG)/HOME 2019 Action Plan, which was previously approved by the Planning Commission (5/7/19), Community Development Committee (4/23/19), and the City Commission (6/17/19). Proposed amendments include:
 - Identified scope, location, and budget for an activity under the previously approved Affordable Housing Development project
 - Decreased budget for Affordable Housing Development project
 - Identified scope, location, and budget for the previously approved Beyond Shelter, Inc. Acquisition project
 - Increased budget for Beyond Shelter, Inc. Acquisition project
 - Identified location for the previously approved Community Housing Development Organization (CHDO) Housing project

The proposed amendments are in compliance with federal regulations for the Department of Housing and Urban Development (HUD) CDBG and HOME programs. The following actions were completed as required by the City of Fargo's Citizen Participation Plan:

Public Advertisement Published	July 25, 2019
Public Comment Period	July 25-August 25, 2019
Approved by the Planning Commission	August 6, 2019
Public Hearing at City Commission Meeting	August 12, 2019
Approved by the Community Development Committee	August 20, 2019

No public comments were received. Each proposed amendment is detailed in the attached public notice.

Recommended Motion: Approve proposed amendments to Community Development Block Grant (CDBG)/HOME 2019 Action Plan.



**Notice of Public Hearing & Public Comment Period
Amendments to 2019 Action Plan
Community Development Block Grant (CDBG)
& HOME Investment Partnerships Programs**

The City of Fargo is considering amendments to its 2019 Action Plan, previously approved by City Commission on June 17, 2019. Specific locations have recently been identified for 2019 projects and must be included in the plan. Location updates are considered substantial amendments and must go through a citizen participation process. Also included in this amendment is a budget revision for two 2019 CDBG activities. The details and timeline for this process are outlined below. Upon City Commission action on August 26, 2019, a recommendation regarding these amendments will be forwarded to HUD for their consideration and approval.

30-Day Public Comment Period: July 25, 2019 through August 25, 2019

Send written comments or phone: City of Fargo
Planning and Development Department
Attn: Community Development Planning Coordinator
225 4th Street North, Fargo ND 58102
701.476.4144

Electronic Comments: planning@FargoND.gov

Public Hearing: Monday, August 12, 2019 - 5:15 p.m.
Fargo City Commission Chambers
225 4th Street North, Fargo ND 58102

Final City Commission Consideration: Monday, August 26, 2019

Summary of Proposed Amendments:

1. Amendments to 2019 CDBG Affordable Housing Development Activity

a. Project site/activities/budget identified – 1529 10 Avenue South (\$48,000)

Activities include acquisition and future construction of a single-family housing unit in partnership with Lake Agassiz Habitat for Humanity. *National Objective: Low to Moderate Income Housing Benefit [570.208(a)(3)]. CDBG Matrix Codes: 01 Acquisition and *12 Construction of Housing. Eligibility 24 CFR Part 570.201 (a) and 570.201 (m). *CDBG funds will only be used to fund acquisition, construction of housing will be funded and performed by Lake Agassiz Habitat for Humanity.*

b. Revise activity budget from \$284,049 to \$103,049 (reduction of \$181,000)

An additional \$181,000 is needed for the previously approved Beyond Shelter, Inc. CDBG acquisition activity (original budget \$345,000), which will result in affordable senior rental housing. See Amendment #2(b) below.

2. Amendments to 2019 Acquisition Activity: Beyond Shelter, Inc.

a. Project site/activities/budget identified – 4225 28 Avenue South (\$526,000)

Activities include acquisition and future construction of a multi-family senior rental housing complex in partnership with HomeField 3, LLLP (previously published and noted as Beyond Shelter, Inc.). *National Objective: Low to Moderate Income Housing Benefit [570.208(a)(3)]. CDBG Matrix Codes: 01 Acquisition and *12 Construction of Housing. Eligibility 24 CFR Part 570.201 (a) and*



570.201 (m). *CDBG funds will only be used to fund acquisition, construction of housing will be funded with non-CDBG funds (i.e., HOME funds, other federal and local sources).

b. Revise activity budget from \$345,000 to \$526,000 (addition of \$181,000)

The appraisal of the vacant land determined fair market value was \$520,000. An additional \$6,000 is needed for acquisition-related costs. Additional funds will be drawn from the Affordable Housing Development activity, see revised budget in Amendment #1(b).

3. Amendments to 2019 Community Development Housing Organization (CHDO Project)

a. Project site identified – 4225 28 Avenue South

Activities include construction of a multi-family senior rental housing complex.

Comments & Suggestions

Comments and suggestions from the public are encouraged through a public comment period and/or at the public hearing. The 2019 amended draft plan and activity amendments are available online at www.fargond.gov/planninganddevelopment/plansandstudies or by request through the Planning and Development Department. See contact information below.

The facility is accessible and can accommodate persons with disabilities. Alternative formats of this information or reasonable accommodations for persons with disabilities or limited English proficiency, including the availability of interpretation and translation services, will be made upon request (48 hours notice is required). Anyone who requires these services or an auxiliary aid to fully participate in the hearing should contact the Planning and Development Department at 701.241.1474/Planning@FargoND.gov, or the City of Fargo's Section 504/ADA Coordinator Brock Morrison at 701.298.6966 to arrange for services. To access TDD/Relay service dial 701.241.8258. It is the policy of the City of Fargo to provide services without regard to race, color, religion, sex, disability, familial status, national origin, age, marital status, veteran status, sexual orientation, gender identity, public assistance, domestic violence, lawful activity, or condition protected by applicable federal and state laws except where a Bona Fide Occupational Qualification (BFOQ) applies. The City is an equal employment/equal housing opportunity agency.



Notice of Public Hearing & Public Comment Period Amendments to 2019 Action Plan Community Development Block Grant (CDBG) & HOME Investment Partnerships Programs

The City of Fargo is considering amendments to its 2019 Action Plan, previously approved by City Commission on June 17, 2019. Specific locations have recently been identified for 2019 projects and must be included in the plan. Location updates are considered substantial amendments and must go through a citizen participation process. Also included in this amendment is a budget revision for two 2019 CDBG activities. The details and timeline for this process are outlined below. Upon City Commission action on August 26, 2019, a recommendation regarding these amendments will be forwarded to HUD for their consideration and approval.

30-Day Public Comment Period: July 25, 2019 through August 25, 2019.

Send written comments or phone: City of Fargo Planning and Development Department Attn: Community Development Planning Coordinator 225 4th Street North, Fargo ND 58102 701.476.4144

Electronic Comments: planning@fargo.nd.gov
Public Hearing: Monday, August 12, 2019 - 5:15 p.m. Fargo City Commission Chambers 225 4th Street North, Fargo ND 58102

Final City Commission Consideration: Monday, August 26, 2019
Summary of Proposed Amendments:

1. Amendments to 2019 CDBG Affordable Housing Development Activity

a. Project site/activities/budget identified - 1529 10 Avenue South (\$48,000) Activities include acquisition and future construction of a single-family housing unit in partnership with Lake Agassiz Habitat for Humanity. National Objective: Low to Moderate Income Housing Benefit (570.208(a)(3)). CDBG Matrix Codes: 01 Acquisition and *12 Construction of Housing. Eligibility 24 CFR Part 570.201 (a) and 570.201 (m). *CDBG funds will only be used to fund acquisition, construction of housing will be funded and performed by Lake Agassiz Habitat for Humanity.

b. Revise activity budget from \$284,049 to \$103,049 (reduction of \$181,000) An additional \$181,000 is needed for the previously approved Beyond Shelter, Inc. CDBG acquisition activity (original budget \$345,000), which will result in affordable senior rental housing. See Amendment #2(b) below.

2. Amendments to 2019 Acquisition Activity, Beyond Shelter, Inc.

a. Project site/activities/budget identified - 4225 28 Avenue South (\$526,000) Activities include acquisition and future construction of a multi-family senior rental housing complex in

partnership with HomeField 3, LLLP (previously published and noted as Beyond Shelter, Inc.). National Objective: Low to Moderate Income Housing Benefit (570.208(a)(3)). CDBG Matrix Codes: 01 Acquisition and *12 Construction of Housing. Eligibility 24 CFR Part 570.201 (a) and 570.201 (m). *CDBG funds will only be used to fund acquisition, construction of housing will be funded with non-CDBG funds (i.e., HOME funds, other federal and local sources).

b. Revise activity budget from \$345,000 to \$526,000 (addition of \$181,000)

The appraisal of the vacant land determined fair market value was \$520,000. An additional \$6,000 is needed for acquisition-related costs. Additional funds will be drawn from the Affordable Housing Development activity. See revised budget in Amendment #1(b).

3. Amendments to 2019 Community Development Housing Organization (CHDO Project)

a. Project site identified - 4225 28 Avenue South Activities include construction of a multi-family senior rental housing complex.

Comments & Suggestions

Comments and suggestions from the public are encouraged through a public comment period and/or at the public hearing. The 2019 amended draft plan and activity amendments are available online at www.fargo.nd.gov/planning/2019cdbg/2019cdbg.htm or by request through the Planning and Development Department. See contact information below.

The facility is accessible and can accommodate persons with disabilities. Alternative formats of this information or reasonable accommodations for persons with disabilities or limited English proficiency, including the availability of interpretation and translation services, will be made upon request (48 hours notice is required). Anyone who requires these services or an auxiliary aid to fully participate in the hearing should contact the Planning and Development Department at 701.241.1474 (planning@fargo.nd.gov), or the City of Fargo's Section 504/ADA Coordinator Brock Morrison at 701.298.6956 to arrange for services.

To access TDD/Relay service dial 701.241.8258. It is the policy of the City of Fargo to provide services without regard to race, color, religion, sex, disability, familial status, national origin, age, marital status, veteran status, sexual orientation, gender identity, public assistance, domestic violence, lawful activity, or condition protected by applicable federal and state laws except where a bona fide Occupational Qualification (BFOC) applies. The City is an equal employment/opportunities housing opportunity agency.



**RESOLUTION APPROVING
AMENDMENTS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT
(CDBG)/HOME 2019 ACTION PLAN**

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

WHEREAS, the City of Fargo receives Community Development Block Grant (CDBG)/HOME funds from United States Department of Housing and Urban Development (HUD); and

WHEREAS, in compliance with federal regulations, the City of Fargo has amended its CDBG/HOME 2019 Action Plan to make available housing and community development resources that primarily address the needs of low to moderate income persons in Fargo; and

WHEREAS, the City of Fargo has conducted a required citizen participation process including a draft publication of the amendments, approval by the Planning Commission and Community Development Committee, a public hearing, and a 30-day public comment period.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of Fargo, North Dakota that the Mayor is herein authorized and directed to submit the amendments to the Community Development Block Grant (CDBG)/HOME 2019 Action Plan to HUD and enter into and execute contracts and other documents as necessary to effectuate activities identified in the revised plan.

MEMORANDUM

TO: Fargo City Commission

FROM: Nicole Crutchfield, Director of Planning & Development *NW P&D WLC*
Aaron Nelson, Planning Coordinator *AN*

DATE: August 22, 2019

RE: Consultant Contract for the Land Development Code Diagnostic

Staff is requesting approval of the attached contract with Lisa Wise Consulting, Inc. (LWC) for professional consulting services to conduct a Land Development Code Diagnostic. LWC was selected by the project selection committee out of nine professional consulting teams that had submitted proposals in response to the City's RFP, which was issued in April of this year. The contract has a not to exceed budget of \$197,433 that has been allocated from the Planning Department's planning services budget. The project is anticipated to be completed within approximately seven months once work is underway.

Background

The purpose of the Land Development Code Diagnostic is to objectively understand the effectiveness of the City's development codes and processes in order to assess the potential and options for improvement. The City Commission approved the drafting and publishing of the Land Development Code Diagnostic RFP on March 25, 2019. Nine consultant teams from across the country submitted proposals in response to the RFP. A project selection committee consisting of the Planning Commission chair, City Attorney, Assistant City Administrator, Inspections Administrator, and Assistant Planning Director, reviewed the nine proposals and interviewed two selected finalists. Ultimately, the selection committee felt that LWC (along with their sub consultant, SRF Consulting Group) would best be able to meet the needs of the City for this project. The final selection was primarily based on LWC's proposed work program, good communication, relevant work experience, and professional capacity.

Attached please find the contract with Lisa Wise Consulting, Inc. and associated exhibits, including scope of work, for professional consulting services for the Land Development Code Diagnostic.

Suggested Motion

"To approve the contract with Lisa Wise Consulting, Inc. for professional consulting services for the Land Development Code Diagnostic, subject to final technical review by the City Attorney."

AGREEMENT BETWEEN THE CITY OF FARGO, NORTH DAKOTA AND
LISA WISE CONSULTING, INC. FOR PROFESSIONAL CONSULTING SERVICES
FOR LAND DEVELOPMENT CODE DIAGNOSTIC

NAME OF CONSULTANT: Lisa Wise Consulting, Inc.

RESPONSIBLE PRINCIPAL OF CONSULTANT: Lisa Wise, President

CONSULTANT'S ADDRESS: Lisa Wise Consulting, Inc.
Attention: Lisa Wise
983 Osos Street
San Luis Obispo, CA 93401

CITY'S ADDRESS: City of Fargo, North Dakota
225 4th Street N
Fargo, ND 58102

And

City of Fargo
Attn: City Auditor
225 4th Street N
Fargo, ND 58102

COMMENCEMENT DATE: September 1, 2019

TERMINATION DATE: September 1, 2020, unless extended pursuant to
Section 2

CONSIDERATION: Not to exceed \$197,433

AGREEMENT BETWEEN THE CITY OF FARGO, ND AND LISA WISE CONSULTING, INC. FOR PROFESSIONAL CONSULTING SERVICES FOR LAND DEVELOPMENT CODE DIAGNOSTIC

This Agreement is made by and between the City of Fargo, North Dakota (hereinafter called "CITY"), and Lisa Wise Consulting, Inc. (hereinafter called "CONSULTANT").

RECITALS

- A. CITY desires to have certain services and/or goods provided as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein.

- B. CONSULTANT represents that it is qualified and able to perform the Scope of Work.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Scope of Work. CONSULTANT shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. CITY shall have the right to order, in writing, changes in the Scope of Work. Any changes in the Scope of Work must be made in writing and approved by both parties. Any changes to the budget must also be made in writing and agreed to by both parties in writing.

Section 2. Time of Performance. CONSULTANT shall commence its services under this Agreement upon the Commencement Date or upon a receipt of a written notice to proceed from CITY. CONSULTANT shall complete the performance of services by the Termination Date set forth above and/or in conformance with the project timeline established by the CITY.

The CITY may extend the time of performance in writing for two (2) additional one-year terms or such other term not to exceed two years from the date of termination pursuant to the same terms and conditions of this Agreement.

Section 3. Compensation.

(a) Compensation

CITY agrees to compensate CONSULTANT for the services and/or goods provides under this Agreement, and CONSULTANT agrees to accept in full satisfaction for such services, a sum not to exceed the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein.

(b) Expenses

The amount set forth in paragraph (a) shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement (including, but not limited to, all labor, materials, delivery, tax, assembly, installation, and expenses as applicable). There shall be no claims for additional compensation for reimbursable expenses.

(c) Additional Services.

CITY may from time to time require CONSULTANT to perform additional services not included in the Scope of Work. Such requests for additional services shall be made by CITY in writing and agreed upon by both parties in writing.

Section 4. Method of Payment. CITY shall pay CONSULTANT on a monthly basis based on invoices which include: period in which the work was completed, total budget available per task, percentage of task complete for that time period, and total amount due. Each invoice will be accompanied by a cover letter summarizing the work completed, and issues encountered within the invoicing period and well as work anticipated in the proceeding period.

Section 5. Independent Contractor. CONSULTANT is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as herein set forth. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 6. Assignment. This Agreement shall not be assigned in whole or in part, by CONSULTANT without the prior written approval of CITY. Any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s)

- (a) CONSULTANT's Responsible Principal set forth above shall be responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible Principal by CONSULTANT shall not be made without prior written consent of CITY.
- (b) CITY's Responsible Principal shall be Nicole Crutchfield or their designee, Aaron Nelson, set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 8. Personnel. CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Interests of CONSULTANT. CONSULTANT affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

Section 10. Insurance

(a) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by CONSULTANT in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(4) A policy or policies of Professional Liability Insurance (errors and omissions) with minimum limits of One Million Dollars (\$1,000,000) per claim and in the aggregate. Any deductibles or self-insured retentions attached to such policy or policies must be declared to and be approved by CITY. Further, CONSULTANT agrees to maintain in full force and effect such insurance for one year after performance of work under this Agreement is completed.

(b) CONSULTANT shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) CONSULTANT agrees that it will keep the aforesaid insurance in full force and effect during the term of this Agreement.

(d) At all times during the term of this Agreement, CONSULTANT shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONSULTANT shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance shall contain an endorsement naming the CITY as an additional insured.

(e) The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(f) The insurance coverage amounts required under the Agreement do not limit CITY's right to recover against CONSULTANT and its insurance carriers.

Section 11. Indemnification. CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Commission and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys' fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 12. Termination.

- (a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon ten calendar days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.
- (b) CONSULTANT may terminate this agreement upon 15 calendar days' written notice if, the City fails to pay any undisputed amount, fails to materially comply with obligations under this agreement or in the event the City experiences financial insolvency.
- (c) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid based on the percentage of work performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement. CONSULTANT shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 13. CITY's Responsibility. CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT's Scope of Work.

Section 14. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 15. Records and Inspections. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of 2 years. CITY shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

Section 16. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, each party shall be responsible for its own attorney fees, costs and disbursements.

Section 17. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

Section 18. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 19. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of North Dakota.

Section 20. CITY Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

Section 21. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

IN WITNESSETH HEREOF, the parties have hereunto set their hands and seals.

Approved as to Form:

City of Fargo,
A North Dakota municipal corporation

City Attorney

by: _____
Timothy J. Mahoney, M.D., its Mayor

Attest:

CONSULTANT/CONTRACTOR:

Steven Sprague, City Auditor

Lisa Wise, AICP President

EXHIBIT A
SCOPE OF WORK

TASK 1: Project Initiation and Management

1.1 Data Needs

The LWC Team will prepare and present a list of data needs to City staff prior to the project initiation meeting, including, but not limited to, maps, GIS data, Comprehensive Plan, Area Plans, the Land Development Code, uncodified ordinances, a list of technical zoning issues or interpretations from staff, and representative projects for use in reviewing the application of specific standards.

1.2 Public Outreach Program

The LWC Team will work closely with City staff to finalize the details of the Public Outreach Program (comprised of the outreach activities outlined in this Scope of Work) targeted to the City of Fargo. The Public Outreach Program will outline all public meetings, work sessions, interviews, and other outreach efforts (such as educational and website materials); detail LWC and City roles and responsibilities for each outreach event; and provide preliminary schedule of events. The outreach activities identified in this Scope of Work (Tasks 2, 4, and 5) are based on our initial understanding of the project needs and objectives and may be modified as part of this Task to best suit the needs of the project. The Outreach Program will also include the agreed upon approach to noticing, including a combination of traditional (e.g. flyers, e-mail blasts) and modern (e.g. Facebook, twitter, Next Door) outreach techniques, so project information and meeting notices are distributed to a wide audience.

The LWC Team will work with City staff to refine a public process that enables residents, business owners and operators, property owners, City staff, Planning Commission and special interest groups to participate in the code evaluation and alternatives process and to assure that the collective community's perspective is evident in the preferred alternatives. The main objective of the outreach program is to ensure multiple and substantive opportunities for participation, and to nurture a strong sense of ownership from a wide range of the community as well as City staff and elected and appointed officials. The LWC Team's public outreach efforts are grounded in proactive and consistent messaging and regular, noticed meetings with community leaders and stakeholders aimed at transparency, and ensuring the people who live and work in the City are a partner in decisions regarding development regulations.

1.3 Project Initiation Meeting

The LWC Team will meet with City staff to discuss their aspirations and priorities for the project and the outreach process, finalize the schedule and work program, and clarify roles, responsibilities, and communication protocols. As part of the initiation meeting, the LWC Team will tour the City on foot and by car with staff to experience and understand the types and patterns of development that have occurred as a result of the current regulations.

1.4 City Staff Interviews

During the Project Initiation Meeting trip, the LWC Team will conduct personal interviews with City staff from Engineering, Planning and Development, Inspections, Public Works, and other departments to get an insider's view of issues and concerns on the effectiveness and usability of the LDC, administration and enforcement issues, priority amendments, and overall desires for the LDC Update. Staff interviews will help identify the highest priority issues and inform the LWC

Team's review and analysis in Task 3. Staff interviews are in addition to public and stakeholder interviews in Task 2.

The LWC Team's interview methods are grounded in ethnographic research and employ a brief survey of 4-5 basic, open-ended questions (What is your relationship to the LDC? What is working well? What is not working well? What do we need to do?) that enables the respondent to drive the interview in an informal and conversational manner. This method is most effective at identifying the highest priority issues as well as areas of consensus and potential dispute.

1.5 Website Materials

Throughout the project, the LWC Team will provide material for the City's website, such as text, photographs, maps calendars and other information that describes the project process, objectives, findings, milestones, and opportunities to participate. The City will maintain the webpage and the LWC Team will work closely to provide timely, attractive, and informative material in the appropriate format.

1.6 Project Management

The LWC Team will prepare a Project Management and Communications Plan, which will provide a clear and mutually agreed upon protocol for the LDC Analysis and ensure information flows consistently among the City, LWC, and the Team and avoids misinterpretations or redundancies. Through this task the LWC Team will also identify clear lines of authority and responsibility, and when to elevate issues up the chain of command. As project lead, LWC will be responsible for ensuring quality of deliverables, monitoring and reporting on progress, maintaining "laser" focus on City objectives, open and constant communication with the City, and compliance with timeline and project budget.

LWC will participate in regularly scheduled conference calls with the City project manager and key staff, with members of the Team as needed. The purpose of the calls is to discuss project progress and upcoming milestones, coordinate on meetings and outreach events, and serve as an early warning system to issues or problems that may impact project goals.

Task 1 Meetings

- *Project initiation meeting, staff interviews, city tour (Trip 1)*
- *Project check-in calls with staff, bi-weekly or as needed.*

Task 1 Deliverables

- *List of data needs*
- *Public Outreach Program*
- *Project Management and Communication Plan*
- *Website materials*

TASK 2: Listening, Understanding, and Education

2.1 Education Materials

The LWC Team will prepare educational materials to use during outreach and engagement events and post to the City's website. Educational Materials will include 'Land Development Code 101' memos addressing: what a Land Development Code is, how it relates to the City's Comprehensive Plan, limits of the Land Development Code (what the City can and cannot do), and descriptions and summaries of the different types of code approaches (performance-based, form-based, and use-based regulations).

2.2 Public and Stakeholder Interviews

The LWC Team will prepare for and participate in up to two days (targeting 20 interviews) of one-on-one or small group interviews with City Commissioners and officials, decision makers, code-users (property owners, business owners and operators, real estate professionals, architects, developers, etc.), the local chamber of commerce, and others with interest in or familiarity with the City's regulatory framework. City staff will be responsible for identifying and coordinating interviews with stakeholders. Issues identified by stakeholders will be classified and sorted to identify common themes and shared concerns and summarized in the Development Code Analysis Report (Task 4). Interviewees are much more likely to share personal perspectives in one-on-one and small group interviews than in larger gatherings, public settings or written surveys. The LWC Team interview methodology is grounded in ethnographic research protocols and described in Task 1.4 (Staff Interviews).

2.3 Listening to the Community Workshop

During the same trip as the stakeholder interviews, The LWC Team will conduct a public workshop to meet the community, introduce the project and the project team, develop a mutual understanding of the project, introduce the basics of land use and development controls, present the various approaches of development codes, and gather feedback on code-related issues. Following this brief presentation, the participants will break out into smaller, more intimate groups where they can pose direct questions and engage in discussion with individual LWC Team members and City Staff on specific concerns, and opportunities with development in Fargo.

2.4 Planning Commission Initiation Work Session

During the same trip as the stakeholder interviews and Workshop #1, the Team will attend a Planning Commission meeting to provide an overview of the project and gather feedback from the Commission on what is, and is not working, with existing development regulations.

Task 2 Meetings

- *Public and Stakeholder Interviews (Trip 2)*
- *Listening to the Community Workshop (Trip 2)*
- *Planning Commission Initiation Work Session (Trip 2)*

Task 2 Deliverables

- *Education Materials*
- *Meeting Materials*

TASK 3: Land Development Code Analysis

The LWC Team will conduct an in-depth and multi-faceted analysis of the City's development regulations, focusing on Chapter 20 (Land Development Code) of the Fargo Municipal Code. The Team will also review and assess development standards and other regulatory codes outside of Title 20, as they relate to the project. The LWC Team and the City will agree on the approach and method of analyses prior to beginning work. The analysis will include the following subtasks.

3.1 Comprehensive Plan and Policy Review

The LWC Team will review the Go2030 Comprehensive Plan and Downtown InFocus catalysts, opportunity sites, key initiatives, future land use map, policies, and implementation tasks as well as other relevant plans and policy documents (such as the 2015 Housing Study) and analyze the effectiveness of existing regulations and regulatory structure to implement the Comprehensive Plan, accommodate growth targets, and meet other City planning objectives. As part of this, the LWC Team will prepare a summary matrix of Comprehensive Plan goals and action items as related to the LDC and perform a consistency assessment of adopted policy and regulation. Where inconsistencies occur, the LWC Team will identify how they could be resolved.

3.2 Legal Consistency Review

The LWC Team will perform a legal consistency review to identify and summarize inconsistencies between the existing LDC and State and federal law, including the 2015 federal Supreme Court case, *Reed v. Town of Gilbert*, which abolished content-based restrictions on signage. The LWC Team will coordinate this work with the City Attorney, as appropriate.

3.3 Best Practice Review

The LWC Team will conduct a technical review of the City's existing LDC and analyze how well the development codes align with industry best practices, and align with City and community expectations for growth, flexibility, and predictability.

3.4 Development Process Review

As part of the technical review, the LWC Team will analyze the permit and approval process as written, and as applied, to identify any issues with Code administration and entitlement.

3.5 User Friendliness Review

The LWC Team will analyze how effectively the current LDC meets the City planning objectives for a user friendly, easy to use Code. The analysis will focus on the LDC's structure, organization, use of cross references, general simplicity, intelligibility, and overall usability.

3.6 Economic and Fiscal Review

The LWC Team will evaluate commercial, industrial, and residential growth trends and development patterns in Fargo to understand how existing regulations affect the City budget, local economy and how closely they align with community goals. The Team will also work with the City to evaluate the fee schedule and discuss fee with representatives from the local development community.

Task 3 Deliverables

- *Findings from Task 3 analysis will be incorporated into Task 4 and inform the development of alternatives and the preferred alternative.*

TASK 4: Land Development Code Analysis Report

4.1 Administrative Draft Land Development Codes Analysis Report

Based on findings from initial outreach efforts (Planning Commission work session, stakeholder and City Staff interviews, Listening Workshop, etc.) and technical review and evaluation, The LWC Team will prepare a Land Development Code Analysis Report presenting the strengths and weaknesses of the existing Development Codes. The objective of the report is to provide the City and stakeholders an understanding of the strengths and weaknesses of current development codes and processes, as they relate to the assessment elements in Task 3. The report will include a summary of:

- Consistencies or inconsistencies between the current LDC and City policy
- Consistencies or inconsistencies between the current LDC and state and federal law
- Fargo LDC alignment with national best practices and community expectations
- Issues and opportunities related to the City's Development review process
- Assessment of "User-friendliness" (clarity and consistency of cross references, terms, definitions, and use of graphics over lengthy narrative)
- Findings from the fiscal and economic assessment
- Summary of comments and input from stakeholder and City staff interviews, workshop, Planning Commission work session and other public input with issues classified and sorted to identify common themes and shared concerns

4.2 Revised Land Development Codes Analysis Report

The LWC Team will participate in a conference call to discuss the Administrative Draft Report and review questions or comments. The LWC Team will prepare a revised report based on staff comments.

4.3 Analysis Report Joint Planning Commission and City Commission Work Session

The LWC Team will prepare for and conduct a joint work session with the Planning Commission and City Commission to present the findings of the technical review and analysis. The workshop will focus on major issues of the current regulations, Comprehensive Plan direction for new/modified regulations, and key issues to be addressed. The Team will solicit feedback on priorities and considerations which will inform the alternative approaches in Task 5.

Task 4 Meetings

- *Analysis Report Joint Commission Work Session (Trip 3)*

Task 4 Deliverables

- *Land Development Code Analysis Report*
- *Meeting materials*

Task 5: Alternatives and Code Work Plan

5.1 Alternatives City Staff Meeting

The LWC Team will participate in a conference call with City staff to discuss options and alternative approaches to address identified issues. The purpose of the meeting is to check in after the Joint Work Session on the Analysis Report (Task 4.3), discuss the range of potential alternatives, and prioritize and confirm community priorities for recommended actions.

5.2 Land Development Code Alternatives and Recommendation Memo

In consideration of input from City staff, elected officials and civic leaders, business owners and operators, landowners, special interest groups, and the community, the LWC Team will prepare a memo summarizing up to three primary alternative approaches to addressing issues identified within the Development Code Analysis Report. Each alternative will include a discussion of:

- How the alternative addresses the issues identified in the Analysis Report,
- An overview of the pros and cons to the given alternative, and
- A comparison to other alternatives in terms of estimated cost, timeline to completion, and City vs. Consultant resources needed for implementation.

Alternatives may vary by techniques used (e.g. use-based, form-based, or hybrid approach) as well as degree of change (e.g. focused amendments vs. comprehensive update), or a combination of the two (e.g. form-based regulations Downtown and surrounding neighborhoods, and minimal modifications to traditional residential districts on the periphery of the City).

The LWC Team will develop a clear rationale supporting one recommended alternative from the range of potential alternatives, and present to the Planning Commission and City Commission for consideration and input (see Task 5.3). The aim of the memo is to demonstrate why the recommended alternative best aligns with city goals for long-term development while addressing deficiencies identified in Tasks 3 and 4.

The LWC Team will discuss the preliminary alternatives and recommendations with City staff and make necessary revisions prior to presenting at a joint Planning Commission and City Commission work session.

5.3 Alternatives Joint Planning Commission and City Commission Work Session

The LWC Team will present the Land Development Code Alternatives and Recommendation Memo at a joint work session with the Planning Commission and City Commission and solicit input from the commissions on priorities and the preferred alternative.

5.4 Preferred Alternative and Work Plan

The LWC Team will prepare a detailed work plan for the preferred alternative. The Work Plan will reflect the preferred alternative based on input received at the Joint Work Session in Task 5.3, and prioritize the involvement of City staff and the community to generate a sense of ownership and commitment to the updated LDC. The preferred alternative Work Plan will be based on input from City staff, Planning Commission, City Commission, and stakeholders throughout the process, include a priority list of amendments and demonstrate how the preferred framework and proposed amendments and work plan result in an improved Land Development Code completed to the satisfaction of the City.

5.5 Land Development Code Update Preferred Alternative and Work Plan Work Session

The LWC Team will prepare for and conduct one work session to present the preferred alternative and introduce next steps for implementing the preferred alternative. Alternatively, at the City's request, the LWC Team will attend two separate meetings, one with the Planning Commission and one with the City Commission.

Task 5 Meetings

- *Alternatives City Staff Meeting*
- *Alternatives Joint Work Session (Trip 4)*
- *Preferred Alternative and Work Plan Work Session (Trip 5)*

Task 5 Deliverables

- *Land Development Code Alternatives and Recommendations Memo*
- *Land Development Code Update Preferred Alternative and Work Plan*
- *Meeting Materials*

**EXHIBIT B
SCHEDULE OF PAYMENT**

CITY shall compensate CONSULTANT for the performance of the work described in this Agreement in an amount not to exceed of One Hundred Ninety-Seven Thousand, Four Hundred and Thirty-Three Dollars (\$197,433.00).

Additional services outside the scope of Exhibit A shall be compensated as mutually agreed upon in writing prior to performing such services.

CONSULTANT shall submit to CITY a detailed invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services by task rendered during the billing period, the amount due, and the approximate percentage complete. Within 30 days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall pay CONSULTANT said Consideration in accordance with the schedule of payment set forth in this Exhibit.

Rate Schedule:

Staff	Rate
LISA WISE CONSULTING, INC.	
Principal	\$275
Director	\$205
Senior Associate	\$180
Associate	\$145
SRF CONSULTING	
Senior Associate	\$162
Associate	\$148
Administrative Associate	\$80

Detailed Budget:

Fargo Land Development Code Diagnostic							Project Total
		Project Initiation and Management	Listening, Understanding, and Education	Land Development Code Analysis	Land Development Code Analysis Report	Alternatives and Code Update Work Plan	
Lisa Wise Consulting, Inc.							
Principal	Hours	8	6	13	6	13	46
	Fee	\$2,200	\$1,650	\$3,575	\$1,650	\$3,575	\$12,650
Director	Hours	32	22	13	16	18	101
	Fee	\$6,560	\$4,510	\$2,665	\$3,280	\$3,690	\$20,705
Senior Associate	Hours	80	36	46	30	60	252
	Fee	\$14,400	\$6,480	\$8,280	\$5,400	\$10,800	\$45,360
Associate	Hours	62	54	60	60	62	298
	Fee	\$8,990	\$7,830	\$8,700	\$8,700	\$8,990	\$43,210
Expenses		\$1,960	\$4,280	\$0	\$1,960	\$3,920	\$12,120
SRF Consulting							
Senior Associate	Hours	31	31	56	37	57	212
	Fee	\$5,030	\$5,030	\$9,087	\$6,004	\$9,249	\$34,399
Associate	Hours	8	12	28	6	8	62
	Fee	\$1,181	\$1,771	\$4,132	\$885	\$1,181	\$9,150
Admin Assistant	Hours	1	2	0	0	3	6
	Fee	\$80	\$160	\$0	\$0	\$241	\$481
Expenses		\$678	\$930	\$0	\$500	\$1,500	\$3,608
Legal Assessment							
Staff	Hours	8	0	32	5	0	45
	Fee	\$2,800	\$0	\$11,200	\$1,750	\$0	\$15,750
TOTAL	Hours	230	163	248	160	221	1,022
	Fee	\$43,879	\$32,641	\$47,639	\$30,129	\$43,145	\$197,433

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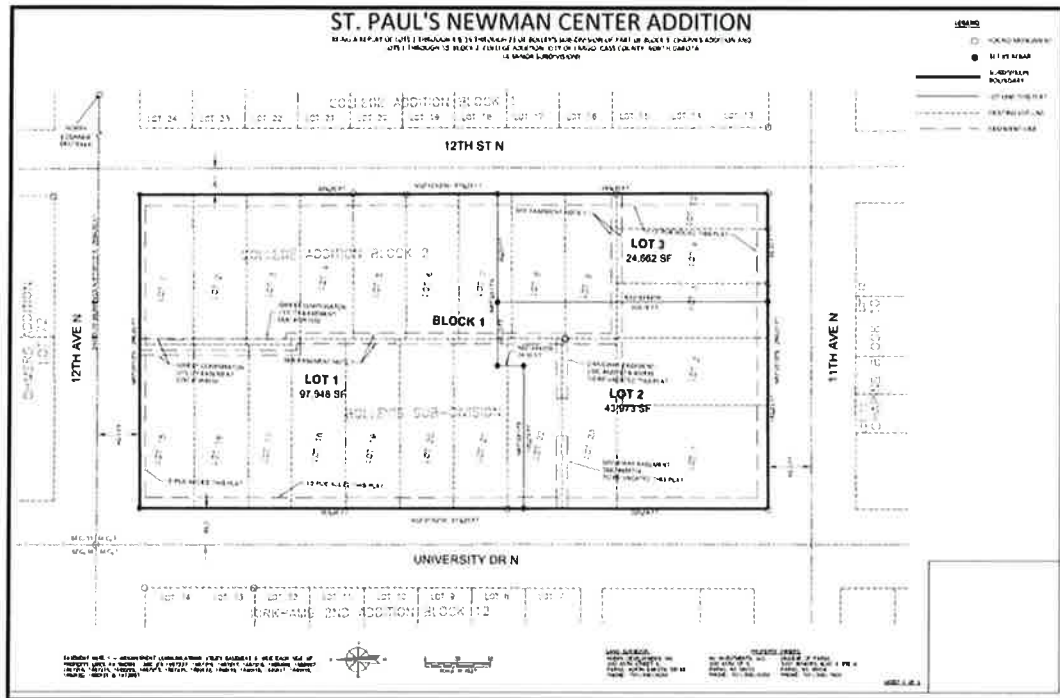
City of Fargo Staff Report			
Title:	St. Paul's Newman Center Addition	Date: Updated:	7/31/2019 8/21/2019
Location:	1113, 1117, 1119, 1129, 1131, 1141 North University Drive; 1112, 1118, 1122, 1126, 1130, 1134, 1138, 1142, 1146 12th Street North; 1201, 1211, 1213, 1215, 1223 11th Avenue North	Staff Contact:	Donald Kress, planning coordinator
Legal Description:	Lots 1-10, Block 2, College Addition and Lots 1-4 and 15-23, Block 9, Bolley's Addition, City of Fargo, Cass County, North Dakota.		
Owner(s)/Applicant:	Diocese of Fargo; NC Investments, LLC / Roers Development—Larry Nygard	Engineer:	Roers
Entitlements Requested:	Minor Plat (replat of Lots 1-10, Block 2, College Addition and Lots 1-4 and 15-23, Block 9, Bolley's Addition, City of Fargo, Cass County, North Dakota)		
Status:	City Commission Public Hearing: August 26, 2019		

Existing	Proposed
Land Use: Recent religious institution, single-dwelling residential; and multi-dwelling residential are being demolished or relocated	Land Use: Religious institution; multi-dwelling residential
Zoning: MR-3, Multi-Dwelling Residential with PUD, Planned Unit Development overlay	Zoning: No change
Uses Allowed: Allows detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religious institutions, safety services, schools, and basic utilities. Plus additional uses noted in PUD	Uses Allowed: No change
Maximum Density Allowed: PUD allows 32 dwelling units per acre across the project.	Maximum Density Allowed: No change

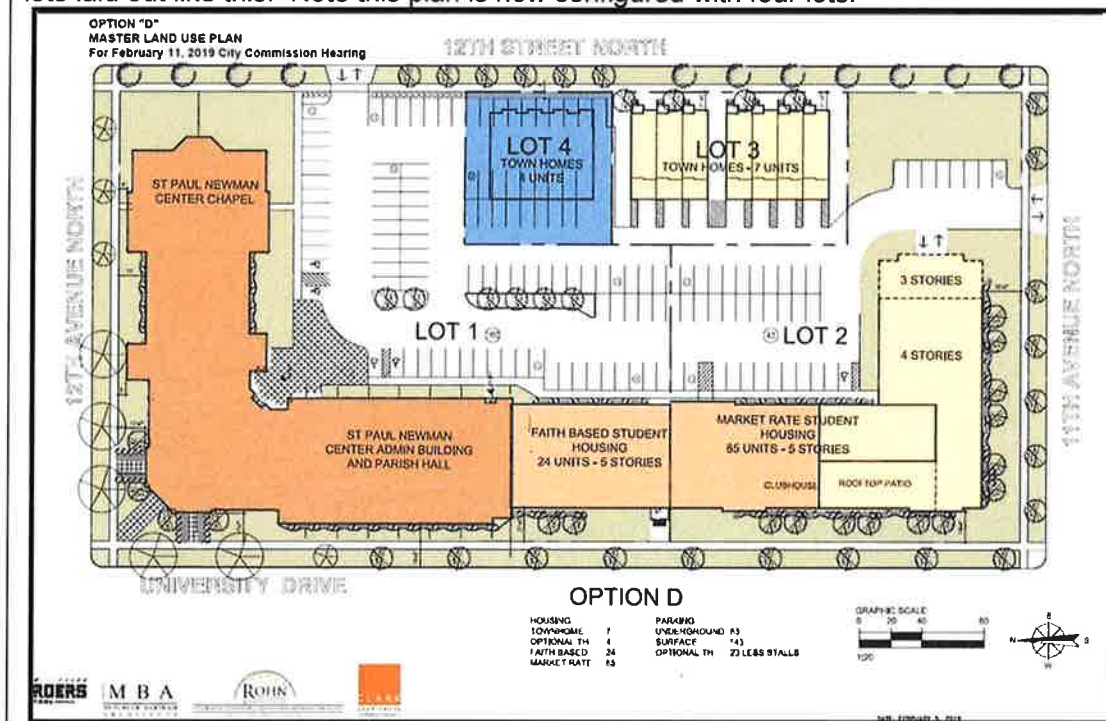
Proposal:

PROJECT HISTORY NOTE: The action being taken on this plat is required by the decision of the City Commission on February 11, 2019, which approved what was known as the "Option D" configuration of the St. Paul's Newman Center project. The "Option D" configuration divides the original one lot for townhomes into two lots and moves these two lots to the north from the original location of the one lot for townhomes. As the plat originally recommended for approval by the Planning Commission on December 4, 2018 showed three lots, and the current plat shows four lots, the plat has to go back through the Planning Commission and City Commission review process. The earlier version of the plat was not recorded. Action is only being taken on the plat. A comparison of these plats is shown below.

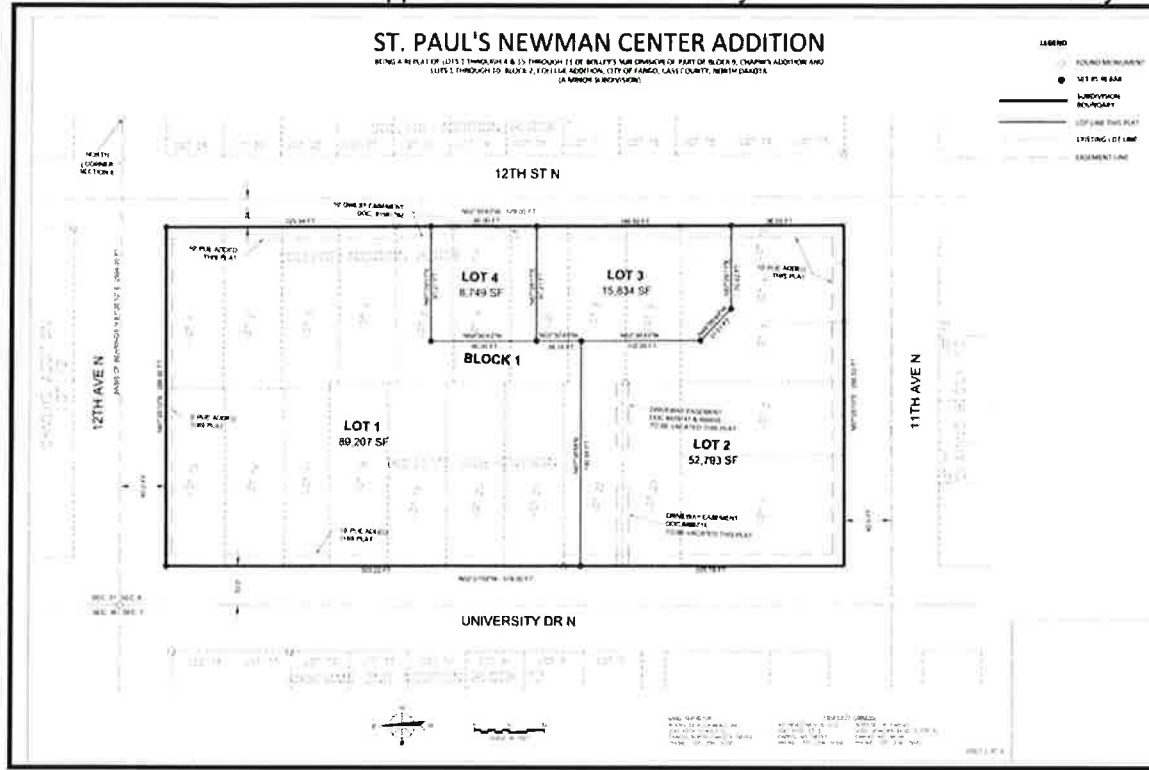
The plat recommended for approval by the Planning Commission on December 4, 2018 looked like this. Note the three lots:



At the February 11, 2019 City Commission hearing, the applicant agreed to submit a revised plat that has lots laid out like this. Note this plan is now configured with four lots:



The revised plat submitted May 31, 2019 follows the plan of Option D shown above, except the southwest corner of Lot 3 is clipped off to allow the driveway from 11th Street to be entirely on Lot 2.



The applicant requests approval of one entitlement:

1. A plat of the **St. Paul Newman Center Addition**, a replat of Lots 1-10, Block 2, College Addition and Lots 1-4 and 15-23, Block 9, Bolley's Addition, City of Fargo, Cass County, North Dakota., to create four lots as shown in the table below.

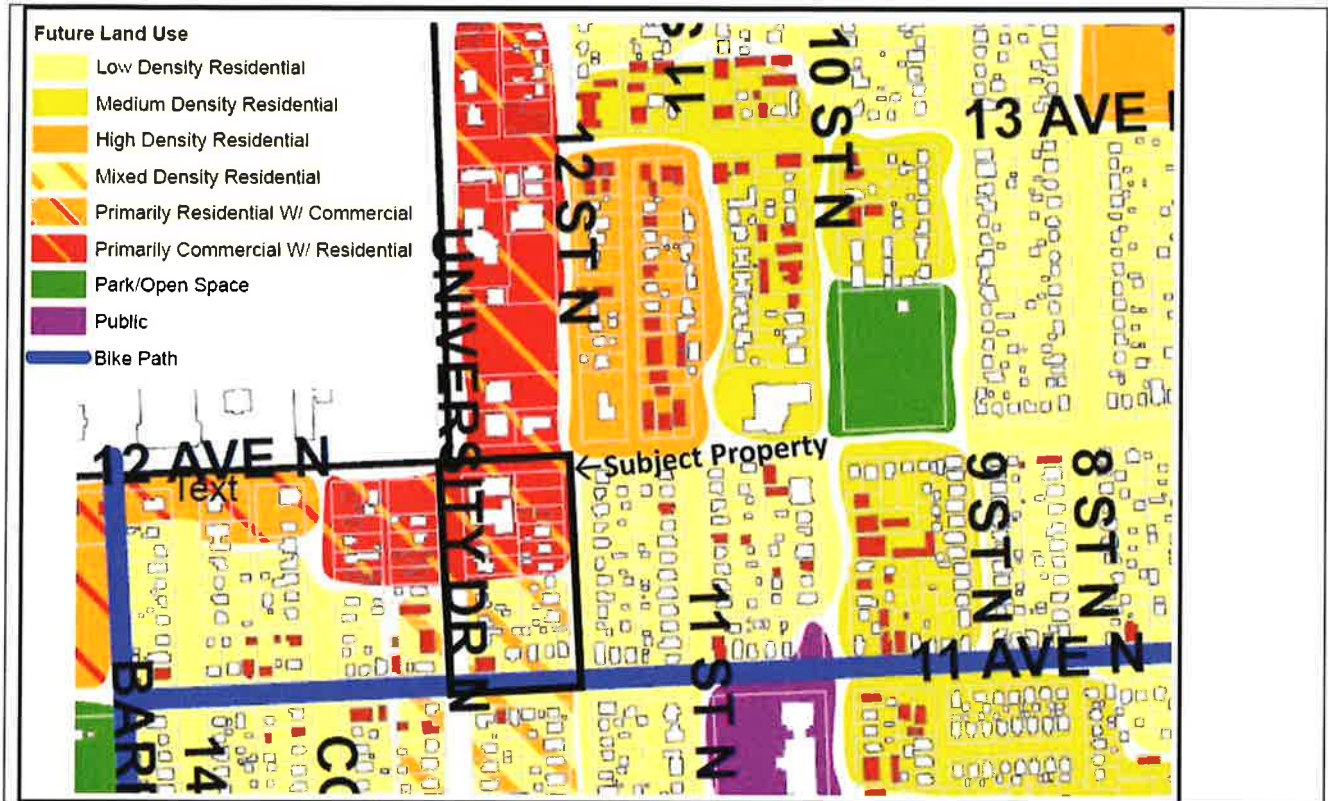
BLOCK	LOT	AREA (square feet/acres)	ZONING	USE
1	1	89,207 / 2.04	MR-3 with PUD	Religious institution
1	2	52,793 / 1.2	MR-3 with PUD	Multi-dwelling residential,
1	3	15,834 / 0.36	MR-3 with PUD	Townhomes
1	4	8,749 / 0.2	MR-3 with PUD	Townhomes

Surrounding Land Uses and Zoning Districts:

- North: LC with convenience store use; P/I with NDSU office use
- East: SR-3 with single-dwelling residential use
- South: SR-3 with single-dwelling residential use
- West: LC with NDSU parking lot use; MR-3 with multi-dwelling use

Area Plans:

This subject property is outlined in black in the graphic below, within the Roosevelt/NDSU Neighborhood Future Land Use Plan. This plan designates the subject property as "Primarily Commercial with Residential" on the north end of the block and "Mixed Density Residential" on the remainder of the block.



Schools and Parks:

Schools: The subject property is located within the Fargo School District and is served by Roosevelt Elementary, Ben Franklin Middle, and North High schools.

Parks: Roosevelt Park (1220 10th Street North) is located less than 1,000 feet northeast of the subject property and offers a multipurpose field, outdoor ice skating rinks, warming houses, and playground for ages 2-5. Johnson Soccer Complex (1420 11th Avenue North) is located approximately 1,000 feet west of the subject property and offers a multipurpose field, picnic tables, playgrounds for ages 2-5 and 5-12, restrooms, shelter, and soccer facilities.

Neighborhood: The subject property is located within the Roosevelt neighborhood.

Pedestrian / Bicycle: There is an on-road bike facility located along University Drive North and 11th Avenue North. These bike facilities are components of the metro area bikeways system.

Staff Analysis:

PLAT

The LDC stipulates that the following criteria are met before a minor plat can be approved:

1. Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.

<p>The subject property is located within the Roosevelt neighborhood. The future land use plan for the Roosevelt neighborhood designates the subject property as "Primarily Commercial with Residential" on the north end of the block and "Mixed Density Residential" on the remainder of the block. The subject property is zoned MR-3 with a PUD, Planning Unit Development overlay for the entire block. The PUD modifies certain development standards of the MR-3 zone, landscaping, parking, and Residential Protection Standards as indicated above in order to accommodate the proposed development. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received no comments. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments and found to meet the standards of Article 20-06 and other applicable requirements of the Land Development Code. (Criteria Satisfied)</p> <p>2. Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.</p> <p>While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. (Criteria Satisfied)</p>
<p>Staff Recommendation:</p>
<p>Suggested Motion: "To accept the findings and recommendations of staff and the Planning Commission and move to approve the proposed St. Paul's Newman Center Addition subdivision plat, as presented, as the proposal complies with the Go2030 Plan, the Roosevelt/NDSU Neighborhood Future Land Use Plan, Standards of Article 20-06, and all other applicable requirements of the LDC."</p>
<p>Planning Commission Recommendation: August 6, 2019</p>
<p>At the August 6, 2019 Planning Commission, by a vote of 7-0 with three Commissioners absent and one abstaining from voting, the Commission moved to accept the findings and recommendations of staff and to recommend approval to the City Commission of the proposed St. Paul's Newman Center Addition subdivision plat, as presented, as the proposal complies with the Go2030 Plan, the Roosevelt/NDSU Neighborhood Future Land Use Plan, Standards of Article 20-06, and all other applicable requirements of the LDC</p>
<p>Attachments:</p>
<ol style="list-style-type: none"> 1. Zoning Map 2. Location Map 3. Preliminary Plat

Plat (Minor)

1113, 1117, 1119, 1129, 1131 & 1141 University Drive N
1112, 1118, 1122, 1126, 1130, 1134, 1138, 1142 & 1146 12th Street N
1201, 1211, 1213, 1215 & 1223 11th Avenue N

St. Paul Newman Center Addition



Plat (Minor)

1113, 1117, 1119, 1129, 1131 & 1141 University Drive N
1112, 1118, 1122, 1126, 1130, 1134, 1138, 1142 & 1146 12th Street N
1201, 1211, 1213, 1215 & 1223 11th Avenue N

St. Paul Newman Center Addition



ST. PAUL'S NEWMAN CENTER ADDITION

BEING A REPLAT OF LOTS 1 THROUGH 4 & 15 THROUGH 23 OF BOLLEY'S SUB-DIVISION OF PART OF BLOCK 9, CHAPIN'S ADDITION AND LOTS 1 THROUGH 10, BLOCK 2, COLLEGE ADDITION, CITY OF FARGO, CASS COUNTY, NORTH DAKOTA (A MINOR SUBDIVISION)

OWNER'S DESCRIPTION AND DEDICATION

KNOW ALL MEN BY THESE PRESENTS, THAT THE DIOCESE OF FARGO, A NORTH DAKOTA NONPROFIT CORPORATION, AND NC INVESTMENTS LLC, A NORTH DAKOTA LIMITED LIABILITY COMPANY AS OWNERS OF TRACTS OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 139 NORTH, RANGE 48 WEST OF THE 5TH PRINCIPAL MERIDIAN, CASS COUNTY NORTH DAKOTA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

LOTS 1 THROUGH 4 & 15 THROUGH 23, BOLLEY'S SUBDIVISION OF PART OF BLOCK 9, CHAPIN'S ADDITION AND LOTS 1 THROUGH 10, BLOCK 2, COLLEGE ADDITION, CITY OF FARGO, CASS COUNTY NORTH DAKOTA, SAID TRACT OF LAND CONTAINS 3.824 ACRES, MORE OR LESS AND IS SUBJECT TO EASEMENTS AS MAY BE OF RECORD.

SAID OWNERS HAVE CAUSED THE ABOVE DESCRIBED TRACT OF LAND TO BE SURVEYED AND PLATTED AS "ST. PAUL'S NEWMAN CENTER ADDITION" TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, AND DO HEREBY DEDICATE TO THE PUBLIC, FOR PUBLIC USE, ALL UTILITY EASEMENTS AS SHOWN ON THIS PLAT.

DIOCESE OF FARGO

BY: John T. Folda
MOST REV. JOHN T. FOLDA, PRESIDENT OF THE DIOCESE OF FARGO

STATE OF NORTH DAKOTA }
COUNTY OF CASS } ss

ON THIS 17th DAY OF May 2019, BEFORE ME PERSONALLY APPEARED MOST REV. JOHN T. FOLDA, PRESIDENT OF THE DIOCESE OF FARGO, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.



NOTARY PUBLIC

NC INVESTMENTS LLC

BY: James P. Rogers
JAMES P. ROGERS, PRESIDENT OF NC INVESTMENTS LLC

STATE OF NORTH DAKOTA }
COUNTY OF CASS } ss

ON THIS 17th DAY OF May 2019, BEFORE ME PERSONALLY APPEARED JAMES P. ROGERS, PRESIDENT OF NC INVESTMENTS LLC, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT HE EXECUTED THE SAME AS HIS FREE ACT AND DEED.



NOTARY PUBLIC

CONSENT OF MORTGAGEE

DATED THIS 23rd DAY OF May 2019.

AMERICAN FEDERAL BANK
BY: Mark Dubord
MARK DUBORD, VICE PRESIDENT

STATE OF NORTH DAKOTA }
COUNTY OF CASS } ss

ON THIS 23rd DAY OF May 2019, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED MARK DUBORD, VICE PRESIDENT OF AMERICAN FEDERAL BANK, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE SAME AS A FREE ACT AND DEED.

NOTARY PUBLIC



CITY OF FARGO PLANNING COMMISSION APPROVAL

APPROVED BY THE CITY OF FARGO PLANNING COMMISSION ON THIS 14th DAY OF September 2018.

SHARA FISCHER, PLANNING COMMISSION CHAIR
STATE OF NORTH DAKOTA }
COUNTY OF CASS } ss

ON THIS 21st DAY OF May 2019, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED SHARA FISCHER, PLANNING COMMISSION CHAIR, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE SAME AS A FREE ACT AND DEED.

NOTARY PUBLIC



CONSENT OF MORTGAGEE

DATED THIS 22nd DAY OF May 2019.

WESTERN STATE BANK
BY: Braed Jacobson
BRAED JACOBSON, PRESIDENT

STATE OF NORTH DAKOTA }
COUNTY OF CASS } ss

ON THIS 22nd DAY OF May 2019, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED BRAED JACOBSON, PRESIDENT OF WESTERN STATE BANK, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE SAME AS A FREE ACT AND DEED.

NOTARY PUBLIC



SURVEYOR'S CERTIFICATE AND ACKNOWLEDGEMENT

I, DOUGLAS W. KUMMER, PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NORTH DAKOTA, DO HEREBY CERTIFY THAT I HAVE SURVEYED AND PLATTED "ST. PAUL'S NEWMAN CENTER ADDITION" TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA; THAT THIS PLAT IS A CORRECT REPRESENTATION OF SAID SURVEY; THAT ALL MONUMENTS ARE OR WILL BE INSTALLED CORRECTLY IN THE GROUND AS SHOWN.

DATED THIS 16th DAY OF May 2019.

Douglas W. Kummer
DOUGLAS W. KUMMER, PROFESSIONAL LAND SURVEYOR
NORTH DAKOTA LICENSE NO. 1225

STATE OF NORTH DAKOTA }
COUNTY OF CASS } ss

ON THIS 16th DAY OF May 2019, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED DOUGLAS W. KUMMER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE SAME AS A FREE ACT AND DEED.

NOTARY PUBLIC



SECRETARY, CITIES OF FARGO
NC INVESTMENTS, LLC
200 4TH ST. SE.
FARGO, NORTH DAKOTA 58103
PHONE: 701-256-9550 PHONE: 701-256-1900

LAND DEVELOPER
ROPER DEVELOPMENT, INC
200 4TH ST. SE.
FARGO, NORTH DAKOTA 58103
PHONE: 701-256-9550 PHONE: 701-256-1900

FARGO CITY COMMISSION APPROVAL
APPROVED BY THE BOARD OF CITY COMMISSIONERS AND ORDERED FILED THIS 11th DAY OF February 2019.

TIMOTHY J. MAHONEY, MAYOR

STEVEN SPRAGUE, CITY AUDITOR

STATE OF NORTH DAKOTA }
COUNTY OF CASS } ss

ON THIS DAY OF February 2019 BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED TIMOTHY J. MAHONEY, MAYOR, AND STEVEN SPRAGUE, CITY AUDITOR, KNOWN TO ME TO BE THE PERSONS DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME IN THE NAME OF THE FARGO CITY COMMISSION

NOTARY PUBLIC



CITY OF FARGO ENGINEERING DEPARTMENT APPROVAL

APPROVED BY CITY ENGINEER THIS DAY OF 2019.

BRENDA E. DERRIG, CITY ENGINEER

STATE OF NORTH DAKOTA }
COUNTY OF CASS } ss

ON THIS DAY OF February 2019, BEFORE ME, A NOTARY PUBLIC WITHIN AND FOR SAID COUNTY, PERSONALLY APPEARED BRENDA E. DERRIG, CITY ENGINEER, KNOWN TO ME TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE SAME AS A FREE ACT AND DEED.

NOTARY PUBLIC



19a-c

 **AIA** Document G701™ – 2017

Change Order

PROJECT: <i>(Name and address)</i> Fargo Police Department Headquarters Fargo, North Dakota	CONTRACT INFORMATION: Contract For: General Construction Date: January 14, 2019	CHANGE ORDER INFORMATION: Change Order Number: 002 Date: August 20, 2019
OWNER: <i>(Name and address)</i> City of Fargo Fargo Police Department 225 4 th Street North Fargo, ND 58102	ARCHITECT: <i>(Name and address)</i> Shultz & Associates, Ltd 612 1/2 Main Avenue Fargo, ND 58103	CONTRACTOR: <i>(Name and address)</i> Meinecke-Johnson Company 5 North 14 th Street Fargo, ND 58102

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

1. GPD 05: Miscellaneous Revisions
2. GPD 06: Drywall Patching

The original Contract Sum was	\$ 1,074,300.00
The net change by previously authorized Change Orders	\$ 13,853.00
The Contract Sum prior to this Change Order was	\$ 1,088,153.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 16,776.00
The new Contract Sum including this Change Order will be	\$ 1,104,929.00

The Contract Time will be increased by Four (4) days.
The new date of Substantial Completion will be August 10, 2019.

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

<u>Shultz & Associates, Ltd</u> ARCHITECT <i>(Firm name)</i>	<u>Meinecke-Johnson Company</u> CONTRACTOR <i>(Firm name)</i>	<u>City of Fargo, Fargo Police Department</u> OWNER <i>(Firm name)</i>
_____ SIGNATURE	_____ SIGNATURE	_____ SIGNATURE
<u>Jared Jensen, Vice President</u> PRINTED NAME AND TITLE	_____ PRINTED NAME AND TITLE	_____ PRINTED NAME AND TITLE
<u>August 20, 2019</u> DATE	_____ DATE	_____ DATE

Change Order Summary

Project: Fargo Police Department Headquarters Fargo, North Dakota	Change Order No. 002
Contractor: Meinecke-Johnson Company 5 North 14th Street Fargo, ND 58102	Contract For: General Construction
	Change Order Date: August 20, 2019
	Project Number: 1826

Contract changes included in this Change Order:

GPD 05	Miscellaneous Revisions	\$13,071.00
GPD 06	Drywall Patching	\$3,705.00

Total \$16,776.00

The Original Contract Sum is:	\$ 1,074,300.00
The Net Change by Previously Authorized Change Orders:	\$ 13,853.00
The Contract Sum Prior to this Change Order was:	\$ 1,088,153.00
The New Contract Sum will be INCREASED by this Change Order in the amount of:	\$ 16,776.00
The New Contract Sum including this Change Order will be:	\$ 1,104,929.00
The Contract Time will be INCREASED by:	4 Calendar Days

Project Directive

Project No: 1826
Project: Fargo Police Department HQ

Directive No: GPD.004 005
Date of Issuance: May 28, 2019
Initiated By: Architect

To Contractor:
 Meinecke-Johnson Company
 5 North 14th Street
 Fargo, ND 58102

Other Contractor(s):	Copy:
<input type="checkbox"/>	<input checked="" type="checkbox"/> Architect
<input type="checkbox"/>	<input type="checkbox"/> Construction Mgr.
<input type="checkbox"/>	<input type="checkbox"/> Consultant
<input type="checkbox"/>	<input checked="" type="checkbox"/> Owner
<input type="checkbox"/>	<input type="checkbox"/>

Please submit an itemized proposal for changes in the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. Submit proposal within **seven days**, or notify the Architect in writing of the date on which you anticipate submitting your proposal.

THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.

Directive Action:

- A. Proceed with work described below and provide cost breakdown as follows (Change Directive):

Basis	Amount	Estimate / Fixed / Maximum
<input type="checkbox"/> Cost Plus Mark-Up	\$	
<input type="checkbox"/> Lump Sum	\$	
<input type="checkbox"/> Unit Price	\$	per
- B. Provide itemized cost breakdown only (Proposal Request).
- C. Supplemental Instruction – No cost change.

Directive Description:

1. Reference AR-07. Provide cost change to revise Second Floor Quartermaster area as shown. Note that demolition/new framing and drywall work at east walls of Hall 272 and Stair 273 has been omitted.	\$	3,380.00
2. Reference AR-07. Provide cost change to add soffit to Stair 135.	\$	882.00
3. Provide cost change to revise casework interiors at glass display cases in Lobby 101 and Media 104 to veneer wood.	\$	3,843.00
4. Provide cost change to replace precast joint sealant and repair damaged drywall at west wall of Media 104.	\$	1,849.00
5. Provide credit to omit framing of north wall of Conference 152 and laminate drywall over existing wall.	\$	-450.00
6. Provide credit for reduced projection screen size per reviewed submittal.	\$	-116.00
7. Provide credit for reduced frosted glazing per reviewed submittal.	\$	-214.00
8. Provide cost change to sawcut, remove and replace concrete at in-floor duct chase in Room 148. NTE \$2,315.00 (actual cost \$2,423.00)	\$	2,315.00
9. Provide cost change to spray foam around beam at south wall of Room 129.	\$	1,582.00

ADD / DEDUCT \$	13,071.00
ADD / DEDUCT	4 Days

Attachments: AR-07

Project Directive

Signatures:

Architect

Shultz + Associates Architects
612 ½ Main Avenue
Fargo, ND 58103


By:

5/28/19
Date

Contractor

Meinecke-Johnson Company
5 North 14th Street
Fargo, ND 58102


By:

6/20/19
Date

Owner (Action A only)

City of Fargo
Fargo Police Department
225 4th Street North
Fargo, ND 58102

By:

Date

Project Directive

Project No: 1826
Project: Fargo Police Department HQ

Directive No: GPD 006
Date of Issuance: June 25, 2019
Initiated By: Architect

To Contractor:
 Meinecke-Johnson Company
 5 North 14th Street
 Fargo, ND 58102

Other Contractor(s):

Copy:
 Architect
 Construction Mgr.
 Consultant
 Owner

Please submit an itemized proposal for changes in the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. Submit proposal within **seven** days, or notify the Architect in writing of the date on which you anticipate submitting your proposal.

THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.

Directive Action:

- A. Proceed with work described below and provide cost breakdown as follows (Change Directive):
- | Basis | Amount | Estimate / Fixed / Maximum |
|--|--------|----------------------------|
| <input type="checkbox"/> Cost Plus Mark-Up | \$ | |
| <input type="checkbox"/> Lump Sum | \$ | |
| <input type="checkbox"/> Unit Price | \$ | per |
- B. Provide itemized cost breakdown only (Proposal Request).
- C. Supplemental Instruction – No cost change.

Directive Description:

1. Miscellaneous drywall patching. \$ 3705.00

ADD / DEDUCT \$ 3705.00

ADD / DEDUCT _____ Days

Attachments:

Signatures:

Architect	Contractor	Owner (Action A only)
Shultz + Associates Architects 612 1/2 Main Avenue Fargo, ND 58103	Meinecke-Johnson Company 5 North 14 th Street Fargo, ND 58102	City of Fargo Fargo Police Department 225 4 th Street North Fargo, ND 58102

		
By: _____	By: _____	By: _____
Date: 6/25/19	Date: _____	Date: _____



Document G701™ – 2017

Change Order

PROJECT: *(Name and address)*
 Fargo Police Department Headquarters
 Fargo, North Dakota

CONTRACT INFORMATION:
 Contract For: Mechanical Construction
 Date: January 14, 2019

CHANGE ORDER INFORMATION:
 Change Order Number: 002
 Date: August 20, 2019

OWNER: *(Name and address)*
 City of Fargo
 Fargo Police Department
 225 4th Street North
 Fargo, ND 58102

ARCHITECT: *(Name and address)*
 Shultz & Associates, Ltd
 612 1/2 Main Avenue
 Fargo, ND 58103

CONTRACTOR: *(Name and address)*
 Peterson Mechanical, Inc.
 3001 1st Avenue North
 Fargo, ND 58102

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

1. MPD 04: Fire Sprinkler Adjustments
2. MPD 05: Add Diffuser Room 125

The original Contract Sum was	\$ 203,400.00
The net change by previously authorized Change Orders	\$ 13,419.00
The Contract Sum prior to this Change Order was	\$ 216,819.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 1,477.00
The new Contract Sum including this Change Order will be	\$ 218,296.00

The Contract Time will be unchanged by Zero (0) days.
 The new date of Substantial Completion will be unchanged.

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Shultz & Associates, Ltd
 ARCHITECT *(Firm name)*

Peterson Mechanical, Inc.
 CONTRACTOR *(Firm name)*

City of Fargo, Fargo Police Department
 OWNER *(Firm name)*

 SIGNATURE

 SIGNATURE

 SIGNATURE

Jared Jensen, Vice President
 PRINTED NAME AND TITLE

 PRINTED NAME AND TITLE

 PRINTED NAME AND TITLE

August 20, 2019
 DATE

 DATE

 DATE

Change Order Summary

Project: Fargo Police Department Headquarters Fargo, North Dakota	Change Order No. 002
Contractor: Peterson Mechanical, Inc. 3001 1st Avenue North Fargo, ND 58102	Contract For: Mechanical Construction
	Change Order Date: August 20, 2019
	Project Number: 1826

Contract changes included in this Change Order:

MPD 04 Fire Sprinkler Adjustments	\$1,307.00
MPD 05 Add Diffuser Room 125	\$170.00

Total \$1,477.00

The Original Contract Sum is:	\$ 203,400.00
The Net Change by Previously Authorized Change Orders:	\$ 13,419.00
The Contract Sum Prior to this Change Order was:	\$ 216,819.00
The New Contract Sum will be INCREASED by this Change Order in the amount of:	\$ 1,477.00
The New Contract Sum including this Change Order will be:	\$ 218,296.00
The Contract Time will be UNCHANGED by:	0 Calendar Days

Project Directive

Project No: 1826
Project: Fargo Police Department HQ

Directive No: MPD 004
Date of Issuance: June 25, 2019
Initiated By: Architect

To Contractor:

Peterson Mechanical, Inc.
 3001 1st Avenue North
 Fargo, ND 58102

Other Contractor(s):

Copy:

Architect
 Construction Mgr.
 Consultant
 Owner

Please submit an itemized proposal for changes in the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. Submit proposal within **seven** days, or notify the Architect in writing of the date on which you anticipate submitting your proposal.

THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.

Directive Action:

- A. Proceed with work described below and provide cost breakdown as follows (Change Directive):
- | Basis | Amount | Estimate / Fixed / Maximum |
|--|--------|----------------------------|
| <input type="checkbox"/> Cost Plus Mark-Up | \$ | |
| <input type="checkbox"/> Lump Sum | \$ | |
| <input type="checkbox"/> Unit Price | \$ | per |
- B. Provide itemized cost breakdown only (Proposal Request).
- C. Supplemental Instruction – No cost change.

Directive Description:

1. Revise fire sprinkler heads in Rooms 180, 190, 279, and 280 as required. \$ 1,307.00

ADD / DEDUCT \$ 1,307.00

~~ADD / DEDUCT~~ Days

Attachments:

Signatures:

Architect

Shultz + Associates Architects
 612 ½ Main Avenue
 Fargo, ND 58103

Contractor

Peterson Mechanical, Inc.
 3001 1st Avenue North
 Fargo, ND 58102

Owner (Action A only)

City of Fargo
 Fargo Police Department
 225 4th Street North
 Fargo, ND 58102


 By: _____ Date: 6/25/19

By: _____ Date: _____

By: _____ Date: _____

Project Directive

Project No: 1826
Project: Fargo Police Department HQ

Directive No: MPD 005
Date of Issuance: August 20, 2019
Initiated By: Architect

To Contractor:

Peterson Mechanical, Inc.
 3001 1st Avenue North
 Fargo, ND 58102

Other Contractor(s):

Copy:

Architect
 Construction Mgr.
 Consultant
 Owner

Please submit an itemized proposal for changes in the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. Submit proposal within **seven** days, or notify the Architect in writing of the date on which you anticipate submitting your proposal.

THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.

Directive Action:

- A. Proceed with work described below and provide cost breakdown as follows (Change Directive):
- | Basis | Amount | Estimate / Fixed / Maximum |
|--|--------|----------------------------|
| <input type="checkbox"/> Cost Plus Mark-Up | \$ | |
| <input type="checkbox"/> Lump Sum | \$ | |
| <input type="checkbox"/> Unit Price | \$ | per |
- B. Provide itemized cost breakdown only (Proposal Request).
- C. Supplemental Instruction – No cost change.

Directive Description:

1. Indicate cost change to provide a 6" diameter take-off and S-1 supply grille from V1-5 to serve Room 125 Hall. \$ 170.00

ADD / DEDUCT \$ 170.00

~~ADD / DEDUCT~~ Days

Attachments:

Signatures:

Architect

Shultz + Associates Architects
 612 1/2 Main Avenue
 Fargo, ND 58103

Contractor

Peterson Mechanical, Inc.
 3001 1st Avenue North
 Fargo, ND 58102

Owner (Action A only)

City of Fargo
 Fargo Police Department
 225 4th Street North
 Fargo, ND 58102

 8/20/19
 By: _____ Date

By: _____ Date

By: _____ Date



Document G701™ – 2017

Change Order

PROJECT: *(Name and address)*
 Fargo Police Department Headquarters
 Fargo, North Dakota

CONTRACT INFORMATION:
 Contract For: Electrical Construction
 Date: January 14, 2019

CHANGE ORDER INFORMATION:
 Change Order Number: 002
 Date: August 20, 2019

OWNER: *(Name and address)*
 City of Fargo
 Fargo Police Department
 225 4th Street North
 Fargo, ND 58102

ARCHITECT: *(Name and address)*
 Shultz & Associates, Ltd
 612 1/2 Main Avenue
 Fargo, ND 58103

CONTRACTOR: *(Name and address)*
 Grotberg Electric, Inc.
 1109 West Main Street
 PO Box 426
 Valley City, ND 58072

THE CONTRACT IS CHANGED AS FOLLOWS:

(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)

1. EPD 04: Power & Data Revisions 3
2. EPD 05: Fire Alarm Revisions 2
3. EPD 06: Boring for Fiber
4. EPD 07: Power & Data Revisions 4

The original Contract Sum was	\$	443,000.00
The net change by previously authorized Change Orders	\$	14,510.23
The Contract Sum prior to this Change Order was	\$	457,510.23
The Contract Sum will be increased by this Change Order in the amount of	\$	38,169.44
The new Contract Sum including this Change Order will be	\$	495,679.67

The Contract Time will be unchanged by Zero (0) days.
 The new date of Substantial Completion will be unchanged.

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Shultz & Associates, Ltd	Grotberg Electric, Inc.	City of Fargo, Fargo Police Department
ARCHITECT <i>(Firm name)</i>	CONTRACTOR <i>(Firm name)</i>	OWNER <i>(Firm name)</i>
SIGNATURE	SIGNATURE	SIGNATURE
Jared Jensen, Vice President		
PRINTED NAME AND TITLE	PRINTED NAME AND TITLE	PRINTED NAME AND TITLE
August 20, 2019		
DATE	DATE	DATE

Change Order Summary

Project: Fargo Police Department Headquarters Fargo, North Dakota	Change Order No. 002
Contractor: Grotberg Electric, Inc. 1109 West Main Street Valley City, ND 58072	Contract For: Electrical Construction
	Change Order Date: August 20, 2019
	Project Number: 1826

Contract changes included in this Change Order:

EPD 04	Power & Data Revisions 3	\$12,711.37
EPD 05	Fire Alarm Revisions 2	\$2,850.02
EPD 06	Boring for Fiber	\$9,893.03
EPD 07	Power & Data Revisions 4	\$12,715.02

Total \$38,169.44

The Original Contract Sum is:	\$	443,000.00
The Net Change by Previously Authorized Change Orders:	\$	14,510.23
The Contract Sum Prior to this Change Order was:	\$	457,510.23
The New Contract Sum will be INCREASED by this Change Order in the amount of:	\$	38,169.44
The New Contract Sum including this Change Order will be:	\$	495,679.67
The Contract Time will be UNCHANGED by:	0	Calendar Days

Project No: 1826
Project: Fargo Police Department HQ

Directive No: EPD 004R
Date of Issuance: June 25, 2019
Initiated By: Architect

To Contractor:

Grotberg Electric, Inc.
 1109 West Main Street
 Valley City, ND 58072

Other Contractor(s):

Copy:

Architect
 Construction Mgr.
 Consultant
 Owner

Please submit an itemized proposal for changes in the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. Submit proposal within **seven** days, or notify the Architect in writing of the date on which you anticipate submitting your proposal.

THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.

Directive Action:

- A. Proceed with work described below and provide cost breakdown as follows (Change Directive):
- | Basis | Amount | Estimate / Fixed / Maximum |
|--|--------|----------------------------|
| <input type="checkbox"/> Cost Plus Mark-Up | \$ | |
| <input type="checkbox"/> Lump Sum | \$ | |
| <input type="checkbox"/> Unit Price | \$ | per |
- B. Provide itemized cost breakdown only (Proposal Request).
- C. Supplemental Instruction – No cost change.

Directive Description:

- | | |
|---|-------------|
| 1. Provide cost change to provide rough-in for Interrogation area and Room 109 per requests by High Point Networks. | \$ 2,156.96 |
| 2. Provide cost change to provide additional power and data to workstations in Room 176 per MBN PR-E03. | \$ 9,083.66 |
| 3. Provide cost change to re-pull data to workstations in Room 178. | \$ 840.40 |
| 4. Provide cost change to revise electrical baseboard heaters per MBN PR-E04. | \$ 630.35 |

ADD / DEDUCT \$ 12,711.37

~~ADD / DEDUCT~~ Days

Attachments: PR-E03, R1.0/E300, R4.0/E400, PR-E04

Signatures:

Architect

Shultz + Associates Architects
 612 ½ Main Avenue
 Fargo, ND 58103

Contractor

Grotberg Electric, Inc.
 1109 West Main Street
 Valley City, ND 58072

Owner (Action A only)

City of Fargo
 Fargo Police Department
 225 4th Street North
 Fargo, ND 58102

By:  Date: 6/25/19

By: _____ Date: _____

By: _____ Date: _____

Project No: 1826
Project: Fargo Police Department HQ

Directive No: EPD 005
Date of Issuance: June 25, 2019
Initiated By: Architect

To Contractor:
Grotberg Electric, Inc.
1109 West Main Street
Valley City, ND 58072

Other Contractor(s):	Copy:
<input type="checkbox"/>	<input checked="" type="checkbox"/> Architect
<input type="checkbox"/>	<input type="checkbox"/> Construction Mgr.
<input type="checkbox"/>	<input type="checkbox"/> Consultant
<input type="checkbox"/>	<input checked="" type="checkbox"/> Owner
<input type="checkbox"/>	<input type="checkbox"/>

Please submit an itemized proposal for changes in the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. Submit proposal within **seven** days, or notify the Architect in writing of the date on which you anticipate submitting your proposal.

THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.

Directive Action:

- A. Proceed with work described below and provide cost breakdown as follows (Change Directive):

Basis	Amount	Estimate / Fixed / Maximum
<input type="checkbox"/> Cost Plus Mark-Up	\$	
<input type="checkbox"/> Lump Sum	\$	
<input type="checkbox"/> Unit Price	\$	per
- B. Provide itemized cost breakdown only (Proposal Request).
- C. Supplemental Instruction – No cost change.

Directive Description:

1. Provide cost change to replace existing two-way communication box in Room 272. \$ 1,347.59
2. Provide cost change to connect second fire sprinkler riser located in Room 266 to new Fire Alarm Control Panel per response to RFI-E4. \$ 1,502.43

ADD / DEDUCT \$ 2,850.02

~~ADD / DEDUCT~~ ~~Days~~

Attachments: RFI E-4

Signatures:

Architect	Contractor	Owner (Action A only)
Shultz + Associates Architects 612 1/2 Main Avenue Fargo, ND 58103	Grotberg Electric, Inc. 1109 West Main Street Valley City, ND 58072	City of Fargo Fargo Police Department 225 4 th Street North Fargo, ND 58102

By: 	By: _____	By: _____
Date: 6/25/19	Date: _____	Date: _____

Project Directive

Project No: 1826
Project: Fargo Police Department HQ

Directive No: EPD 006R
Date of Issuance: June 25, 2019
Initiated By: Architect

To Contractor:

Grotberg Electric, Inc.
 1109 West Main Street
 Valley City, ND 58072

Other Contractor(s):

Copy:

Architect
 Construction Mgr.
 Consultant
 Owner

Please submit an itemized proposal for changes in the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. Submit proposal within **seven** days, or notify the Architect in writing of the date on which you anticipate submitting your proposal.

THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.

Directive Action:

- A. Proceed with work described below and provide cost breakdown as follows (Change Directive):
- | Basis | Amount | Estimate / Fixed / Maximum |
|--|--------|----------------------------|
| <input type="checkbox"/> Cost Plus Mark-Up | \$ | |
| <input type="checkbox"/> Lump Sum | \$ | |
| <input type="checkbox"/> Unit Price | \$ | per |
- B. Provide itemized cost breakdown only (Proposal Request).
- C. Supplemental Instruction – No cost change.

Directive Description:

1. Provide cost change to revise Outside Plant Fiber connection per MBN R1.1/E600. \$ 9,893.03

ADD / DEDUCT \$ 9,893.03

~~ADD / DEDUCT~~ ~~Days~~

Attachments: R1.1/E600

Signatures:

Architect

Shultz + Associates Architects
 612 1/2 Main Avenue
 Fargo, ND 58103

Contractor

Grotberg Electric, Inc.
 1109 West Main Street
 Valley City, ND 58072

Owner (Action A only)

City of Fargo
 Fargo Police Department
 225 4th Street North
 Fargo, ND 58102

 6/25/19
 By: _____ Date

By: _____ Date

By: _____ Date

Project No: 1826
Project: Fargo Police Department HQ

Directive No: EPD 007
Date of Issuance: July 12, 2019
Initiated By: Architect

To Contractor:
 Grotberg Electric, Inc.
 1109 West Main Street
 Valley City, ND 58072

Other Contractor(s):

Copy:
 Architect
 Construction Mgr.
 Consultant
 Owner

Please submit an itemized proposal for changes in the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. Submit proposal within **seven days**, or notify the Architect in writing of the date on which you anticipate submitting your proposal.

THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.

Directive Action:

- A. Proceed with work described below and provide cost breakdown as follows (Change Directive):

Basis	Amount	Estimate / Fixed / Maximum
<input type="checkbox"/> Cost Plus Mark-Up	\$	
<input type="checkbox"/> Lump Sum	\$	
<input type="checkbox"/> Unit Price	\$	per
- B. Provide itemized cost breakdown only (Proposal Request).
- C. Supplemental Instruction -- No cost change.

Directive Description:

1. Provide cost change to revise power and data connections per MBN R2.0/E300 and R5.0/E400. \$ 12,715.02

ADD / DEDUCT \$ 12,715.02

~~ADD / DEDUCT~~ Days

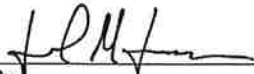
Attachments: R2.0/E300, R5.0/E400

Signatures:

Architect
 Shultz + Associates Architects
 612 1/2 Main Avenue
 Fargo, ND 58103

Contractor
 Grotberg Electric, Inc.
 1109 West Main Street
 Valley City, ND 58072

Owner (Action A only)
 City of Fargo
 Fargo Police Department
 225 4th Street North
 Fargo, ND 58102


 By: _____ Date: 7/12/19

By: _____ Date: _____

By: _____ Date: _____

August 20, 2019

The Honorable Board of City Commissioners
City of Fargo
225 4th Street North
Fargo, ND 58102

RE: Authorization to award the Public Works Master Service Agreements (MSA) to
KLJ, AE2S and Houston Engineering.

Commissioners:

Proposals were received on Monday, August 5, 2019, in response to a Request for Proposal
(RFP) issued by Public Works for General Consulting and Engineering services.

The proposals received were evaluated on:

- Completeness and Organization of Proposal,
- Qualifications of Assigned Personnel,
- Prior Pertinent Staff Experience,
- Available Resources of Firm,
- Hourly Fee Schedule.

All proposals received were fully evaluated by a Selection Committee made up of the following:

- Public Works Director of Operations,
- Public Works Services Manager,
- Public Works Fleet/Building Manager.

Based on the evaluation, the committee has selected KLJ, AE2S and Houston Engineering as the
recommended providers for the Public Works General Consulting and Engineering MSA.

RECOMMENDED MOTION: I/we hereby move based on the request for proposal (RFP19127)
to award the Public Works Master Service Agreements to KLJ, AE2S and Houston Engineering.

Respectfully submitted,



Ben Dow
Director of Public Works

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective on the 26th Day of August, 2019 ("Effective Date") between the City of Fargo, North Dakota, a municipal corporation ("Owner"), and Kadmas, Lee & Jackson Inc. (dba KLJ) 4585 Coleman Street, Bismarck, ND 58503 ("Engineer").

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer's services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided. Basic and Additional Services that may be included in a Task Order are set forth in Exhibit A, "Engineer's Services."
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.02 *Task Order Procedure*

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein, in Exhibit B, "Owner's Responsibilities," and in each Task Order.

- B. Owner shall compensate Engineer as set forth in each Task Order, pursuant to the applicable terms of Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 - TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for 1 year(s) from the Effective Date of the Agreement.
- B. The term of this agreement may be extended for one-year periods for a maximum of two (2) additional years, if approved and accepted by both the Engineer and Owner.

3.02 *Times for Rendering Services*

- A. The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, Engineer will perform services and provide deliverables within a reasonable time.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast tracking), then Owner and Engineer shall, prior to commencement of final design services, develop a schedule for performance of Engineer's remaining services in order to sequence and coordinate properly such services as are applicable to the work under such separate Construction Contracts. This schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 - INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. the compounded amount due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes sales or use taxes, fees, or charges on Engineer's services or compensation under the Task Order, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 - OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit: Not Used.*

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer shall serve as Owner's prime professional under each Task Order. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:* Engineer and Owner shall comply with applicable Laws and Regulations.
 - 1. Prior to the Effective Date of each Task Order, Owner shall provide to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under such Task Order. Engineer shall comply with such policies and procedures pursuant to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 2. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of such Task Order. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not

to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.

- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (FJCDC C-700, 2007 Edition) unless both parties mutually agree in a Task Order to use other General Conditions.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification of the Contract Documents other than those made by Engineer.
- L. While at a Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design without Construction Phase Services*

- A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been itemized and expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, shop drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be in any way connected to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to a Specific Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Specific Project by Owner. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or its Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. At all times when any Task Order is under performance, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer which is applicable to a Specific Project.
- B. At all times when any Task Order is under performance, Owner shall procure and maintain insurance as set forth in Exhibit G.

- C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractors
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services under any Task Order and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to a Specific Project shall contain provisions to the effect that Engineer's and Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.05 *Suspension and Termination*

A. *Suspension*

- 1. *By Owner:* Owner may suspend a Task Order upon seven days written notice to Engineer.
- 2. *By Engineer:* If Engineer's services are substantially delayed through no fault of Engineer, then Engineer may, after giving seven days written notice to Owner, suspend services under a Task Order.

B. *Termination:* The obligation to provide further services under this Agreement, or under a Task Order, may be terminated:

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement or any Task Order through no fault of the terminating party.
 - b. By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law:*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Specific Project is located.

6.07 *Successors, Assigns, and Beneficiaries:*

- A. Owner and Engineer each is hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. The Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in any Contract Documents prepared for any Specific Project under this Agreement.

6.08 *Dispute Resolution:*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site:*

- A. With respect to each Task Order, Specific Project, and Site:
 - 1. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
 - 2. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

3. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
4. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating this Agreement for cause on 30 days' notice.
6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable costs, losses, and damages arising out of or relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and

(ii) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to a Specific Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of each particular Specific Project.
- F. *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement:* Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 - DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following provisions:
1. *Addenda*: Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
 2. *Additional Services*: Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order which are not included in Basic Services for that Task Order.
 3. *Agreement*: This "Agreement between Owner and Engineer for Professional Services-Task Order Edition" including those Exhibits listed in Article 8 and any duly executed Task Order.
 4. *Application for Payment*: The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 5. *Asbestos*: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 6. *Basic Services*: Specified services to be performed for or furnished to Owner by Engineer in accordance with a Task Order.
 7. *Bid*: The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 8. *Bidding Documents*: The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
 9. *Change Order*: A document recommended by Engineer, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.
 10. *Constituent of Concern*: Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et

seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

11. *Construction Agreement*: The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.
12. *Construction Contract*: The entire and integrated written agreement between Owner and Contractor concerning the Work.
13. *Construction Cost*: The cost to Owner of those portions of an entire Specific Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
14. *Consultants*: Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Consultants.
15. *Contract Documents*: Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
16. *Contract Price*: The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
17. *Contract Times*: The numbers of days or the dates stated in a Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
18. *Contractor*: The entity or individual with which Owner has entered into the Construction Contract.
19. *Correction Period*: The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
20. *Defective*: An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval

referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.

21. *Documents*: Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
22. *Drawings*: That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by a Contractor. Shop Drawings are not Drawings as so defined.
23. *Effective Date of the Construction Agreement*: The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
24. *Effective Date of the Agreement*: The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
25. *Effective Date of the Task Order*: The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
26. *Engineer*: The individual or entity named as such in this Agreement.
27. *Field Order*: A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
28. *General Conditions*: That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.
29. *Hazardous Waste*: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
30. *Laws and Regulations; Laws or Regulations*: Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
31. *Owner*: The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any construction contracts concerning the Project.
32. *PCBs*: Polychlorinated biphenyls.
33. *Petroleum*: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds

per square inch absolute), such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*: The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
35. *Radioactive Materials*: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Record Drawings*: The Drawings as issued for construction on which Engineer, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Engineer considers significant based on record documents furnished by Contractor to Engineer and which were annotated by Contractor to show changes made during construction.
37. *Reimbursable Expenses*: The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for a Specific Project for which Owner shall pay Engineer as indicated in Exhibit C.
38. *Resident Project Representative*: The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR agreed to by Owner. The duties and responsibilities of the RPR will be as set forth in each Task Order.
39. *Samples*: Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
40. *Shop Drawings*: All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work.
41. *Site*: Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.
42. *Specifications*: That part of the Contract Documents prepared by Engineer consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.
43. *Specific Project*: An undertaking of Owner as set forth in a Task Order.
44. *Subcontractor*: An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at a Site.
45. *Substantial Completion*: The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the

Contract Documents, so that the Work can be utilized for the purposes for which it is intended.

46. *Supplementary Conditions*: That part of the Contract Documents which amends or supplements the General Conditions.
47. *Supplier*: A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Task Order*: A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
49. *Total Project Costs*: The sum of the Construction Cost, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
50. *Work*: The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by those Contract Documents.
51. *Work Change Directive*: A written directive to a Contractor signed by Owner upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits*

Attachment 1, Task Order Form (Template)

Exhibit A, Engineer's Services

Exhibit B, Owner's Responsibilities

Exhibit C, Payments to Engineer for Services and Reimbursable Expenses

Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative

Exhibit E, Notice of Acceptability of Work

~~Exhibit F, Construction Cost Limit~~ – Not Included.

Exhibit G, Insurance

Exhibit H, Dispute Resolution

Exhibit I, Limitations on Liability

~~Exhibit J, Special Provisions~~ – Not Included.

Exhibit K, Amendment to Task Order (Form)

8.02 *Total Agreement*

A. This Agreement (together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format provided in Exhibit K to this Agreement, "Amendment to Task Order."

8.03 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of each respective party. Each Task Order shall likewise designate representatives of the two parties.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER:

ENGINEER:

By: _____

By:  _____

Name: _____
Dr. Tim Mahoney

Name: _____
Mark Anderson, PE

Title: Mayor

Title: Vice President

Date
Signed: _____

Engineer License or
Firm's Certificate No. 061-C

Attest: _____
Steve Sprague

State of: ND

Title: City Auditor

Date
Signed: _____

Date
Signed: 8/20/2019

Address for giving notices:
225 4th Street N.
Fargo, North Dakota
58102

Address for giving notices:
4585 Coleman Street
Bismarck, ND 58503
klj.legal@kljeng.com

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

Title: _____

Phone
Number: _____

Email
Address: _____

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

Title: _____

Phone
Number: _____

Email
Address: _____

This is Task Order
No. 1, consisting of 3
pages.

Public Works Consulting Services Task Order No. 1

In accordance with Paragraph 1.01 of the Agreement between Owner and Engineer for Professional Services, dated August 26, 2019 ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

A. Title: _____

B. Description: _____

2. Services of Engineer

[Incorporate applicable text or paragraphs from Exhibit A, Schedule of Engineer's Services -- either by Reference or by insertion here. Incorporate Exhibits D and/or F if applicable -- either by reference or by insertion here. Supplement or modify as needed for this specific Task Order.]

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 and in Exhibit B, subject to the following:

4. Times for Rendering Services

Phase	Completion Date
_____	_____
_____	_____
_____	_____

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered as follow:

<i>Category of Services</i>	<i>Compensation Method</i>	<i>Lump Sum, or Estimate of Compensation for Services</i>
Basic Services: Study and Report Phase	TBD	
Basic Services: Preliminary Design Phase	TBD	
Basic Services: Final Design Phase	TBD	
Basic Services: Bidding or Negotiating Phase	TBD	
Basic Services: Construction Phase	TBD	
Basic Services: Post-Construction Phase	TBD	
Additional Services	TBD	

B. The terms of payment are set forth in Article 4 of the Agreement and in Exhibit C.

1. Consultants:

None

2. Other Modifications to Agreement:

None at the time.

3. Attachments:

Attachment I to Exhibit A-1 and Exhibit B-1

4. Documents Incorporated By Reference:

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____, _____.

OWNER:

ENGINEER:

By: _____

By: _____

Name: Ben Dow

Name: _____

Title: Director of Operations

Title: _____

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

Name: Ben Dow

Name: _____

Title: Public Works Director of Operations

Title: _____

Address: 402 23rd Street N.
Fargo, ND 58102

Address: _____

Email Bdow@cityoffargo.com

Email _____

Address: _____

Address: _____

Phone
Number: 701-241-1463

Phone
Number: _____

Fax: 701-241-8100

Fax: _____

This is **EXHIBIT A**, consisting of 10 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Engineer's Services

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. The Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for a Specific Project and available data.
2. Advise Owner as to the necessity of Owner's providing data or services of the types described in Exhibit B, and, if requested, assist Owner in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of a Specific Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate the number of alternate solutions available to Owner for a Specific Project, and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for a Specific Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. The Report will be accompanied by Engineer's opinion of Total Project Costs for each solution which is so recommended for a Specific Project with each component separately itemized, including the following, which will be separately itemized:
 - a. opinion of probable Construction Cost,
 - b. allowances for contingencies and for the estimated total costs of design, professional, and related services provided by Engineer and,
 - c. on the basis of information furnished by Owner, allowances for other items and services included within the definition of Total Project Costs.
6. Furnish the number of review copies of the Report to Owner within the time period set forth in the Task Order and review it with Owner.
7. Revise the Report in response to Owner's and other parties' comments, as appropriate, and furnish the number of final copies of the revised Report to the Owner within the time period set forth in the Task Order.

- B. Engineer's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to Owner.

PART 2 - DESIGN ACTIVITIES

A1.02 Preliminary Design Phase

- A. Engineer shall on the basis of the above acceptance, selection, and authorization:
 - 1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of a Specific Project.
 - 2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
 - 3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 - 4. Based on the information contained in the Preliminary Design Phase documents, submit a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, which will be itemized as provided in the Study and Report Phase Services section above.
 - 5. Furnish the Preliminary Design Phase documents to and review them with Owner.
 - 6. Submit to Owner the number of final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within the time period set forth in the Task Order.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to Owner.

A1.03 Final Design Phase

- A. Engineer shall:
 - 1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Where appropriate, prepare Specifications in general conformance with the format of the Construction Specifications Institute.
 - 2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of a Specific Project and assist Owner in consultations with appropriate authorities.
 - 3. Provide Owner a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, itemized as provided in the Study and Report Phase Services section above.

4. Prepare and furnish Bidding Documents for review and approval by Owner, its legal counsel, and other advisors, as appropriate, and assist Owner in the preparation of other related documents.
 5. Submit the number of final copies of the Bidding Documents and a current opinion of probable Construction Cost to Owner within the time period set forth in the Task Order.
 6. Prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and perform or furnish services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the required submittals have been delivered to Owner.

PART 3 - BIDDING AND NEGOTIATION

A1.04 Bidding or Negotiating Phase

- A. The Engineer shall:
1. Assist Owner in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 4. Prepare additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
 5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions below regarding additional compensation for an excessive number of such substitute or "or equal" submittals.
 6. Attend the bid opening, prepare bid tabulation sheets, and assist Owner in evaluating bids or proposals and in assembling and awarding contracts for the Work.
 7. Assist Owner with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
 8. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:

- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

PART 4 - CONSTRUCTION AND COMMISSIONING

A1.05 Construction Phase

- A. Engineer shall provide the following services:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of Engineer as assigned in said General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, who shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site of the Specific Project to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in the Task Order and in Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative." The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Paragraph B2.01.0.
4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction:* In connection with observations of Work in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Engineer in the Task Order and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations,

Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site of the Specific Project, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.
8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

12. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor, but subject to any provisions below regarding additional compensation for evaluation of such substitute or "or equal" submittals.
13. *Inspections and Tests*: Require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor*: Render formal written decisions on all duly submitted issues relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance or progress of the Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief: the Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of Engineer contained in Paragraph A1.05.A.15.a are expressly subject to the limitations set forth in Paragraph A1.05.A.15.b and other express or general limitations in this Agreement and elsewhere.
 - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of the Work as it is performed and furnished have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of the Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or

programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents:* Receive, review and transmit to Owner maintenance and operating instructions, schedules guarantees, bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided above, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided above.
17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to determine if the Work is Substantially Complete. If after considering any objections of Owner, Engineer considers the Work Substantially Complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
18. *Final Notice of Acceptability of the Work:* Conduct a final payment inspection to determine if the completed Specific Project of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
19. *Defective Work:* Together with Owner, visit the Site to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if any.
20. *Correction Period:* Together with Owner or Owner's representative, visit the Site within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Agreement for a Specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If a Specific Project involves more than one prime contract as indicated in the Task Order, Construction Phase services may be rendered at different times in respect to the separate contracts.

A1.06 *Commissioning Phase*

A. Engineer shall:

1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.

2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
3. Prepare operation and maintenance manuals.
4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

PART 5 - OTHER SERVICES

A2.01 *For each Task Order, consider the inclusion of the following possible services:*

A. Engineer shall:

1. Prepare applications and supporting documents for private or governmental grants, loans or advances in connection with a Specific Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for a Specific Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of a Specific Project.
2. Provide services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner.
3. Provide renderings or models for Owner's use.
4. Undertake investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assist in obtaining financing for a Specific Project; evaluate processes available for licensing, and assist Owner in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by Owner.
5. In addition to baselines and benchmarks, provide more extensive construction surveys and staking to enable a Contractor to perform its work and any type of property surveys or related engineering services needed for the transfer of interests in real property; and provide other special field surveys.
6. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
7. Prepare to serve or serve as a consultant or witness for Owner in any litigation, arbitration or other dispute resolution process related to a Specific Project.

PART6 - ADDITIONAL SERVICES REQUIRING AMENDMENT TO TASK ORDER

A2.02 Additional Services Requiring an Amendment to Task Order

- A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. The Task Order shall be amended to reflect the inclusion of such Additional Services. Services resulting from significant changes in the scope, extent, or character of the portions of a Specific Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer's control.
1. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A.1.01.A.4.
 2. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 3. Providing Construction Phase services beyond the Contract Times set forth in the Task Order.
 4. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner, subject to the terms of Paragraph 6.01.F of the Agreement.
 5. Overtime work requiring higher than regular rates.
 6. Other services proposed to be performed or furnished by Engineer not otherwise provided for in this Agreement.
- B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. The Task Order shall be amended to reflect the inclusion of such Additional Services.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make the compensation commensurate with the extent of the Additional Services rendered.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of any Construction Contract in evaluating and determining the acceptability of a proposed substitution, whether approved or not; evaluation and determination of an excessive number of proposed "or equals" or substitutions whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services in connection with any partial utilization of any part of the Work on a Specific Project by Owner prior to Substantial Completion.
6. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
7. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program enacted or provided to Engineer subsequent to the Effect Date of the Task Order that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.
8. Evaluation of an unreasonable claim or an excessive number of claims or requests for information submitted by a Contractor or others in connection with the Work on a Specific Project.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, or investigation at or adjacent to the Site of the Specific Project.
- C. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, furnish or otherwise make available such additional Specific Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to a Specific Project, the Site and adjacent areas.
 - 6. Data or consultations as required for a Specific Project but not otherwise identified in the Agreement, the Exhibits thereto, or the Task Order.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in the Task Order as required.

- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Task Order.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer for the Specific Project (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Specific Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Specific Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Specific Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Specific Project as Owner requires, a Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose a Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Specific Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling and legal advice) for Owner so that Engineer may assist the Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. If more than one prime contract is to be awarded for the Work of the Specific Project designed or specified by Engineer, designate in the Task Order a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors. Define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Site.

- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work for the Specific Project with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by any independent testing laboratory, if Engineer is required to review such documents.
- R. Inform Engineer of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services:

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Payments to Engineer for Service and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 - OWNER'S RESPONSIBILITIES

C2.01 Method of Payment

A. Owner shall pay Engineer for services in accordance with one or more of the following methods as identified in each Task Order:

1. Method A: Lump Sum
2. Method B: Standard Hourly Rates

C2.02 Explanation of Methods

A. Method A - Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Method B - Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendix 1.

4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and Consultants' charges, if any.
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.

C2.03 Reimbursable Expenses

Costs incurred by Engineer in the performance of the Task Order in the following categories constitute Reimbursable Expenses:

- A. Transportation and subsistence incidental thereto; advertisements, postage, and shipping costs; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls, faxes, and telegrams; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Specific Project-related items in addition to those required under Exhibit A. If authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment. Reimbursable expenses shall be paid at rates set forth in Appendix I to this Exhibit C which shall be adjusted annually (as of January 1st) to reflect equitable changes in the rates.
- B. The amounts payable to Engineer for Reimbursable Expenses will be the project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to a Specific Project, as listed in the Reimbursable Expenses Schedule provided as Appendix I for each Task Order.

C2.04 Serving as a Witness

- A. Unless compelled to testify by subpoena or other court order, in which case no compensation or payment shall be owed by Owner, the rate may be negotiated for services performed by Engineer's employees as an expert witness giving testimony in any litigation, arbitration, or other legal or administrative proceeding under Paragraph A.2.01.A.21. Compensation for Consultants for such services will be by reimbursement of Consultants' charges to Engineering for such services.

C2.05 Other Provisions Concerning Payment

- A. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.

B. *Estimated Compensation Amounts*

1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1** to **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Standard Hourly Rates and Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Standard Hourly Rates and Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates for reimbursable expenses will be provided with each respective Task Order.

APPENDIX B: STANDARD HOURLY FEE SCHEDULE

KLJ STANDARD RATES – CITY OF FARGO			
KLJ Staff Type	2020	2021	2022
Archaeologist I	\$72.00	\$75.00	\$78.00
Archaeologist II	\$83.00	\$86.00	\$89.00
Archaeologist III	\$119.00	\$123.00	\$127.00
Archaeologist IV	\$145.00	\$150.00	\$155.00
Archaeologist Technician	\$67.00	\$69.00	\$71.00
Architect I	\$98.00	\$101.00	\$104.00
Architect II	\$109.00	\$113.00	\$117.00
Architect III	\$140.00	\$145.00	\$150.00
Architectural Historian	\$119.00	\$123.00	\$127.00
CADD Technician I	\$88.00	\$91.00	\$94.00
CADD Technician II	\$93.00	\$96.00	\$100.00
CADD Technician III	\$109.00	\$113.00	\$117.00
CADD Technician IV	\$129.00	\$134.00	\$139.00
Engineer I (EIT)	\$104.00	\$108.00	\$112.00
Engineer II (EIT)	\$120.00	\$125.00	\$130.00
Engineer III (WGM/PM)	\$150.00	\$155.00	\$160.00
Engineer IV (Sector Leader/ Project Manager)	\$195.00	\$200.00	\$205.00
Engineer V – (Project Manager)	\$210.00	\$215.00	\$220.00
Engineer VI – (Project Manager)	\$240.00	\$245.00	\$250.00
Engineering Technician I	\$87.00	\$90.00	\$93.00
Engineering Technician II	\$104.00	\$108.00	\$112.00
Engineering Technician III	\$124.00	\$128.00	\$132.00
Engineering Technician IV	\$160.00	\$166.00	\$170.00
Environmental Planner I	\$85.00	\$88.00	\$91.00
Environmental Planner II	\$98.00	\$101.00	\$104.00
Environmental Planner III	\$119.00	\$123.00	\$127.00
Environmental Planner IV	\$155.00	\$160.00	\$165.00
Environmental Planner V	\$195.00	\$200.00	\$205.00
Environmental Technician	\$78.00	\$81.00	\$84.00
GIS Analyst I	\$83.00	\$86.00	\$89.00
GIS Analyst II	\$98.00	\$101.00	\$104.00
GIS Analyst III	\$124.00	\$128.00	\$132.00
GIS Analyst IV	\$171.00	\$177.00	\$183.00
GIS Technician	\$72.00	\$75.00	\$78.00
Government Relations Specialist I	\$83.00	\$86.00	\$89.00
Government Relations Specialist II	\$106.00	\$110.00	\$114.00

KLJ STANDARD RATES – CITY OF FARGO			
KLJ Staff Type	2020	2021	2022
Government Relations Manager	\$120.00	\$124.00	\$132.00
Hydrogeologist	\$210.00	\$215.00	\$225.00
Landscape Architect I	\$85.00	\$88.00	\$94.00
Landscape Architect II	\$110.00	\$114.00	\$122.00
Landscape Architect III	\$130.00	\$135.00	\$145.00
Landscape Architect IV	\$145.00	\$150.00	\$160.00
Planner I	\$98.00	\$101.00	\$109.00
Planner II	\$142.00	\$147.00	\$156.00
Planner III	\$190.00	\$195.00	\$205.00
Planner IV	\$210.00	\$215.00	\$225.00
Project Assistant I	\$65.00	\$67.00	\$71.00
Project Assistant II	\$80.00	\$83.00	\$89.00
Project Assistant III	\$90.00	\$93.00	\$99.00
Project Assistant IV	\$105.00	\$109.00	\$117.00
Project Control Specialist I	\$132.00	\$137.00	\$147.00
Project Control Specialist II	\$146.00	\$151.00	\$160.00
Project Manager	\$200.00	\$205.00	\$215.00
Senior Project Manager	\$230.00	\$235.00	\$245.00
Right-of-Way Agent I	\$85.00	\$88.00	\$94.00
Right-of-Way Agent II	\$110.00	\$114.00	\$122.00
Right-of-Way Agent III	\$125.00	\$129.00	\$139.00
Right-of-Way Agent IV	\$154.00	\$159.00	\$170.00
Safety Representative I	\$100.00	\$104.00	\$112.00
Safety Representative II	\$120.00	\$124.00	\$132.00
Safety Representative III	\$160.00	\$166.00	\$176.00
Structural Engineer I	\$95.00	\$98.00	\$104.00
Structural Engineer II	\$105.00	\$109.00	\$117.00
Structural Engineer III	\$140.00	\$145.00	\$155.00
Structural Engineer IV	\$170.00	\$176.00	\$187.00
Structural Engineer V	\$205.00	\$210.00	\$220.00
Survey Technician	\$70.00	\$72.00	\$78.00
Surveyor I	\$85.00	\$88.00	\$94.00
Surveyor II	\$100.00	\$88.00	\$112.00
Surveyor III	\$115.00	\$119.00	\$127.00
Surveyor IV	\$150.00	\$155.00	\$165.00
Surveyor V	\$150.00	\$210.00	\$220.00
Visual Designer	\$105.00	\$109.00	\$117.00

FOSS STANDARD RATES – CITY OF FARGO			
Foss Staff Type	2019-2020	2020-2021	2021-2022
Principal-In-Charge/Project Manager	\$175.00	\$180.00	\$185.00
Senior Project Architect	\$125.00	\$128.00	\$132.00
Project Architect	\$95.00	\$98.00	\$100.00
Intern/Drafter	\$75.00	\$77.00	\$80.00
Interior Designer	\$105.00	\$108.00	\$112.00
Cost Estimator/Specifier	\$145.00	\$150.00	\$154.00
Construction Inspector/Construction Manager	\$100.00	\$103.00	\$106.00
Clerical	\$80.00	\$82.00	\$85.00

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

D1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.
- B. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, by the RPR, supervise, direct, or have control over Contractor's work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Paragraph A1.05 of Exhibit A as incorporated in the Task Order are applicable.
- C. The duties and responsibilities of the RPR are limited to those of Engineer in the Agreement with the Owner and in the Contract Documents, and are further limited and described as follows:
 1. *General:* RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
 - RPR's dealings in matters pertaining to a Contractor's work in progress shall in general be with Engineer and Contractor.
 - RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor.
 - RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by a Contractor and consult with Engineer concerning acceptability.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, and assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Specific Project Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Specific Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over a Specific Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Specific Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- d. Maintain records for use in preparing project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Specific Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed change orders, work change directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system startup reports.

- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:*

- a. Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:*

- a. During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by a Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in visits to the Project to assist in determining Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work. (See Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of a Contractor, subcontractors, suppliers, or a Contractor's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Contractor's work.
5. Advise on, issue directions regarding, or assume control over security safety practices, precautions and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy a Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Notice of Acceptability of Work

PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTNE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER:

To:

OWNER

And To:

CONTRACTOR

From:

ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth on the reverse side hereof.

By: _____

Title: _____

Dated: _____

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of Engineer.
3. Said Notice is given as to the best of Engineer's knowledge, information, and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referenced on the reverse hereof, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under Engineer's Agreement with Owner and the Construction Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT G**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.04 Insurance

- A. The limits of liability for the insurance required by Paragraphs 6.04.A and 6.04.B of the Agreement are provided on the attached certificate(s) of insurance:

CERTIFICATE OF INSURANCE

PRODUCER	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHT UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.								
	COMPANIES AFFORDING COVERAGE								
	COMPANY A LETTER								
	COMPANY B LETTER								
INSURED	COMPANY C LETTER								
	COMPANY D LETTER								
	COMPANY E LETTER								
COVERAGES THIS IS TO CERTIFY THAT POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAME ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSION, AND CONDITON OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.									
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATIO N	LIMITS				
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIM MADE <input type="checkbox"/> OCCURRENCE <input type="checkbox"/> OWNER'S & CONTRACTORS PROTECTIVE <input type="checkbox"/> <input type="checkbox"/>				GENERAL AGGREGATE \$ PRODUCTS-COMP/OPS AGGREGATE \$ PERSONAL & ADVERTISING INJURY \$ EACH OCCURENCE \$ FIRE DAMAGE (ANY ONE FIRE) \$ MED.EXPENSE (ANY ONE PERSON) \$				
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/>				CSL \$ BODILY INJURY (PER PERSON) \$ BODILY INJURY (PER ACCIDENT) \$ PROPERTY DAMAGE \$				
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">EACH OCCURENCE</td> <td style="width: 50%; text-align: center;">AGGREGATE</td> </tr> <tr> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> </table> STATUTORY	EACH OCCURENCE	AGGREGATE	\$	\$
EACH OCCURENCE	AGGREGATE								
\$	\$								
	WORKERS' COMPENSATION AND EMPLOYER LIABILITY				\$ (EACH ACCIDENT) \$ (DISEASE-POLICY LIMIT) \$ (DISEASE-EACH EMPLOYEE)				
A	OTHER PROFESSIONAL LIABILITY <input checked="" type="checkbox"/> ARCHITECTS AND ENGINEERS <input type="checkbox"/>				\$2000000 LIMIT EACH CLAIM AND \$2000000 IN THE AGGREGATE.				
DESCRIPTION OF OPERATIONS/LOCATION/VEHICLES/SPECIAL ITEMS									
CERTIFICATE HOLDER City of Fargo 200 3rd Street N. Fargo, ND 58102-4809				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.					
ACORD 25-S (1/95)				AUTHORIZED REPRESENTATIVE					



**CERTIFICATE OF
PREMIUM PAYMENT**
WORKFORCE SAFETY & INSURANCE
EMPLOYER SERVICES
SFN 4920 (04/2007)

1600 EAST CENTURY AVENUE, SUITE 1
PO BOX 5585
BISMARCK ND 58506-5585
Telephone 1-800-777-5033
Toll Free Fax 1-888-786-8695
TTY (hearing impaired) 1-800-366-6888
Fraud and Safety Hotline 1-800-243-3331
www.WorkforceSafety.com

Employer Account Number:

Issued Date:

Expiration Date:

CERTIFICATE OF PREMIUM PAYMENT

This is to certify that North Dakota Workers Compensation coverage is effective for the employer named on this certificate. Employees of the named employer are entitled to apply for the rights and benefits of Workforce Safety and Insurance(WSI).

Coverage under this certificate extends to North Dakota based employers for their North Dakota exposure. Limited coverage extends beyond the physical boundaries of North Dakota. Contact the Policyholder Services Department of WSI at 1-800-777-5033 for further information on coverage issues or to inquire into the status of the holder of this certificate.

North Dakota Century Code § 65-04-04 requires that each employer post this Certificate of Premium Payment in a conspicuous manner at the workplace. A penalty of \$250 may apply for failure to comply with this requirement.

A Certificate of Premium Payment may be revoked for failure to make required premium payments.

Class	Classification Description
5603 5603X 8805	Consulting Engineers Optional Coverage Clerical Office Employees

This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019 .

Dispute Resolution

Paragraph 6.08 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Task Order, or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process should be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Limitations of Liability

16.10.A *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to a Specific Project or Task Order, or this Agreement, from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Engineer or Engineer's officers, directors, partners, agents, employees, or Consultants, or any of them (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal).
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages.* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of paragraph 6.10 the Engineer and Engineer's officers, directors, members, partners, agents, employees, or Consultants, shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to a Specific Project, Task Order, or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
3. *Agreement Not to Claim for Cost of Certain Change Orders:* Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer for each Task Order under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees not to sue or to make any claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders on a Specific Project.
4. *Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself),

including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

AMENDMENT TO TAKS ORDER

Amendment to task order No. _____

1. Background Data:

- a. Effective Date of Task Order Agreement:
- b. Owner:
- c. Engineer:
- d. Specific Project:

2. Nature of Amendment

- 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
- Modifications to other terms and conditions of the Task Order

3. Description of Modifications

Attachment 1, "Modifications"
[List other Attachments, if any]

Owner and Engineer hereby agree to modify the above-referenced Task Order 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 _____.

OWNER:

ENGINEER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date
Signed: _____

Date
Signed: _____

This is **Attachment 1**, consisting of 1 page, to
Amendment No _____, dated _____:
Task Order No. _____.

Modifications

[Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Task Order, the Agreement, or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

1. Engineer shall perform the following Additional Services:

2. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows:

3. The responsibilities of Owner are modified as follows:

4. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

5. The schedule for rendering services is modified as follows:

6. Other portions of the Task Order (including previous amendments, if any) are modified as follows:

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective on the 26th Day of August, 2019 ("Effective Date") between the City of Fargo, North Dakota, a municipal corporation ("Owner"), and Houston Engineering Inc. 1401 21st Avenue N. Fargo, ND 58102 ("Engineer").

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer's services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided. Basic and Additional Services that may be included in a Task Order are set forth in Exhibit A, "Engineer's Services."
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.02 *Task Order Procedure*

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein, in Exhibit B, "Owner's Responsibilities," and in each Task Order.

- B. Owner shall compensate Engineer as set forth in each Task Order, pursuant to the applicable terms of Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 - TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for 1 year(s) from the Effective Date of the Agreement.
- B. The term of this agreement may be extended for one-year periods for a maximum of two (2) additional years, if approved and accepted by both the Engineer and Owner.

3.02 *Times for Rendering Services*

- A. The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, Engineer will perform services and provide deliverables within a reasonable time.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast tracking), then Owner and Engineer shall, prior to commencement of final design services, develop a schedule for performance of Engineer's remaining services in order to sequence and coordinate properly such services as are applicable to the work under such separate Construction Contracts. This schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 - INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
1. the compounded amount due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes sales or use taxes, fees, or charges on Engineer's services or compensation under the Task Order, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.

ARTICLE 5 - OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit: Not Used.*

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer shall serve as Owner's prime professional under each Task Order. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:* Engineer and Owner shall comply with applicable Laws and Regulations.
 - 1. Prior to the Effective Date of each Task Order, Owner shall provide to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under such Task Order. Engineer shall comply with such policies and procedures pursuant to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 2. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of such Task Order. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not

to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.

- G. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (FJCDC C-700, 2007 Edition) unless both parties mutually agree in a Task Order to use other General Conditions.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification of the Contract Documents other than those made by Engineer.
- L. While at a Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design without Construction Phase Services*

- A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been itemized and expressly required of Engineer in the authorizing Task Order. With the exception of such expressly required services, Engineer shall have no design, shop drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be in any way connected to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to a Specific Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Specific Project by Owner. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or its Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies or adapts the Documents for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. At all times when any Task Order is under performance, Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer which is applicable to a Specific Project.
- B. At all times when any Task Order is under performance, Owner shall procure and maintain insurance as set forth in Exhibit G.

- C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractors
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services under any Task Order and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to a Specific Project shall contain provisions to the effect that Engineer's and Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.05 *Suspension and Termination*

A. *Suspension*

- 1. *By Owner:* Owner may suspend a Task Order upon seven days written notice to Engineer.
- 2. *By Engineer:* If Engineer's services are substantially delayed through no fault of Engineer, then Engineer may, after giving seven days written notice to Owner, suspend services under a Task Order.

B. *Termination:* The obligation to provide further services under this Agreement, or under a Task Order, may be terminated:

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement or any Task Order through no fault of the terminating party.
 - b. By Engineer:

- 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience,
 - a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law:*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Specific Project is located.

6.07 *Successors, Assigns, and Beneficiaries:*

- A. Owner and Engineer each is hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. The Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in any Contract Documents prepared for any Specific Project under this Agreement.

6.08 *Dispute Resolution:*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site:*

- A. With respect to each Task Order, Specific Project, and Site:
 - 1. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
 - 2. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

3. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
4. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Specific Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating this Agreement for cause on 30 days' notice.
6. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable costs, losses, and damages arising out of or relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (i) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and

(ii) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to a Specific Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of each particular Specific Project.
- F. *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement:* Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 - DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following provisions:
1. *Addenda*: Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
 2. *Additional Services*: Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order which are not included in Basic Services for that Task Order.
 3. *Agreement*: This "Agreement between Owner and Engineer for Professional Services-Task Order Edition" including those Exhibits listed in Article 8 and any duly executed Task Order.
 4. *Application for Payment*: The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 5. *Asbestos*: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 6. *Basic Services*: Specified services to be performed for or furnished to Owner by Engineer in accordance with a Task Order.
 7. *Bid*: The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 8. *Bidding Documents*: The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
 9. *Change Order*: A document recommended by Engineer, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.
 10. *Constituent of Concern*: Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et

seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

11. *Construction Agreement*: The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.
12. *Construction Contract*: The entire and integrated written agreement between Owner and Contractor concerning the Work.
13. *Construction Cost*: The cost to Owner of those portions of an entire Specific Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
14. *Consultants*: Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Consultants.
15. *Contract Documents*: Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
16. *Contract Price*: The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
17. *Contract Times*: The numbers of days or the dates stated in a Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
18. *Contractor*: The entity or individual with which Owner has entered into the Construction Contract.
19. *Correction Period*: The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
20. *Defective*: An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval

referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.

21. *Documents*: Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
22. *Drawings*: That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by a Contractor. Shop Drawings are not Drawings as so defined.
23. *Effective Date of the Construction Agreement*: The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
24. *Effective Date of the Agreement*: The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
25. *Effective Date of the Task Order*: The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
26. *Engineer*: The individual or entity named as such in this Agreement.
27. *Field Order*: A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
28. *General Conditions*: That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.
29. *Hazardous Waste*: The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
30. *Laws and Regulations; Laws or Regulations*: Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
31. *Owner*: The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any construction contracts concerning the Project.
32. *PCBs*: Polychlorinated biphenyls.
33. *Petroleum*: Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds

per square inch absolute), such as fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*: The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
35. *Radioactive Materials*: Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
36. *Record Drawings*: The Drawings as issued for construction on which Engineer, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Engineer considers significant based on record documents furnished by Contractor to Engineer and which were annotated by Contractor to show changes made during construction.
37. *Reimbursable Expenses*: The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for a Specific Project for which Owner shall pay Engineer as indicated in Exhibit C.
38. *Resident Project Representative*: The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR agreed to by Owner. The duties and responsibilities of the RPR will be as set forth in each Task Order.
39. *Samples*: Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
40. *Shop Drawings*: All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work.
41. *Site*: Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.
42. *Specifications*: That part of the Contract Documents prepared by Engineer consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.
43. *Specific Project*: An undertaking of Owner as set forth in a Task Order.
44. *Subcontractor*: An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at a Site.
45. *Substantial Completion*: The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the

Contract Documents, so that the Work can be utilized for the purposes for which it is intended.

46. *Supplementary Conditions*: That part of the Contract Documents which amends or supplements the General Conditions.
47. *Supplier*: A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
48. *Task Order*: A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
49. *Total Project Costs*: The sum of the Construction Cost, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
50. *Work*: The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by those Contract Documents.
51. *Work Change Directive*: A written directive to a Contractor signed by Owner upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

8.01 Exhibits

Attachment 1, Task Order Form (Template)

Exhibit A, Engineer's Services

Exhibit B, Owner's Responsibilities

Exhibit C, Payments to Engineer for Services and Reimbursable Expenses

Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative

Exhibit E, Notice of Acceptability of Work

~~Exhibit F, Construction Cost Limit~~ – Not Included.

Exhibit G, Insurance

Exhibit H, Dispute Resolution

Exhibit I, Limitations on Liability

~~Exhibit J, Special Provisions~~ – Not Included.

Exhibit K, Amendment to Task Order (Form)

8.02 *Total Agreement*

A. This Agreement (together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format provided in Exhibit K to this Agreement, "Amendment to Task Order."

8.03 *Designated Representatives*

A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of each respective party. Each Task Order shall likewise designate representatives of the two parties.

8.04 *Engineer's Certifications*

A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:

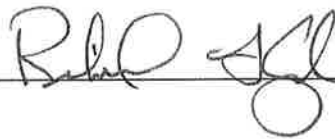
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER:

ENGINEER:

By: _____

By:  _____

Name: _____
Dr. Tim Mahoney

Name: _____
Richard Gunderson, P.E.

Title: _____
Mayor

Title: _____
Office Manager / Principal-in-Charge

Date
Signed: _____

Engineer License or
Firm's Certificate No. _____
PE-4032

Attest: _____
Steve Sprague

State of: _____
North Dakota

Title: _____
City Auditor

Date
Signed: _____

Date
Signed: _____
AUG 21, 2019

Address for giving notices:

Address for giving notices:

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

Title: _____

Phone
Number: _____

Email
Address: _____

DESIGNATED REPRESENTATIVE
(Paragraph 8.03.A):

_____ Cody Eilertson _____

Title: Director of Operations / Project Manager

Phone
Number: 701-237-5065

Email
Address: ceilertson@houstoneng.com

This is Task Order
No. 1, consisting of 3
pages.

Public Works Consulting Services Task Order No. 1

In accordance with Paragraph 1.01 of the Agreement between Owner and Engineer for Professional Services, dated August 26, 2019 ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

A. Title: _____

B. Description: _____

2. Services of Engineer

[Incorporate applicable text or paragraphs from Exhibit A, Schedule of Engineer's Services -- either by Reference or by insertion here. Incorporate Exhibits D and/or F if applicable -- either by reference or by insertion here. Supplement or modify as needed for this specific Task Order.]

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 and in Exhibit B, subject to the following:

4. Times for Rendering Services

Phase	Completion Date
_____	_____
_____	_____
_____	_____

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered as follow:

<i>Category of Services</i>	<i>Compensation Method</i>	<i>Lump Sum, or Estimate of Compensation for Services</i>
Basic Services: Study and Report Phase	TBD	
Basic Services: Preliminary Design Phase	TBD	
Basic Services: Final Design Phase	TBD	
Basic Services: Bidding or Negotiating Phase	TBD	
Basic Services: Construction Phase	TBD	
Basic Services: Post-Construction Phase	TBD	
Additional Services	TBD	

B. The terms of payment are set forth in Article 4 of the Agreement and in Exhibit C.

1. Consultants:

None

2. Other Modifications to Agreement:

None at the time.

3. Attachments:

Attachment 1 to Exhibit A-1 and Exhibit B-1

4. Documents Incorporated By Reference:

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is _____, _____.

OWNER:

ENGINEER:

By: _____

By: _____

Name: Ben Dow

Name: _____

Title: Director of Operations

Title: _____

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

DESIGNATED REPRESENTATIVE FOR
TASK ORDER:

Name: Ben Dow

Name: _____

Title: Public Works Director of Operations

Title: _____

Address: 402 23rd Street N.
Fargo, ND 58102

Address: _____

Email: bdow@cityoffargo.com

Email: _____

Address: _____

Address: _____

Phone
Number: 701-241-1463

Phone
Number: _____

Fax: 701-241-8100

Fax: _____

This is **EXHIBIT A**, consisting of 10 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Engineer's Services

PART 1 – BASIC SERVICES

A1.01 Study and Report Phase

A. The Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for a Specific Project and available data.
2. Advise Owner as to the necessity of Owner's providing data or services of the types described in Exhibit B, and, if requested, assist Owner in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of a Specific Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.
4. Identify and evaluate the number of alternate solutions available to Owner for a Specific Project, and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for a Specific Project.
5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. The Report will be accompanied by Engineer's opinion of Total Project Costs for each solution which is so recommended for a Specific Project with each component separately itemized, including the following, which will be separately itemized:
 - a. opinion of probable Construction Cost,
 - b. allowances for contingencies and for the estimated total costs of design, professional, and related services provided by Engineer and,
 - c. on the basis of information furnished by Owner, allowances for other items and services included within the definition of Total Project Costs.
6. Furnish the number of review copies of the Report to Owner within the time period set forth in the Task Order and review it with Owner.
7. Revise the Report in response to Owner's and other parties' comments, as appropriate, and furnish the number of final copies of the revised Report to the Owner within the time period set forth in the Task Order.

- B. Engineer's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to Owner.

PART 2 - DESIGN ACTIVITIES

A1.02 Preliminary Design Phase

- A. Engineer shall on the basis of the above acceptance, selection, and authorization:
 - 1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of a Specific Project.
 - 2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
 - 3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 - 4. Based on the information contained in the Preliminary Design Phase documents, submit a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, which will be itemized as provided in the Study and Report Phase Services section above.
 - 5. Furnish the Preliminary Design Phase documents to and review them with Owner.
 - 6. Submit to Owner the number of final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within the time period set forth in the Task Order.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to Owner.

A1.03 Final Design Phase

- A. Engineer shall:
 - 1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Where appropriate, prepare Specifications in general conformance with the format of the Construction Specifications Institute.
 - 2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of a Specific Project and assist Owner in consultations with appropriate authorities.
 - 3. Provide Owner a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, itemized as provided in the Study and Report Phase Services section above.

4. Prepare and furnish Bidding Documents for review and approval by Owner, its legal counsel, and other advisors, as appropriate, and assist Owner in the preparation of other related documents.
 5. Submit the number of final copies of the Bidding Documents and a current opinion of probable Construction Cost to Owner within the time period set forth in the Task Order.
 6. Prepare for, coordinate with, participate in, and respond to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and perform or furnish services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the required submittals have been delivered to Owner.

PART 3 - BIDDING AND NEGOTIATION

A1.04 Bidding or Negotiating Phase

- A. The Engineer shall:
1. Assist Owner in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.
 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 3. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 4. Prepare additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
 5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions below regarding additional compensation for an excessive number of such substitute or "or equal" submittals.
 6. Attend the bid opening, prepare bid tabulation sheets, and assist Owner in evaluating bids or proposals and in assembling and awarding contracts for the Work.
 7. Assist Owner with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
 8. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:

- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

PART 4 - CONSTRUCTION AND COMMISSIONING

A1.05 Construction Phase

- A. Engineer shall provide the following services:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of Engineer as assigned in said General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, who shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site of the Specific Project to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in the Task Order and in Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative." The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Paragraph B2.01.0.
4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction:* In connection with observations of Work in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Engineer in the Task Order and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations,

Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site of the Specific Project, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.
8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

12. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or equal" materials and equipment proposed by Contractor, but subject to any provisions below regarding additional compensation for evaluation of such substitute or "or equal" submittals.
13. *Inspections and Tests*: Require such special inspections or tests of the Work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor*: Render formal written decisions on all duly submitted issues relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance or progress of the Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief: the Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of Engineer contained in Paragraph A1.05.A.15.a are expressly subject to the limitations set forth in Paragraph A1.05.A.15.b and other express or general limitations in this Agreement and elsewhere.
 - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of the Work as it is performed and furnished have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of the Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or

programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents*: Receive, review and transmit to Owner maintenance and operating instructions, schedules guarantees, bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided above, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided above.
17. *Substantial Completion*: Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to determine if the Work is Substantially Complete. If after considering any objections of Owner, Engineer considers the Work Substantially Complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
18. *Final Notice of Acceptability of the Work*: Conduct a final payment inspection to determine if the completed Specific Project of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
19. *Defective Work*: Together with Owner, visit the Site to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if any.
20. *Correction Period*: Together with Owner or Owner's representative, visit the Site within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

- B. *Duration of Construction Phase*: The Construction Phase will commence with the execution of the first Construction Agreement for a Specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If a Specific Project involves more than one prime contract as indicated in the Task Order, Construction Phase services may be rendered at different times in respect to the separate contracts.

A1.06 *Commissioning Phase*

A. Engineer shall:

1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.

2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
3. Prepare operation and maintenance manuals.
4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

PART 5 - OTHER SERVICES

A2.01 *For each Task Order, consider the inclusion of the following possible services:*

A. Engineer shall:

1. Prepare applications and supporting documents for private or governmental grants, loans or advances in connection with a Specific Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for a Specific Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of a Specific Project.
2. Provide services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner.
3. Provide renderings or models for Owner's use.
4. Undertake investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assist in obtaining financing for a Specific Project; evaluate processes available for licensing, and assist Owner in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by Owner.
5. In addition to baselines and benchmarks, provide more extensive construction surveys and staking to enable a Contractor to perform its work and any type of property surveys or related engineering services needed for the transfer of interests in real property; and provide other special field surveys.
6. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
7. Prepare to serve or serve as a consultant or witness for Owner in any litigation, arbitration or other dispute resolution process related to a Specific Project.

PART6 - ADDITIONAL SERVICES REQUIRING AMENDMENT TO TASK ORDER

A2.02 Additional Services Requiring an Amendment to Task Order

- A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. The Task Order shall be amended to reflect the inclusion of such Additional Services. Services resulting from significant changes in the scope, extent, or character of the portions of a Specific Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer's control.
1. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A.1.01.A.4.
 2. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 3. Providing Construction Phase services beyond the Contract Times set forth in the Task Order.
 4. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner, subject to the terms of Paragraph 6.01.F of the Agreement.
 5. Overtime work requiring higher than regular rates.
 6. Other services proposed to be performed or furnished by Engineer not otherwise provided for in this Agreement.
- B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. The Task Order shall be amended to reflect the inclusion of such Additional Services.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make the compensation commensurate with the extent of the Additional Services rendered.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of any Construction Contract in evaluating and determining the acceptability of a proposed substitution, whether approved or not; evaluation and determination of an excessive number of proposed "or equals" or substitutions whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.

4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
5. Services in connection with any partial utilization of any part of the Work on a Specific Project by Owner prior to Substantial Completion.
6. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
7. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program enacted or provided to Engineer subsequent to the Effect Date of the Task Order that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.
8. Evaluation of an unreasonable claim or an excessive number of claims or requests for information submitted by a Contractor or others in connection with the Work on a Specific Project.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Owner's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, or investigation at or adjacent to the Site of the Specific Project.
- C. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, furnish or otherwise make available such additional Specific Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions,
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to a Specific Project, the Site and adjacent areas.
 - 6. Data or consultations as required for a Specific Project but not otherwise identified in the Agreement, the Exhibits thereto, or the Task Order.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in the Task Order as required.

- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Task Order.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer for the Specific Project (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Specific Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Specific Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Specific Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Specific Project as Owner requires, a Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose a Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Specific Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling and legal advice) for Owner so that Engineer may assist the Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. If more than one prime contract is to be awarded for the Work of the Specific Project designed or specified by Engineer, designate in the Task Order a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors. Define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Site.

- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work for the Specific Project with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by any independent testing laboratory, if Engineer is required to review such documents.
- R. Inform Engineer of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services:

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Payments to Engineer for Service and Reimbursable Expenses

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 - OWNER'S RESPONSIBILITIES

C2.01 Method of Payment

A. Owner shall pay Engineer for services in accordance with one or more of the following methods as identified in each Task Order:

1. Method A: Lump Sum
2. Method B: Standard Hourly Rates

C2.02 Explanation of Methods

A. Method A - Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

B. Method B - Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendix I.

4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and Consultants' charges, if any.
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of January 1st) to reflect equitable changes in the compensation payable to Engineer.

C2.03 Reimbursable Expenses

Costs incurred by Engineer in the performance of the Task Order in the following categories constitute Reimbursable Expenses:

- A. Transportation and subsistence incidental thereto; advertisements, postage, and shipping costs; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and their assistants; toll telephone calls, faxes, and telegrams; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Specific Project-related items in addition to those required under Exhibit A. If authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment. Reimbursable expenses shall be paid at rates set forth in Appendix 1 to this Exhibit C which shall be adjusted annually (as of January 1st) to reflect equitable changes in the rates.
- B. The amounts payable to Engineer for Reimbursable Expenses will be the project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to a Specific Project, as listed in the Reimbursable Expenses Schedule provided as Appendix 1 for each Task Order.

C2.04 Serving as a Witness

- A. Unless compelled to testify by subpoena or other court order, in which case no compensation or payment shall be owed by Owner, the rate may be negotiated for services performed by Engineer's employees as an expert witness giving testimony in any litigation, arbitration, or other legal or administrative proceeding under Paragraph A.2.01.A.21. Compensation for Consultants for such services will be by reimbursement of Consultants' charges to Engineering for such services.

C2.05 Other Provisions Concerning Payment

- A. *Extended Contract Times.* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.

B. *Estimated Compensation Amounts*

1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

This is **Appendix 1** to **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Standard Hourly Rates and Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Standard Hourly Rates and Reimbursable Expenses are subject to review and adjustment per Exhibit C. Rates for reimbursable expenses will be provided with each respective Task Order.



HoustonEngineering Inc.

2019 FEE SCHEDULE

The following is a schedule of hourly rates and charges for engineering and surveying services offered by Houston Engineering, Inc. These rates are subject to a modest increase on January 1st of each year (typically no more than 5%).

Category	2019 Rates
Engineer I	\$121
Engineer II	134
Engineer III	151
Project Engineer	168
Project Manager	184
Sr Project Manager	202
Scientist I	\$121
Scientist II	134
Scientist III	152
Project Mgr – Environmental	178
Sr Project Mgr – Environmental	202
Hydrogeologist I	\$121
Hydrogeologist II	134
Hydrogeologist III	152
Sr Hydrogeologist	190
Construction Engineer	\$139
Sr Construction Engineer	165
Land Surveyor I	\$121
Land Surveyor II	139
Land Surveyor III	153
Project Mgr – Land Surveying	165
Sr Project Manager – Land Surveying	184
Survey Crews:	
1-Person Crew (+ equipment)	\$147
2-Person Crew (+ equipment)	178
3-Person Crew (+ equipment)	222
4-Person Crew (+ equipment)	248
Landscape Architect	\$129
CAD Technician I	\$82
CAD Technician II	95
CAD Supervisor	108
Designer I	\$127
Designer II	136
Sr Designer	146
Engineering Specialist	155
Technician Intern (all areas)	\$82
Technician I	\$95
Technician II	108
Sr Technician	121

Category	2019 Rates
Right-of-Way Technician	\$110
Right-of-Way Specialist	184
GIS Analyst I	\$90
GIS Analyst II	105
GIS Analyst III	121
Sr GIS Analyst	139
Project Manager – GIS	152
Sr Project Manager – GIS	178
Software Engineer I	\$105
Software Engineer II	121
Software Engineer III	139
Sr Software Engineer	152
Computer Technician	\$146
Communications Specialist	\$82
Sr Communications Specialist	90
Administrative Assistant	\$77
Sr Administrative Assistant	82
Planner	\$133
Senior Planner	184
Legislative/Grant Specialist	\$171
Expert Witness	222
Drone Pilot	\$129
Drone Visual Observer	49

Chargeable Expenses	Rate
Subsistence	Actual Cost
Mileage-Vehicles:	
2-Wheel Drive	IRS Standard Rate
4-Wheel Drive	IRS Standard Rate + \$0.20/Mile
GPS Equipment	\$25/hour/unit
Robotic Total Station	\$40/hour
ATV/Snowmobile/Boat	\$15/hour
ATV with Tracks	\$30/hour
Hydrone RCV	\$50/hour
Small UAS	\$25/hour
Delivery, Postage, Printing	Actual Cost
Surveying Materials, Special Equipment, and other Materials required	Actual Cost
Subconsultants	Actual Cost + 10%

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Schedule of Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

D1.01 *Resident Project Representative*

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.
- B. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, by the RPR, supervise, direct, or have control over Contractor's work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Paragraph A1.05 of Exhibit A as incorporated in the Task Order are applicable.
- C. The duties and responsibilities of the RPR are limited to those of Engineer in the Agreement with the Owner and in the Contract Documents, and are further limited and described as follows:
 1. *General:* RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
 - RPR's dealings in matters pertaining to a Contractor's work in progress shall in general be with Engineer and Contractor.
 - RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor.
 - RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by a Contractor and consult with Engineer concerning acceptability.

3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, and assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Specific Project Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Specific Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.

9. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over a Specific Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Specific Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- d. Maintain records for use in preparing project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Specific Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed change orders, work change directives, and Field Orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system startup reports.

- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:*

- a. Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:*

- a. During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by a Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in visits to the Project to assist in determining Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work. (See Exhibit E).

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in this Agreement.
- 3. Undertake any of the responsibilities of a Contractor, subcontractors, suppliers, or a Contractor's superintendent.
- 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Contractor's work.
- 5. Advise on, issue directions regarding, or assume control over security safety practices, precautions and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy a Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Notice of Acceptability of Work

PROJECT:

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTNE DATE OF THE CONSTRUCTION AGREEMENT:

CONSTRUCTION CONTRACT DATE:

ENGINEER:

To:

OWNER

And To:

CONTRACTOR

From:

ENGINEER

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents and the terms and conditions set forth on the reverse side hereof.

By: _____

Title: _____

Dated: _____

(Reverse side of Notice)

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work ("Notice") on the front side of this sheet is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. Said Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. Said Notice reflects and is an expression of the professional judgment of Engineer.
3. Said Notice is given as to the best of Engineer's knowledge, information, and belief as of the date hereof.
4. Said Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referenced on the reverse hereof, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under Engineer's Agreement with Owner and the Construction Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referenced on the reverse hereof nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT G**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Insurance

Paragraph 6.04 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.04 *Insurance*

- A. The limits of liability for the insurance required by Paragraphs 6.04.A and 6.04.B of the Agreement are provided on the attached certificate(s) of insurance:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/11/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Choice Financial Insurance 3050 Sienna Dr S Ste 100 Fargo, ND 58104	CONTACT NAME: Joan Kjoaas PHONE (A/C, No, Ext): (701) 356-9760 FAX (A/C, No): (701) 356-6461 E-MAIL ADDRESS: j.kjoaas@choicefinancialgroup.com
	INSURER(S) AFFORDING COVERAGE
INSURED Houston Engineering, Inc. 1401 21st Ave N Fargo, ND 58102	INSURER A : Travelers Indemnity Company NAIC # 25658
	INSURER B : Travelers Casualty & Surety Company of America 31194
	INSURER C : Architects and Engineers Insurance Company 44148
	INSURER D :
	INSURER E :
	INSURER F :

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			680-2H597969	09/17/2018	09/17/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			BA-5D261569	09/17/2018	09/17/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			CUP-5D26717A	09/17/2018	09/17/2019	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	UB-5J58339A	09/17/2018	09/17/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Cyber Liability			105803474	09/17/2018	09/17/2019	2,000,000
C	Professional Liab			AEICPG17	09/17/2017	09/17/2020	Limit each claim 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER **CANCELLATION**

City of Fargo 200 N. 3rd Street Fargo, ND 58102	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer** for **Professional Services** dated August 26th, 2019.

Dispute Resolution

Paragraph 6.08 of the Agreement is supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Task Order, or the breach thereof ("Disputes") to mediation. Owner and Engineer agree to participate in the mediation process in good faith. The process should be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT I**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

Limitations of Liability

16.10.A *Limitation of Engineer's Liability*

1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to a Specific Project or Task Order, or this Agreement, from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Engineer or Engineer's officers, directors, partners, agents, employees, or Consultants, or any of them (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal).
2. *Exclusion of Special, Incidental, Indirect, and Consequential Damages.* To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of paragraph 6.10 the Engineer and Engineer's officers, directors, members, partners, agents, employees, or Consultants, shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to a Specific Project, Task Order, or this Agreement, from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.
3. *Agreement Not to Claim for Cost of Certain Change Orders:* Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer for each Task Order under this Agreement ("Covered Change Orders"). Accordingly, Owner agrees not to sue or to make any claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders on a Specific Project.
4. *Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself),

including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 26th, 2019.

AMENDMENT TO TAKS ORDER

Amendment to task order No. _____

1. Background Data:

- a. Effective Date of Task Order Agreement:
- b. Owner:
- c. Engineer:
- d. Specific Project:

2. Nature of Amendment

- 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
- Modifications to other terms and conditions of the Task Order

3. Description of Modifications

Attachment 1, "Modifications"
[List other Attachments, if any]

Owner and Engineer hereby agree to modify the above-referenced Task Order 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 _____.

OWNER:

ENGINEER:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date
Signed: _____

Date
Signed: _____

This is **Attachment 1**, consisting of 1 page, to
Amendment No _____, dated _____,
Task Order No.____.

Modifications

[Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Task Order, the Agreement, or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

1. Engineer shall perform the following Additional Services:

2. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows:

3. The responsibilities of Owner are modified as follows:

4. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:

5. The schedule for rendering services is modified as follows:

6. Other portions of the Task Order (including previous amendments, if any) are modified as follows:

21

August 26, 2019

City of Fargo Commissioners
 224 N 4th Street
 Fargo, ND 58102

Dear Commissioners:

The City of Fargo provides transit services to North Dakota State University (NDSU) through a Joint Powers Agreement and an Agreement for Transit Services (U-Pass). These agreements are renewed annually and define the level and cost of the service.

The agreements for these services for 2019-2020 are attached for your consideration. Under the terms of these agreements the following:

3.1 Payments & Schedule:

Description	Payment Due	Amount
U-Pass	October 1, 2019	\$62,711.84
Circulator Service 2019-2020 Academic Year		\$731,287.82
Credits from 2018-2019 Academic Year		(\$10,524.74)
Total Circulator Service		\$720,763.08
*10 Payments August 2019 to May 2020		\$72,076.31

RECOMMENDED MOTION: Approval of the Joint Powers Agreement Amendment and the Agreement for Transit Services (U-Pass) with North Dakota State University for 2019-2020.

Sincerely,



Matthew G. Peterson
 Assistant Transit Director
 City of Fargo

/enc

**Amendment to
Joint Powers Agreement for Transit Support
Between
The City of Fargo, North Dakota
and
North Dakota State University**

This Amendment to Agreement (attachment A) is effective the 1st day of July, 2019, and is by and between the City of Fargo ("CITY") and the North Dakota State Board of Higher Education on behalf of North Dakota State University ("NDSU").

WHEREAS, CITY and NDSU entered into a Joint Powers Agreement for Transit Support dated July 1, 2019; and,

WHEREAS, Article 11 of said Joint Powers Agreement stated that the CITY and NDSU shall be authorized to adjust the financial terms of said agreement and the term of said agreement as they mutually agree in writing, from time to time; and,

WHEREAS, the CITY and NDSU wish to make such adjustments for the school year 2019-2020.

NOW, THEREFORE, it is mutually understood and agreed as follows:

A. Article 3, entitled "Payment" shall be amended to read as follows:

ARTICLE 3 – PAYMENT

3.1 NDSU will donate to the CITY \$720,763.08 over the term of this agreement.
Payments of \$72,076.31 will be made each month for 10 months, starting August, 2019.
Said monthly payments shall be made, in arrears, by the end of each month.

B. Article 6, entitled "Term of Agreement" shall be amended to read as follows:

ARTICLE 7 – TERM OF AGREEMENT

This Agreement shall become effective July 1, 2019 and shall remain in full-force and effect for one year unless terminated earlier as provided in the joint powers agreement (attachment A).

C. Article 11, entitled "Notices" shall be amended to read as follows:

ARTICLE 11 – NOTICES

All notices herein required and any communications with respect to this Agreement shall be effected upon the mailing thereof, and addressed as follows:

NDSU

Mr. Mike Ellingson
Director of Facilities Management
North Dakota State University
Box 6050
Fargo, ND 58105

City of Fargo


Ms. Julie Bommelman
Transit Director
Metro Area Transit Garage
650 23rd St. N.
Fargo, ND 58102

D. In all other respects, the Joint Powers Agreement for Transit Support shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective July 1, 2019.

North Dakota State University

City of Fargo



Mr. Bruce Bollinger
Vice President for Finance and Administration

Dr. Timothy J. Mahoney, Mayor

Date: 8/8/19

Date: _____

Attest: City Auditor Date

**Agreement for Transit Services
Between
The City of Fargo, North Dakota
and
North Dakota State University**

This Agreement, dated July 1, 2019, is by and between the City of Fargo (“CITY”) and North Dakota State University (“NDSU”).

WHEREAS, NDSU wishes to provide transit services for the benefit of students using the regular fixed route system serving the Fargo-Moorhead metropolitan area, and six circulator shuttle routes serving the NDSU campus and vicinity, and;

WHEREAS, The CITY, through its Transit Division, in partnership with the City of Moorhead, Minnesota, provides bus service within the Fargo-Moorhead metropolitan area, and;

WHEREAS, The CITY has the infrastructure, vehicles, staffing, funding, and operational capacity to provide these services to NDSU in accordance with the articles in this agreement.

NOW, THEREFORE, it is mutually understood and agreed as follows:

ARTICLE 1 – GENERAL PURPOSE

The purpose of this agreement is to provide public transportation opportunities for NDSU students while reducing traffic congestion in the City of Fargo. This Agreement will allow NDSU students, faculty and staff to ride any bus route within the Fargo-Moorhead Metropolitan Area Transit system free of charge in accordance with Article 3.1 below. Students, faculty and staff must swipe a current NDSU ID card when boarding any non-circulator route. In addition to use of the regular fixed route system, six circulator shuttle routes will be maintained to increase student, faculty and staff mobility in and around the NDSU campus.

ARTICLE 2 – SERVICE

- 2.1 Route: The CITY will maintain service on Route 13 which connects the NDSU campus to the Ground Transportation Center where connections are made to routes serving the Fargo-Moorhead area. The CITY will also maintain six circulator routes in and around the NDSU campus, to be funded in accordance with Article 2.2 below.
- 2.2 Service: The following six circulator shuttle routes will utilize a total of eight (8) vehicles and operate in and around the NDSU main and downtown campus. Each will operate on routes/schedules determined by the CITY. Circulator shuttle routes will operate on days which NDSU classes are in session, the day prior to NDSU class starting each semester, and during NDSU finals week of each semester, except on State Holidays. Circulator shuttle routes are listed in article 3.2 below with the total operating hours assigned to each route per day. NDSU will have 65.01 operating hours each day NDSU classes are in session, the day prior to NDSU class starting each semester, and during NDSU finals week of each semester, except on State Holidays.

ARTICLE 3 – PAYMENT

3.1 **Bison Roam Free U-Pass Program:** All enrolled NDSU students regardless of full or part-time status, class standing, or location of residence shall be authorized to ride any fixed route within the Fargo-Moorhead Metropolitan Area Transit system free of charge. This service is referred to as the “Bison Roam Free U-Pass Program”, or simply as “U-Pass.” To be eligible for participation, students must swipe a current NDSU ID at the time of boarding. In exchange, NDSU will pay the CITY an annual amount of \$62,711.84. Payment is due by September 30, 2019.

The U-Pass cost is calculated by taking the total percent of NDSU student, faculty and staff ridership from all Fargo non-circulator routes at fifteen percent (15%) of the previous year’s operating costs. The formula below shows the calculation for the previous year.

FTA expectation is 15% farebox recovery. 15% of Operating Expenses = 15% Farebox Recovery * % NDSU Non-Circulator Ridership = U-Pass Cost includes NDSU Students, Faculty and Staff.

U-Pass Cost	2018 Operating Expenses (Fixed)	15% Farebox Recovery	% NDSU Non-Circulator Ridership	Total
	\$5,844,956.93	\$876,743.44	7.15%	\$62,711.84

3.2 **Circulator Costs:**

July 1, 2019 to December 31, 2019					
Route	Daily Revenue Hours	Academic Operating Days	Annual Operating Hours	Rate	Cost
Route 31	10.50	80	840		
Route 32E	10.67	80	854		
Route 32W	3.00	80	240		
Route 33	28.20	80	2,256		
Route 34	8.91	80	713		
TapRide	3.5	80	280		
Totals			5,182.40	\$69.03	\$357,741.07

January 1, 2020 to June 30, 2020					
Route	Daily Revenue Hours	Academic Operating Days	Annual Operating Hours	Rate	Cost
Route 31	10.50	81	851		
Route 32E	10.67	81	864		
Route 32W	3.00	81	243		
Route 33	28.20	81	2,284		
Route 34	8.91	81	722		
TapRide	3.5	81	284		
Totals			5,247.18	\$71.19	\$373,546.74

Vehicle advertising is included in the hourly operating costs for NDSU routes. For every 1,000 annual operating hours, NDSU receives one (1) vehicle for advertising on both the interior and exterior of the vehicle. NDSU is allowed a maximum of 10 vehicles at the current rate. The City will handle installation and removal of all wraps. The City will have sole discretion on which vehicles the wraps are placed.

3.3 Credits:

In the event any revenue hours are canceled by either NDSU or the City of Fargo, a credit of the total number of hours canceled at the current rate per hour will be credited in the following years cost spreadsheet. Hours credited for the 2018-2019 academic year for this agreement are listed below.

NDSU 2019 Closings (Missed Service due to weather)	Hours	Rate	Total
1/24/19 - Late Start	12.20	\$66.26	\$808.37
1/29/19 - Closed at 1815	2.00	\$66.26	\$132.52
1/30/19 - Storm Closure	64.93	\$66.26	\$4,302.26
1/31/19 - Open at 1015	8.96	\$66.26	\$593.69
4/11/19 - Closed at 1615	5.82	\$66.26	\$385.63
4/12/19 - Closed	64.93	\$66.26	\$4,302.26
			\$10,524.74

3.4 Payments & Schedule:

Description	Payment Due	Amount
U-Pass	October 1, 2019	\$62,711.84
Circulator Service 2019-2020 Academic Year		\$731,287.82
Credits from 2018-2019 Academic Year		(\$10,524.74)
Total Circulator Service		\$720,763.08
*10 Payments August 2019 to May 2020		\$72,076.31

ARTICLE 4 – ROUTE/SERVICE ADJUSTMENTS

The CITY will closely monitor NDSU student ridership statistics, patterns, and other information to create quarterly reports for NDSU. NDSU will consult with students on the usefulness of the transit service, and provide this information to the CITY. Based on this information, the parties may jointly make adjustments to the routes and transit schedule. Both parties acknowledge that any such adjustments must comply with all applicable federal, state and local rules and regulations regarding transit operations, and with basic safety requirements pertaining to the operation of public transit vehicles.

ARTICLE 5 – INSURANCE

The CITY shall maintain and provide casualty, liability, body injury, collision and comprehensive insurance on the buses and equipment it deems necessary, and NDSU shall have no responsibility to provide such coverage. The CITY is authorized to self-insure for such risks, subject to the liability limits of the State of North Dakota.

ARTICLE 6 – FORCE MAJEURE

Neither Party shall be held responsible for delays or lack of performance caused by events or acts beyond their control. Such events and acts include, but are not limited to, acts of God, inclement weather, strikes and labor disputes, lack of fuel, road closures, and changes in government regulation, war, insurrection or civil unrest.

ARTICLE 7 – TERM OF AGREEMENT

This Agreement shall become effective July 1, 2019 and shall remain in full-force and effect until June 30, 2020 unless terminated earlier as herein provided. The U-Pass portion of the agreement is in effect for the term of this agreement, and the shuttle service portions of the agreement that reference days that class is in session are in effect for the NDSU Fall 2019 and Spring 2020 semesters.

ARTICLE 8 – TERMINATION OF AGREEMENT

- 8.1 Changes in City Cost, Funding, or Service: The CITY may terminate or reduce the amount of service in this Agreement if there is, in the opinion of a majority of the City Commission, a significant increase in local costs; or insufficient local, state or federal funding available for the service. In such an event the CITY will provide NDSU a written notice ninety (90) days prior to any changes in the service.
- 8.2 NDSU Initiated Termination of U-Pass Program: NDSU may terminate the portion of this Agreement with the CITY that allows NDSU students to ride for no charge by providing written notice ninety (90) days prior to the termination of the Agreement. Any monies paid by NDSU to the CITY will be reimbursed on a prorated basis in which the numerator is the length of time from the beginning of the term to the termination date and the denominator is the length of time from the beginning of the term to May 10, 2020. NDSU understands that termination of the U-Pass program may result in the termination of the shuttle services due to required compliance with federal rules and regulations.

ARTICLE 9 – GENERAL PROVISIONS

- 9.1 Safety and Environmental Codes: All practices, materials, supplies, and equipment shall comply with the Federal Occupational Safety and Health Act as well as any pertinent federal, state and local safety or environmental codes.
- 9.2 Compliance with Applicable Rules and Regulations: This Agreement shall be subject to, governed by, and construed according to all applicable administrative codes and laws of the City of Fargo, State of North Dakota, and federal government.
- 9.3 Severability Clause: In the event that any provision of the Agreement is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect in any manner the legality or the remaining provisions of the Agreement, and each provision of the Agreement will be, and is deemed to be separate and severable from each other provision.
- 9.4 By the 30th day of each semester start, NDSU will provide the City a complete list of all active NDSU student, faculty and staff ID card numbers ensuring only active students are riding under the U-Pass program.

ARTICLE 10 – AUTHORITY TO AMEND FINANCIAL TERMS OF AGREEMENT

The City and NDSU shall be authorized to adjust the financial terms of this agreement and the term of agreement as they mutually agree, from time to time.

ARTICLE 11 – DISPUTES

In the event of a dispute regarding the performance of, or adherence to the provisions of this Agreement by either party to the Agreement, the CITY and NDSU shall select a representative(s) who will attempt to resolve the dispute. If the representatives are unable to resolve the dispute, the issue will be presented to the City’s Administrator. If the City Administrator cannot resolve the dispute, then it will be referred to the Fargo City Commission. If the Fargo City Commission’s decision does not resolve the dispute, the parties have such remedies as provided by law.

ARTICLE 12 – NOTICES

All notices herein required and any communications with respect to this Agreement shall be effected upon the mailing thereof, and addressed as follows:

NDSU

Mr. Mike Ellingson
Director, Facilities Management
North Dakota State University
Box 6050
Fargo, ND 58105

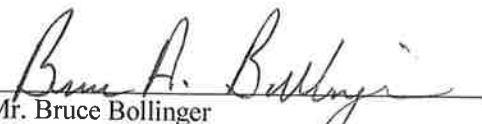
City of Fargo

Ms. Julie Bommelman
Transit Director
Metro Area Transit Garage
650 23rd St. N.
Fargo, ND 58102

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed effective July 1, 2019.

North Dakota State University

City of Fargo


Mr. Bruce Bollinger
Vice President for Finance and Administration

Dr. Timothy J. Mahoney, Mayor

Date: 8/8/19

Date: _____

Attest:

Steven Sprague, City Auditor

22

August 26, 2019

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

Dear Commissioners:

In July KLJ, Inc., under contract with the City of Fargo Transit Department for design/bid/build services, advertised for construction services to renovate the Jefferson Lines Ticketing & Storage Counter portion of the Ground Transportation Center (GTC) renovation project. One bid was received in response to the advertised project – please see attached.

We did reserve the right to reject bids within the bid documents, which we are recommending at this time.

The requested motion: *The City of Fargo reject the one bid received from Gast Construction and rebid the Ground Transportation Center (GTC) Renovation as one project to include the main GTC renovation plus the Jefferson Lines Ticketing & Storage services as outlined in the attached correspondence from KLJ, Inc.*

Sincerely,



Julie Bommelman
Transit Director
City of Fargo

/attachment

For Schedule Information: 701-232-7500



728 East Beaton Drive, Suite 101
West Fargo, ND 58078-2650
701 232 5353
KLJENG.COM

August 13, 2019

Julie Bommelman
Transit Director
City of Fargo
650 23rd Street North
Fargo, ND 58102

Re: GTC Jefferson Lines Ticketing and Storage Counter

Dear Ms. Bommelman:

Bids on the referenced project were opened on July 31, 2019. A total of one (1) bid was received. The bid was checked for mathematical accuracy and no discrepancies were found. A complete tabulation of all bids received is attached. The apparent low bidder is Gast Construction Company, Inc. with a total bid of \$157,270, which is nearly 30% higher than the Engineer's Estimate of \$112,317.28.

The Disadvantage Business Enterprise (DBE) goal for this project is 1.37 percent. Gast Construction committed to no DBE participation, but did provide Good Faith Effort documentation with their proposal. They also provided the proper bid requirements for Buy American documentation, Debarment or Suspension Certificate, Certificate of Restriction of Lobbying and Non-Collusion Affidavit form. KLJ reviewed these documents and believes Gast Construction has met the requirements set forth in the Project Manual. In addition, KLJ verified Gast Construction does not show up on the GSA SAM exclusion list.

Due to the high bid prices received and low bidder participation, KLJ recommends the City reject all bids received and rebid the project in conjunction with the larger GTC Remodel project scheduled to be released for bids later this winter.

If you have any questions, please contact our office.

Sincerely,

KLJ

A handwritten signature in cursive script that reads "Cassie McNames".

Cassie McNames, PE
Project Manager

Enclosure(s): (2) Bid Tabulation and SAM documentation
Project #: 1904-00485
cc: File

[View assistance for SAM.gov](#)



A NEW WAY TO SIGN IN - If you already have a SAM account, use your **SAM email** for login.gov.

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▲ ALERT: SAM.gov will be down for scheduled maintenance Saturday, 08/17/2019, from 8:00 AM to 3:00 PM (EDT).

▲ ALERT: Due to increased volume and additional security requirements, a high number of entity registrations are pending CAGE review. Processing time currently exceeds the normal window of ten business days. Some users may experience processing delays of up to four weeks. Respond promptly if you are contacted by a CAGE Technician for additional information. Contact the [CAGE Help Desk](#) with urgent questions about a registration pending CAGE review.

Advanced Search - Exclusion

Single Search

Classification:

Name:

First Name: Middle Name: Last Name:

DUNS Number:

CAGE Code:

City:

State/Province:

Zip Code:

Country:

Agency:

Exclusion Status: Selecting "All" displays both Active and Inactive Exclusions.

Exclusion Type:

Exclusion Program:

Active Date: To

Termination Date: To

Create Date: To

Modify Date: To

You may only perform a search with the criteria contained in one accordion.

Multiple Names

SSN/TIN Search



IBM-P-20190627-1414
WWW6

- [Search Records](#)
- [Data Access](#)
- [Check Status](#)
- [About](#)
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- [Accessibility](#)
- [Privacy Policy](#)
- [FAPIS.gov](#)
- [GSA.gov/IAE](#)
- [GSA.gov](#)
- [USA.gov](#)

This is a U.S. General Services Administration Federal Government computer system that is "FOR OFFICIAL USE ONLY." This system is subject to monitoring. Individuals found performing unauthorized activities are subject to disciplinary action including criminal prosecution.

SAM Search Results
List of records matching your search for :

Functional Area: Performance Information
Classification: Individual, Firm, Special Entity Designation, Vessel
Record Status: Active
Location - State: NORTH DAKOTA

EXCLUSION Brian E. Briggs

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Minot
 State/Province: NORTH DAKOTA
 ZIP Code: 58701
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 07/10/1990
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION David L. MacDonald

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Minot
 State/Province: NORTH DAKOTA
 ZIP Code: 58701
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 08/06/1993
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Bonnie Lynne Jackson

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Grafton
 State/Province: NORTH DAKOTA
 ZIP Code: 58237
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 06/20/2002
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Bethany Heinrichs

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: Pembina

Activation Date: 02/19/2004

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58271

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION C. Gregory Henderickson

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

City: Parshall

Activation Date: 11/25/2003

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58770-0517

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION Daniel Craig Yon

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Ineligible (Proceedings Completed)

Address: --

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

City: Grand Forks

Activation Date: 05/20/2002

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58201

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION Meide and Son, Inc.

Status: Active

DUNS: 927690867

CAGE Code:

Classification: Firm

Exclusion Type: Prohibition/Restriction

Address: P.O. Box 938, 602 Dakota Ave.

Excluding Agency: ENVIRONMENTAL PROTECTION AGENCY

City: Wahpeton

Activation Date: 11/30/1998

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58075

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION Janice Pitcher

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Cavalier
 State/Province: NORTH DAKOTA
 ZIP Code: 58220
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 11/13/2000
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Tanya Jetty

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Fort Totten
 State/Province: NORTH DAKOTA
 ZIP Code: 58335
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Pending)
 Excluding Agency: EDUCATION DEPARTMENT OF
 Activation Date: 07/19/2011
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Pioneer Drug Inc.

Status: Active

DUNS: 099055410

CAGE Code:

Classification: Firm
 Address: P.O. Box 517, Main St.
 City: Parshall
 State/Province: NORTH DAKOTA
 ZIP Code: 58770-517
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 09/19/2003
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION TINA MARIE SMITH

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: FARGO
 State/Province: NORTH DAKOTA
 ZIP Code: 58104
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 12/18/2008
 Termination Date:--
 Creation Date: 07/27/2012

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Powers Lake
 State/Province: NORTH DAKOTA
 ZIP Code: 58773
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 10/20/2003
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Jody Wittmayer

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Grand Forks
 State/Province: NORTH DAKOTA
 ZIP Code: 58201-4872
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 12/20/1999
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Sheala Jetty

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: St. Michael
 State/Province: NORTH DAKOTA
 ZIP Code: 58335
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Pending)
 Excluding Agency: EDUCATION DEPARTMENT OF
 Activation Date: 07/19/2011
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION David M. Bauwens

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Steele
 State/Province: NORTH DAKOTA
 ZIP Code: 58482
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 05/04/1995
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION NATHAN CLAUDE CARTER

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: THOMPSON
 State/Province: NORTH DAKOTA
 ZIP Code: 58278
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 06/20/2011
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Betty L. Wegehaupt

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Belcourt
 State/Province: NORTH DAKOTA
 ZIP Code: 58316
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 04/16/2003
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Mary Ann Casperson

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Valley City
 State/Province: NORTH DAKOTA
 ZIP Code: 58072
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 11/13/2000
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION DEANNA M SUTTER

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: BISMARCK
 State/Province: NORTH DAKOTA
 ZIP Code: 58504
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 09/20/2005
 Termination Date:--
 Creation Date: 07/27/2012

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: ROLLA
 State/Province: NORTH DAKOTA
 ZIP Code: 58367
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 06/17/2010
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION C. Gregory Henderickson

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Parshall
 State/Province: NORTH DAKOTA
 ZIP Code: 58770-0517
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 09/19/2003
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION POLLY BAKKO

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: OXBOW
 State/Province: NORTH DAKOTA
 ZIP Code: 58047
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 07/20/2003
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION David L. Martinson

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Fargo
 State/Province: NORTH DAKOTA
 ZIP Code: 58103
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 12/04/2000
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Darlene Dodds

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Minot
 State/Province: NORTH DAKOTA
 ZIP Code: 58701-7052
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 07/24/2000
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Darlene Dodds

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Minot
 State/Province: NORTH DAKOTA
 ZIP Code: 58701-7052
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 03/20/2000
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION TRACY KREITEL

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: GRAND FORKS
 State/Province: NORTH DAKOTA
 ZIP Code: 58201
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 09/20/2005
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Pioneer Drug Inc.

Status: Active

DUNS: 099055410

CAGE Code:

Classification: Firm
 Address: P.O. Box 517, Main St.
 City: Parshall
 State/Province: NORTH DAKOTA
 ZIP Code: 58770-517
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 11/25/2003
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION RICHARD HARRISON LEIGH

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: GRAND FORKS
 State/Province: NORTH DAKOTA
 ZIP Code: 58201
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 05/03/2006
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION TARA MARIE WIELAND

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: WEST FARGO
 State/Province: NORTH DAKOTA
 ZIP Code: 58078
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 04/20/2010
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION RICHARD HARRISON LEIGH

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: GRAND FORKS
 State/Province: NORTH DAKOTA
 ZIP Code: 58201
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 10/24/2006
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION NICHOLE AARON OVERBY

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: SAINT JOHN
 State/Province: NORTH DAKOTA
 ZIP Code: 58369
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 06/17/2010
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Sheri Ann Olson

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Fargo
 State/Province: NORTH DAKOTA
 ZIP Code: 58103
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 03/20/2002
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION JANET ELLEN MILES

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: MINOT
 State/Province: NORTH DAKOTA
 ZIP Code: 58702
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 09/20/2005
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION JACQUELINE JEAN BINSTOCK

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: BISMARCK
 State/Province: NORTH DAKOTA
 ZIP Code: 58504
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 07/20/2011
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Sheri Ann Olson

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Fargo
 State/Province: NORTH DAKOTA
 ZIP Code: 58103
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 05/20/2002
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Brett C. Muscatell

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Voluntary Exclusion

Address: --

Excluding Agency: DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT

City: Fargo

Activation Date: 07/26/1994

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58103

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION Robert Paul Eberhardt

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Ineligible (Proceedings
Completed)

Address: --

Excluding Agency: OFFICE OF PERSONNEL
MANAGEMENT

City: Bismarck

Activation Date: 10/07/1996

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58501

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION Robert Paul Eberhardt

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN
SERVICES, DEPARTMENT OF

City: Bismarck

Activation Date: 10/07/1996

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58501

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION Luella Nantt

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Ineligible (Proceedings
Completed)

Address: --

Excluding Agency: OFFICE OF PERSONNEL
MANAGEMENT

City: Dickinson

Activation Date: 05/30/2001

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58601

Creation Date: 07/27/2012

Country: UNITED STATES

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Dickinson
 State/Province: NORTH DAKOTA
 ZIP Code: 58601
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 03/20/2001
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Robert Alfred Marshall

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Grand Forks
 State/Province: NORTH DAKOTA
 ZIP Code: 58201
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: --
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Judith D. Buethner

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Hillsboro
 State/Province: NORTH DAKOTA
 ZIP Code: 58045
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 11/04/1991
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Kian K. Chang

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Minot
 State/Province: NORTH DAKOTA
 ZIP Code: 58701
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 11/27/2000
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Kian K. Chang

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: Minot

Activation Date: 08/20/2000

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58701

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION Cynthia Beckstrand

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Ineligible (Proceedings Pending)

Address: --

Excluding Agency: RISK MANAGEMENT AGENCY

City: Warwick

Activation Date: 03/14/2019

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 48381

Creation Date: 03/20/2019

Country: UNITED STATES

EXCLUSION WENDY VALLA

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: WILLISTON

Activation Date: 09/20/2005

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58801

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION Kathleen Materi

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

City: Nekoma

Activation Date: 11/25/2003

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58355-0000

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION Tami D. Coenen

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: McVille
 State/Province: NORTH DAKOTA
 ZIP Code: 58254
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 11/04/1991
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION ROBIN LESLEY WESTON

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: GRAND FORKS
 State/Province: NORTH DAKOTA
 ZIP Code: 58203
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 06/20/2007
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Bonnie Lynne Jackson

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Grafton
 State/Province: NORTH DAKOTA
 ZIP Code: 58237
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 08/22/2002
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION KAREN LEIGH WALKER

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: FARGO
 State/Province: NORTH DAKOTA
 ZIP Code: 58103
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 11/20/2008
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Girish Patel

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Bismarck
 State/Province: NORTH DAKOTA
 ZIP Code: 58501
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 04/10/1992
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Girish Patel

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Bismarck
 State/Province: NORTH DAKOTA
 ZIP Code: 58501
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 09/30/1993
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Kathleen Sisk

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Westhope
 State/Province: NORTH DAKOTA
 ZIP Code: 58793
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 07/18/2002
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Kathleen Sisk

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Westhope
 State/Province: NORTH DAKOTA
 ZIP Code: 58793
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 09/23/2002
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Michael Addington

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Bismarck
 State/Province: NORTH DAKOTA
 ZIP Code: 58503
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Pending)
 Excluding Agency:
 Activation Date: 01/27/2012
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Ricky R. Roth

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Bismarck
 State/Province: NORTH DAKOTA
 ZIP Code: 58501
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 11/04/1991
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION KASI LYNN HAMMLING

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: WASHBURN
 State/Province: NORTH DAKOTA
 ZIP Code: 58577
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 02/18/2010
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION MAVIS M BEAUCHAMP

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: HEBRON
 State/Province: NORTH DAKOTA
 ZIP Code: 58638
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 07/20/2005
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Bernard Emile Malhomme

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: Kenmare

State/Province: NORTH DAKOTA

ZIP Code: 58746

Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

Activation Date: 01/09/1995

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION Bernard Emile Malhomme

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: Kenmare

State/Province: NORTH DAKOTA

ZIP Code: 58746

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 01/09/1995

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION David Sowell

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: Ashley

State/Province: NORTH DAKOTA

ZIP Code: 58413

Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

Activation Date: 01/14/2002

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION David Sowell

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: Ashley

State/Province: NORTH DAKOTA

ZIP Code: 58413

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 11/20/2001

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION Jennifer M. Bitz

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Jamestown
 State/Province: NORTH DAKOTA
 ZIP Code: 58401
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 12/12/2001
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Jennifer M. Bitz

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Jamestown
 State/Province: NORTH DAKOTA
 ZIP Code: 58401
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 02/18/2002
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Walter S. Skwarok

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Hebron
 State/Province: NORTH DAKOTA
 ZIP Code: 58638
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: --
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION DONNA LOU STEEN

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: GRAND FORKS
 State/Province: NORTH DAKOTA
 ZIP Code: 58201
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 05/19/2011
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Kathleen Materi

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Nekoma
 State/Province: NORTH DAKOTA
 ZIP Code: 58355-0000
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 09/19/2003
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Janice Pitcher

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Cavalier
 State/Province: NORTH DAKOTA
 ZIP Code: 58220
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 08/20/2000
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Duane Gahner

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Jamestown
 State/Province: NORTH DAKOTA
 ZIP Code: 58401
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 06/04/2001
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION MYIA MICHELLE ST PETER

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: WILLISTON
 State/Province: NORTH DAKOTA
 ZIP Code: 58801
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 01/19/2012
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Duane Gahner

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Jamestown
 State/Province: NORTH DAKOTA
 ZIP Code: 58401
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN
 SERVICES, DEPARTMENT OF
 Activation Date: 03/20/2001
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Jerry L. Meide

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Wahpeton
 State/Province: NORTH DAKOTA
 ZIP Code: 58075
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: ENVIRONMENTAL
 PROTECTION AGENCY
 Activation Date: 11/30/1998
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION NANCY SUE GULER

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: HANNAFORD
 State/Province: NORTH DAKOTA
 ZIP Code: 58448
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN
 SERVICES, DEPARTMENT OF
 Activation Date: 08/18/2005
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION CAROLYN MARY HOCHSPRUNG

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: WEST FARGO
 State/Province: NORTH DAKOTA
 ZIP Code: 58078
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN
 SERVICES, DEPARTMENT OF
 Activation Date: 07/20/2005
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION KATHY JEAN HILL

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: FORMAN
 State/Province: NORTH DAKOTA
 ZIP Code: 58032
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 07/19/2007
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Debra Moore

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Cleveland
 State/Province: NORTH DAKOTA
 ZIP Code: 58424
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 06/09/1997
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Debra Moore

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Cleveland
 State/Province: NORTH DAKOTA
 ZIP Code: 58424
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 03/12/1997
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION DIANE PATRICIA MILES

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: MAX
 State/Province: NORTH DAKOTA
 ZIP Code: 58750
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 09/20/2005
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Dalaine B. Uran

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: New Town

State/Province: NORTH DAKOTA

ZIP Code: 58763

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 11/04/1991

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION David L. MacDonald

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: Minot

State/Province: NORTH DAKOTA

ZIP Code: 58701

Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

Activation Date: 08/06/1993

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION Michelle Marie Von Rueden

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: Fargo

State/Province: NORTH DAKOTA

ZIP Code: 58104

Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

Activation Date: 10/17/1994

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION Michelle Marie Von Rueden

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: Fargo

State/Province: NORTH DAKOTA

ZIP Code: 58104

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 10/17/1994

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION	Hunter Adrian Nicholas	Status: Active
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DUNS:	CAGE Code:
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Classification: Individual Address: -- City: Bismarck State/Province: NORTH DAKOTA ZIP Code: 58501 Country: UNITED STATES	Exclusion Type: Prohibition/Restriction Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT Activation Date: 03/14/2003 Termination Date:-- Creation Date: 07/27/2012
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EXCLUSION	Justin Beckstrand	Status: Active
------------------	-------------------	----------------

DUNS:	CAGE Code:
-------	------------

Classification: Individual Address: -- City: Warwick State/Province: NORTH DAKOTA ZIP Code: 48381 Country: UNITED STATES	Exclusion Type: Ineligible (Proceedings Pending) Excluding Agency: RISK MANAGEMENT AGENCY Activation Date: 03/14/2019 Termination Date:-- Creation Date: 03/20/2019
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EXCLUSION	Kelly S. Johansen	Status: Active
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DUNS:	CAGE Code:
-------	------------

Classification: Individual Address: -- City: Devils Lake State/Province: NORTH DAKOTA ZIP Code: 58301 Country: UNITED STATES	Exclusion Type: Ineligible (Proceedings Completed) Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT Activation Date: 12/16/1998 Termination Date:-- Creation Date: 07/27/2012
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EXCLUSION	Kelly S. Johansen	Status: Active
------------------	-------------------	----------------

DUNS:	CAGE Code:
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Classification: Individual Address: -- City: Devils Lake State/Province: NORTH DAKOTA ZIP Code: 58301 Country: UNITED STATES	Exclusion Type: Prohibition/Restriction Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF Activation Date: 09/20/1998 Termination Date:-- Creation Date: 07/27/2012
---	---

EXCLUSION MARILYN RENEE BJERKE

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: HATTON

Activation Date: 08/20/2007

State/Province: NORTH DAKOTA

ZIP Code: 58240

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION Cletis Mahoney Wigton

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: Bismarck

Activation Date: 10/20/2002

State/Province: NORTH DAKOTA

ZIP Code: 58502

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION Cletis Mahoney Wigton

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Ineligible (Proceedings Completed)

Address: --

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

City: Bismarck

Activation Date: 12/23/2002

State/Province: NORTH DAKOTA

ZIP Code: 58502

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION Polly Bakko

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

City: Oxbow

Activation Date: 09/22/2003

State/Province: NORTH DAKOTA

ZIP Code: 58047

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION DEBORAH D SCHOTT

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: ALFRED
 State/Province: NORTH DAKOTA
 ZIP Code: 58454
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 09/20/2005
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Marlene D. Freitag

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Bismarck
 State/Province: NORTH DAKOTA
 ZIP Code: 58501
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 12/05/1991
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Linda Hoffman

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Carrington
 State/Province: NORTH DAKOTA
 ZIP Code: 58421-8668
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 10/20/1999
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Linda Hoffman

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Carrington
 State/Province: NORTH DAKOTA
 ZIP Code: 58421-8668
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 01/31/2000
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION STACY MARIE WERRE

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: BISMARCK

Activation Date: 09/20/2005

State/Province: NORTH DAKOTA

ZIP Code: 58504

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION THERESA ELIZABETH LANGERUD

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: SAINT THOMAS

Activation Date: 02/20/2011

State/Province: NORTH DAKOTA

ZIP Code: 58276

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION Beverly Rusch

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Ineligible (Proceedings Completed)

Address: --

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

City: Beulah

Activation Date: 07/17/2002

State/Province: NORTH DAKOTA

ZIP Code: 58523

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION Beverly Rusch

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: Beulah

Activation Date: 05/20/2002

State/Province: NORTH DAKOTA

ZIP Code: 58523

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION Bethany Heinrichs	Status: Active
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DUNS:	CAGE Code:
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Classification: Individual Address: -- City: Pembina State/Province: NORTH DAKOTA ZIP Code: 58271 Country: UNITED STATES	Exclusion Type: Prohibition/Restriction Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT Activation Date: 04/22/2004 Termination Date:-- Creation Date: 07/27/2012
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EXCLUSION TRACI RENEE DECK	Status: Active
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DUNS:	CAGE Code:
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Classification: Individual Address: -- City: FARGO State/Province: NORTH DAKOTA ZIP Code: 58106 Country: UNITED STATES	Exclusion Type: Prohibition/Restriction Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF Activation Date: 06/20/2007 Termination Date:-- Creation Date: 07/27/2012
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EXCLUSION JEANNETTE MARIE LIPSH	Status: Active
--	----------------

DUNS:	CAGE Code:
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Classification: Individual Address: -- City: WALHALLA State/Province: NORTH DAKOTA ZIP Code: 58282 Country: UNITED STATES	Exclusion Type: Prohibition/Restriction Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF Activation Date: 10/20/2005 Termination Date:-- Creation Date: 07/27/2012
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EXCLUSION Barbara Stoegbauer	Status: Active
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DUNS:	CAGE Code:
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Classification: Individual Address: -- City: Powers Lake State/Province: NORTH DAKOTA ZIP Code: 58773 Country: UNITED STATES	Exclusion Type: Prohibition/Restriction Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT Activation Date: 12/23/2003 Termination Date:-- Creation Date: 07/27/2012
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DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Grand Forks
 State/Province: NORTH DAKOTA
 ZIP Code: 58201
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 03/20/2002
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Betty L. Wegehaupt

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Belcourt
 State/Province: NORTH DAKOTA
 ZIP Code: 58316
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 02/20/2003
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Jody Wittmayer

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Grand Forks
 State/Province: NORTH DAKOTA
 ZIP Code: 58201-4872
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 06/05/2000
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Steven Madsen

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Fargo
 State/Province: NORTH DAKOTA
 ZIP Code: 58103
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 03/20/2001
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Steven Madsen

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Fargo
 State/Province: NORTH DAKOTA
 ZIP Code: 58103
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 06/04/2001
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION AMANDA MAE PEDEN

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: MINOT
 State/Province: NORTH DAKOTA
 ZIP Code: 58701
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 07/20/2011
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION RANDI SUE PEDERSON

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: FARGO
 State/Province: NORTH DAKOTA
 ZIP Code: 58103
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 06/20/2005
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION VESTA FREEHAUF-NORTON

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: FARGO
 State/Province: NORTH DAKOTA
 ZIP Code: 58107
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 09/20/2005
 Termination Date:--
 Creation Date: 07/27/2012

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: Valley City

Activation Date: 08/20/2000

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58072

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION JUDY JOY WEED

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: DEVILS LAKE

Activation Date: 06/19/2008

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58301

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION SUELLYN ANN MEDLEY

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: FARGO

Activation Date: 04/20/2010

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58102

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION GARY PAUL HAJICEK

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: GRAFTON

Activation Date: 02/20/2008

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58237

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION Tammy Saldana

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Minot
 State/Province: NORTH DAKOTA
 ZIP Code: 58701-6522
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 09/10/1999
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Tammy Saldana

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Minot
 State/Province: NORTH DAKOTA
 ZIP Code: 58701-6522
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 06/17/1999
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION TIMOTHY JAMES DAVIS

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: MANDAN
 State/Province: NORTH DAKOTA
 ZIP Code: 58554
 Country:

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 02/20/2013
 Termination Date:--
 Creation Date: 02/21/2013

EXCLUSION DALE BERNARD POLANSKY

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: GRAND FORKS
 State/Province: NORTH DAKOTA
 ZIP Code: 58201
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 06/20/2007
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION JODI MELANDER

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: MINOT

Activation Date: 09/20/2011

State/Province: NORTH DAKOTA

ZIP Code: 58701

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION Corey Cordell Humble

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: FARM SERVICE AGENCY

City: Towner

Activation Date: 05/22/2013

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58788-0082

Creation Date: 05/31/2013

Country: UNITED STATES

EXCLUSION Blaine Dennis Isakson

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: FARM SERVICE AGENCY

City: Upham

Activation Date: 03/07/2012

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58789-9465

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION JAMES BRADLEY TORKESEN

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: BISMARCK

Activation Date: 07/20/2009

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58506

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION SHAWN MARIE NEWBURY

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: FARGO

Activation Date: 09/20/2011

State/Province: NORTH DAKOTA

ZIP Code: 58102

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION Edith Jane Semler

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: Bismarck

Activation Date: 12/20/1999

State/Province: NORTH DAKOTA

ZIP Code: 58501-1911

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION Edith Jane Semler

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Ineligible (Proceedings Completed)

Address: --

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

City: Bismarck

Activation Date: 06/02/2000

State/Province: NORTH DAKOTA

ZIP Code: 58501-1911

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION David L. Martinson

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: Fargo

Activation Date: 07/03/2000

State/Province: NORTH DAKOTA

ZIP Code: 58103

Termination Date:--

Country: UNITED STATES

Creation Date: 07/27/2012

EXCLUSION TONJA LYNN SCHLOSSER

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: BISMARCK

State/Province: NORTH DAKOTA

ZIP Code: 58503

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 02/18/2010

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION HEATHER MARIE NYLAND

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: LAKOTA

State/Province: NORTH DAKOTA

ZIP Code: 58344

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 11/19/2009

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION Brian L Valenta

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: Ray

State/Province: NORTH DAKOTA

ZIP Code: 58849

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: FARM SERVICE AGENCY

Activation Date: 05/22/2013

Termination Date:--

Creation Date: 05/31/2013

EXCLUSION MARLETTA CHEAUMA

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: FORT YATES

State/Province: NORTH DAKOTA

ZIP Code: 58538

Country:

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 01/20/2015

Termination Date:--

Creation Date: 01/21/2015

EXCLUSION KEVIN MICHAEL LORENZ

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: OFFICE OF PERSONNEL
MANAGEMENT

City: BISMARCK

Activation Date: 09/30/2013

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58501

Creation Date: 04/03/2014

Country:

EXCLUSION CARLA RENNER

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN
SERVICES, DEPARTMENT OF

City: BEULAH

Activation Date: 08/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58523

Creation Date: 08/21/2014

Country:

EXCLUSION STEPHANIE C BALLOU

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN
SERVICES, DEPARTMENT OF

City: WEST FARGO

Activation Date: 08/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58078

Creation Date: 08/21/2014

Country:

EXCLUSION AMY SORNSIN

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN
SERVICES, DEPARTMENT OF

City: BISMARCK

Activation Date: 08/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58503

Creation Date: 08/21/2014

Country:

EXCLUSION AOS, DOUGLAS

Status: Active

DUNS: 807856930

CAGE Code: 4WC51

Classification: Firm
 Address: 508 HIGHLAND STREET
 City: ROLETTE
 State/Province: NORTH DAKOTA
 ZIP Code: 58366
 Country:

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 08/20/2013
 Termination Date:--
 Creation Date: 08/21/2013

EXCLUSION KEVIN MICHAEL LORENZ

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: BISMARCK
 State/Province: NORTH DAKOTA
 ZIP Code: 58501
 Country:

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 08/20/2013
 Termination Date:--
 Creation Date: 08/21/2013

EXCLUSION SANDRA HARPER

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: MINOT
 State/Province: NORTH DAKOTA
 ZIP Code: 58703
 Country:

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 09/18/2014
 Termination Date:--
 Creation Date: 09/22/2014

EXCLUSION BRITTNI LYNN BAKER

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: SAINT MICHAEL
 State/Province: NORTH DAKOTA
 ZIP Code: 58370
 Country:

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 06/19/2014
 Termination Date:--
 Creation Date: 06/19/2014

EXCLUSION TASHA KENNEDY

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: MAPLETON

Activation Date: 07/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58059

Creation Date: 07/22/2014

Country:

EXCLUSION SANDRA DAY

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: BELCOURT

Activation Date: 07/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58316

Creation Date: 07/22/2014

Country:

EXCLUSION CAROLYN MARIE BLACK

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: SAINT MICHAEL

Activation Date: 07/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58370

Creation Date: 07/22/2014

Country:

EXCLUSION ERICA ELIZABETH GOOD BEAR

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: MINOT

Activation Date: 07/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58701

Creation Date: 07/22/2014

Country:

EXCLUSION JEANNA MAE DEGELDER

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: HORACE

Activation Date: 05/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58047

Creation Date: 05/28/2014

Country:

EXCLUSION STACIE LYNNE WATTENDORF

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: SURREY

Activation Date: 05/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58785

Creation Date: 05/28/2014

Country:

EXCLUSION JOELEN MOSSETT

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: PARSHALL

Activation Date: 01/20/2015

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58770

Creation Date: 01/21/2015

Country:

EXCLUSION CORAL FLEMING

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: CAVALIER

Activation Date: 05/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58220

Creation Date: 05/28/2014

Country:

EXCLUSION DEREK EUGENE STONEBURG

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: FARGO

Activation Date: 05/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58103

Creation Date: 05/28/2014

Country:

EXCLUSION GEORGE ABDILNOUR

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: CANDU

Activation Date: 09/18/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58324

Creation Date: 09/22/2014

Country:

EXCLUSION Mical Robert Sougstad

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: FARM SERVICE AGENCY

City: Mandan

Activation Date: 05/29/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58554

Creation Date: 06/04/2014

Country: UNITED STATES

EXCLUSION CHELSY HELBLING

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: FARGO

Activation Date: 11/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58103

Creation Date: 11/20/2014

Country:

EXCLUSION Yvonne Graber

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Rolette
 State/Province: NORTH DAKOTA
 ZIP Code: 58366
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN
 SERVICES, DEPARTMENT OF
 Activation Date: 02/19/2004
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Yvonne Graber

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Rolette
 State/Province: NORTH DAKOTA
 ZIP Code: 58366
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: OFFICE OF PERSONNEL
 MANAGEMENT
 Activation Date: 04/22/2004
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION DAWN FREEMONT

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: MAX
 State/Province: NORTH DAKOTA
 ZIP Code: 58759
 Country:

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN
 SERVICES, DEPARTMENT OF
 Activation Date: 01/20/2015
 Termination Date:--
 Creation Date: 01/21/2015

EXCLUSION KRISTIE JO SWANSON

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: FARGO
 State/Province: NORTH DAKOTA
 ZIP Code: 58103
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN
 SERVICES, DEPARTMENT OF
 Activation Date: 08/20/2007
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION APRIL BECKLER

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: MINOT

Activation Date: 04/20/2015

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58701

Creation Date: 04/20/2015

Country:

EXCLUSION KIMBERLY KOCHER

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: MINOT

Activation Date: 04/20/2015

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58703

Creation Date: 04/20/2015

Country:

EXCLUSION SHIRLEY REINOWSKI

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: MARTIN

Activation Date: 10/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58758

Creation Date: 10/20/2014

Country:

EXCLUSION CELESTE E LONG ELK

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: GRAND FORKS

Activation Date: 05/20/2015

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58201

Creation Date: 05/20/2015

Country:

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: JAMESTOWN
 State/Province: NORTH DAKOTA
 ZIP Code: 58401
 Country:

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 05/20/2015
 Termination Date:--
 Creation Date: 05/20/2015

EXCLUSION REBECCA LYNN MELLEN

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: MINOT
 State/Province: NORTH DAKOTA
 ZIP Code: 58701
 Country:

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 03/19/2015
 Termination Date:--
 Creation Date: 03/19/2015

EXCLUSION AMANDA BLAKE

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: VALLEY CITY
 State/Province: NORTH DAKOTA
 ZIP Code: 58072
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 07/20/2015
 Termination Date:--
 Creation Date: 09/03/2015

EXCLUSION GERTRUDE SCHERESKY

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: MAX
 State/Province: NORTH DAKOTA
 ZIP Code: 58759
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 07/20/2015
 Termination Date:--
 Creation Date: 09/03/2015

EXCLUSION JOLIE BADUINI

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: MINOT
 State/Province: NORTH DAKOTA
 ZIP Code: 58701
 Country:

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 05/20/2015
 Termination Date:--
 Creation Date: 05/20/2015

EXCLUSION CHRISTINE KUHN

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: MANDAN
 State/Province: NORTH DAKOTA
 ZIP Code: 58554
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 07/20/2015
 Termination Date:--
 Creation Date: 09/03/2015

EXCLUSION Linda Lee Wilson

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Bismarck
 State/Province: NORTH DAKOTA
 ZIP Code: 58501
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT
 Activation Date: 07/01/1993
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION Linda Lee Wilson

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Bismarck
 State/Province: NORTH DAKOTA
 ZIP Code: 58501
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 07/01/1993
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION JOANNE CECILE BLUE

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: NEW TOWN

State/Province: NORTH DAKOTA

ZIP Code: 58763

Country:

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 03/19/2015

Termination Date:--

Creation Date: 03/19/2015

EXCLUSION SHANNON NODLAND

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: MANDAN

State/Province: NORTH DAKOTA

ZIP Code: 58554

Country:

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 03/19/2015

Termination Date:--

Creation Date: 03/19/2015

EXCLUSION FREDERICK SCHILLER

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: TURTLE LAKE

State/Province: NORTH DAKOTA

ZIP Code: 58575

Country:

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 12/18/2014

Termination Date:--

Creation Date: 12/18/2014

EXCLUSION MICHELLE ECKMANN

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: LAMOURE

State/Province: NORTH DAKOTA

ZIP Code: 58458

Country:

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 05/20/2015

Termination Date:--

Creation Date: 05/20/2015

EXCLUSION Quinton Dean Osborn

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: FARM SERVICE AGENCY

City: Napoleon

Activation Date: 09/12/2012

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58561-9787

Creation Date: 09/14/2012

Country: UNITED STATES

EXCLUSION ASHLEY L KULSTAD

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: POWERS LAKE

Activation Date: 04/18/2013

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58773

Creation Date: 04/29/2013

Country:

EXCLUSION MANUEL COTA

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: WILLISTON

Activation Date: 12/20/2015

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58801

Creation Date: 12/22/2015

Country: UNITED STATES

EXCLUSION Zedan Khalaf Ali-Sulivani

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: FOOD & NUTRITION SERVICE

City: FARGO

Activation Date: 06/25/2013

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58103

Creation Date: 12/22/2014

Country: UNITED STATES

EXCLUSION KATHLEEN J TILLET

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: CAVALIER
 State/Province: NORTH DAKOTA
 ZIP Code: 58220
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 12/20/2015
 Termination Date:--
 Creation Date: 12/22/2015

EXCLUSION Gary L. Trauger

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Watford City
 State/Province: NORTH DAKOTA
 ZIP Code: 58854
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 08/10/1994
 Termination Date:--
 Creation Date: 07/27/2012

EXCLUSION KIM M HARTJE

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: SAINT THOMAS
 State/Province: NORTH DAKOTA
 ZIP Code: 58276
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 08/20/2015
 Termination Date:--
 Creation Date: 09/23/2015

EXCLUSION Aboallah Uwimana Rama

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: FARGO
 State/Province: NORTH DAKOTA
 ZIP Code: 58103
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: FOOD & NUTRITION SERVICE
 Activation Date: 06/04/2012
 Termination Date:--
 Creation Date: 12/22/2014

EXCLUSION JEANNE LOUISE PAUL

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: FARGO

Activation Date: 08/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58103

Creation Date: 08/21/2014

Country:

EXCLUSION MEGAN SPIEKERMEIER

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: FARGO

Activation Date: 01/20/2015

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58103

Creation Date: 01/21/2015

Country:

EXCLUSION KATHERINE CARLISLE

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: ANETA

Activation Date: 09/18/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58212

Creation Date: 09/22/2014

Country:

EXCLUSION LINDY SNYDER

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: BISMARCK

Activation Date: 03/20/2016

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58503

Creation Date: 03/21/2016

Country: UNITED STATES

EXCLUSION SHERI LYNN GROSSMAN

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: STRASBURG

Activation Date: 05/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58573

Creation Date: 05/28/2014

Country:

EXCLUSION ROBYN BERGE

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: FARGO

Activation Date: 02/18/2016

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58102

Creation Date: 02/23/2016

Country: UNITED STATES

EXCLUSION SUSAN WEGNER

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: BISMARCK

Activation Date: 06/20/2016

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58501

Creation Date: 07/01/2016

Country: UNITED STATES

EXCLUSION Jasmin Fazlovic

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: FOOD & NUTRITION SERVICE

City: FARGO

Activation Date: 06/17/2016

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58103

Creation Date: 01/17/2017

Country: UNITED STATES

EXCLUSION PAMELA HOLYBULL

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: SAINT MICHAEL

Activation Date: 06/20/2016

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58370

Creation Date: 07/01/2016

Country: UNITED STATES

EXCLUSION TINA OLSON

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: BOTTINEAU

Activation Date: 07/20/2016

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58318

Creation Date: 07/20/2016

Country: UNITED STATES

EXCLUSION MARK MCBRIDE

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: JAMESTOWN

Activation Date: 06/20/2016

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58401

Creation Date: 07/01/2016

Country: UNITED STATES

EXCLUSION Tatjana Fazlovic

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: FOOD & NUTRITION SERVICE

City: FARGO

Activation Date: 06/17/2016

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58103

Creation Date: 01/17/2017

Country: UNITED STATES

EXCLUSION KAREN STEFFENS

Status: Active

DUNS:

CAGE Code:

Classification: Individual
Address: --
City: FARGO
State/Province: NORTH DAKOTA
ZIP Code: 58103
Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Activation Date: 04/20/2016
Termination Date:--
Creation Date: 04/22/2016

EXCLUSION OSCAR WALKER

Status: Active

DUNS:

CAGE Code:

Classification: Individual
Address: --
City: ASHLEY
State/Province: NORTH DAKOTA
ZIP Code: 58413
Country:

Exclusion Type: Prohibition/Restriction
Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Activation Date: 07/20/2014
Termination Date:--
Creation Date: 07/22/2014

EXCLUSION ANN MARIE KALVODA

Status: Active

DUNS:

CAGE Code:

Classification: Individual
Address: --
City: MANDAN
State/Province: NORTH DAKOTA
ZIP Code: 58554
Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Activation Date: 09/20/2016
Termination Date:--
Creation Date: 09/20/2016

EXCLUSION TINA MARIE ROMFO

Status: Active

DUNS:

CAGE Code:

Classification: Individual
Address: --
City: GRAND FORKS
State/Province: NORTH DAKOTA
ZIP Code: 58201
Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Activation Date: 04/20/2010
Termination Date:--
Creation Date: 07/27/2012

EXCLUSION EDEN MICHELLE WANZEK

Status: Active

DUNS:

CAGE Code:

Classification: Individual
Address: --
City: FARGO
State/Province: NORTH DAKOTA
ZIP Code: 58104
Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Activation Date: 07/20/2017
Termination Date:--
Creation Date: 07/20/2017

EXCLUSION LISA LOUISE RHEAULT

Status: Active

DUNS:

CAGE Code:

Classification: Individual
Address: --
City: FARGO
State/Province: NORTH DAKOTA
ZIP Code: 58103
Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Activation Date: 07/20/2017
Termination Date:--
Creation Date: 07/20/2017

EXCLUSION KAREN TERESA ESCALANTE

Status: Active

DUNS:

CAGE Code:

Classification: Individual
Address: --
City: STANLEY
State/Province: NORTH DAKOTA
ZIP Code: 58784
Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Activation Date: 07/20/2017
Termination Date:--
Creation Date: 07/20/2017

EXCLUSION DEBRA GRAF

Status: Active

DUNS:

CAGE Code:

Classification: Individual
Address: --
City: BISMARCK
State/Province: NORTH DAKOTA
ZIP Code: 58503
Country:

Exclusion Type: Prohibition/Restriction
Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Activation Date: 06/18/2015
Termination Date:--
Creation Date: 06/23/2015

EXCLUSION CAMERON ANDREW PETREK

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: WEST FARGO

State/Province: NORTH DAKOTA

ZIP Code: 58078

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 01/20/2016

Termination Date:--

Creation Date: 01/26/2016

EXCLUSION NICOLE DYKEMA

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: STRASBURG

State/Province: NORTH DAKOTA

ZIP Code: 58573

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 09/20/2015

Termination Date:--

Creation Date: 09/23/2015

EXCLUSION KASSIE HELDE

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: WILLISTON

State/Province: NORTH DAKOTA

ZIP Code: 58801

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 01/20/2016

Termination Date:--

Creation Date: 01/26/2016

EXCLUSION Ruben Jonathan

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: FARGO

State/Province: NORTH DAKOTA

ZIP Code: 58103

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: FOOD & NUTRITION SERVICE

Activation Date: 07/13/2018

Termination Date:--

Creation Date: 10/17/2018

EXCLUSION Aaron Scott Johnson

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: RISK MANAGEMENT AGENCY

City: Northwood

Activation Date: 04/03/2015

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58267

Creation Date: 03/13/2018

Country: UNITED STATES

EXCLUSION Eric Chiza Ntivu Bisimwa

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: FOOD & NUTRITION SERVICE

City: FARGO

Activation Date: 06/04/2012

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58103

Creation Date: 12/22/2014

Country: UNITED STATES

EXCLUSION Johnson Potato Company

Status: Active

DUNS:

CAGE Code:

Classification: Special Entity Designation

Exclusion Type: Prohibition/Restriction

Address: 404 Raymond Street

Excluding Agency: RISK MANAGEMENT AGENCY

City: Northwood

Activation Date: 04/03/2015

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58267

Creation Date: 03/13/2018

Country: UNITED STATES

EXCLUSION DAKOTA MYRAN

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: DICKINSON

Activation Date: 02/18/2016

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58601

Creation Date: 02/23/2016

Country: UNITED STATES

EXCLUSION Neville Jones

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: Richardton

State/Province: NORTH DAKOTA

ZIP Code: 58652

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 11/07/1994

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION Neville Jones

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: Richardton

State/Province: NORTH DAKOTA

ZIP Code: 58652

Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)

Excluding Agency: OFFICE OF PERSONNEL MANAGEMENT

Activation Date: 11/07/1994

Termination Date:--

Creation Date: 07/27/2012

EXCLUSION Derek Martin Johnson

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: Northwood

State/Province: NORTH DAKOTA

ZIP Code: 58267

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: RISK MANAGEMENT AGENCY

Activation Date: 04/03/2015

Termination Date:--

Creation Date: 03/13/2018

EXCLUSION DWIGHT LEMBKE

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Address: --

City: HARWOOD

State/Province: NORTH DAKOTA

ZIP Code: 58042

Country: UNITED STATES

Exclusion Type: Prohibition/Restriction

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Activation Date: 05/19/2016

Termination Date:--

Creation Date: 05/19/2016

EXCLUSION KIMBERLY ANN MARTINSON

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: WEST FARGO

Activation Date: 09/20/2009

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58078

Creation Date: 07/27/2012

Country: UNITED STATES

EXCLUSION NICOLE SUSANNE MARSHALL

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: FARGO

Activation Date: 01/18/2018

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58102

Creation Date: 01/24/2018

Country: UNITED STATES

EXCLUSION AUDRA WILLIS

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: MANDAN

Activation Date: 10/18/2018

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58554

Creation Date: 10/18/2018

Country: UNITED STATES

EXCLUSION DENISE KAY FEIST

Status: Active

DUNS:

CAGE Code:

Classification: Individual

Exclusion Type: Prohibition/Restriction

Address: --

Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF

City: MINOT

Activation Date: 01/20/2014

State/Province: NORTH DAKOTA

Termination Date:--

ZIP Code: 58703

Creation Date: 01/22/2014

Country:

EXCLUSION OLUFUNLAYO OLUSOLA ONAFOWODE		Status: Active
DUNS:		CAGE Code:
Classification: Individual Address: -- City: BISMARCK State/Province: NORTH DAKOTA ZIP Code: 58501 Country:	Exclusion Type: Prohibition/Restriction Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF Activation Date: 05/20/2014 Termination Date:-- Creation Date: 05/28/2014	

EXCLUSION KATHLEEN MARIE STIEFEL		Status: Active
DUNS:		CAGE Code:
Classification: Individual Address: -- City: BEULAH State/Province: NORTH DAKOTA ZIP Code: 58523 Country:	Exclusion Type: Prohibition/Restriction Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF Activation Date: 05/20/2014 Termination Date:-- Creation Date: 05/28/2014	

EXCLUSION DOREEN MARIE DUTTENHEFER		Status: Active
DUNS:		CAGE Code:
Classification: Individual Address: -- City: MANDAN State/Province: NORTH DAKOTA ZIP Code: 58554 Country:	Exclusion Type: Prohibition/Restriction Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF Activation Date: 05/20/2014 Termination Date:-- Creation Date: 05/28/2014	

EXCLUSION Dyad Environmental, LLC		Status: Active
DUNS:		CAGE Code:
Classification: Special Entity Designation Address: 383 102X Avenue S.W. City: Killdeer State/Province: NORTH DAKOTA ZIP Code: 58640 Country: UNITED STATES	Exclusion Type: Ineligible (Proceedings Pending) Excluding Agency: ENVIRONMENTAL PROTECTION AGENCY Activation Date: 12/17/2014 Termination Date:-- Creation Date: 12/18/2014	

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Mandaree
 State/Province: NORTH DAKOTA
 ZIP Code: 58757
 Country: UNITED STATES

Exclusion Type: Voluntary Exclusion
 Excluding Agency: FARM SERVICE AGENCY
 Activation Date: 11/22/2013
 Termination Date:--
 Creation Date: 06/20/2014

EXCLUSION JAMES MCGUIRE

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: STARKWEATHER
 State/Province: NORTH DAKOTA
 ZIP Code: 58377
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 10/20/2015
 Termination Date:--
 Creation Date: 10/20/2015

EXCLUSION Dawn Muir

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: Mandan
 State/Province: NORTH DAKOTA
 ZIP Code: 58554
 Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
 Excluding Agency:
 Activation Date: 03/26/2014
 Termination Date: 10/18/2024
 Creation Date: 03/27/2014

EXCLUSION MARK FRONNING

Status: Active

DUNS:

CAGE Code:

Classification: Individual
 Address: --
 City: FARGO
 State/Province: NORTH DAKOTA
 ZIP Code: 58102
 Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
 Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
 Activation Date: 05/19/2016
 Termination Date:--
 Creation Date: 05/19/2016

EXCLUSION BLUE SKY ENGINEERING, INC

Status: Active

DUNS: 078499429

CAGE Code: 6RWZ5

Classification: Firm
Address: 417 MAIN AVE STE 003
City: FARGO
State/Province: NORTH DAKOTA
ZIP Code: 58103-1956
Country: UNITED STATES

Exclusion Type: Ineligible (Proceedings Completed)
Excluding Agency: NATIONAL SCIENCE FOUNDATION
Activation Date: 07/16/2019
Termination Date: 07/15/2024
Creation Date: 07/16/2019

EXCLUSION SAMANTHA JO HENLEY

Status: Active

DUNS:

CAGE Code:

Classification: Individual
Address: --
City: MANDAN
State/Province: NORTH DAKOTA
ZIP Code: 58554
Country: UNITED STATES

Exclusion Type: Prohibition/Restriction
Excluding Agency: HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Activation Date: 07/18/2019
Termination Date:--
Creation Date: 07/23/2019

REPORT OF ACTION

UTILITY COMMITTEE

23a-6

Project No. SW 16-03 Phase II

Type: Change Orders – SW16-03 Phase II
Landfill Gas Expansion Project

Location: Solid Waste Division - Landfill

Date of Hearing: 8/22/19

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/26/19</u>
Project File	<u> </u>

Terry Ludlum, Solid Waste Utility Director, presented the attached Change Orders for SW16-03 Phase II Landfill Gas Expansion Project.

On October 8, 2018, the Commission approved the award of Project SW16-03 Phase II in a *Multiple Prime Contractor* format. The landfill gas expansion project was awarded to *Gast Construction Company Inc., Robert Gibb & Sons, and Rickard Electric Inc.* Construction on the project began in October (2018) and is scheduled for completion and startup in June of 2019. Awarded contract bid prices, change orders, and adjusted contract prices are as follows:

Contractor	Contractor	Contract Bid Price	Current Change Orders	Adjusted Contract Price
Gast Construction Co.	General Contractor (GC)	\$609,502.16	\$0.00	\$609,502.16
Robert Gibb & Sons	Mechanical Contractor (MC)	\$729,276.00	\$12,522.00	\$741,798.00
Rickard Electric	Electrical Contractor (EC)	\$539,210.07	\$3,339.91	\$542,549.98
		\$1,877,988.23	\$15,861.91	\$1,893,850.14

A detailed summary of each contractor recommended change order has been included in the memorandum to the Utility Committee for your review.

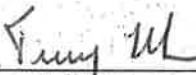
MOTION:

On a motion by Kent Costin, seconded by Scott Liudahl, the Utility Committee voted to approve the attached Change Orders for SW16-03 Phase II, Landfill Gas Compressor Station Expansion Project.

COMMITTEE: Present Yes No Unanimous

Anthony Gehrig, City Commissioner				X
Brenda Derrig, City Engineer	X	X		(Tom Knakmuhs)
Kent Costin, Director of Finance	X	X		
Brian Ward, Water Plant Supt.	X	X		
Mark Miller, Wastewater Plant Supt.	X	X		
Bruce Grubb, Enterprise Director	X	X		
Scott Liudahl, City Forester	X	X		
Terry Ludlum, Solid Waste Utility Director	X	X		
James Hausauer, Wastewater Util. Director	X	X		
Troy Hall, Water Utility Director	X	X		
Ben Dow, Public Works Operations Director				

ATTEST:



 Terry Ludlum
 Solid Waste Utility Director

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

MEMORANDUM

To: Utility Committee
From: Terry Ludlum, Solid Waste Utility Director TL
Date: August 7, 2019
Subject: Change Orders – SW 16-03 Phase II Landfill Gas Expansion Project

On October 8, 2018, the Commission approved the award of Project SW16-03 Phase II in a *Multiple Prime Contractor* format. The landfill gas expansion project was awarded to *Gast Construction Company Inc.*, *Robert Gibb & Sons*, and *Rickard Electric Inc.* Construction on the project began in October 2018, and is scheduled for completion and startup June 2019. Awarded contract bid prices are as follows:

Contract	Contractor	Bid Price
General Contractor (GC)	Gast Construction Co.	\$580,322.00
Mechanical Contractor (MC)	Robert Gibb & Sons	\$699,950.00
Electrical Contractor (EC)	Rickard Electric	\$534,830.00
	Total	\$1,815,102.00

With previous Change Order approval, the current contract amounts would be as follows:

Contract	Contractor	Bid Price
General Contractor (GC)	Gast Construction Co.	\$609,502.16
Mechanical Contractor	Robert Gibb & Sons	\$729,276.00
Electrical Contractor	Rickard Electric	\$539,210.07
	Total	\$1,877,988.23

The following table shows the overall cost summary of the recommended changes by the contractors during this approval period (monthly):

Change Order	Contractor	Change Order Cost
MC – No. 11	Robert Gibb & Sons	\$12,522.00
EC – No. 7	Rickard Electric	\$3,339.91
	Total	\$15,861.91

With Change Order approval, the updated contract amounts would be as follows:

Contract	Contractor	Bid Price
General Contractor (GC)	Gast Construction Co.	\$609,502.16
Mechanical Contractor	Robert Gibb & Sons	\$741,798.00
Electrical Contractor	Rickard Electric	\$542,549.98
	Total	\$1,893,850.14

To date, change orders have totaled 4.3 % of total construction costs.

Detailed Summary of Change Orders

The project cost impact due to **Mechanical Contractor** recommended changes are as follow:

- No. 11:** Contractor asked to furnish and install piping and valves designed for recirculation of unused landfill gas. The installation will allow the overall landfill gas collection and treatment system to continue to operate during times when any one of the major end users discontinues pulling or accepting gas.

Cost: \$12,522.00

Reason: City requested.

The project cost impact due to **Electrical Contractor** recommended changes are as follow:

- No. 7:** Contractor provided deduct for connecting unit heaters. Heaters to be purchased directly by the owner after system startup and evaluation of amount of equipment heat produced. Contractor asked to furnish and install electrical service to west end leachate pumps, heat trace panel alarm, moving valve for H2S system, additional fire alarm equipment, and a fiber patch panel.

Cost: \$3,339.91

Reason: City requested.

Process for Amending the Contract Documents; Changes in the Work

As provided in **Article 11 of Project SW16-03 Specifications**, and to avoid substantial construction schedule delays, *Work Change Directives (WCD)* were issued for the additional work. Acceptance of *WCDs* by Solid Waste (City) staff are provided after review and negotiation of contractor recommended work through contractor provided *Proposal Requests*. *WCDs* have been incorporated into subsequent *Change Orders* through formal Utility Committee and City Commission approval on this project.

Recommendation

Approve the contract *Change Orders* with Robert Gibb & Sons (Mechanical Contractor), and Rickard Electric (Electrical Contractor) on Project SW16-03 Phase II Landfill Gas Expansion Project.

Date of Issuance: August 6, 2019	Effective Date: August 8, 2019
Owner: City of Fargo Division of Solid Waste	Owner's Contract No.: SW 16-03
Contractor: Robert Gibb & Sons	Contractor's Project No.:
Engineer: Wenck Associates Inc.	Engineer's Project No.: 0208-0140
Project: Landfill Gas Compression System Expansion	Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Landfill gas recirculation piping and valves

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ <u>699,950.00</u>	Original Contract Times: Substantial Completion: <u>June 30, 2019</u> Ready for Final Payment: <u>July 30, 2019</u> days or dates
[Increase] [Decrease] from previously approved Change Orders No. <u>0</u> to No. <u>10</u> : \$ <u>29,326</u>	Increase from previously approved Change Orders No. to No. <u> </u> : Substantial Completion: <u>August 30, 2019</u> Ready for Final Payment: <u>September 30, 2019</u> days
Contract Price prior to this Change Order: \$ <u>729,276.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>August 30, 2019</u> Ready for Final Payment: <u>September 30, 2019</u> days or dates
Increase of this Change Order: \$ <u>12,522</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: <u>None</u> Ready for Final Payment: <u>None</u> days or dates
Contract Price incorporating this Change Order: \$ <u>741,798.00</u>	Contract Times with all Change Orders: Substantial Completion: <u>August 30, 2019</u> Ready for Final Payment: <u>September 30, 2019</u> days or dates

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>[Signature]</u> By: _____	By: _____	By: <u>[Signature]</u>
_____	_____	_____
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: <u>Project Manager</u> Title _____	Title _____	Title <u>Estimator/Project Manager</u>
Date: <u>August 6, 2019</u> Date _____	Date _____	Date <u>August 6, 2019</u>



205 40th Street Southwest
 PO Box 10188 (58106)
 Fargo, North Dakota 58103
 Phone: 701.282.5900
 Fax: 701.281.0819

July 15, 2019

Mr. Randy Hanson
 Project Manager
 Wenck
 1800 Pioneer Creek Center
 Maple Plain, MN 55359

RE: Fargo Landfill Gas Compression System Expansion, Project NO. SW-16-03
 Recirculating Line

Dear Randy,

Please find list below our cost associated with installing a 4" recirculating line from LFG-103-6"-1S4 post exchanger to LFG-112A-8"-1S4 second stage blower suction.

Material:

Pipe & Fittings:	\$ 1861
Back Pressure Valve:	\$ 3,625
Freight:	\$ 60
Hangers and Consumables:	\$ 160

Tax:	\$ 428
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Labor:

\$ 5,250

Sub Total:	\$ 11,384
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Overhead/Profit	\$ 1,138
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Total:	<u>\$ 12,522</u>
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If you have any questions please feel free to contact our office at 701.282.5900.

Sincerely,
 ROBERT GIBB & SONS

Tim Singelmann
 Tim Singelmann

USTOMIZED PRODUCT 2" BPS-09i-20A		QUANTITY	TOTAL
	Stra-Val Quote Number: QS29849 Customized Product: Back Pressure/Bypass Valve 150# ANSI B16.5 RF Flanges (10 bar nominal rating) 220 psi, 15 bar max Estimated Flow Cv: 23.3	1 @ \$3,625.50 / unit	\$3,625.50
	Seal Kit Adders (Optional)	1 @ \$250.00 / unit @	\$250.00 @

Options selected

Adders:

Spring Range: 8 - 80 psig / 0.552 - 5.52 barg

Set Pressure:

1 pcs. @ 25 psig (1.72 barg)

- Body & wetted trim :303SS
- Diaphragm :Viton
- Seat :Viton
- Spring Chamber & Ext. Spring Hardware (nonwetted) :303SS
- Spring (non-wetted) :302SS (nw)
- Flanges 150# ANSI Companion Set of 2 (Optional) :None

Estimated Ship Weight: 37 lbs. (not including seal kits)
Freight & Insurance charges are not included in any of above pricing

Est. shipments as configured: approx 7-9 days (working days, excluding weekends and holidays)

Actual delivery schedule may change and can vary with order quantity. Consult factory.
*All orders subject only to Straval Terms and conditions. **Minimum \$65 Per Order.***

*Straval valves or strainer orders are non-cancellable, and these products **CANNOT** be returned (for credit or exchange...etc.)*

Straval offers the following optional certificates:

- (Not included in the valve or strainer cost quoted)*
- Certificate for raw material from our Mill (MTR): \$525.00 /Line Item*
- Certificate of Conformance/Compliance: \$15.00 /Order*
- Certificate of Origin: \$15.00 /Order*
- Certificate of Functional Test : \$20.00 /Line Item*
- Certificate of Hydro-test: \$35.00 /Line Item*

Straval charges the following financial transaction fees:

Price Quotation # B110186

FERGUSON ENTERPRISES #3093

1602 45TH STREET NORTH
FARGO, ND 58102-4275

Phone : 701-237-4131
Fax : 701-235-9782

Bid No.....: B110186

Bid Date...: 07/15/19

Quoted By: BJL

Customer.: ROBERT GIBB & SONS INC
CITY OF FARGO LANDFILL
2011 GREAT NORTHERN DR
FARGO, ND 58103

Cust Phone: 701-282-5900

Terms.....: NET 10TH PROX

Ship To.....: ROBERT GIBB & SONS INC
CITY OF FARGO LANDFILL
2011 GREAT NORTHERN DR
FARGO, ND 58103

Cust PO#...:

Job Name.: CITY OF FARGO LANDFILL

Item	Description	Quantity	Net Price	UM	Total	Customer Code
IS14LWTUUP	6X6X4 SS S10 304L TEE	1	97.812	EA	97.81	
IS14LWTXXP	8X8X4 SS S10 304L TEE	1	282.048	EA	282.05	
IS14LWCRPK	4X2 SS S10 304L CONC RED	2	10.140	EA	20.28	
IS14LW9P	4 SS S10 304L LR 90 ELL A403WPW	4	16.068	EA	64.27	
IS4LRFSOFK	2 SS 304L 150# RF SO FLG	2	25.280	EA	50.56	
FNWSWG14FK	2 150# 304 FG SPRL WND GSKT	4	7.295	EA	29.18	
FNWNBSZ1K	2 ZN 150# FLG NUT/BLT SET	4	2.024	EA	8.10	
FNW600BK	2 SS TFM 150# FLG 2PC FP BV	2	408.148	EA	816.30	
GSP14LK	2 SS S10 304L A312 WELD PIPE	20	7.549	FT	150.98	
GSP14LP	4 SS S10 304L A312 WELD PIPE	20	17.050	FT	341.00	

Subtotal: \$1860.53

Inbound Freight: \$0.00

Tax: \$0.00




Order Total: \$1860.53

Date of Issuance: July 26, 2019 Effective Date: July 26, 2019
 Owner: City of Fargo Division of Solid Waste Owner's Contract No.: SW 16-03
 Contractor: Rickard Electric Contractor's Project No.:
 Engineer: Wenck Associates Inc. Engineer's Project No.: 0208-0140
 Project: Landfill Gas Compression System Expansion Contract Name:

The Contract is modified as follows upon execution of this Change Order:

1. Deduct for not connecting unit heaters, Additional breaker required for west end leachate pumps, labor and materials for heat trace panel alarm, electrical work associated with moving valve for H2S system (+\$1,373.00).
2. Addition of TL-300 IP dialer for fire alarm system (+\$1,048.87).
3. Provide REI Built Fiber Patch Panel (+\$918.04).

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES
Original Contract Price: \$ <u>534,830.00</u>	Original Contract Times: Substantial Completion: <u>June 30, 2019</u> Ready for Final Payment: <u>July 30, 2019</u> days or dates
Increase from previously approved Change Orders No. <u>0</u> to No. <u>6</u> : \$ <u>4,380.07</u>	Increase from previously approved Change Orders No. <u>0</u> to No. <u>6</u> : Substantial Completion: <u>August 30, 2019</u> Ready for Final Payment: <u>September 30, 2019</u> days
Contract Price prior to this Change Order: \$ <u>539,210.07</u>	Contract Times prior to this Change Order: Substantial Completion: <u>August 30, 2019</u> Ready for Final Payment: <u>September 30, 2019</u> days or dates
Increase of this Change Order: \$ <u>3,339.91</u>	[Increase] [Decrease] of this Change Order: Substantial Completion: _____ Ready for Final Payment: _____ days or dates
Contract Price incorporating this Change Order: \$ <u>542,549.98</u>	Contract Times with all Change Orders: Substantial Completion: <u>August 30, 2019</u> Ready for Final Payment: <u>September 30, 2019</u> days or dates

<p>RECOMMENDED: By: <u></u> By: _____ _____ Engineer (if required) Title: <u>Project Manager</u> Title _____ Date: <u>July 26, 2019</u> Date _____</p>	<p>ACCEPTED: By: <u></u> By: _____ _____ Owner (Authorized Signature) Title _____ Date _____</p>	<p>ACCEPTED By: <u></u> By: _____ _____ Contractor (Authorized Signature) Title: <u>President</u> Title _____ Date: <u>07/26/2019</u> Date _____</p>
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RICKARD ELECTRIC, INC.
Electrical Contractors
1220 41st Street NW
Fargo, North Dakota 58102
(701) 281-0766 FAX (701) 282-3239

EMAIL ADDRESS: darrin@reifargo.com
WEB SITE: www.reifargo.com

TO: WENCK ASSOCIATES
3310 FIECHTNER DRIVE S
FARGO, ND 58103

PHONE: DATE: 7/3/2019
JOB NAME/LOCATION
MISC. CHANGE ORDER
FARGO LANDFILL
FARGO
ND
58102
JOB NUMBER: JOB PHONE: (701) 297-9600

We hereby submit an estimate for:
ADDITIONAL LABOR AND MATERIALS OUTSIDE THE SCOPE OF THE ORIGINAL PROJECT.

- 1.) DEDUCT CHANGES FOR UNIT HEATER CHANGE ORDER
- THIS DEDUCT IS DUE TO THE FACT THAT WE ARE NOT COMPLETING THE CONNECTION TO THE UNIT HEATERS AT THIS TIME. ITEMS DEDUCTED ARE CONNECTION LABOR, EXPLOSION PROOF FLEXIBLE CONDUIT, AND WIRE IN CONDUIT.
- ADDED COST TO THIS IS A J-BOX AT THE END OF THE PIPE TO CAP OFF FOR NOW
2.) ADDITIONAL FOR LEACHATE BREAKER. THIS WAS MISSED BY MYSELF WHEN I QUOTED THE LEACHATE PUMP CONNECTIONS ORIGINALLY.
3.) ADDITIONAL LABOR AND MATERIALS FOR HEAT TRACE PANEL ALARMING
- THIS INCLUDES CONDUIT AND WIRE TO CP-1 ALONG WITH PROGRAMMING BY REI
4.) ADDITIONAL LABOR AND MATERIALS FOR VALVE ZS300
- THE PLANS AND SPECS SHOWED THIS AS A MANUAL VALVE W/ LIMIT SWITCH LOCATED IN THE H2S TANK AREA. THIS VALVE WAS MOVED TO THE WEST END OF THE BUILDING AND IS NOW AN AUTOMATED VALVE.
- THIS INCLUDES A NEW CONDUIT RUN FOR THE VALVE ALONG WITH PROGRAMMING BY REI

WE PROPOSE hereby to furnish material and labor-complete in accordance with the above specifications, for the sum of:
ONE THOUSAND THREE HUNDRED SEVENTY THREE AND 00/100 dollars (\$1,373.00)

Payment to be made as follows: UPON INVOICE

All material is guaranteed to be as specified. All work to be completed in a professional manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed upon only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Worker's Compensation insurance.

Authorized Signature

Darrin Dietrich

Note: This proposal may be withdrawn by us if not accepted within 30 days

ACCEPTANCE OF PROPOSAL-The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment to be made as outlined above.

Signature:

Signature:

Date of Acceptance:



RICKARD ELECTRIC, INC.
Electrical Contractors
1220 41st Street NW
Fargo, North Dakota 58102
(701) 281-0766 FAX (701) 282-3239

EMAIL ADDRESS: darrin@reifargo.com
WEB SITE: www.reifargo.com

TO: WENCK ASSOCIATES
3310 FIECHTNER DRIVE S
FARGO, ND 58103

PHONE:	DATE: 6/26/2019
JOB NAME/LOCATION LANDFILL IP FA DIALER FARGO LANDFILL	
ND 58103	
JOB NUMBER:	JOB PHONE: (701) 297-9600

We hereby submit an estimate for:
THIS PROPOSAL IS FOR THE TL-300 IP DIALER FOR THE LANDFILL FIRE ALARM SYSTEM

WE PROPOSE hereby to furnish material and labor-complete in accordance with the above specifications, for the sum of:
ONE THOUSAND FORTY EIGHT AND 87/100 dollars (\$1,048.87)

Payment to be made as follows: UPON INVOICE

All material is guaranteed to be as specified. All work to be completed in a professional manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed upon only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Worker's Compensation insurance.

Authorized
Signature

Darrin Dietrich

Note: This proposal may be withdrawn by us if not accepted within 30 days

ACCEPTANCE OF PROPOSAL-The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment to be made as outlined above.

Signature: _____

Signature: _____

Date of Acceptance: _____



RICKARD ELECTRIC, INC.
Electrical Contractors
1220 41st Street NW
Fargo, North Dakota 58102
(701) 281-0766 FAX (701) 282-3239

EMAIL ADDRESS: darrin@reifargo.com
WEB SITE: www.reifargo.com

TO: WENCK ASSOCIATES
3310 FIECHTNER DRIVE S
FARGO, ND 58103

PHONE: DATE: 7/16/2019
JOB NAME/LOCATION: LANDFILL FIBER PATCH PANEL
FARGO ND 58102
JOB NUMBER: JOB PHONE: (701) 297-9600

We hereby submit an estimate for:
PROVIDE REI BUILT FIBER PATCH PANEL FOR THE GAS COMPRESSION BUILDING AT THE FARGO LANDFILL

COMPONENTS INCLUDE THE FOLLOWING

- Qty 1 - 24"x24"x12" Painted UL listed control panel
Qty 1 - Panduit FDME8RG Din Rail patch panel and 8 LC adaptors
Qty 2 - LC 24" fiber patch cables
Qty 1 - Extreme Networks 16804 industrial switch
Qty 1 - Extreme Networks 16920 55VDC power supply
Qty 2 - SM SFP Modules
Qty 1 - Allen Bradley 1606-XLS120E 120W power supply
All associated 35mm Din rail and necessary mounting hardware

*****LABOR TO INSTALL THIS PATCH PANEL IN THE BUILDING WAS INCLUDED IN THE PROJECT
***** EXTREME NETWORKS POWER SUPPLY AND SWITCH PURCHASED BY IS

WE PROPOSE hereby to furnish material and labor-complete in accordance with the above specifications, for the sum of:
NINE HUNDRED EIGHTEEN AND 04/100 dollars (\$918.04)

Payment to be made as follows: UPON INVOICE

All material is guaranteed to be as specified. All work to be completed in a professional manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed upon only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Worker's Compensation insurance.

Authorized Signature: Darrin Dietrich

Note: This proposal may be withdrawn by us if not accepted within 30 days

ACCEPTANCE OF PROPOSAL-The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment to be made as outlined above.

Signature: _____

Signature: _____

Date of Acceptance: _____

MEMORANDUM
August 16, 2019

To: Utility Committee
From: Troy B. Hall, Water Utility Director **TBH**
Re: Apex Task Order #8 – Downtown Water Tower Design

Introduction

Attached, please find a task order proposal from Apex Engineering Group (Apex) for services related to the design of a new downtown water tower. This new water tower will replace the three oldest water towers in the water system with a single, larger water tower. The single tower option has the lowest life-cycle costs, fixes hydraulic issues in the distribution system, and will simplify water tower operation for WTP personnel. The fee for this task order is \$245,550.



Location of the new water tower will be near 11th Street and 7th Avenue North. It will replace the current water tower at this location.

Financial Considerations

The new downtown water tower is \$4 million and is a line item in the proposed 2020 budget to be funded through Infrastructure Sales Tax (Fund 450). At this time, Water Utility staff and consultants are contemplating submitting an application to the State Water Commission to request \$2.5-2.7 million in cost-share (grant) funding. The new downtown water tower is a line item in the 2019 budget as well.

SUGGESTED MOTION:

Approve Task Order #8 with Apex Engineering Group in the amount of \$245,550 for engineering services toward the design and bidding of a new downtown water tower.

Your consideration in this matter is greatly appreciated.

Task Order No. 08

In accordance with Paragraph 1.01 of the Agreement between Owner and Engineer for Professional Services – Task Order Edition, dated January 1, 2018 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order: August 19, 2019
- b. Owner: City of Fargo – Water Division
- c. Engineer: Apex Engineering Group, Inc.
- d. Specific Project (title): 2.5 Million Gallon Elevated Water Storage Tank
- e. Specific Project (description): Design and Bid Phase Services for Construction of a New Composite Elevated Water Storage Tank.

2. Services of Engineer

A. The specific services to be provided or furnished by Engineer under this Task Order are:

- as follows: ***See attached Scope of Services***

B. Resident Project Representative (RPR) Services

If the scope of services established in Paragraph 2.A above includes RPR services, then Exhibit D of the Agreement is expressly incorporated in this Task Order by reference.

~~C. Designing to a Construction Cost Limit~~

~~Under this Task Order Engineer will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement and of Exhibit F to the Agreement. Exhibit F is expressly incorporated by reference. The Construction Cost Limit is \$_____. The bidding or negotiating contingency to be added to the Construction Cost Limit is _____ percent.~~

D. Other Services

Engineer shall also provide the following services: ***None***

E. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

Task Order Form

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 and American Society of Civil Engineers. All rights reserved.

A. Additional Services that may be authorized or necessary under this Task Order are:

as follows: *None*

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following: *Attached Scope of Services*

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

<u>Phase/Task</u>	<u>Completion Date (week of)</u>
Execute Engineering Agreement Task Order	August 26, 2019
Kickoff Meeting	September 2, 2019
Submit Preliminary Engineering Report	October 14, 2019
Submit 90% Design Documents for City Review	December 2, 2019
Submit 100% Design Documents for City Review and Submit Documents to the NDDH for Review and Approval	December 30, 2019
Advertise for Bids	January 13, 2020
Receive and Open Bids	February 17, 2020
Begin Construction	April 6, 2020

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

Description of Service	Amount	Basis of Compensation
1. Basic Services (Part 1 of Exhibit A)		
a. Study and Report Phase (A1.01)	(N/A)	(N/A)
b. Preliminary and Final Design Phase (A1.02, A1.03)	\$221,224	Lump Sum
c. Bidding or Negotiating Phase (A1.04)	\$24,326	Lump Sum
d. Construction Phase (A1.05)*	(N/A)	(N/A)
e. Resident Project Representative Services* (A1.05.A.2).	(N/A)	(N/A)
f. Post-Construction Phase (A1.06)	(N/A)	(N/A)
g. Commissioning Phase (A1.07)	(N/A)	(N/A)
h. Other Services (see A1.08, and 2.D above)	(N/A)	(N/A)
TOTAL COMPENSATION (lines 1.a-h)	\$245,550	Lump Sum
2. Additional Services (Part 2 of Exhibit A)	(N/A)	(N/A)

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer’s labor, overhead, profit, reimbursable expenses (if any), and Consultants’ charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order: *None*

8. Other Modifications to Agreement and Exhibits: *None*

9. Attachments: *Scope of Services*

10. Other Documents Incorporated by Reference: *None*

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is **August 19, 2019**.

OWNER:

By: _____

Print Name: Troy Hall

Title: Water Utility Director

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Troy Hall

Title: Water Utility Director

Address: 435 14th Avenue South
Fargo, ND 58103

E-Mail Address: THall@FargoND.gov

Phone: 701-476-6741

ENGINEER:

By: _____

Print Name: Timothy J. Paustian, PE

Title: Vice President

Engineer License or Firm's Certificate No. (if required): COCP #975C
State of: North Dakota

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Timothy J. Paustian, PE

Title: Project Manager

Address: 4733 Amber Valley Parkway South
Fargo, ND 58103

E-Mail Address: Tim.Paustian@ApexEngGroup.com

Phone: 701-373-7991

Task Order Form

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Water | Transportation | Municipal | Facilities

Scope of Services

2.5 Million Gallon Elevated Water Storage Tank – Design and Bid Period Services

City of Fargo, North Dakota
August 19, 2019

Task No.	Description
1	Project Management
2	Preliminary Design
3	Final Design
4	Bidding and Award

Project Background

In February of 2017, the City of Fargo adopted recommendations from a technical memorandum (Downtown Water Tower Improvements Analysis) by AE2S and KLM for construction of a new elevated water storage tank to be located near downtown Fargo. The newly proposed composite tank is designed to replace existing Towers No. 1, No. 2, and No. 3. The new 2.5 Million Gallon (MG) elevated tank will be constructed at the existing Tower No. 1 property, which is located at 1102 7th Avenue North.

The original analysis called for a new 2 MG tank. However, further analysis by City Staff indicated a need to control pressure surges within the distribution system to lessen the possibility of main breaks. For this reason, City Staff expressed a desire to construct a 2.5 MG elevated tank that will have 2 MG of useable storage and 0.5 MG of surge storage.

The long term plan is to demolish Towers No. 2 and No. 3, following the successful startup, commissioning and one-year warranty inspection of new Tower No. 1 and the completion of future water transmission main installations by City of Fargo Engineering Staff to the downtown area.

The City also desires to demolish Tower No. 8 near Fargo South High School. This tower is in need of rehabilitation, but its proximity to the High School building and athletic facilities makes it nearly impossible and cost prohibitive to rehabilitate. Further, this tank has not been in service for quite some time.

The following scope and fee is for engineering services related to design and bidding of the 2.5 MG Elevated Water Storage Tank. Demolition of Towers No. 2, No. 3, and No. 8 is not included.

Task No. 1.0 – Project Management

Objective:

Management of engineers, technicians and sub consultants through all phases of the project, including contract administration and coordination of quality assurance and quality control. Provide point of contact for City of Fargo.

Activities:

1. Review and execute contract between City of Fargo and Apex Engineering Group (Apex).
2. Oversee Engineers and Technicians assigned to the project.
3. Attend and report at project update meetings, as necessary.
4. Provide communications and coordination between City of Fargo, Sub-consultants, and Apex.
5. Provide quality assurance and quality control.

City of Fargo Responsibilities:

- ✓ Execute contract between City of Fargo and Apex.
- ✓ Provide requested information in a timely manner.
- ✓ Attend project update meetings.

Apex Responsibilities and Deliverables:

- ✓ Review and execute task order contract with the City of Fargo in a timely manner.
- ✓ Gather, organize, review and return (if applicable) any necessary information.
- ✓ Schedule and attend project update meetings.
- ✓ Communicate with City of Fargo on project updates and schedule.

Task No. 2.0 – Preliminary Design

Objective:

To develop a Preliminary Engineering Report (PER) with 30% design documents for the proposed 2.5 MG Elevated Water Storage Tank in Fargo.

Activities:

1. Conduct kickoff meeting between all parties for project.
2. Install dynamic pressure sensor in the existing tower vicinity to monitor pressures over a 1 to 2 week time period.
3. Complete topographic field survey for the selected site at 1102 7th Avenue North, including the lot adjacent to the tower site (1112 7th Avenue North) recently purchased by the City.
4. Coordinate with Geotechnical Sub-consultant (Northern Technologies, LLC) regarding soil borings and geotechnical report completed January 12th, 2017.
5. Work with City and Park District to implement overall plan for the tower site.
6. Prepare Preliminary Engineering Report which will include:
 - a. Demolition plan for removal of Tower No. 1 tank and foundation as necessary for construction of newly proposed tank.
 - b. Elevated tank plan, section view and general details for new 2.5 MG Elevated Composite Tank.
 - c. Preliminary site utility plan including water, storm and sanitary sewer layouts as necessary for elevated tank site.
 - d. Preliminary grading plan, pavement plan, fencing plan and general landscaping plan for elevated tank site.
 - e. Preliminary electrical, instrumentation, SCADA design and site lighting for elevated tank site.
 - f. A recommended list of proposed vendors for construction of elevated tank.
 - g. A rendering of the proposed city of Fargo logo that will be placed on the tank.
 - h. Visual renderings of the elevated tank.
 - i. An opinion of probable costs for 30% design.
7. Present Preliminary Engineering Report (PER) to City Staff.
8. Hold public meeting with adjacent property owners to discuss proposed elevated tank project following the completion of Preliminary Engineering Report.
9. Coordinate with Owner and Funding Agency for project funding requirements.

City of Fargo Responsibilities:

- ✓ Provide documents as requested.
- ✓ Provide Apex with hydraulic grade elevation and overflow elevation for new 2.5 MG elevated tank.
- ✓ Provide Apex with site design considerations for new auxiliary storage buildings and overall site development plan.
- ✓ Attend review meetings.
- ✓ Provide Apex feedback on "draft" Preliminary Engineering Report.

Apex Responsibilities and Deliverables:

- ✓ Conduct review meetings for Preliminary Engineering Report.
- ✓ Provide City of Fargo with three (3) copies of "Draft" Preliminary Engineering Report.

Task No. 3.0 – Final Design

Objective:

Prepare final contract documents (plans and specifications) for the proposed 2.5 MG Elevated Water Storage Tank in Fargo. Provide 90% and 100% contract documents for milestone review. Follow funding agency requirements for contract documents.

Activities:

1. Prepare permit applications for storm, sanitary and water main connections as necessary.
2. Prepare Storm Water Pollution Prevention Plan (SWWPP) for the project. Permit by Contractor.
3. Prepare and submit Federal Aviation Administration (FAA) application for approval.
4. Review geotechnical report and final recommendations for foundation system.
5. Prepare design drawings and specifications for elevated tank project.
6. Finish final logo design for tank.
7. Prepare final opinion of costs for 90% and 100% plan sets.
8. Submit plans and specifications for Owner's review at 90% and 100% design intervals.
9. Hold review meetings with Owner at various design document intervals.
10. Submit final plans (100%) to the North Dakota Department of Environmental Quality (NDDEQ) for review and approval.

City of Fargo Responsibilities:

- ✓ Attend scheduled meetings.
- ✓ Review milestone contract documents (90% and 100%) and provide comments.

Apex Responsibilities and Deliverables:

- ✓ Coordinate with NDDEQ for funding program contract requirements.
- ✓ Prepare 90% plans and specifications. Submit 3 copies to the City of Fargo for review and comment.
- ✓ Prepare 100% plans and specifications. Submit 3 copies to the City of Fargo for review and comment.

Task No. 3.0 – Bidding and Award

Objective:

Advertise, answer questions during bidding, open bids and make recommendations for award of 2 MG Elevated Water Storage Tank.

Activities:

1. Prepare bid proposal and contract forms.
2. Issue advertisement for bids.
3. Reproduce contract documents for interested parties and post to QuestCDN.
4. Respond to bid period questions.
5. Conduct Pre-Bid Meeting.
6. Issue addenda for project as needed.
7. Attend bid opening and receive bids from Contractors.
8. Evaluate bids, prepare bid tabulation and make recommendation to Owner for bid award.
9. Assist Owner with preparation of After-Bid documents for submission to NDDEQ.

City of Fargo Responsibilities:

- ✓ Placement of Advertisement for Bids in appropriate publications.
- ✓ Make facilities available to prospective Bidders for tours and inspections.
- ✓ Attend Pre-Bid Meeting
- ✓ Attend Bid Opening.
- ✓ Review of contractor's bids by City Attorney, if necessary.

Apex Responsibilities and Deliverables:

- ✓ Provide electronic copy of Bidding Documents for download by prospective Bidders.
- ✓ Provide electronic copy of Bidding Documents for local Builder's Exchanges.
- ✓ Provide any 'hard copy' Bidding Documents to prospective Bidders, as needed.
- ✓ Answer and document contractor questions during bidding.
- ✓ Develop bid tabulation for bid opening.
- ✓ Complete bid tabulation with contractors' bids.
- ✓ Provide recommendation of award letter to city.

Project Schedule

<u>Task/Activity</u>	<u>Date (Week of)</u>
- Execute Agreement for Engineering Service	August 26, 2019
- Conduct Kickoff Meeting	September 2, 2019
- Submit Preliminary Engineering Report	October 14, 2019
- Submit 90% Design Documents for City Review	December 2, 2019
- Submit 100% Design Documents for City Review Submit Documents to NDDH for Review and Approval	December 30, 2019
- City Commission Approval to Advertise	January 13, 2020
- Advertise for Bids (QuestCDN)	January 13, 2020
- Advertise for Bids (Fargo Forum)	January 24, 2020
- Receive and Open Bids	February 17, 2020
- City Commission Authorize Award of Contract	March 9, 2020
- Begin Construction (Notice to Proceed)	April 6, 2020

Apex Engineering Group
 Hours Estimate
 Fargo, North Dakota
 2.5 MG Elevated Water Storage Tank

Task	Principal	Senior Engineer	Design Engineer	Graduate Engineer	Lead Engineering Technician	Survey Crew	Field Technician	Admin Support
Task 1.0 - Project Management								
Task Subtotal	16	52	24	0	0	0	0	0
Task 2.0 - Preliminary Engineering Report								
Task Subtotal	6	100	186	116	122	48	20	28
Task 3.0 - Final Design								
Task Subtotal	6	132	252	168	164	0	36	32
Task 4.0 - Bidding								
Task Subtotal	2	40	80	16	16	0	0	16
Apex Project Subtotals								
Hours	30	324	542	300	302	48	56	76

REPORT OF ACTION

25

UTILITY COMMITTEE

Project No. WA1860

Type: AE2S Task Order #27 – WTP
Pretreatment Process Rehab

Location: Lime Softening Water Treatment Plant

Date of Hearing: 8/22/2019

<u>Routing</u>	<u>Date</u>
City Commission	8/26/2019
Project File	

Troy Hall, Water Utility Director, presented the attached memo regarding a proposed AE2S engineering task order for rehabilitation of the Pretreatment process in the Lime Softening Water Treatment Plant (LSWTP). This project was a recommendation in the LSWTP Facility Plan Phase 2 planning effort (2016). The Pretreatment process equipment is original to the 1997 LSWTP. This project is in the 2019 Water Utility budget and will be paid through a low-interest State Revolving Fund (SRF) loan. Construction would take place in 2020. The AE2S task order is in the amount of \$208,400.

MOTION:

On a motion by Terry Ludlum, seconded by Jim Hausauer, the Utility Committee voted to approve the proposed Task Order #27 with AE2S in the amount of \$208,400 for engineering services related to the rehabilitation of the Pretreatment Process in the Lime Softening Water Treatment Plant.

<u>COMMITTEE:</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				X
				Proxy
Anthony Gehrig, City Commissioner				
Kent Costin, Director of Finance	X			
Brian Ward, Water Plant Supt.	X			
Mark Miller, Wastewater Plant Supt.	X			
Bruce Grubb, City Administrator	X			
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				
Brenda Derrig, City Engineer	X			(Tom Knakmuhs)

ATTEST:


 Troy B. Hall
 Water Utility Director

- C: Tim Mahoney, Mayor
 Commissioner Strand
 Commissioner Piepkorn
 Commissioner Grindberg

MEMORANDUM
Aug 22, 2019

To: Utility Committee

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

Re: AE2S Task Order #27 – Fargo LSWTP Pretreatment Rehabilitation

Introduction

Attached, please find a proposed task order with AE2S for engineering services related to a rehabilitation project for the Pretreatment process in the Lime Softening Water Treatment Plant (LSWTP). This project was recommended in the LSWTP Facility Plan Phase 2 in 2016 by AE2S and Black & Veatch. The Pretreatment process removes river sediment prior to lime softening. The pretreatment equipment is original to the 1997 LSWTP. This project is a line item in the 2019 Water Utility budget and will be funded with a low-interest State Revolving Fund (SRF) loan.



Plate Settlers in the Pretreatment Process of the Lime Softening Water Treatment Plant.

Water Utility staff suggests that the following scope of service for Task Order #27 is important for successful design and construction of the Pretreatment rehabilitation project.

<u>Phase</u>	<u>Task Number and Task Name</u>	<u>Est. Hours</u>	<u>Amount</u>
Phase 030	Preliminary Design Phase Services		
	01 Project Management and Administration	44	\$ 8,200
	02 30% Design Submittal	284	\$ 40,800
	03 Preliminary Design Report and SRF Loan Report	88	\$ 15,200
Phase 040	Final Design Phase Services		
	01 Project Management and Administration	66	\$ 13,000
	02 Process Design and Specifications	555	\$ 77,400
	03 Electrical Design and Specifications	187	\$ 31,500
Phase 050	Bidding or Negotiation Phase Services		
	01 Pre-Bidding Administration	102	\$ 17,000
	02 Post-Bidding Administration	28	\$ 5,300
	Total	1,354	\$208,400
44,300			

Plan of Financing

Water Utility staff recommends this task order be paid through low-interest State Revolving Fund (SRF) loan. The project is a specific line item in the loan and 2019 budget. The project will be financed through Fund 501/Division 3051 until loan reimbursement is received.

SUGGESTED MOTION:

Approve Task Order #27 with AE2S in the amount of \$208,400 for engineering services related to Pretreatment Rehabilitation in the Lime Softening Water Treatment Plant (LSWTP).

Your consideration in this matter is greatly appreciated.

This is Water Consulting Task Order No. 27, consisting of 4 pages.

Water Consulting Task Order No. 27

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Water Consulting Services – Task Order Edition, dated January 1, 2018 ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- A. Effective Task Order Date: August 22, 2019
- B. Owner: City of Fargo (Water Utility)
- C. Engineer: Advanced Engineering and Environmental Services, Inc. (AE2S)
- D. Engineer Project No.: P00803-2018-029
- E. Specific Project (title): Fargo LSWTP Pretreatment Rehabilitation
- F. Specific Project (description):

Design and bidding phase services for improvements to the pretreatment system at the existing Fargo Lime Softening Water Treatment Plant (LSWTP) including project funding support. The improvements generally include the replacement of existing redwood baffle walls, replacement of rapid mix and flocculation mixing equipment, basin modifications to improve cleaning process, and miscellaneous electrical improvements.

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are detailed in Attachment 1 and include the services (and related terms and conditions) set forth in the following sections of Exhibit A, as attached to the Agreement referred to above, such sections being hereby incorporated by reference:
 - Preliminary Design Phase (Exhibit A, Paragraph A1.02)
 - Final Design Phase (Exhibit A, Paragraph A1.03)
 - Bidding or Negotiating Services (Exhibit A, Paragraph A1.04)
- B. Resident Project Representative (RPR) Services: None.
- C. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2, Exhibit B of the Agreement.

4. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following approximate schedule:

- Utility Committee Task Order approval – *August 22, 2019*
- City Commission Task Order approval – *September 9, 2019*
- Preliminary Engineering Phase – *September 2019 – November 2019*
- Final Design Phase – *November 2019 – February 2020*
- Bidding Phase – *March 2020*

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

<i>Phase</i>	<i>Task Number and Task Name</i>	<i>Payment Method</i>	<i>Estimated Hours</i>	<i>Amount</i>
030	<i>Preliminary Design Phase Services</i>	<i>Method A</i>		
01	<i>Project Management and Administration</i>		44	\$8,200
02	<i>30 Percent Design Submittal</i>		284	\$40,800
03	<i>Preliminary Design Report and SRF Loan Support</i>		88	\$15,200
040	<i>Final Design Phase Services</i>	<i>Method A</i>		
01	<i>Project Management and Administration</i>		66	\$13,000
02	<i>Process Design and Specifications</i>		555	\$77,400
03	<i>Electrical Design and Specifications</i>		187	\$31,500
050	<i>Bidding or Negotiating Phase Services</i>	<i>Method A</i>		
01	<i>Pre-Bidding Administration</i>		102	\$17,000
02	<i>Post-Bidding Administration</i>		28	\$5,300
Total			1,354	\$208,400

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

- B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C, where Method A is a Lump Sum payment and Method B is payment for Standard Hourly Rates.

6. Consultants retained as of the Effective Date of the Task Order:

Black & Veatch Corporation

7. Other Modifications to Agreement and Exhibits: None.

8. Attachments:

Attachment 1 – Scope of Services for Task Order

9. Other Documents Incorporated by Reference: None.

10. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is August 22, 2019.

OWNER: City of Fargo (Water Utility)

ENGINEER: Advanced Engineering and Environmental Services, Inc. (AE2S)

By: _____

By: _____

Name: Troy B. Hall

Name: Brian R. Bergantine, PE

Title: Water Utility Director

Title: Operations Manager

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: Troy B. Hall

Name: Ryan Grubb, PE

Title: Water Utility Director

Title: Project Engineer

Address: 435 14th Ave S
Fargo, ND 58103

Address: 4170 28th Ave S
Fargo, ND 58104

E-Mail Address: THall@FargoND.gov

E-Mail Address: Ryan.Grubb@AE2S.com

Phone: (701) 476 - 6741

Phone: (701) 364 - 9111

*Attachment 1 to Water Consulting Task Order No. 27**Fargo LSWTP Pretreatment Rehabilitation**August 22, 2019*

Scope of Services

The Project entails improvements to the pretreatment system at the existing Fargo Lime Softening Water Treatment Plant (LSWTP) and project funding support. This Scope of Services provides for the design and bidding phase services to support the replacement of the existing redwood baffle walls, replacement of the rapid mix and flocculation mixing equipment, basin modifications to improve the cleaning process, and electrical improvements including upgrades to existing control panels, motor control centers, and area lighting. The following is a detailed breakdown of this Scope of Services to Water Consulting Task Order No. 27.

Phase 030 – Preliminary Design Phase Services

In accordance with Paragraphs A1.02 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2018, ENGINEER shall perform the following additional Preliminary Design Phase services under Water Consulting Task Order No. 27:

Task 01 – Project Management and Administration

ENGINEER shall perform general Project administration activities including progress monitoring, scheduling, general correspondence, office administration, and invoicing. These activities include maintaining contact and liaison with the OWNER and Project staff; providing OWNER with monthly Project financial status updates; ensuring that the needs of the OWNER are met in a timely manner, and monitoring Project budgets and schedules.

Task 02 – 30 Percent Design Submittal

ENGINEER shall prepare construction drawings and technical specifications which are to address not less than 30 percent completion design effort for the Fargo LSWTP Pretreatment Rehabilitation. The tasks and deliverables anticipated are as follows:

- ENGINEER shall attend and facilitate a project kick-off meeting with the OWNER.
- 30 Percent Design Deliverables:
 - Preliminary equipment and process layouts
 - Preliminary process flow diagram and electrical schematic
 - Spatial design for major process and electrical equipment
 - Preliminary equipment descriptions
 - Preliminary specifications for major process equipment
 - Structural review
 - Opinion of probable construction cost update
 - Project schedule update

- ENGINEER shall conduct internal quality control review and refinement before submittal to OWNER.
- ENGINEER shall submit three (3) hard copies and one (1) electronic copy, in PDF format, of the 30 Percent Design deliverables to OWNER for review at least one week prior to review meeting.
- ENGINEER shall conduct a 30 Percent Design Workshop with the OWNER to obtain OWNER'S comments on the submittal.

Task 02 – Preliminary Design Report and SRF Loan Support

ENGINEER shall develop a preliminary design report to document the general design philosophy and key design elements. The report shall meet the state revolving fund (SRF) loan requirements as defined by the North Dakota Department of Environmental Quality (NDDEQ). ENGINEER shall provide additional support as needed to ensure the project is eligible for SRF funding.

Phase 040 – Final Design Phase Services

In accordance with Paragraphs A1.03 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2018, ENGINEER shall perform the following additional Final Design Phase services under Water Consulting Task Order No. 27:

The tasks or deliverables to be provided in the Final Design Phase will expand on the preliminary design concepts prepared for the Project and result in completion of final bidding documents for Water Consulting Services Task Order No. 27. One (1) independent set of bidding documents will be prepared for the Project. Throughout the Final Design Phase, design deliverables shall be prepared in the form of the following milestones:

- 60 Percent Design Submittal
- 90 Percent Design Submittal
- 100 Percent (Final) Bid Documents

The milestone design deliverables are anticipated to include the following key components:

60 Percent Design Submittal

The 60 percent design will expand on the preliminary and 30 percent design documents. The ENGINEER shall prepare construction drawings and technical specifications which are to address not less than 60 percent completion design effort for the Fargo LSWTP Pretreatment Rehabilitation. The tasks and deliverables anticipated are as follows:

- 60 Percent Design Deliverables:
 - Preliminary contract front-end documents (using Engineers Joint Contract Documents Committee (EJCDC) and Construction Specification Institute (CSI) format)
 - Process piping and equipment specifications
 - 60 percent design drawings
 - Sections and details showing major process and sub process equipment
 - Structural framing and support plans and sections (as necessary)
 - Major electrical cabinets and gear

- Power and lighting plans
- Programmable logic controller (PLC) panel preliminary details
- Major commodity specifications and equipment schedules
- Opinion of probable construction cost update
- Project schedule update
- Preliminary design report update
- ENGINEER shall conduct internal quality control review and refinement before submittal to OWNER.
- ENGINEER shall submit three (3) hard copies and one (1) electronic copy, in PDF format, of the 60 Percent Design deliverables to OWNER for review at least one (1) week prior to review meeting.
- A 60 Percent Design Review Workshop will be conducted with key City staff, including water utility operators, to thoroughly review the 60 percent design submittal. ENGINEER shall obtain OWNER'S comments on the submittal.

90 Percent Design Submittal

This task will consist of the work items continue to refine the project documents towards final completion. The OWNER's comments obtained during review of the 60 percent design documents will be incorporated into the design documents. ENGINEER shall refine the drawings, details, notes, and appurtenances during this task and the specifications will be completed in greater detail. ENGINEER shall submit the 90 percent design documents to the OWNER'S key project stakeholders for review. The tasks and deliverables anticipated are as follows:

- Final review set of contract drawings, which will now include:
 - Finalized contract front-end documents
 - All remaining discipline schedules and details
 - Electrical and Instrumentation and Controls (I&C) design details
- Final review set of technical specifications and construction contract documents, which shall include electrical and I&C specifications.
- Opinion of probable construction cost update.
- Project schedule update.
- ENGINEER shall conduct internal quality control review and refinement before submittal to OWNER.
- ENGINEER shall submit three (3) hard copies and one (1) electronic copy, in PDF format, of the 90 Percent Design deliverables to OWNER for review at least one week prior to review meeting.
- A design review workshop will be conducted with key City staff, including water utility operators to thoroughly review the 90 percent design submittal.
- ENGINEER shall refine documents according to mutual agreement between OWNER and ENGINEER.

100 Percent Bidding Document Submittal

These submittals will be used as the bidding documents and include or address 90 percent review comments, as appropriate. ENGINEER shall prepare and submit an electronic copy (PDF) and three (3) sets of final 100 Percent Bidding Documents the OWNER for review. ENGINEER shall also submit three (3) copies of the Bidding Documents to the NDDEQ for review and approval. One (1) approved copy will be retained by the NDDEQ, one (1) approved copy will be retained by the OWNER, and one (1) approved copy will be retained by the ENGINEER. ENGINEER shall meet with the OWNER to discuss review

comments, if any, from the regulatory agencies. The 100 Percent Bidding Documents deliverables are as follows:

- Final review set of drawings for the Fargo LSWTP Pretreatment Rehabilitation, signed and sealed as appropriate.
- Final review set of technical specifications and construction contract documents for the Fargo LSWTP Pretreatment Rehabilitation, signed and sealed as appropriate.
- Final opinion of probable construction cost update.
- Final updates to the preliminary design report. ENGINEER will provide OWNER with an electronic copy of the final Preliminary Design Report, which shall include the general basis of design for all major project components.

For presentation of scope of services, the Fargo LSWTP Pretreatment Rehabilitation Final Design Phase will be split into the following Tasks: (1) Project Management and Administration, (2) Process Design, and (3) Electrical Design.

Task 01 – Project Management and Administration

ENGINEER shall perform general Project administration activities including progress monitoring, scheduling, general correspondence, office administration, and invoicing. These activities include maintaining contact and liaison with the OWNER and Project staff; providing OWNER with monthly Project financial status updates; ensuring that the needs of the OWNER are met in a timely manner, and monitoring Project budgets and schedules.

Task 02 – Process Design

Services to be provided under this Task shall include the tasks and deliverables as detailed in the milestone deliverable descriptions, including the development of all front-end EJCDC documents and technical process specifications. More specifically, the Process Design is anticipated to include the following key components:

- Flocculation Process:
 - The existing redwood baffle walls shall be replaced with fiber reinforced plastic (FRP) baffles and stainless steel supports to withstand corrosion conditions.
 - Existing flocculator gear shall be replaced with a gear box type instead of the existing belt type and better control shall be recommended after evaluating the G Values with speed adjustment to handle weather variations.
- Sedimentation Process:
 - Existing rakes in sedimentation basins are corroded and shall be replaced with stainless steel rakes.
 - An evaluation on the addition slide gates to facilitate basin cleaning will be performed. Evaluation and design recommendation shall be presented in the preliminary design report. Following agreement with OWNER on design direction to facilitate easier basin cleaning, ENGINEER shall prepare specifications and/or drawings in accordance with agreed upon.
- Pumping and Blowdown Systems:
 - An evaluation of a new permanent pump for draining shall be performed. Progressing cavity pumps shall be considered. Evaluation and design recommendation shall be presented in the preliminary design report. Following agreement with OWNER on design direction necessary to proceed with a permanent pump installation, ENGINEER shall prepare specifications and/or drawings in accordance with agreed upon recommendation.

- An evaluation of the valves in this area shall be conducted. While currently operating satisfactorily, the valves are nearing the end of their useful life. The evaluation shall make recommendations on repair or replacement, which will be presented in the preliminary design report. Following agreement with OWNER on design direction necessary for valve repair or replacement, ENGINEER shall prepare specifications and/or drawings in accordance with agreed upon recommendation.
- Structural Review for key components which are anticipated to include:
 - Process piping and equipment support system
 - Basin wall modifications (if necessary)

Task 03 – Electrical Design and Specifications

Services to be provided under this Task shall include the tasks and deliverables as detailed in the milestone deliverable descriptions, including the development of all technical electrical specifications. More specifically, the Electrical Design is anticipated to include the following key components:

- Power and controls to pretreatment system equipment, control panels, and other associated ancillary equipment
- Power and controls to new permanent blowdown system pump
- Addition of variable frequency drives (VFDs) to all new mixer motors
- Upgrades to existing motor control centers and starters as necessary
- Upgrades of all existing lighting in pretreatment area to LED lighting

Phase 050 – Bidding or Negotiating Phase Services

In accordance with Paragraphs A1.04 and A1.08 of Exhibit A of the Original Task Order Agreement, dated January 1, 2018, ENGINEER shall perform the following additional Bidding or Negotiating Phase services under Water Consulting Task Order No. 27:

Task 01 – Pre-Bidding Administration

Pre-bidding administration services will be provided to assist the OWNER in soliciting bids for construction, responding to plan holder questions, preparing and certifying addenda for distribution, and attending the bid opening for the Fargo LSWTP Pretreatment Rehabilitation.

ENGINEER shall also attend and facilitate a pre-bid conference meeting onsite at the Fargo LSWTP with OWNER and prospective contractor representatives.

Task 02 – Post-Bidding Administration

Post-bidding administration services will include reviewing the bids for errors and discrepancies, preparing a recommendation letter to the Utility Committee and City Commission, preparing the Notice of Award(s) to the successful contractor(s), and preparing the contract documents for the Fargo LSWTP Pretreatment Rehabilitation.



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Water Treatment Plant
435 14th Avenue South
Fargo, ND 58103
Office: 701.241.1469 | Fax: 701.241.8110
www.FargoND.gov

August 22, 2019

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

Subject: Sole Source – Metrohm Process Analyzer (Cost: \$77,817)

Dear Commissioners:

Water Utility staff is requesting a sole source for a Process Analyzer from Metrohm Process Analytics. This sole source has already been passed by the Finance Committee. Sole source information submitted to the Finance Committee is attached to this letter. The estimated cost for the purchase and installation of this analyzer is \$77,817. Four manufacturers were evaluated for the specific purpose of this analyzer. As noted in the sole source forms, the other instrument manufacturers were not equal to allow for bidding of this item.

The Metrohm Process Analyzer will analyze raw water chemistry on approximately an hourly basis to help predict water softening chemical doses (lime and soda ash). Predictive doses will be calculated in the computer control system for display to WTP personnel. While improving quality control and workflow efficiency, the resulting treatment cost efficiency using the Metrohm instrument should outweigh the investment.

Your consideration is greatly appreciated in this matter.

Sincerely,

Troy B. Hall
Water Utility Director

C: Bruce Grubb, City Administrator

SUGGESTED MOTION:

Approve sole source with Metrohm Process Analytics for a Process Analyzer in the estimated amount of \$77,817.



Sole Source and Piggyback Procurement Form

Sole Source and Piggyback Justification for Procurement

The following information is offered for the sole source acquisition of goods or services described below. The purchase has been thoroughly researched and it has been determined that the vendor/brand is the only acceptable vendor/brand for the product or services that will fit the particular need.

Vendor Name:

Metrohm

Estimated Dollar Amount of Purchase:

\$77,817 + future related costs

The project/service is required to:

Purchase Metrohm Process Analyzer to measure raw water hardness and alkalinity to help predict lime softening chemical doses. Upon successful implementation, there may additional Metrohm purchases for other applications.

This equipment was on a list previously approved by the Finance Committee to re-purpose Fund 501 capital budget dollars. Funding for this Metrohm will come from account 501-3051-441.74-10 in the Water Treatment Plant Operations budget (Fund 501). Future costs will be assigned to appropriate budget line(s).

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Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

There were four manufacturers contacted and evaluated before recommending Metrohm. Metrohm is being recommended based on suitability for the application, cost, end-user reference calls, output data stability, and flexibility for programming adjustments. The Metrohm Process Analyzer will do all of the all parameters needed for predicting lime and soda ash adjustment in a single analyzer (only manufacturer to do that) to keep costs down. Also, Metrohm was the only manufacturer that will do the chemical analysis methods we are looking for to achieve stable readings with minimum drift over time. The other manufacturers examined were: Hach, ChemScan, and ECD. The Metrohm Process Analyzer will be custom built for Fargo's application.

Provide a brief description of how your investigation was conducted. (Internet, publications, consultations) List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements (Must be exhaustive of all sources for the commodity being purchased. **)

Over the span of a few months, four manufacturers were contacted for product information and budget pricing. The four manufacturers examined were: Metrohm, Hach, ChemScan, and ECD. ECD dropped off immediately because instrumentation couldn't perform in ranges needed for Fargo. ChemScan and Hach were eliminated through investigation into cost, analysis methods, and reference calls. Through this investigation, Metrohm was clearly the best choice for Fargo Water Plant applications. So, Metrohm is being recommended for sole source due to factors in addition to cost.

****If all sources are not investigated a competitive solicitation must be issued.**

Provide a side-by-side comparison of the features/service of all other vendors/brands considered. (List the features or capabilities required for your project and how each vendor investigated does or does not meet those requirements. A table format is recommended)

The four manufacturers examined were: Metrohm, Hach, ChemScan, and ECD. Please see attached spreadsheet for some of evaluation criteria.

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.

N/A

Signature: Troy B. Hall
(Requestor)

Printed Name: Troy B. Hall

Department: Water Treatment Plant

Title: Water Utility Director

Date: 7/25/2019

I, hereby, certify that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.

TBH (Requestor initials)



Metrohm USA
 9250 Camden Field Parkway
 Riverview, FL 33578
 Phone: 866-METROHM (638-7646)
 Fax: (813) 316-4900
 Email: customersupport@metrohmusa.com

Quotation # N8Y9K2
Prices Firm: 07/18/2019 - 07/31/2019

Dean Sletten
Apex Engineering Group
 4733 Amber Valley Parkway South
 Fargo, North Dakota
Phone: 701-373-7998
Email: dean.sletten@apexenggroup.com

Line No.	Item No.	Description	Quantity	Unit Price	Total
1	BOM-PA190460	2035 Process Analyzer to measure Alk & Hard in WTP, No Reagent Cabinet Included, Single Stream Analyzer, No Sample Panel is Included, Reagents additional & may be quoted separately, General Purpose Cabinet included	1	\$70,781.00	\$70,781.00
2	SER-PA350132	3 Day 2035 PA System Startup (BOM-PA190460) – Required, Does not include travel & lodging expenses	1	\$7,036.00	\$7,036.00
				List Subtotal (USD)	\$77,817.00
				Total Amount (USD)	\$77,817.00

Additional Information & Technical Specifications (BOM-PA190460):

2035 Process Analyzer



Customized online monitoring of industrial processes
and wastewater

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August 26, 2019

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

Dear Commissioners:

The Federal Transit Administration requires the Transit Department to have a Title VI Plan specific to Transit. The Plan is attached and specifies applicability to the Transit Department and additionally identifies Mr. Brock Morrison as the City of Fargo Title VI Coordinator.

The requested motion is to approve the attached Transit Title VI Plan.

Sincerely,



Julie Bommelman
Transit Director
City of Fargo

Attachment

TITLE VI AND NON-DISCRIMINATION POLICY STATEMENT

CITY OF FARGO TRANSIT DEPARTMENT

The City of Fargo Transit Department is committed to compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and all related regulations and statutes. The City assures that no person or groups(s) of persons shall, on the grounds of race, color, national origin, sex, age, disability/handicap, and income status¹ be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by the City, regardless of whether those programs and activities are federally funded or not.

The City of Fargo Transit Department also assures that every effort will be made to prevent discrimination through the impacts of its programs, policies, and activities on the basis of religion, sexual orientation, minority status and low-income populations. In addition, the City will provide meaningful access to services for persons with Limited English Proficiency.

In the event the City distributes federal-aid funds to a subrecipient, the City will include Title VI language in all written agreements and will monitor for compliance.

The City's Transit Title VI Coordinator is responsible for initiating and monitoring Transit Title VI activities, preparing reports and other responsibilities as required by 23 Code of Federal Regulations (CFR) 200 and 49 CFR 21. The City of Fargo has a Title VI Coordinator (Mr. Brock Morrison) who oversees the City's overall Title VI program. The City's *Transit* Title VI Coordinator is:

Julia Bommelman
Transit Director, City of Fargo
650 23rd St N
Fargo, ND 58102
701-476-6737
jbommelman@cityoffargo.com

Timothy J. Mahoney, Mayor

City of Fargo

Signature

Date

¹ Title VI of the Civil Rights Act of 1964 governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.

TITLE VI ASSURANCES

The City of Fargo Transit Department in the State of North Dakota (hereinafter referred to as the Recipient) HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the U. S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the U.S. Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations), and other pertinent directives to the end that, in accordance with the Act, regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, national origin, sex, age, disability/handicap, and income status² be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance through the North Dakota Department of Transportation, including the U.S. Department of Transportation and the Federal Highway Administration; and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by Subsection 21.7(a)(1) of the Regulations.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its Federal-aid Highway Program

1. That the Recipient agrees that each "program" and each "facility," as defined in Subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or materials subject to the regulations and made in connection with the Federal-aid Highway Program and, in adapted form, in all proposals for negotiated agreements:

The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4, and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the U.S. Department of Transportation, issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises will be afforded full opportunity to submit bids in response to this invitation

² Title VI of the Civil Rights Act of 1964 governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.

and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and income status in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the Recipient shall insert the clauses of Appendix B of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over, or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under the Federal-aid highway Program; and (b) for the construction or use of, or access to space on, over, or under, real property acquired or improved under the Federal-aid highway Program.
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein, or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation, or the official to whom he or she delegates specific authority, to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to the Act, the Regulations, and this assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Recipient by the U.S. Department of Transportation under the Federal-aid Highway Program and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants in the Federal-aid Highway Program. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

Timothy J. Mahoney, Mayor

City of Fargo

Signature

Date

APPENDIX A OF THE TITLE VI ASSURANCES

The City of Fargo Transit will insert or add the following clauses into every contract subject to the Act and Regulations associated with the receipt of Federal financial assistance:

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the Contractor), agrees as follows:

1. **Compliance with Regulations:** The Contractor shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the City of Fargo or the North Dakota Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the City of Fargo, or the North Dakota Department of Transportation, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the City of Fargo and the North Dakota Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
 - a. withholding of payments to the Contractor under the contract until the Contractor complies, and/or
 - b. cancellation, termination, or suspension of the contract, in whole or in part.

6. Incorporation of Provisions: The Contractor shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto.

The Contractor shall take such action with respect to any subcontract or procurement as the City of Fargo or the U.S. Department of Transportation, Federal Highway Administration, may direct as a means of enforcing such provisions, including sanctions for noncompliance provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Contractor may request the City of Fargo enter into such litigation to protect the interests of the City of Fargo; and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

*** The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.*

APPENDIX B OF THE TITLE VI ASSURANCES

The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures, or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the City of Fargo Transit, as authorized by law and upon the condition that the City of Fargo Transit will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of Federal Aid for Highways, and the policies and procedures prescribed by the Federal Highway Administration of the U.S. Department of Transportation, and also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the U.S. Department of Transportation (hereinafter referred to as the Regulations), pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim, and convey unto the City of Fargo all the right, title, and interest of the U.S. Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the City of Fargo Transit and its successors forever, subject, however, to the covenant, conditions, restrictions, and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, and shall be binding on the City of Fargo Transit, its successors, and assigns.

The City of Fargo Transit, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree, as a covenant running with the land, for itself, its successor, and assigns that (1) no person shall, on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the City of Fargo Transit shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the U.S. Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended [,] and (3) that in the event of

breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land; and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assignees as such interest existed prior to this instruction.*

** Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purpose of Title VI of the Civil Rights Act of 1964.*

*** The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.*

APPENDIX C OF THE TITLE VI ASSURANCES

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the City of Fargo Transit, pursuant to the provisions of Assurance 7(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate), for him or herself, his or her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases, add “as a covenant running with the land”] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended, or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the U.S. Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, the City of Fargo Transit shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deed.]*

That in the event of breach of any of the above nondiscrimination covenants, the City of Fargo Transit shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of the City of Fargo and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the City of Fargo Transit, pursuant to the provisions of Assurance 7(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate), for him or herself, his or her personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases, add “as a covenant running with the land”] that (1) no person, on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of

services thereon, no person, on the grounds of race, color, national origin, sex, age, disability/handicap, or income status**, shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the U.S. Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, the City of Fargo Transit shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds.]*

That in the event of breach of any of the above nondiscrimination covenants, the City of Fargo Transit shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of the City of Fargo Transit and its assigns.

** Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purpose of Title VI of the Civil Rights Act of 1964.*

*** The Act governs race, color, and national origin. Related Nondiscrimination Authorities govern sex, 23 U.S.C. 324; age, 42 U.S.C. 6101; disability/handicap, 29 U.S.C. 790; and low income, E.O. 12898.*

CATEGORY I. CERTIFICATIONS AND ASSURANCES REQUIRED OF EVERY APPLICANT.

All applicants must make the certifications in this category.

1.1. Standard Assurances.

This certification appears on the Office of Management and Budget's standard form 424B "Assurances—Non-Construction Programs". This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
- (b) Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- (c) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- (d) Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- (e) Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- (f) Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin, as effectuated by U.S. DOT regulation 49 C.F.R. Part 21;
 - (2) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex, as effectuated by U.S. DOT regulation 49 C.F.R. Part 25;
 - (3) Section 5332 of the Federal Transit Law (49 U.S.C. § 5332), which prohibits any person being excluded from participating in, denied a benefit of, or discriminated

- against under, a project, program, or activity receiving financial assistance from FTA because of race, color, religion, national origin, sex, disability, or age.
- (4) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps, as effectuated by U.S. DOT regulation 49 C.F.R. Part 27;
 - (5) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;
 - (6) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
 - (7) The comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
 - (8) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
 - (9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
 - (10) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
 - (11) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- (g) Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act”) (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. The requirements of the Uniform Act are effectuated by U.S. DOT regulation 49 C.F.R. Part 24.
 - (h) Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
 - (i) Will comply, as applicable, with the provisions of the Davis–Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.
 - (j) Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

- (k) Will comply with environmental standards which may be prescribed pursuant to the following:
- (1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
 - (2) Notification of violating facilities pursuant to EO 11738;
 - (3) Protection of wetlands pursuant to EO 11990;
 - (4) Evaluation of flood hazards in floodplains in accordance with EO 11988;
 - (5) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
 - (6) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.);
 - (7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
 - (8) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- (l) Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- (m) Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).
- (n) Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- (o) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- (p) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- (q) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 C.F.R. Part 200, Subpart F, "Audit Requirements", as adopted and implemented by U.S. DOT at 2 C.F.R. Part 1201.
- (r) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program under which it is applying for assistance.

- (s) Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a sub-recipient from:
- (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (2) Procuring a commercial sex act during the period of time that the award is in effect; or
 - (3) Using forced labor in the performance of the award or subawards under the award.

1.2. Standard Assurances: Additional Assurances for Construction Projects.

This certification appears on the Office of Management and Budget's standard form 424D "Assurances—Construction Programs" and applies specifically to federally assisted projects for construction. This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency; will record the Federal awarding agency directives; and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
- (b) Will comply with the requirements of the assistance awarding agency with regard to the drafting, review, and approval of construction plans and specifications.
- (c) Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications, and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

1.3. Procurement.

The Uniform Administrative Requirements, 2 C.F.R. 200.324, allow a recipient to self-certify that its procurement system complies with Federal requirements, in lieu of submitting to certain pre-procurement reviews.

The applicant certifies that its procurement system complies with:

- (a) U.S. DOT regulations, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. Part 1201, which incorporates by reference U.S. OMB regulatory guidance, "Uniform Administrative Requirements, Cost

Principles, and Audit Requirements for Federal Awards,” 2 C.F.R. Part 200, particularly 2 C.F.R. §§ 200.317–200.326 “Procurement Standards;

- (b) Federal laws, regulations, and requirements applicable to FTA procurements; and
- (c) The latest edition of FTA Circular 4220.1 and other applicable Federal guidance.

1.4. Suspension and Debarment.

Pursuant to Executive Order 12549, as implemented at 2 C.F.R. Parts 180 and 1200, prior to entering into a covered transaction with an applicant, FTA must determine whether the applicant is excluded from participating in covered non-procurement transactions. For this purpose, FTA is authorized to collect a certification from each applicant regarding the applicant's exclusion status. 2 C.F.R. § 180.300. Additionally, each applicant must disclose any information required by 2 C.F.R. § 180.335 about the applicant and the applicant's principals prior to entering into an award agreement with FTA. This certification serves both purposes.

The applicant certifies, to the best of its knowledge and belief, that the applicant and each of its principals:

- (a) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any Federal department or agency;
- (b) Has not, within the preceding three years, been convicted of or had a civil judgment rendered against him or her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;
- (c) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offense described in paragraph (b) of this certification;
- (d) Has not, within the preceding three years, had one or more public transactions (Federal, State, or local) terminated for cause or default.

CATEGORY 2. TAX LIABILITY AND FELONY CONVICTIONS.

Federal appropriations acts since at least 2014 have prohibited FTA from using funds to enter into an agreement with any corporation that has unpaid Federal tax liabilities or recent felony convictions without first considering the corporation for debarment. As prescribed by U.S. DOT Order 4200.6, FTA requires each applicant to certify as to its tax and felony status.

If the applicant is a private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the applicant certifies that:

- (a) It has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (b) It has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months.

CATEGORY 3. LOBBYING.

If the applicant will apply for a grant or cooperative agreement exceeding \$100,000, or a loan, line of credit, loan guarantee, or loan insurance exceeding \$150,000, it must make the following certification and, if applicable, make a disclosure regarding the applicant's lobbying activities. This certification is required by 49 C.F.R. § 20.110 and app. A to that part.

This certification does not apply to an applicant that is an Indian Tribe, Indian organization, or an Indian tribal organization exempt from the requirements of 49 C.F.R. Part 20.

3.1. Certification for Contracts, Grants, Loans, and Cooperative Agreements.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3.2. Statement for Loan Guarantees and Loan Insurance.

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

CATEGORY 4. PRIVATE SECTOR PROTECTIONS.

If the applicant will apply for funds that it will use to acquire or operate public transportation facilities or equipment, the applicant must make the following certification regarding protections for the private sector.

4.1. Charter Service Agreement.

To enforce the provisions of 49 U.S.C. § 5323(d), FTA's charter service regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following Charter Service Agreement. 49 C.F.R. § 604.4.

The applicant agrees that it, and each of its subrecipients, and third party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 C.F.R. Part 604, the terms and conditions of which are incorporated herein by reference.

4.2. School Bus Agreement.

To enforce the provisions of 49 U.S.C. § 5323(f), FTA's school bus regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following agreement regarding the provision of school bus services. 49 C.F.R. § 605.15.

- (a) If the applicant is not authorized by the FTA Administrator under 49 C.F.R. § 605.11 to engage in school bus operations, the applicant agrees and certifies as follows:
- (1) The applicant and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.
 - (2) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Mass Transit Regulations, or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
- (b) If the applicant is authorized or obtains authorization from the FTA Administrator to engage in school bus operations under 49 C.F.R. § 605.11, the applicant agrees as follows:
- (1) The applicant agrees that neither it nor any operator of project equipment will engage in school bus operations in competition with private school bus operators except as provided herein.
 - (2) The applicant, or any operator of project equipment, agrees to promptly notify the FTA Administrator of any changes in its operations which might jeopardize the continuation of an exemption under § 605.11.
 - (3) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Transit Administration regulations or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
 - (4) The applicant agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any other use of project facilities and equipment will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation service to the public.

CATEGORY 5. TRANSIT ASSET MANAGEMENT PLAN.

If the applicant owns, operates, or manages capital assets used to provide public transportation, the following certification is required by 49 U.S.C. § 5326(a).

The applicant certifies that it has, or will develop, a transit asset management plan in compliance with 49 C.F.R. Part 625.

CATEGORY 6. ROLLING STOCK BUY AMERICA REVIEWS AND BUS TESTING.

6.1. Rolling Stock Buy America Reviews.

If the applicant will apply for an award to acquire rolling stock for use in revenue service, it must make this certification. This certification is required by 49 C.F.R. § 663.7.

The applicant certifies that it will conduct or cause to be conducted the pre-award and post-delivery audits prescribed by 49 C.F.R. Part 663 and will maintain on file the certifications required by Subparts B, C, and D of 49 C.F.R. Part 663.

6.2. Bus Testing.

If the applicant will apply for funds for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components, the applicant must make this certification. This certification is required by 49 C.F.R. § 665.7.

The applicant certifies that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required by 49 C.F.R. Part 665. The applicant has received or will receive the appropriate full Bus Testing Report and any applicable partial testing reports before final acceptance of the first vehicle.

CATEGORY 7. URBANIZED AREA FORMULA GRANTS PROGRAM.

If the applicant will apply for an award under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), or any other program or award that is subject to the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310); "flex funds" from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)); projects that will receive an award authorized by the Transportation Infrastructure Finance and Innovation Act ("TIFIA") (23 U.S.C. §§ 601–609) or State Infrastructure Bank Program (23 U.S.C. § 610) (see 49 U.S.C. § 5323(o)); formula awards or competitive awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(a) and (b)); or low or no emission awards to any area under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(c)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5307(c)(1).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out the program of projects (developed pursuant 49 U.S.C. § 5307(b)), including safety and security aspects of the program;
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities;

- (c) Will maintain equipment and facilities in accordance with the applicant's transit asset management plan;
- (d) Will ensure that, during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section, a fare that is not more than 50 percent of the peak hour fare will be charged for any—
 - (1) Senior;
 - (2) Individual who, because of illness, injury, age, congenital malfunction, or any other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semi-ambulatory capability), cannot use a public transportation service or a public transportation facility effectively without special facilities, planning, or design; and
 - (3) Individual presenting a Medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. §§ 401 et seq., and 1395 et seq.);
- (e) In carrying out a procurement under 49 U.S.C. § 5307, will comply with 49 U.S.C. §§ 5323 (general provisions) and 5325 (contract requirements);
- (f) Has complied with 49 U.S.C. § 5307(b) (program of projects requirements);
- (g) Has available and will provide the required amounts as provided by 49 U.S.C. § 5307(d) (cost sharing);
- (h) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning);
- (i) Has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation;
- (j) Either—
 - (1) Will expend for each fiscal year for public transportation security projects, including increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation system, at least 1 percent of the amount the recipient receives for each fiscal year under 49 U.S.C. § 5336; or
 - (2) Has decided that the expenditure for security projects is not necessary;
- (k) In the case of an applicant for an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census, will submit an annual report listing projects carried out in the preceding fiscal year under 49 U.S.C. § 5307 for associated transit improvements as defined in 49 U.S.C. § 5302; and
- (l) Will comply with 49 U.S.C. § 5329(d) (public transportation agency safety plan).

CATEGORY 8. FORMULA GRANTS FOR RURAL AREAS.

If the applicant will apply for funds made available to it under the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), it must make this certification. Paragraph (a) of this certification helps FTA make the determinations required by 49 U.S.C. § 5310(b)(2)(C). Paragraph (b) of this certification is required by 49 U.S.C. § 5311(f)(2). Paragraph (c) of this certification, which applies to funds apportioned for the Appalachian Development Public Transportation Assistance Program, is necessary to enforce the conditions of 49 U.S.C. § 5311(c)(2)(D).

- (a) The applicant certifies that its State program for public transportation service projects, including agreements with private providers for public transportation service—
 - (1) Provides a fair distribution of amounts in the State, including Indian reservations; and
 - (2) Provides the maximum feasible coordination of public transportation service assisted under 49 U.S.C. § 5311 with transportation service assisted by other Federal sources; and
- (b) If the applicant will in any fiscal year expend less than 15% of the total amount made available to it under 49 U.S.C. § 5311 to carry out a program to develop and support intercity bus transportation, the applicant certifies that it has consulted with affected intercity bus service providers, and the intercity bus service needs of the State are being met adequately.
- (c) If the applicant will use for a highway project amounts that cannot be used for operating expenses authorized under 49 U.S.C. § 5311(c)(2) (Appalachian Development Public Transportation Assistance Program), the applicant certifies that—
 - (1) It has approved the use in writing only after providing appropriate notice and an opportunity for comment and appeal to affected public transportation providers; and
 - (2) It has determined that otherwise eligible local transit needs are being addressed.

CATEGORY 9. FIXED GUIDEWAY CAPITAL INVESTMENT GRANTS AND THE EXPEDITED PROJECT DELIVERY FOR CAPITAL INVESTMENT GRANTS PILOT PROGRAM.

If the applicant will apply for an award under any subsection of the Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), including an award made pursuant to the FAST Act's Expedited Project Delivery for Capital Investment Grants Pilot Program (Pub. L. 114-94, div. A, title III, § 3005(b)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5309(c)(2) and Pub. L. 114-94, div. A, title III, § 3005(b)(3)(B).

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award,
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities acquired or improved under its Award.
- (c) Will maintain equipment and facilities acquired or improved under its Award in accordance with its transit asset management plan; and
- (d) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning).

CATEGORY 10. GRANTS FOR BUSES AND BUS FACILITIES AND LOW OR NO EMISSION VEHICLE DEPLOYMENT GRANT PROGRAMS.

If the applicant is in an urbanized area and will apply for an award under subsection (a) (formula grants) or subsection (b) (competitive grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(a)(3) and (b)(6), respectively.

If the applicant is in a rural area and will apply for an award under subsection (a) (formula grants) or subsection (b) (competitive grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 8 for Formula Grants for Rural Areas (49 U.S.C. § 5311). This certification is required by 49 U.S.C. § 5339(a)(3) and (b)(6), respectively.

If the applicant, regardless of whether it is in an urbanized or rural area, will apply for an award under subsection (c) (low or no emission vehicle grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(c)(3).

Making this certification will incorporate by reference the applicable certifications in Category 7 or Category 8.

CATEGORY 11. ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAMS.

If the applicant will apply for an award under the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. § 5310), it must make the certification in Category 7 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5310(e)(1). Making this certification will incorporate by reference the certification in Category 7, except that FTA has determined that (d), (f), (i), (j), and (k) of Category 7 do not apply to awards made under 49 U.S.C. § 5310 and will not be enforced.

In addition to the certification in Category 7, the applicant must make the following certification that is specific to the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program. This certification is required by 49 U.S.C. § 5310(e)(2).

The applicant certifies that:

- (a) The projects selected by the applicant are included in a locally developed, coordinated public transit-human services transportation plan;
- (b) The plan described in clause (a) was developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers, and other members of the public;
- (c) To the maximum extent feasible, the services funded under 49 U.S.C. § 5310 will be coordinated with transportation services assisted by other Federal departments and agencies, including any transportation activities carried out by a recipient of a grant from the Department of Health and Human Services; and
- (d) If the applicant will allocate funds received under 49 U.S.C. § 5310 to subrecipients, it will do so on a fair and equitable basis.

CATEGORY 12. STATE OF GOOD REPAIR GRANTS.

If the applicant will apply for an award under FTA's State of Good Repair Grants Program (49 U.S.C. § 5337), it must make the following certification. Because FTA generally does not review the transit asset management plans of public transportation providers, this certification is necessary to enforce the provisions of 49 U.S.C. § 5337(a)(4).

The applicant certifies that the projects it will carry out using assistance authorized by the State of Good Repair Grants Program, 49 U.S.C. § 5337, are aligned with the applicant's most recent transit asset management plan and are identified in the investment and prioritization section of such plan, consistent with the requirements of 49 C.F.R. Part 625.

CATEGORY 13. INFRASTRUCTURE FINANCE PROGRAMS.

If the applicant will apply for an award for a project that will include assistance under the Transportation Infrastructure Finance and Innovation Act ("TIFIA") Program (23 U.S.C. §§ 601–609) or the State Infrastructure Banks ("SIB") Program (23 U.S.C. § 610), it must make the certifications in Category 7 for the Urbanized Area Formula Grants Program, Category 9 for the Fixed Guideway Capital Investment Grants program, and Category 12 for the State of Good Repair Grants program. These certifications are required by 49 U.S.C. § 5323(o).

Making this certification will incorporate the certifications in Categories 7, 9, and 12 by reference.

CATEGORY 14. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.

If the applicant will apply for an award under FTA's Urbanized Area Formula Grants Program (49 U.S.C. § 5307), Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339) programs, the applicant must make the following certification. The applicant must make this certification on its own behalf and on behalf of its subrecipients and contractors. This certification is required by 49 C.F.R. § 655.83.

The applicant certifies that it, its subrecipients, and its contractors are compliant with FTA's regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 C.F.R. Part 655.

CATEGORY 15. RAIL SAFETY TRAINING AND OVERSIGHT.

If the applicant is a State with at least one rail fixed guideway system, or is a State Safety Oversight Agency, or operates a rail fixed guideway system, it must make the following certification. The elements of this certification are required by 49 C.F.R. §§ 659.43, 672.31, and 674.39.

The applicant certifies that the rail fixed guideway public transportation system and the State Safety Oversight Agency for the State are:

- (a) Compliant with the requirements of 49 C.F.R. part 659, "Rail Fixed Guideway Systems; State Safety Oversight";
- (b) Compliant with the requirements of 49 C.F.R. part 672, "Public Transportation Safety Certification Training Program"; and
- (c) Compliant with the requirements of 49 C.F.R. part 674, "State Safety Oversight".

CATEGORY 16. DEMAND RESPONSIVE SERVICE.

If the applicant operates demand responsive service and will apply for an award to purchase a non-rail vehicle that is not accessible within the meaning of 49 C.F.R. Part 37, it must make the following certification. This certification is required by 49 C.F.R. § 37.77.

The applicant certifies that the service it provides to individuals with disabilities is equivalent to that provided to other persons. A demand responsive system, when viewed in its entirety, is deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (a) Response time;

- (b) Fares;
- (c) Geographic area of service;
- (d) Hours and days of service;
- (e) Restrictions or priorities based on trip purpose;
- (f) Availability of information and reservation capability; and
- (g) Any constraints on capacity or service availability.

CATEGORY 17. INTEREST AND FINANCING COSTS.

If the applicant will pay for interest or other financing costs of a project using assistance awarded under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), the Fixed Guideway Capital Investment Grants Program (49 U.S.C. § 5309), or any program that must comply with the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), "flex funds" from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)), or awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the following certification. This certification is required by 49 U.S.C. §§ 5307(e)(3) and 5309(k)(2)(D).

The applicant certifies that:

- (a) Its application includes the cost of interest earned and payable on bonds issued by the applicant only to the extent proceeds of the bonds were or will be expended in carrying out the project identified in its application; and
- (b) The applicant has shown or will show reasonable diligence in seeking the most favorable financing terms available to the project at the time of borrowing.

CATEGORY 18. CONSTRUCTION HIRING PREFERENCES.

If the applicant will ask FTA to approve the use of geographic, economic, or any other hiring preference not otherwise authorized by law on any contract or construction project to be assisted with an award from FTA, it must make the following certification. This certification is required by the Consolidated Appropriations Act, 2019, Pub. L. 116-6, div. G, title I, § 191.

The applicant certifies the following:

- (a) That except with respect to apprentices or trainees, a pool of readily available but unemployed individuals possessing the knowledge, skill, and ability to perform the work that the contract requires resides in the jurisdiction;
- (b) That the applicant will include appropriate provisions in its bid document ensuring that the contractor does not displace any of its existing employees in order to satisfy such hiring preference; and

- (c) That any increase in the cost of labor, training, or delays resulting from the use of such hiring preference does not delay or displace any transportation project in the applicable Statewide Transportation Improvement Program or Transportation Improvement Program.

FTA FISCAL YEAR 2019 CERTIFICATIONS AND ASSURANCES
FEDERAL FISCAL YEAR 2019 CERTIFICATIONS AND ASSURANCES FOR FTA
ASSISTANCE PROGRAMS

(Signature pages alternate to providing Certifications and Assurances in TrAMS.)

Name of Applicant: City of Fargo, ND

The Applicant certifies to the applicable provisions of categories 01-18. XX

Or,

The Applicant certifies to the applicable provisions of the categories it has selected:

Category	Certification
01 Certifications and Assurances Required of Every Applicant	_____
02 Tax Liability and Felony Convictions	_____
03 Lobbying	_____
04 Private Sector Protections	_____
05 Transit Asset Management Plan	_____
06 Rolling Stock Buy America Reviews and Bus Testing	_____
07 Urbanized Area Formula Grants Program	_____
08 Formula Grants for Rural Areas	_____
09 Fixed Guideway Capital Investment Grants and the Expedited Project Delivery for Capital Investment Grants Pilot Program	_____
10 Grants for Buses and Bus Facilities and Low or No Emission Vehicle Deployment Grant Programs	_____
11 Enhanced Mobility of Seniors and Individuals with Disabilities Programs	_____
12 State of Good Repair Grants	_____
13 Infrastructure Finance Programs	_____
14 Alcohol and Controlled Substances Testing	_____
15 Rail Safety Training and Oversight	_____
16 Demand Responsive Service	_____
17 Interest and Financing Costs	_____
18 Construction Hiring Preferences	_____

FEDERAL FISCAL YEAR 2019 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE

(Required of all Applicants for federal assistance to be awarded by FTA in FY 2019)

AFFIRMATION OF APPLICANT

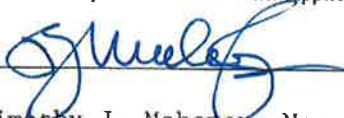
Name of the Applicant: City of Fargo, ND

BY SIGNING BELOW, on behalf of the Applicant, I declare that it has duly authorized me to make these Certifications and Assurances and bind its compliance. Thus, it agrees to comply with all federal laws, regulations, and requirements, follow applicable federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its Authorized Representative makes to the Federal Transit Administration (FTA) in federal fiscal year 2019, irrespective of whether the individual that acted on his or her Applicant's behalf continues to represent it.

FTA intends that the Certifications and Assurances the Applicant selects on the other side of this document should apply to each Award for which it now seeks, or may later seek federal assistance to be awarded during federal fiscal year 2019.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and implementing U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. § 1001 apply to any certification, assurance, or submission made in connection with a federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Applicant are true and accurate.


Signature  Date: 3.20.19
Name Timothy J. Mahoney, Mayor Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): City of Fargo, ND

As the undersigned Attorney for the above-named Applicant, I hereby affirm to the Applicant that it has authority under state, local, or tribal government law, as applicable, to make and comply with the Certifications and Assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the Certifications and Assurances have been legally made and constitute legal and binding obligations on it.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these Certifications and Assurances, or of the performance of its FTA assisted Award.

Signature  Date: 3-20-2019
Name Erik Johnson, City Attorney Fargo Attorney for Applicant

Each Applicant for federal assistance to be awarded by FTA must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its electronic signature in lieu of the Attorney's signature within TrAMS, provided the Applicant has on file and uploaded to TrAMS this hard-copy Affirmation, signed by the attorney and dated this federal fiscal year.

POST PERMANENTLY ON ALL BULLETIN BOARDS

**PUBLIC NOTICE
CITY OF FARGO AND CITY OF MOORHEAD
POLICY OF TITLE VI NONDISCRIMINATION ON THE BASIS OF
RACE, COLOR OR NATIONAL ORIGIN
ON FEDERAL TRANSIT ADMINISTRATION PROJECTS**

The City of Fargo and the City of Moorhead are recipients of Federal financial assistance from the U.S. Department of Transportation through the Federal Transit Administration (FTA) for transit operating, planning and/or capital projects and is therefore subject to Title VI Civil Rights Requirements.

The following is a summary of said Title VI requirements for non-discrimination on FTA projects receiving this federal assistance.

1. Any person who is, or seeks to be, a patron of any vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color or national origin.
2. No person who is or seeks to be an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.
3. No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color or national origin.
4. The location of projects requiring land acquisition and the displacement of person from their residences and businesses may not be determined on the basis of race, color, or national origin.

The City of Fargo and the City of Moorhead maintains records and other information and submit compliance reports and assessments regarding Title VI as directed by FTA. This information may be made available to the public upon request. Requests for information regarding City of Fargo and/or City of Moorhead may be requested from the MATBUS Mobility Manager, located at 650 23rd St N Fargo, ND 58102 or by phone at (701) 476-5967.

Discrimination complaints may be filed with the City of Fargo or the City of Moorhead for resolution by contacting the appropriate contact person at the telephone numbers and addresses shown above. If the complainant is dissatisfied with the resolution by the City of Fargo or the City of Moorhead, the same complaint may be submitted to FTA or the Secretary of Transportation within 180 calendar days after the date of the alleged discrimination. The Civil Rights Office for FTA Region 8 is Morgan Hecht (303) 362-2416, 1961 Stout Street Suite 13-301 Denver, CO 80202.

Title VI nondiscrimination posters and all Title VI public notices are posted in accessible and conspicuous locations for everyone to see and read.

58

August 26, 2019

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

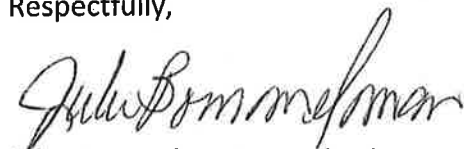
Dear Commissioners:

The City of Fargo Transit Department respectfully submits a Memorandum of Understanding (MOU) between the City of Fargo and the State of North Dakota for approval.

The purpose of the MOU is to transfer \$1,000,000 in Urban Roads Program (STPU) funds, administered by the Federal Highway Administration (FHWA), to the Federal Transit Administration (FTA). FTA will administer the funding to the City of Fargo Transit Department in the form of a grant. The grant application will be submitted directly to FTA for the purchase of replacement buses upon notification to the City that the fund transfer is complete and funding is available. The local share of \$250,000 was requested in the 2020 Transit budget.

Requested motion: Approve the attached MOU between the City of Fargo and the State of North Dakota, and authorize staff to apply for and execute a grant for the outlined funds.

Respectfully,



Julie Bommelman, Transit Director
City of Fargo
650 23rd Street N
Fargo, ND 58102

\enc

MEMO TO: Zdravka Zeric, Programming Division
FROM: Stacey Hanson, Local Government Division
DATE: June 27, 2019
SUBJECT: Transfer of funds from FHWA to FTA Section 5307

At the request of FMCOG and City of Fargo Metropolitan Area Transit, the Local Government Division is requesting the transfer of FHWA federal funds (STBG program – Areas with Population Over 5k to 200k) in the amount of \$1,000,000 to FTA Section 5307 for the transit project shown below. A number has not yet been assigned by FTA for the grant that will include this project.

A copy of the letters from the MPO and project sponsor requesting this transfer and confirming that matching funds are available and committed are attached for your information. The City of Fargo will provide the local match.

Project	Federal 80%	Local 20%	Total
Transit Capital – Replace Fixed Route & Paratransit Vehicles	\$1,000,000	\$250,000	\$1,250,000

The project is included in the 2019-2022 STIP, page 50, and is listed in the FMCOG TIP on page 30 of the online pdf document. Please provide a copy of the FHWA-1576 form used to request the above transfer.

Please let me know if you have any questions.

38/smh

Attachments

cc: Project File
Stephanie Manz, Sandy Kramer – FHWA ND Division
Ranae Tunison – FTA



Fargo-Moorhead Metropolitan Council of Governments

Case Plaza Suite 232 | One 2nd Street North
 Fargo, North Dakota 58102-4807
 p: 701.532.5100 | f: 701.232.5043
 e: metrocog@fmmetrocog.org
 www.fmmetrocog.org

June 27, 2019

Stacey Hanson
 Assistant Local Government Engineer
 North Dakota Department of Transportation
 608 East Boulevard Avenue
 Bismarck, ND 58505

Re: Request to transfer STP funds for transit project to FTA

Please consider this as our request that the STPU funds identified in the 2019-2021 TIP for a 2019 transit project (**Metro COG TIP ID Number 490001**) be transferred to the Federal Transit Administration. This letter also serves as a confirmation that matching funds for this project are available and committed from MATBUS (City of Fargo).

STPU			
Project	Federal	Local Match	Total
Transit Capital- Replace fixed route and paratransit vehicles for Transit Fleet	\$1,000,000	\$250,000	\$1,250,000

I understand that the Fargo-Moorhead Metropolitan Council of Governments needs to make this request of the NDDOT. They, in turn, will work with Federal Highway Administration and Federal Transit Administration on the funding transfer.

Please contact me at 701-532-5103, or gray@fmmetrocog.org if you have any questions.

Thank you,

Cindy Gray
 Executive Director

C: Stacey Hanson, North Dakota Department of Transportation
 Julie Bommelman, City of Fargo - MATBUS

**Transit Capital Project – Fiscal Year 2019 Urban Roads Program
Memorandum of Understanding
City of Fargo and NDDOT
NDDOT Project No. SU-8-984(166), PCN 22581**

This Memorandum of Understanding (MOU) is entered into by and between the North Dakota Department of Transportation (NDDOT) acting through the Director, whose address is 608 East Boulevard Avenue, Bismarck, ND 58505-0700, and the city of Fargo, North Dakota, hereinafter referred to as the City who agree that:

It is in the best interest of both parties to have the city of Fargo take the lead in the procurement of fixed route and paratransit replacement vehicles, funded through the fiscal year 2019 Urban Roads Program, as a Section 5307 grant through the Federal Transit Administration (FTA). The transit capital project is currently programmed in the 2019-2021 NDDOT Statewide Transportation Improvement Program (STIP) and the Metro COG Transportation Improvement Program (TIP), ID Number 490001, at the following cost:

\$1,250,000 Total
\$1,000,000 Federal
\$ 250,000 City

NDDOT has discussed this project with the Federal Highway Administration (FHWA) and FTA. It has been determined that FTA will administer the grant to the city of Fargo. Pursuant to Title 23 of the United States Code, NDDOT will submit a funding transfer request to FHWA. FHWA will transfer the funds to FTA for a grant to the city of Fargo for this project.

NDDOT will notify the city of Fargo once it has received confirmation that FHWA has transferred the funds. The city of Fargo is responsible for obtaining the grant from FTA for the fixed route and paratransit replacement vehicles. The funds shall be used as identified in the approved STIP and TIP. The city agrees to the terms and conditions required for this project by FHWA and FTA.

The city agrees to the following requirements for NDDOT:

- a. The city shall submit project data and information as requested by NDDOT.
- b. The city shall also submit financial statements, data, records, contracts, specifications, procurement documents, and other documents related to the project as requested by NDDOT.
- c. The city shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

Transit Capital Project
Page 2 of 2
July 10, 2019

- d. The city shall list NDDOT as lienholder on the vehicles in accordance with the "NDDOT State Management Plan for Public Transportation".

ATTESTED:

CITY OF FARGO

NAME (TYPE OR PRINT)

MAYOR (TYPE OR PRINT NAME)

SIGNATURE

SIGNATURE

DATE

WITNESS:

**NORTH DAKOTA DEPARTMENT OF
TRANSPORTATION**

NAME (TYPE OR PRINT)

DIRECTOR (TYPE OR PRINT NAME)

SIGNATURE

SIGNATURE

DATE

DATE

APPROVED as to substance by:

DIVISION DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

29

September 2nd, 2019

The Honorable Board of City Commissioners
City of Fargo
200 Third Street North
Fargo, North Dakota 28102

RE: Tire Purchase and Tire Services RFP

Commissioners,

The City of Fargo Transit and Central Garage operations have historically purchased tires off the State of North Dakota contract as a piggyback procurement. Transit tires are no longer a part of the State of North Dakota contract and need to be purchased through a different procurement process. In an effort to obtain the best pricing, Central Garage has opted to take part in this request for proposals.

RECOMMENDED MOTION: I/we move to approve the publication of the Tire Purchase and Tire Services RFP.

Respectfully Submitted,



Jordan Smith
Transit Fleet and Facilities Manager



**Request For Proposals
for
Tire Purchase and Service**

**Attachment 1 – Transit Fleet
Attachment 2 – Public Works Fleet**

**Published Date
Final Submission Deadline 2:00 PM CST**

**September 2nd, 2019
September 19th, 2019**

Issued by:

City of Fargo Metro Area Transit (MAT)

&

City of Fargo Public Works

Portions of this RFP may use City of Fargo funding which is partially funded by the North Dakota Department of Transportation, and up to 80% funding by the Federal Transit Administration.

City of Fargo Tire Purchase and Service RFP

SUBMITTALS

Sealed proposals will be received by the City of Fargo Transit Office at 650 23rd Street North, Fargo, North Dakota 58102, for the purpose of purchasing tires and tire services. Proposals will be received until **2:00 PM Central Standard Time, September 19th, 2019.**

The City reserves the right to accept or reject any and all proposals that are in the best interest of the City.

All proposers are notified that disadvantaged and women-owned business enterprises are encouraged to submit responses to this request. The City of Fargo will ensure that respondents to this request will not be discriminated against based on sex, race, color, creed or national origin in consideration of an award.

All questions and inquiries about the requirements must be in writing and E-mailed or be addressed to:

Jordan Smith
Transit Fleet and Facilities Manager
Metro Transit Garage
650 23rd Street North
Fargo, ND 58102
E-mail: jmsmith@matbus.com
Phone: (701) 476-5940
Fax: (701) 476-5947

Allan Erickson
Fleet Services Manager
City of Fargo Public Works
402 23rd St N
Fargo, ND 58102
E-Mail: aerickson@fargond.gov
Phone: (701) 241-1439

General Requirements & Applicable State and Local Clauses

1. INTENT

This Request for Proposals (RFP) is being published by the City of Fargo for the purpose of selecting a vendor to provide tire sales and service on vehicles and equipment operated by the City of Fargo Transit Department.

2. PROPOSER

The Proposer must fill out the Questionnaire and Bid Sheet.

3. PROPOSAL

All proposals submitted in accordance with the terms and conditions of the RFP shall be binding upon the proposer for at least **ninety (90)** calendar days after the proposal opening.

4. BID OPENING

There will not be a public opening since this is not a Low Bid Award but is instead a Request for Proposal. All proposals will be reviewed by the selection committee.

5. CONFIDENTIALITY OF PROPOSAL INFORMATION

Each proposal and supporting documents must be submitted in or under cover of a sealed envelope to provide confidentiality of the proposal information prior to the proposal opening. During the selection period, all proposals will be confidential.

6. CITY OF FARGO RIGHTS

The City reserves the right to cancel this RFP in writing or postpone the date and time for submitting proposals at any time prior to the proposal due date. The City by this RFP does not promise to accept the lowest cost or any other proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualifications and experience of any Proposer, to reject any provisions in any proposal, to modify RFP contents, to obtain new proposals, to negotiate the requested services and contract terms with any Proposer, or to proceed to do the work otherwise.

7. AWARD

The selection committee of the City of Fargo will review and analyze each response. The committee members will independently rate each proposal. Upon review, the committee may elect to interview the selected firm or firms. They will then determine if they feel additional firms merit interviews. Upon completion of all interviews, using the evaluation form, the committee will then re-evaluate the firms. The firm that best meets the selection criteria will be recommended to the Fargo City Commission. Awards may be made to multiple vendors based on criteria met for individual products or services. All evaluations will be signed by the evaluator and retained as part of the public official records. No proposals will be considered that do not meet mandatory elements.

Upon award of a proposal, all information of all proposals, including costs, will become public record.

8. EVALUATION TABLE

EVALUATION	Maximum Points	Score
Qualifications of the Tire Specifications	20	
Qualifications of Tire Services	20	
Price	40	
References	20	
TOTAL POINTS	100	

Price Evaluation Example: The lowest proposed price will receive 40 points. The other proposers will receive points in direct proportion to the lowest price. For example, if the lowest total cost is \$100,000 and someone bid \$110,000, they would receive 31.5 points ($10,000/100,000 = 10\%$, $100\% - 10\% = 90\%$, $90\% \times 40 = 36$ pts)

9. BID PROTEST PROCEDURE

Protests will be accepted from prospective Proposers whose direct economic interest would be affected by the award of a contract or by failure to award a contract. The Transit Director and the Transit Fleet and Facilities Manager will consider all protests or objections filed in a timely manner regarding the award of a contract, whether submitted before or after award. All protests shall be in writing and shall be supported by sufficient information to enable the protest to be considered. A protest will not be considered if it is insufficiently supported or it is not received within the time limits specified herein. Protest submissions should be concise, logically arranged, and clearly state the ground for the protest. Protests must include at least the following information:

- Name, address, and telephone number of protestor.
- Identification of the solicitation or bid.
- A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents.
- A statement as to what relief is requested.

A complete copy of the protest procedures can be requested from the Transit Fleet and Facilities Manager and Protests should be sent via certified mail through the U.S. Postal Service to:

Jordan Smith
Transit Fleet and Facilities Manager
Metro Transit Garage
650 23rd St North
Fargo, ND 58102

Protests must be filed with City of Fargo in accordance with our procedures and time requirements. The protest to City of Fargo must be complete and contain all the issues that the protestor believes relevant. The City of Fargo will respond to each substantive issue raised in the protest. Failure to include an issue in the protest to the City of Fargo will preclude raising the issue to FTA, if the protest is appealed to that agency. Following an adverse decision by City of Fargo, protestor may file a protest with FTA under certain limited circumstances.

On occasion, when considered appropriate by the Fargo City Administrator, an informal conference on the merits of the protest with all interested parties may be held.

10. REMEDIES/SANCTIONS FOR BREACH

If awarded the contract, the Contractor shall warrant that he or she has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of the City or its operating contractor, with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of the contract.

11. DISCLAIMER OF LIABILITY

The City will not hold harmless or indemnify any contractor for any liability whatsoever.

12. HOLD HARMLESS

The City will be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

13. LAW GOVERNING

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of North Dakota as applicable.

14. CONDITIONAL PROPOSALS

Conditional proposals are subject to rejection in whole or in part.

15. SUBLETTING OF CONTRACT

The contract that will be derived from this RFP shall not be sublet except with the written consent of the City. No such consent shall be construed as making the City a party to such subcontract, or subjecting the City to liability of any kind to any subcontractor. No subcontract shall, under any circumstances, relieve the Contractor of his liability and obligation under his contract, and all transactions with the City must be through the General Contractor.

16. ASSIGNMENT/TRANSFER OF INTERESTS

There shall be no assignment/transfer of interests or delegation of Contractor's rights, duties or responsibilities of Contractor under the contract derived from this RFP without the prior written approval of the City, which approval shall not be unreasonably withheld. An assignment or transfer of interests which shall require approval of the City shall include, without limitation, the occurrence within any six-month period of the transfer of a majority ownership interest of the Contractor, such as a transfer of a majority of the outstanding stock in the Contractor if it is a corporation or a transfer of a majority of the membership in the Contractor if it is a limited liability company. A claim by Contractor that City's withholding of approval is unreasonable may only be resolved by a lawsuit seeking declaratory relief or judgment, and such claim shall not give rise to any action for damages, direct, indirect or consequential.

17. SEVERABILITY

In the event any provision of the contract is declared or determined to be unlawful, invalid or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining

provisions of the contract and each provision of the contract will be and is deemed to be separate and severable from each other provision.

18. REGULATORY REQUIREMENTS

The Contractor shall comply with all Federal, State, and local licensing, training, testing and/or regulatory requirements (including permits) for the provision of the transit services.

The successful Contractor shall be appropriately licensed for the work required as a result of the contract. The cost for any required licenses or permits shall be the responsibility of the Contractor. Contractor is liable for any and all taxes due as a result of the contract.

19. RESPONSIBLE FIRMS

Nothing herein is intended to exclude any responsible firm or in any way restrain or restrict competition. On the contrary, all responsible firms are encouraged to submit proposals.

20. RESERVED RIGHTS

The City reserves the right to accept or reject any or all of the proposals submitted, waive informalities and technicalities and negotiate any or all elements of the proposals.

21. PUBLICATION, REPRODUCTION AND USE OF MATERIAL

No custom material produced in whole or in part under the Contract shall be subject to copyright in the United States or in any country. The City and Federal Transit Administration shall have authority to publish, disclose, distribute and otherwise use, in whole or in part, any custom material prepared under any contract resulting from this RFP.

22. WAIVER

By submission of its proposal, the Proposer represents and warrants that it has sufficiently informed itself in all matters affecting the performance of work or the furnishing of the labor services, supplies, materials, or equipment and facilities called for in the solicitation; that it has checked its proposal for errors and omissions; that the prices stated in its proposal are correct and as intended by it; and, are a complete and correct statement of its prices for performing the labor, services, supplies, materials or equipment and facilities required by the Contract Documents. The Proposer waives any claim for the return of its proposal security if, on account of errors or omissions claimed to have been made by it in its proposal or for any other reason it should refuse or fail to execute the contract.

23. INDEPENDENT PRICE DETERMINATION

The Proposer certifies that he/she has not colluded, conspired, connived, or agreed, directly or indirectly, with any Proposer or person to put in a sham proposal or to refrain from proposing, and further, that he has not in any manner, directly or indirectly sought by agreement, collusion, communication, or conference, with any person, to fix the proposal amount herein or any other Proposer, or to fix any overhead, profit, or cost element of said proposal amount, or that of any other Proposer, or to secure any advantage against City or any person interested in the proposed contract.

24. PROHIBITED INTEREST

No administrator or employee of the City and no member of its governing body shall participate in selection or in the award or administration of a contract if a conflict of interest real or apparent would be involved.

No member or delegate to the North Dakota Legislature or to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising there from.

25. TERM OF AGREEMENT:

This Agreement shall extend for a term of twenty-four (24) months commencing on the date signed by the parties. The term of this agreement may be extended, if accepted and signed by the vendor and City, for three (3) additional one (1) year extensions, provided the extension is signed by parties on or before August 31 of the contract year.

Attachment 1

Transit

Scope of Services

1. GENERAL INFORMATION

RFP is to supply City of Fargo with tires and tire services including, but not limited to, mounting and dismounting, balancing and puncture repair. Suspension alignment services are also requested in this proposal.

2. GENERAL OFFEROR INFORMATION

The Offeror shall furnish and maintain a sufficient replacement supply of tires to be used for the Transit Fleet. The Offeror shall provide tires and tire services during normal business hours and also provide after hours on-call service.

3. EXISTING TIRES

All tires currently being used in the Transit Fleet shall be used continuously on the vehicles until permanently unfit for service or the transit maintenance department deems that replacement is warranted.

4. DESCRIPTION OF TRANSIT VEHICLES

The information provided below is for informational purposes only. Each vehicle listed has six wheels.

Bus Series	Mfg./Type	# of Buses	GAWR Front (LB)	GAWR Rear (LB)	Length/Width	Tire Size	Average Annual Miles
1173-1176	New Flyer	4	14,780	27,760	35'/102"	305/70R22.5	35,000
1184-1188	New Flyer	5	13,880	25,580	35'/102"	275/70R22.5	35,000
1195-1199	New Flyer	5	13,880	25,580	35'/102"	275/70R22.5	35,000
1200-1201	New Flyer	2	13,880	25,580	35'/102"	305/70R22.5	35,000
1220-1223	New Flyer	4	14,780	27,760	40'/102"	305/70R22.5	35,000
4151-4152	New Flyer	2	15,000	28,640	40'/102"	305/70R22.5	35,000
4171-4172	New Flyer	2	14,780	27,760	35'/102"	305/70R22.5	35,000
4181-4187	New Flyer	7	14,780	27,760	35'/102"	305/70R22.5	35,000
590,591,593	Orion	3	16,500	28,600	30'/102"	305/70R22.5	45,000
1020	New Flyer	1	13,880	26,420	35'/102"	275/70R22.5	45,000
2151	New Flyer	1	14,780	27,760	35'/102"	305/70R22.5	45,000
2161-2164	New Flyer	4	14,780	27,760	35'/102"	305/70R22.5	45,000
2171-2172	New Flyer	2	14,780	27,760	35'/102"	305/70R22.5	45,000
2181-2182	New Flyer	2	14,780	27,760	35'/102"	305/70R22.5	45,000
Cutaway Vans	Ford E450	15	5,000	9,800	25'/102"	LT225/75R16	28,000

5. TIRE REQUIREMENTS

- A) The offeror shall furnish new tires, which comply with the following radial ply tubeless, 65MPH "MILEAGE" (or approved equal) type tires: (Minimum Specs)

275/70R22.5	Load Range J	New Flyer
305/70R22.5	Load Range L	New Flyer/Orion
LT225/75R16	Load Range E	Cutaway

City of Fargo Transit reserves the right to increase or decrease the number of tires purchased based on need. Quantity of tires purchased for Transit on a yearly basis will not exceed 300 total tires per year.

- B) Tires shall be designed for use on a transit vehicle. Features of a transit tire include, but are not limited to, extra thick sidewall and sidewall wear indicators. All tires in sizes 275/70R22.5 and 305/70R22.5 sold to the City of Fargo for transit use must have a sidewall wear indicator.
- C) Steer tires shall meet all the requirements listed above.
- D) Drive tires shall meet all the requirements listed above. Preference will be given to drive tires that are designed to operate in adverse weather conditions (snow and ice). Tires that are considered for this design would include, but are not limited to:
 - 1. Goodyear Endurance TSD
 - 2. Continental Conti UrbanScandinavia HA3
- E) In the event of a manufacturing delay in tires, e.g., strike, the offeror shall notify City of Fargo immediately to ensure adequate stock is in place.

6. ORIGINAL RECAPPED

Recapped tires will be accepted as part of this proposal. Recapped tires will only be used for drive tires. Tires may be recapped once and used until worn to a level that is unfit for service. Tires that have been recapped will be deemed unfit for service after the first recap is worn to a level that is unfit for service. Recap tires shall have a tread design that is comparable to the tire requirements written above. Recap tread design must be submitted with this proposal.

All tires furnished by the offeror shall be of safe and useable condition. City of Fargo's determination, in the event of a dispute regarding fitness for continued use, shall be final.

Questionnaire and Proposal Sheet Tires and Service for Transit Vehicles

Proposer shall submit answers to the following questions. Responses will be utilized in determination of contract award.

1. Provide the address of the facility that will perform work for the City of Fargo.

2. Describe your company and its history – include years in business.

3. Please provide contact information for the primary account representative and a backup contact for the City of Fargo.

Name _____	Name _____
Title _____	Title _____
Phone _____	Phone _____
E-Mail _____	E-Mail _____

4. Please provide the number of technicians and their type of Certifications. (ASE or similar Certifications)

5. What warranties do you offer for your parts, products, services and workmanship? Please describe each warranty separately and in detail.

6. Does your service department offer after hours on-call service? YES ___ NO ___

7. Does your company offer online invoice access and/or an online Inventory Management System?

8. List three governmental or large businesses you have provided similar services.

9. Have you read and understand the Requirements and Applicable Clauses? YES ___ NO ___

10. Have you read and understand the Federal Clauses? YES ___ NO ___

11. Does your company have a Drug Testing Program for your Technicians? YES ___ NO ___

12. Are you registered to do business with the Federal Government?(sam.gov) YES ___ NO ___

13. Do you agree to the Terms and Conditions of this RFP? YES ___ NO ___

If No Explain Below

Transit Tire Proposal Form

The undersigned shall, if awarded this contract, furnish to the City of Fargo, North Dakota, the following items in accordance with the conditions, specifications, and requirements as set forth in the Request for Proposal.

1. New Tires - Steer

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

2. New Tires – Drive

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

3. Recap Tires - Drive (Must also submit tread design)

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

4. Services and fees

Services and Fees	Cost
Mount/Dismount	
Flat Repair	
Alignment	
Tire Disposal	
After Hours Service Call	
Other _____	

Questionnaire and Proposal Form completed and included? YES _____ NO _____

Additional Documents required

Copy of W9 form included? YES _____ NO _____

Copy of Insurance Certificate included? YES _____ NO _____

Certifications & Restrictions on Lobbying included? YES _____ NO _____

Government-Wide Debarment And Suspension included? YES _____ NO _____

Substance Abuse Certification included? YES _____ NO _____

Receipt of Addendum if issued. (initial) #1 _____ #2 _____ #3 _____ #4 _____

If awarded this request, the bidder's signature on this bid form and contract is the bidder's contractual signature and shall become a binding contract to furnish the services proposed. The City's acceptance is conditioned upon the resolution of any protest to the Request for Proposal.

Signature of Proposer _____

Typed/Printed Name and Title _____

Company Name _____

Address _____

Telephone _____ FAX _____

Federal Tax ID No. _____

Applicable Federal Clauses

Only to the extent any of the following sections are applicable to a contract of the nature herein contemplated, the following shall apply:

1. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- a) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. PROGRAM FRAUD & FALSE OR FRAUDULENT STATEMENTS & RELATED ACTS

- a) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and U.S. DOT regulations, Program Fraud Civil Remedies, 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or cause to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- b) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. § 5323(1) on the Contractor, to the extent the Federal Government deems appropriate.
- c) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. ACCESS TO RECORDS AND REPORTS

- a) Record Retention. The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- b) Retention Period. The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- c) Access to Records. The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- d) Access to the Sites of Performance. The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract as reasonably may be required.

4. FEDERAL CHANGES

- a) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, and they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

5. CIVIL RIGHTS AND EQUAL OPPORTUNITY

The City of Fargo is an Equal Opportunity Employer. As such, the City of Fargo agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the City of Fargo agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- a) Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- b) Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,"

41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- c) Age. In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*, U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- d) Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 *et seq.*, the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

6. TERMINATION PROVISIONS

- a) The City reserves the right to terminate this agreement for cause by written notices to the Contractor. Cause for termination will be documented failure(s) of the Contractor to provide services in the quantity and/or quality required by the agreement. Contractor will, within ten (10) days, correct the failure or present the City with a plan to correct the failure. In the event Contractor does not correct failure or complete its plan to correct failure, then the City may terminate this agreement by notifying Contractor of date of termination. Said termination shall not diminish the City of Fargo's rights under law or equity.
- b) This Contract may be terminated for cause by either party upon seven (7) days' written notice in the event of substantial failure to perform through no fault of the terminating party.
- c) In the event of any termination, City of Fargo shall pay the agreed rate only for services delivered up to the date of termination. City of Fargo has no obligation to Contractor, of any kind, after the date of termination.

7. DISADVANTAGED AND SMALL BUSINESS ENTERPRISE

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a) Withholding monthly progress payments;
- b) Assessing sanctions;
- c) Liquidated damages; and/or
- d) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Further, recipients must establish a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. 49 C.F.R. § 26.29(a). Finally, for contracts with defined DBE contract goals, each FTA recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the recipient's written consent; and that, unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

In connection with the performance of this service, the Contractor will cooperate with the City of Fargo in the utilization of disadvantaged business enterprises including women-owned business enterprises for the duration of the contract and will use its best efforts to insure that disadvantaged business enterprises have the maximum practicable opportunity to compete for subcontract work. In order to insure that a fair proportion of the purchases of supplies and services is placed with disadvantaged business enterprises, the Contractor agrees to take affirmative action to identify disadvantaged business firms, solicit bids or quotations from them for supplies and services related to this proposal.

The Contractor agrees to meet any goals established by City of Fargo for purchases pertaining to this Contract to the best of the Contractor's ability and will provide the City of Fargo with the necessary certification and records for reporting purposes. When the majority of the contract is labor, which is not a contracting opportunity, DBE goals will not be set but Contractors are encouraged to use DBE businesses.

The CONTRACTOR will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

The contractor must promptly notify the City of Fargo whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the City of Fargo.

Fostering Small Business Participation

The City of Fargo has established a small business element to its DBE program, pursuant to 49 CFR 26.39. This program aims to provide opportunities and foster small business enterprises (SBE)/participation in contracting with the City of Fargo. This program is race- and gender-neutral, however SBEs can also count towards DBE goals.

8. INCORPORATION OF FTA TERMS

- a) The preceding provision includes, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1 (as amended), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Fargo requests which would cause City of Fargo to be in violation of the FTA terms and conditions.

9. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. BUY AMERICA

The Contractor shall comply with applicable Buy America requirements set forth under the requirements of Section 165(a) of the Surface Transportation Act of 1982 and the applicable regulations in 49 CFR Part 661, as amended.

11. BREACH OF CONTRACT AND DISPUTE RESOLUTION

a) Disputes

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the City, the City Administrator. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Fargo City Commission, 225 4th St N, Fargo, ND 58102. A hearing will be scheduled with the Fargo City Commission at the next regularly scheduled meeting. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position at said hearing. The decision of the Fargo City Commission shall be binding upon the Contractor and the Contractor shall abide by the decision.

b) Performance During Dispute

Unless otherwise directed by the City, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

c) Claims of Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

d) Remedies

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of North Dakota.

e) Rights and Remedies

The duties and obligations imposed by this Agreement/Contract and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

12. LOBBYING RESTRICTIONS

The Proposer certifies that:

- a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the

extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreement) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure

13. CLEAN AIR AND FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees:

- a) It will not use any violating facilities;
- b) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"
- c) It will report violations of use of prohibited facilities to FTA; and
- d) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

14. CONTRACT WORK HOURS & SAFETY STANDARDS ACT

- a) The Contractor shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.
- b) The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

- c) Such records maintained under this paragraph shall be made available by the Contractor for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the Contractor will permit such representatives to interview employees during working hours on the job.
- d) The contractor shall require the inclusion of the language of this clause within subcontracts of all tiers.

15. SUBSTANCE ABUSE REQUIREMENTS: DRUG AND ALCOHOL TESTING

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. part 655, produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of North Dakota or the City of Fargo, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with part 655 before the start of the contract period and to submit the Management Information System (MIS) reports before the start of the contract to the City of Fargo Fleet Manager. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the *Federal Register*.

16. CARGO PREFERENCE

46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements on shipment of foreign made goods. Requirements therein apply to the contract arising from this procurement.

17. ENERGY CONSERVATION

- a) Contractor shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq).

18. ENVIRONMENTAL VIOLATIONS

For all contracts and subcontracts in excess of \$100,000, contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 CFR Part 15) which prohibits the use under nonexempt Federal contracts, grant or loans of facilities included on the EPA List of Violating Facilities. Contractor shall report violations to FTA and to the US/EPA Assistant Administrator for Enforcement (ENO329).

19. FLY AMERICA *Applies to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation.*

- a) *Definitions.* As used in this clause-- "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

- b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

20. SAFE OPERATION OF MOTOR VEHICLES

a) Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or AGENCY.

b) Distracted Driving

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

CERTIFICATIONS AND RESTRICTIONS ON LOBBYING

The undersigned Company/Contractor certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Company/Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

_____ Company/Contractor

Signature of Company/Contractor's Authorized Official

Printed Name

Title of Company/Contractor's Authorized Official

Date

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29, Executive Orders 12549, 12689, and 31 U.S.C.6101 (Contracts over \$25,000)

Background and Applicability

In conjunction with the Office of Management and Budget and other affected Federal agencies, DOT published and update to 49 DFR Part 29 on November 26, 2003. This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

The provisions of Part 29 apply to all grantee contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for Federally required auditing services. 49 CFR 29.220 (b). This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$25,000. These are contracts and subcontracts referred to in the regulation as "covered transactions."

Grantees, contractors, and subcontractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the Excluded Parties List System, (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract. This represents a change from prior practice in that certification is still acceptable but is no longer required. 49 CFR 29.300.

Grantees, contractors, and subcontractors who enter into covered transactions also must require the entities they contract with to comply with 49 CFR 29, subpart C and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels). Instructions for Certification; By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the municipal corporation. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the municipal corporation, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

_____ Company/Contractor

_____ Signature of Company/Contractor's Authorized Official

_____ Printed Name

_____ Title of Company/Contractor's Authorized Official

_____ Date

SUBSTANCE ABUSE REQUIREMENTS & CERTIFICATION

SUBSTANCE ABUSE REQUIREMENTS

49 U.S.C. § 5331, 49 C.F.R. part 655, 49 C.F.R. part 40

Third party contractors who perform *safety-sensitive functions* must comply with FTA's substance abuse management program under 49 C.F.R. part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations." Under 49 C.F.R. § 655.4, *Safety-sensitive function* means any of the following duties, when performed by employees of recipients, subrecipients, operators, or contractors:

1. Operating a revenue service vehicle, including when not in revenue service;
2. Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service. This section does not apply to the following: an employer who receives funding under 49 U.S.C. § 5307 or § 5309, is in an area less than 200,000 in population, and contracts out such services; or an employer who receives funding under 49 U.S.C. § 5311 and contracts out such services;
5. Carrying a firearm for security purposes.

Additionally, third party contractors providing testing services involving the performance of safety sensitive activities must also comply with 49 C.F.R. part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

The undersigned Company/Contractor certifies:

1. The Company/Contractor has established and implemented:
 - a. An alcohol misuse testing program, and
 - b. A controlled substance testing program.
2. The Company/Contractor to which these testing requirements apply have complied or will comply with all applicable requirements of 49 CFR part 655 to the extent those regulations are consistent with 49 U.S.C. § 5331.
3. Consistent with U.S. DOT Office of Drug and Alcohol Policy and Compliance Notice, issued October 22, 2009, if your Company/Contractor to which these testing requirements apply reside in a state that permits marijuana use for medical or recreational purposes, the Company/Contractor to which these testing requirements apply, have complied or will comply with the federal controlled substance testing requirements of 49 CFR part 655.
4. The Contractor agrees further to certify before the start date of the contract or annually its compliance with parts 655 before January 1st (if applicable) and to submit the Management Information System (MIS) reports before March 15 or the start of the contract to the Transit Fleet Manager at 650 23rd St N, Fargo ND 58102.

_____ Company/Contractor

_____ Signature of Company/Contractor's Authorized Official

_____ Printed Name

_____ Title of Company/Contractor's Authorized Official

_____ Date

Attachment 2 Public Works Scope of Services

1. GENERAL INFORMATION

RFP is to supply City of Fargo with tires and tire services including, but not limited to, mounting and dismounting, balancing and puncture repair. Suspension alignment services are also requested in this proposal.

2. GENERAL OFFEROR INFORMATION

The Offeror shall furnish and maintain a sufficient replacement supply of tires to be used for the Public Works Fleet. The Offeror shall provide tires and tire services during normal business hours and also provide after hours on-call service.

3. EXISTING TIRES

All tires currently being used by the City of Fargo Public Works shall be used continuously on the vehicles until permanently unfit for service or the transit maintenance department deems that replacement is warranted.

4. TIRE REQUIREMENTS

A) The offeror shall furnish new and recap tires, which comply with the following radial ply tubeless type tires: (Minimum Specs)

1. Pursuit – Eagle Enforcer A/W or equivalent
 - a. 245/55R18
2. Regional Steer – Marathon RSA, Dunlop SP281 or equivalent. Minimum 22/32 tread depth.
 - a. 11R22.5
 - b. 425/65R22
 - c. 385/80R22.5
3. Regional Drive – Armor Max MSD or equivalent. Minimum 22/32 tread depth.
 - a. 11R22.5
4. Medium Duty Drive Recap – Precure RDA or equivalent. Minimum 22/32 tread depth.
 - a. 11R22.5
5. Waste Haul Steer – Goodyear G289 WHA or equivalent. Minimum 22/32 tread depth
 - a. 315/80R22.5
 - b. 385/80R22.5
6. Waste Haul Drive Recap – Precure G292 WHD or equivalent. Minimum 32/32 tread depth.
 - a. 11R22.5

Approximately twenty-four (24) tires per month will be required. City of Fargo reserves the right to increase or decrease the number of tires purchased based on need.

B) Tires shall be designed for medium duty/regional or waste haul based on application.

C) All tires shall meet the designated requirements listed above.

- D) In the event of a manufacturing delay in tires, e.g., strike, the offeror shall notify City of Fargo immediately to ensure adequate stock is in place.

6. ORIGINAL RECAPPED

Recapped tires will be accepted as part of this proposal. Tires may be recapped and used until worn to a level that is unfit for service. Recap tires shall have a tread design that is comparable to the tire requirements written above. Splice less recap designs (i.e. Goodyear Unicircle or equivalent) will be preferred where available.

All tires furnished by the offeror shall be of safe and useable condition. City of Fargo's determination, in the event of a dispute regarding fitness for continued use, shall be final.

7. SELF-SEALING

Self-sealing tires will be accepted as part of this proposal.

Questionnaire and Proposal Sheet Tires and Service for Public Works Vehicles

Proposer shall submit answers to the following questions. Responses will be utilized in determination of contract award.

14. Provide the address of the facility that will perform work for the City of Fargo.

15. Describe your company and its history – include years in business.

16. Please provide contact information for the primary account representative and a backup contact for the City of Fargo.

Name _____	Name _____
Title _____	Title _____
Phone _____	Phone _____
E-Mail _____	E-Mail _____

17. Please provide the number of technicians and their type of Certifications. (ASE or similar Certifications)

18. What warranties do you offer for your parts, products, services and workmanship? Please describe each warranty separately and in detail.

19. Does your service department offer after hours on-call service? YES ___ NO ___

20. List three governmental or large businesses you have provided similar services.

21. Have you read and understand the Requirements and Applicable Clauses? YES ___ NO ___

22. Does your company have a Drug Testing Program for your Technicians? YES ___ NO ___
23. Do you agree to the Terms and Conditions of this RFP? YES ___ NO ___

If No Explain Below

Public Works Fleet Proposal Form

The undersigned shall, if awarded this contract, furnish to the City of Fargo, North Dakota, the following items in accordance with the conditions, specifications, and requirements as set forth in the Request for Proposal.

5. Pursuit Tire

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

Pursuit Tire – Self-Sealing Option

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

6. Regional Steer Tire

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

Regional Steer - Self-Sealing Option

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

7. Regional Drive Tire

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

Regional Drive Tire - Self-Sealing Option

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

8. Medium Duty Recap

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

Medium Duty Recap - Self-Sealing Option

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

9. Waste Haul Steer Tire

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

Waste Haul Steer Tire - Self-Sealing Option

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

10. Waste Haul Recap

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

Waste Haul Recap - Self-Sealing Option

Year #1

Size	Description	Cost

Year #2

Size	Description	Cost

Additional Comments

11. Services and fees

Services and Fees	Cost
Mount/Dismount	
Flat Repair	
Alignment	
Tire Disposal	
After Hours Service Call	
Other _____	

Questionnaire and Proposal Form completed and included? YES _____ NO _____

Additional Documents required

Copy of W9 form included? YES _____ NO _____

Copy of Insurance Certificate included? YES _____ NO _____

Certifications & Restrictions on Lobbying included? YES _____ NO _____

Government-Wide Debarment And Suspension included? YES _____ NO _____

Substance Abuse Certification included? YES _____ NO _____

Receipt of Addendum if issued. (initial) #1 _____ #2 _____ #3 _____ #4 _____

If awarded this request, the bidder's signature on this bid form and contract is the bidder's contractual signature and shall become a binding contract to furnish the services proposed. The City's acceptance is conditioned upon the resolution of any protest to the Request for Proposal.

Signature of Proposer _____

Typed/Printed Name and Title _____

Company Name _____

Address _____

Telephone _____ FAX _____

Federal Tax ID No. _____

30

August 26, 2019

Board of City Commissioners
City Hall - 225 4th St N
Fargo, ND 58102

Commissioners:

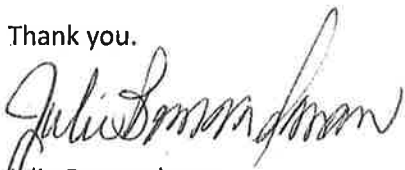
On May 22, 2019 the Fargo City Commission authorized the approval of grant applications, local share and grant execution to the State of North Dakota (see attached).

The resulting contracts received from the North Dakota Department of Transportation (NDDOT) Transit Division were very close to the full amounts requested – grant application requests and resulting contract awards are attached. The local match has been included in Transit's budget.

The contract awards will have a profound impact on our community's transit system and the transportation options we offer our residents and visitors. These awards will vastly improve our ability to address the critical need to get equipment purchases on a regular, rotating schedule.

The requested motion is to approve the attached contracts with NDDOT.

Thank you.


Julie Bommelman
Transit Director
City of Fargo
701.476.6737

/enc

City of Fargo Transit Grant Application and Award to North Dakota Department of Transportation
 FY2020 (July 1, 2019 to June 30, 2020)

NDDOT GRANT REQUESTS FY2020 SECTIONS 5310 & 5339
CFDA 20.513 & CFDA 20.20.526

Description	Qty	Local Share	Federal Share	Total Cost
Replacement Fixed Rt Bus	1	\$ 105,000	\$ 420,000	\$ 525,000
Replacement Para Vehicle	3	\$ 54,000	\$ 216,000	\$ 270,000
Expansion Transit Cut-away	2	\$ 48,000	\$ 192,000	\$ 240,000
MTG Lighting Upgrade	1	\$ 13,400	\$ 53,600	\$ 67,000
Mobility Manager	1	\$ 20,220	\$ 80,880	\$ 101,100
Diesel Particulate Filter Clean	1	\$ 6,700	\$ 26,800	\$ 33,500
Misc. Support Equipment	1	\$ 19,539	\$ 78,157	\$ 97,696
Replace Farebox System	1	\$ 200,000	\$ 800,000	\$ 1,000,000
TOTAL REQUESTED		\$ 466,859	\$ 1,867,437	\$ 2,334,296

NDDOT GRANT AWARDS FY2020 SECTIONS 5310 & 5339
CFDA 20.513 & CFDA 20.20.526

Description	Local	Federal	Total	CFDA NO.
Replace VIN 7C032364 - 35ft Bus	\$ 105,000	\$ 420,000	\$ 525,000	20.526
Replace 3 Para Vehicles	\$ 54,000	\$ 216,000	\$ 270,000	20.513
*Expansion Cur-Aways (<30 ft)	\$ 31,060	\$ 124,240	\$ 155,300	20.526
MTG Rehab/Renovate	\$ 13,400	\$ 53,600	\$ 67,000	20.526
Mobility Manager	\$ 20,220	\$ 80,880	\$ 101,100	20.513
Diesel Part. Cleaner	\$ 6,700	\$ 26,800	\$ 33,500	20.526
Misc Support Equip	\$ 19,540	\$ 78,156	\$ 97,696	20.526
* Replace Farebox System	\$ 200,000	\$ 750,000	\$ 950,000	20.526
TOTAL AWARDED	\$ 449,920	\$ 1,749,676	\$ 2,199,596	

*Notes:
 Fed award < application, therefore local share reduced to provide 20% match of award amount for expansion cut-aways
 Fed award < application, therefore local share reduced to provide 20% match of award amount for fareboxes
 Mobility Manager position fully grant funded

May 22, 2019

Board of City Commissioners
City Hall - 225 4th St N
Fargo, ND 58102

Commissioners:

The State of North Dakota has made \$10.7M available in grant funding for public transportation (transit). The grant opportunity is for capital discretionary 5339 CDFA No. 20.526 and 5310 CFDA No. 20.513 funds (for bus and bus facilities by the Federal Transit Administration (FTA) and administered by the NDDOT). The Transit Department is requesting funding a local share of \$466,859 (the federal share of the projects is \$1,867,437).

The grants would have a profound impact on our community's transit system and the transportation options we offer our residents and visitors. There is a critical need to get equipment purchases on a regular, rotating schedule. The Transit Development Plan identified the need to upgrade and rehab equipment, and the Federal Transit Administration has implemented a requirement to have and follow a Transit Asset Management Plan which outlines equipment maintenance and lifecycle requirements.

The NDDOT grant opportunities are competitively awarded throughout the State of North Dakota and are made available annually. The grant applications would allow for:

Description	Qty	Local Share	Federal Share	Total Cost
Replacement Fixed Rt Bus	1	\$ 105,000	\$ 420,000	\$ 525,000
Replacement Para Vehicle	3	\$ 54,000	\$ 216,000	\$ 270,000
Expansion Transit Cut-away	2	\$ 48,000	\$ 192,000	\$ 240,000
MTG Lighting Upgrade	1	\$ 13,400	\$ 53,600	\$ 67,000
Mobility Manager	1	\$ 20,220	\$ 80,880	\$ 101,100
Diesel Particulate Filter Clean	1	\$ 6,700	\$ 26,800	\$ 33,500
Misc. Support Equipment	1	\$ 19,539	\$ 78,157	\$ 97,696
Replace Farebox System	1	\$ 200,000	\$ 800,000	\$ 1,000,000
TOTAL		\$ 466,859	\$ 1,867,437	\$ 2,334,296

Details by project:

The one (1) replacement 35-foot fixed route vehicle is a 2007 New Flyer, which reached its useful 12 year life this year and is in the capital replacement plan. This project will be a joint Fargo Moorhead purchase – the amount being requested herein represents Fargo's share only.

The three (3) replacement paratransit vehicles are 2015 cut-aways, which reached their useful 5-year life this year and are in the capital replacement plan.

The purchase of two (2) cutaway size vehicles are for fixed route demand response/feeder to the main fixed route system. The zones/areas where the demand response service will be provided is around the

Fargo City Commission
Fargo Grant Applications
May 22, 2019
Page 2 of 2

NDSU campus and the Fargo Industrial Park. Both vehicles are more easily maneuvered and ADA accessible. The interactive software used for these services is TapRide, which has been used for the NDSU area service and has been very successful, allowing us to cover a larger area than the fixed route service previously operating – please note, this is currently only an evening service. The amount listed in the request includes each vehicle getting a camera system, a headsign, and a farebox.

An upgrade to the lighting in the shop/storage area of the Metro Transit Garage (MTG) is being requested. The facility was built in 2006 and the lighting is original to the build. There have been many advances/improvements in lighting features which would improve visibility and power saving features if implemented, especially in the pit area. The cost listed is Fargo's share.

The Mobility Manager position is eligible for grant funding at 80% federal share and 20% local share. The funding for this position is available through 5310 funds – the amount being requested is the benefit pay rate for FY2020.

A Diesel Exhaust Particulate Filter Cleaner is needed: there is ash created during a regeneration cycle and that buildup of ash needs to be removed from the filter or else the filter plugs and causes drivability issues. Currently we send them out if we need to or if they are too bad we have to replace them. Replacement cost is quite expensive (approximately \$8,000 each). This machine would allow us to perform regular maintenance on the DPF and lower the number of times we have to replace a filter.

Various smaller transit support equipment – interactive informational kiosks to be placed at the GTC, NDSU and West Acres to start; tool room storage system; mobile large; computer hardware and software.

Replacement of the farebox system in conjunction with Moorhead replacing their fareboxes. The existing system was purchased over ten years ago and has reached its useful life. Moorhead is seeking authorization for a sole source purchase as a new Genfare system can be integrated to a degree with our existing Genfare system. In addition, a new farebox system would vastly improve the capabilities of the fareboxes – the newer system is capable of scanning mobile tickets which will itself provide more data, diminish the use of cash onboard the bus, and allow passengers to reload their mobile passes online; there would be wireless download of data, upgraded features for smartcard passes, and newer system software (the current software exceeds 20 years). The amount listed in the request is Fargo's portion only.

The proposed grant applications were approved by the Technical Transportation Committee (TTC) on May 9, 2019 and the MAT Coordinating Board on May 15, 2019. The applications are due May 23, 2019.

The requested motion is to approve the grant applications as outlined above, the local share, and, upon successful receipt of funds, approve the grant execution. Thank you.

***Julie Bommelman
City of Fargo Transit Director
701.476.6737***

**North Dakota Department of Transportation
SECTION 5339 TRANSIT GRANT AGREEMENT**

Federal Award Information – To be provided by NDDOT

CFDA No.: 20.526

CFDA Title: Federal Transit Capital Investment

Award Name: Federal Transit Capital Investment Grants Awarding Fed. Agency: FTA

NDDOT Program Mgr.: Becky Hanson Telephone: 701-328-2542

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.

WHEREAS, Section 5339 of the Fixing America's Surface Transportation (FAST) Act, provides for grants for the specific purpose of assisting in financing capital projects that will benefit the country's transit projects.

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds to finance capital projects such as rolling stock, equipment, and/or capital improvements that will benefit transit projects that serve the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this agreement is to provide grant funds to finance rolling stock, equipment, and/or capital improvements, hereinafter referred to as the project. The grant amount is \$544,240.

Section 2. Project Obligation. The Contractor shall undertake and complete the project as described in the attached Project Description and Budget (Attachment A), and as described in the Contractor's approved grant application, on file with NDDOT.

Section 3. Period of Performance. This agreement shall begin on July 1, 2019, and terminate on June 30, 2021.

Section 4. Project Participation. Participation in the project costs shall be as indicated in the attached Project Description and Budget. The Contractor will provide sufficient non-federal funds which together with the grant will pay the project costs. In the event that the actual project costs



are less than what is shown in the project budget or if a rebate is given, this reduction in cost shall be applied to the Contractor and NDDOT in proportion to the participation rates of each.

Section 5. Purchase of Project Equipment. The purchase of all project equipment financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and 49 CFR 18 (Common Rule).

Section 6. Use of Project Equipment. The Contractor agrees that the project equipment shall be used for providing transportation service in accordance with the project description in the grant application. Such equipment shall be used for the duration of its useful life. If any project equipment is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition.

Section 7. Subcontracting. The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

Section 8. Assignments. Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or equipment and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

Section 9. Subcontract Provisions. The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

"This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

Section 10. Records and Reports.

- a. The Contractor shall submit project operational data and information as requested by NDDOT.
- b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.
- c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.
- d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

Section 11. Audit and Inspection. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such



audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

Section 12. Termination. NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

Section 13. Action Upon Termination. The Contractor agrees to dispose of the project equipment in accordance with 49 CFR 18.32 (Common Rule) and NDDOT's program policy, copies of which will be made available by NDDOT upon request.

Section 14. Contract Changes. All modifications of this agreement shall be made in writing and agreed upon by both parties.

Section 15. Prohibited Interest. No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

Section 16. Civil Rights. The following requirements apply to this contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to this contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees



to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Section 17. Disadvantaged Business Enterprise. The Contractor will comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et. seq.).

The Contractor will include the following paragraph verbatim in any subcontracts they sign relative to this project:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NDDOT deems appropriate.

Section 18. Other Provisions. The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them:

Safety Jurisdiction. FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from any private nonprofit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

Section 19. Statement of Financial Assistance. This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

Section 20. Government-Wide Suspension and Debarment. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.



The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Section 21. Nondiscrimination – Compliance with Laws. The Contractor agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

Section 22. Applicable Law. Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and conduct its activities so as not to endanger any person or property.

Section 23. Charter Service Operations. The Contractor agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

Section 24. School Transportation Operations. The recipients agree that neither it nor any transit operator performing work in connection with the project will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as qualified under specified exemptions permitted by 49 USC 5323(f) and FTA regulations, "School Bus Operations" 49 CFR Part 605 and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the grant agreement or cooperative agreement. When operating exclusive school bus service under an allowable exemption, federally funded equipment, vehicles, or facilities may not be used.

Section 25. Buy America.

Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000) Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Section 26. Energy Conservation. 42 USC 6321 and 49 CFR Part 18. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Section 27. Bus Testing. In the purchase of rolling stock the Contractor (manufacturer) agrees to comply with 49 USC 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the bus testing requirements set forth therein.



Section 28. Pre-Award and Post-Delivery Audit Requirements. The recipient agrees to comply with requirements of 49 USC 5323(m) and FTA regulations "Pre-Award and Post-Delivery Audits" of rolling stock purchases 49 CFR Part 663 and any revision thereto.

Section 29. Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et. seq.]. Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 40 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Section 30. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement (from FTA MA (25) dated October 1, 2018) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 31. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§7401 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with federal assistance provided by FTA.

Section 32. Clean Water. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with federal assistance provided by FTA.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et. seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

Section 34. Disputes. 49 CFR Part 18, FTA Cir. 4220.1E. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by



the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Section 35. Merger and Waiver. This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Section 36. No Obligation by the Federal Government. The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Section 37. Insurance. The Contractor shall maintain insurance coverage on the project equipment in an amount adequate to protect the fair market value of the equipment throughout the duration of this agreement.

Section 38. Labor Protection. The Contractor stipulates it has read and agrees to abide by the provision of the labor protection warranty issued under Section 13C para. 1609 of the Transportation Act of 1964 and the National (Model) Agreement referenced therein.

Section 39. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.



Section 40. Davis-Bacon And Copeland Anti-Kickback Acts. The Contractor agrees to comply with the requirements of 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5) for any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

Section 41. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.



Section 42. Risk Management. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

DR Timothy J. Mattonney

NAME (TYPE OR PRINT)

SIGNATURE

Mayor

TITLE

DATE

**NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 1073 (Div. 38)
L.D. Approved 9-8-08, 6-19



CERTIFICATION OF LOCAL MATCH

It is hereby certified that _____ will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided for Transit Provider. Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

Source:

farebox, vending, advertising, general fund

Executed at _____, North Dakota, the last date below signed.

WITNESS:

SIGNATURE

DATE

APPROVED:

Dr. Timothy J. MAHONEY
NAME (TYPE OR PRINT)

SIGNATURE

* MAYOR
TITLE

DATE

*Director or President of Transit Board

CLA 1073 (Div. 38)
L.D. Approved 9-8-08, 6-19



Risk Management Appendix

Routine* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:**Parties:** State – State of North Dakota, its agencies, officers and employees**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees**Governments** – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability insurance** – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation insurance** meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 5-09



Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, City of Fargo, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

DR. Timothy J. MAHONEY

Name and Title of Contractor's Authorized Official

Date

Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Buy America Requirements – Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000) Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Cargo Preference – Use of US-Flag Vessels – Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

Energy Conservation – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$250,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

Bus Testing – Applicability – Rolling Stock/Turnkey Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

Pre-Award & Post-Delivery Audit Requirements – Applicability – Rolling Stock/Turnkey Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:

A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and

B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.

D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

Lobbying – Applicability – Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$250,000 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$250,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds

with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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Access to Records and Reports – Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Clean Air – Applicability – All contracts over \$250,000. 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

Contract Work Hours & Safety Standards Act – Applicability – Contracts over \$250,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

No Government Obligation to Third Parties – Applicability – All contracts except micropurchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT

regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

- a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.
- b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.
- c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.
- d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
- e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.
- f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.
- h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:
 1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
 2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.
 If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.
- i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's

convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government-Wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000 The Recipient agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements – Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination -- Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will,

prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) The Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Breaches and Dispute Resolution – Applicability – All contracts over \$250,000 Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offers will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Prompt Payment – Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Full and Open Competition - In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications - Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture - Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities - Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation - To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections - Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data - (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference - All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Federal Single Audit Requirements - For State Administered Federally Aid Funded Projects Only Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments. Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

Veterans Preference - As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

Catalog of Federal Domestic Assistance (CFDA) Identification Number - The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

The CFDA number for the Federal Transit Administration - Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Organizational Conflicts of Interest - The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without

restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, _____, hereby certify (Name and title of official)
On behalf of _____ that: (Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name City of Fargo
Type or print name
Signature of Authorized representative DR. JIMMIE J. MARRAS Date
Signature of notary and SEAL

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

1. It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,
2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 1. Debarred
 2. Suspended
 3. Proposed for debarment
 4. Declared ineligible
 5. Voluntarily excluded
 6. Disqualified
 - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
 2. Violation of any Federal or State antitrust statute, or
 3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property
 - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,
 - f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
 1. Equals or exceeds \$25,000,
 2. Is for audit services, or
 3. Requires the consent of a Federal official, and
 - g. It will require that each covered lower tier contractor and subcontractor:
 1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and
3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor City of Fargo

Signature of Authorized Official _____ Date / /

Name and Title of Contractor's Authorized Official _____

BUS TESTING CERTIFICATION

The undersigned bidder [Contractor/Manufacturer] certifies that the vehicle model or vehicle models offered in this bid submission complies with 49 CFR Part 665.

A copy of the test report (for each bid ITEM) prepared by the Federal Transit Administration's (FTA) Altoona, Pennsylvania Bus Testing Center is attached to this certification and is a true and correct copy of the test report as prepared by the facility.

he undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the U.S. Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Name of Bidder/Company Name

Type or print name

Signature of authorized representative

Signature of notary and SEAL

Date of Signature: _____

BUY AMERICA REQUIREMENTS

Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:

- A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
- B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

As required by Title 49 of the CFR, Part 663 – Subpart B, _____ (the recipient) is satisfied that the buses to be purchased, _____ (number and description of buses) from _____ (the manufacturer), meet the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended. The recipient or its appointed analyst _____ the analyst – not the manufacturer or its agent), has reviewed documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the buses identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the buses, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart B, _____ (the recipient) certifies that the buses to be purchased, _____ (number and description of buses) from _____ (the manufacturer), are the same product described in the recipient's solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce a bus that meets the specifications.

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart D, _____ the recipient) certifies that it received, at the pre-award stage, a copy of _____'s (the manufacturer) self-certification information stating that the buses, _____ (number and description of buses), will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, Part 571.

Date _____
Signature _____
Title _____

PRE-AWARD AUDIT REQUIREMENTS

A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.

DESCRIPTION OF PRE-AWARD AUDIT

A pre-award audit under this part includes— (a) A Buy America certification; (b) A purchaser's requirements certification; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information.

PRE-AWARD BUY AMERICA CERTIFICATION

For purposes of this part, a pre-award Buy America certification is a certification that the recipient keeps on file that:

- a. There is a letter from FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
- b. The recipient is satisfied that the rolling stock to be purchased meets the requirements of section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
 1. The Component and subcomponent parts of the rolling stock that are produced in the United States is more than 60% for FY2016 and 2017, more than 65% for FY2018 and 2019, more than 70% for FY2020 of the cost of all components and subcomponents of the vehicle identified by the manufacturer; and
 2. The location of the final assembly must take place in the United States (49 CFR 661.11), including a description of the activities that will take place at the final assembly point and the cost of final assembly.

PRE-AWARD PURCHASERS REQUIREMENTS CERTIFICATION

For purposes of this part, a pre-award purchaser's requirements certification is a certification a recipient keeps on file that:

- a. The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and
- b. The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirements in 49 CFR 661.13(b).

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart D, the recipient certifies that it received, at the pre-award stage, a copy of the manufacturers self-certification information stating that the buses will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, Part 571.

Bidder or offeror Certificate of:

COMPLIANCE with Buy America and FMVSS Rolling Stock Requirements

As required by 49 CFR Part 663, the bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 CFR 661.11.

Company _____

Name _____ Title _____

Signature _____ Date _____

Bidder or offeror Certificate of:

NON-COMPLIANCE with Buy America and FMVSS Rolling Stock Requirements

As required by 49 CFR Part 663, the bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Company _____

Name _____ Title _____

Signature _____ Date _____

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Post-Delivery purchaser's requirement, in compliance with the federal requirements of 49 U.S.C. Section 5323(m))

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 10 vehicles for areas >200,000 in population)

As required by 49 CFR Part 663-Subpart C, the

_____ (Recipient's name)

Certifies that a resident inspector,

_____ (Name of inspector)

Was at _____ (the manufacturer's) manufacturing site during the period of manufacture of the buses, _____ (description of buses).

The inspector visually inspecting the buses, the _____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 20 vehicles for areas < 200,000 in population)

As required by 49 CFR Part 663-Subpart C, the

_____ (Recipient's name)

Certifies that a resident inspector,

_____ (Name of inspector)

Was at _____ (the manufacturer's) manufacturing site during the period of manufacture of the buses, _____ (description of buses).

The inspector visually inspecting the buses, the _____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

Signature _____ Date ____/____/____

Title _____

TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATION

Pursuant to the provisions of Section 105(f) of the Surface Transportation Assistance Act of 1982, each bidder for this contract must certify that it has complied with the requirements of 49 CFR Part 26.49, regarding the participation of Disadvantaged Business Enterprises (DBE) in FTA assisted procurements of transit vehicles. Absent this certification, properly completed and signed, a bid shall be deemed non-responsive.

Certification:

I hereby certify, for the bidder named below, that it has complied with the provisions of 49 CFR Part 26.49 and that I am duly authorized by said bidder to make this certification.

BIDDER/COMPANY

Name of Bidder/Company _____

Signature of Representative _____

Type or Print Name _____

Title _____

Date _____

BIDDER/NOTARY

Type or Print Name _____

Signature of Notary _____

Place Notary SEAL Here:

Attachment A

Project Name Fargo MAT
SFY 2019 (April 1, 2019 - June 30, 2021)

	Local match percentage	Funding Source Section	TOTAL Federal Share Share	Local Share	Total
Funding Category					
Replacement Bus Std 35 ft - Replaces VIN 7C032364	20	5339	420,000	105,000	525,000
Purchase Expansion Bus Std 30 ft	20	5339	124,240	31,060	155,300
TOTALS			544,240	136,060	680,300

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

CFDA Title	CFDA No.	Title 49 USC Chapter 53 Section	Award Name
Capital Assistance Program	CFDA No 20.526	5339	Bus and Bus Facilities Formula

Section 5339 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing mass

**North Dakota Department of Transportation
SECTION 5339 TRANSIT GRANT AGREEMENT**

Federal Award Information – To be provided by NDDOT	
CFDA No.: 20.526	CFDA Title: Federal Transit Capital Investment
Award Name: Federal Transit Capital Investment Grants Awarding Fed. Agency: FTA	
NDDOT Program Mgr.: Becky Hanson Telephone: 701-328-2542	
Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.	

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.

WHEREAS, Section 5339 of the Fixing America’s Surface Transportation (FAST) Act, provides for grants for the specific purpose of assisting in financing capital projects that will benefit the country’s transit projects.

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds to finance capital projects such as rolling stock, equipment, and/or capital improvements that will benefit transit projects that serve the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this agreement is to provide grant funds to finance rolling stock, equipment, and/or capital improvements, hereinafter referred to as the project. The grant amount is \$53,600.

Section 2. Project Obligation. The Contractor shall undertake and complete the project as described in the attached Project Description and Budget (Attachment A), and as described in the Contractor’s approved grant application, on file with NDDOT.

Section 3. Period of Performance. This agreement shall begin on July 1, 2019, and terminate on June 30, 2021.

Section 4. Project Participation. Participation in the project costs shall be as indicated in the attached Project Description and Budget. The Contractor will provide sufficient non-federal funds which together with the grant will pay the project costs. In the event that the actual project costs



are less than what is shown in the project budget or if a rebate is given, this reduction in cost shall be applied to the Contractor and NDDOT in proportion to the participation rates of each.

Section 5. Purchase of Project Equipment. The purchase of all project equipment financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and 49 CFR 18 (Common Rule).

Section 6. Use of Project Equipment. The Contractor agrees that the project equipment shall be used for providing transportation service in accordance with the project description in the grant application. Such equipment shall be used for the duration of its useful life. If any project equipment is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition.

Section 7. Subcontracting. The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

Section 8. Assignments. Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or equipment and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

Section 9. Subcontract Provisions. The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

"This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

Section 10. Records and Reports.

- a. The Contractor shall submit project operational data and information as requested by NDDOT.
- b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.
- c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.
- d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

Section 11. Audit and Inspection. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such



audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

Section 12. Termination. NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

Section 13. Action Upon Termination. The Contractor agrees to dispose of the project equipment in accordance with 49 CFR 18.32 (Common Rule) and NDDOT's program policy, copies of which will be made available by NDDOT upon request.

Section 14. Contract Changes. All modifications of this agreement shall be made in writing and agreed upon by both parties.

Section 15. Prohibited Interest. No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

Section 16. Civil Rights. The following requirements apply to this contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to this contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees



to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Section 17. Disadvantaged Business Enterprise. The Contractor will comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et. seq.).

The Contractor will include the following paragraph verbatim in any subcontracts they sign relative to this project:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NDDOT deems appropriate.

Section 18. Other Provisions. The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them:

Safety Jurisdiction. FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from any private nonprofit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

Section 19. Statement of Financial Assistance. This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

Section 20. Government-Wide Suspension and Debarment. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.



The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Section 21. Nondiscrimination – Compliance with Laws. The Contractor agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

Section 22. Applicable Law. Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and conduct its activities so as not to endanger any person or property.

Section 23. Charter Service Operations. The Contractor agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation.

Section 24. School Transportation Operations. The recipients agree that neither it nor any transit operator performing work in connection with the project will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as qualified under specified exemptions permitted by 49 USC 5323(f) and FTA regulations, “School Bus Operations” 49 CFR Part 605 and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the grant agreement or cooperative agreement. When operating exclusive school bus service under an allowable exemption, federally funded equipment, vehicles, or facilities may not be used.

Section 25. Buy America.

Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000) Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Section 26. Energy Conservation. 42 USC 6321 and 49 CFR Part 18. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Section 27. Bus Testing. In the purchase of rolling stock the Contractor (manufacturer) agrees to comply with 49 USC 5323(c) and FTA’s implementing regulation at 49 CFR Part 665 and shall perform the bus testing requirements set forth therein.



Section 28. Pre-Award and Post-Delivery Audit Requirements. The recipient agrees to comply with requirements of 49 USC 5323(m) and FTA regulations "Pre-Award and Post-Delivery Audits" of rolling stock purchases 49 CFR Part 663 and any revision thereto.

Section 29. Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et. seq.]. Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 40 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Section 30. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement (from FTA MA (25) dated October 1, 2018) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 31. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§7401 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with federal assistance provided by FTA.

Section 32. Clean Water. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with federal assistance provided by FTA.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et. seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

Section 34. Disputes. 49 CFR Part 18, FTA Cir. 4220.1E. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by



the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Section 35. Merger and Waiver. This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Section 36. No Obligation by the Federal Government. The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Section 37. Insurance. The Contractor shall maintain insurance coverage on the project equipment in an amount adequate to protect the fair market value of the equipment throughout the duration of this agreement.

Section 38. Labor Protection. The Contractor stipulates it has read and agrees to abide by the provision of the labor protection warranty issued under Section 13C para. 1609 of the Transportation Act of 1964 and the National (Model) Agreement referenced therein.

Section 39. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.



Section 40. Davis-Bacon And Copeland Anti-Kickback Acts. The Contractor agrees to comply with the requirements of 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5) for any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

Section 41. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.



Section 42. Risk Management. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

Dr. Timothy J. MANNKEY

NAME (TYPE OR PRINT)

SIGNATURE

MAYOR

TITLE

DATE

**NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 1073 (Div. 38)
L.D. Approved 9-8-08, 6-19



CERTIFICATION OF LOCAL MATCH

It is hereby certified that _____ will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided for Transit Provider. Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

Source: farebox, advertising, general fund, vending

Executed at _____, North Dakota, the last date below signed.

WITNESS:

SIGNATURE

DATE

APPROVED:

Dr. Timothy J. Mahoney
NAME (TYPE OR PRINT)

SIGNATURE

* Mayor
TITLE

DATE

*Director or President of Transit Board

CLA 1073 (Div. 38)
L.D. Approved 9-8-08, 6-19



Risk Management Appendix

Routine* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:**Parties:** State – State of North Dakota, its agencies, officers and employees**Governmental Entity** – The Governmental Entity executing the attached document, its agencies, officers and employees**Governments** – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

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Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Cargo Preference - Use of US-Flag Vessels – Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

Seismic Safety – Applicability – Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor agrees that any new building or addition to an existing building shall be designed and constructed in accordance with the standards required in USDOT Seismic Safety Regulations 49 CFR 41 and shall certify compliance to the extent required by the regulation. Contractor shall also ensure that all work performed under this contract, including work performed by subcontractors, complies with the standards required by 49 CFR 41 and the certification of compliance issued on the project.

Energy Conservation – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Access to Records and Reports – Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Recycled Products – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

Davis-Bacon and Copeland Anti-Kickback Acts – Applicability – Construction contracts and subcontracts, including actual construction, alteration and/or repair, including decorating and painting, over \$2,000

1. Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. (ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met: (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination. (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
2. Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
3. Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i)

of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005- 00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a) (3)(ii)(B) of this section. (D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
5. Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
6. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
7. Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
8. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
9. Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
10. Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

No Government Obligation to Third Parties – Applicability – All contracts except micropurchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses. If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government-Wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000 The Recipient agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements – Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- (2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI

of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd - 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Prompt Payment – Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements:

Full and Open Competition - In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications - Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture - Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities - Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation - To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections - Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data - (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference - All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Federal Single Audit Requirements - For State Administered Federally Aid Funded Projects Only Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments. Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

Veterans Preference - As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

Catalog of Federal Domestic Assistance (CFDA) Identification Number - The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

The CFDA number for the Federal Transit Administration - Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Organizational Conflicts of Interest - The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- 1. It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,
2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
1. Debarred
2. Suspended
3. Proposed for debarment
4. Declared ineligible
5. Voluntarily excluded
6. Disqualified
b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
2. Violation of any Federal or State antitrust statute, or
3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property
c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,
f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
1. Equals or exceeds \$25,000,
2. Is for audit services, or
3. Requires the consent of a Federal official, and
g. It will require that each covered lower tier contractor and subcontractor:
1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
a. Debarred from participation in its federally funded Project,
b. Suspended from participation in its federally funded Project,
c. Proposed for debarment from participation in its federally funded Project,
d. Declared ineligible to participate in its federally funded Project,
e. Voluntarily excluded from participation in its federally funded Project, or
f. Disqualified from participation in its federally funded Project, and
3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor City OF FARGO
Signature of Authorized Official
Name and Title of Contractor's Authorized Official DA TIMOTHY J. MANTONA
Date 1/1

Attachment A

Project Name Fargo MAT
SFY 2019 (April 1, 2019 - June 30, 2021)

	Local match percentage	Funding Source Section	TOTAL Federal Share Share	Local Share	Total
Funding Category					
Rehab/Renovate – Admin/Maint/Facility	20	5339	53,600	13,400	67,000
TOTALS			53,600	13,400	67,000

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

CFDA Title	CFDA No.	Title 49 USC Chapter 53 Section	Award Name
Capital Assistance Program	CFDA No 20.526	5339	Bus and Bus Facilities Formula

Section 5339 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing mass transportation.

**North Dakota Department of Transportation
SECTION 5339 TRANSIT GRANT AGREEMENT**

Federal Award Information – To be provided by NDDOT

CFDA No.: 20.526

CFDA Title: Federal Transit Capital Investment

Award Name: Federal Transit Capital Investment Grants Awarding Fed. Agency: FTA

NDDOT Program Mgr.: Becky Hanson Telephone: 701-328-2542

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.

WHEREAS, Section 5339 of the Fixing America's Surface Transportation (FAST) Act, provides for grants for the specific purpose of assisting in financing capital projects that will benefit the country's transit projects.

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds to finance capital projects such as rolling stock, equipment, and/or capital improvements that will benefit transit projects that serve the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this agreement is to provide grant funds to finance rolling stock, equipment, and/or capital improvements, hereinafter referred to as the project. The grant amount is \$854,956.

Section 2. Project Obligation. The Contractor shall undertake and complete the project as described in the attached Project Description and Budget (Attachment A), and as described in the Contractor's approved grant application, on file with NDDOT.

Section 3. Period of Performance. This agreement shall begin on July 1, 2019, and terminate on June 30, 2020.

Section 4. Project Participation. Participation in the project costs shall be as indicated in the attached Project Description and Budget. The Contractor will provide sufficient non-federal funds which together with the grant will pay the project costs. In the event that the actual project costs



are less than what is shown in the project budget or if a rebate is given, this reduction in cost shall be applied to the Contractor and NDDOT in proportion to the participation rates of each.

Section 5. Purchase of Project Equipment. The purchase of all project equipment financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and 49 CFR 18 (Common Rule).

Section 6. Use of Project Equipment. The Contractor agrees that the project equipment shall be used for providing transportation service in accordance with the project description in the grant application. Such equipment shall be used for the duration of its useful life. If any project equipment is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition.

Section 7. Subcontracting. The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

Section 8. Assignments. Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or equipment and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

Section 9. Subcontract Provisions. The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

"This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

Section 10. Records and Reports.

- a. The Contractor shall submit project operational data and information as requested by NDDOT.
- b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.
- c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.
- d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

Section 11. Audit and Inspection. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such



audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

Section 12. Termination. NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

Section 13. Action Upon Termination. The Contractor agrees to dispose of the project equipment in accordance with 49 CFR 18.32 (Common Rule) and NDDOT's program policy, copies of which will be made available by NDDOT upon request.

Section 14. Contract Changes. All modifications of this agreement shall be made in writing and agreed upon by both parties.

Section 15. Prohibited Interest. No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

Section 16. Civil Rights. The following requirements apply to this contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to this contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees



to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Section 17. Disadvantaged Business Enterprise. The Contractor will comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et. seq.).

The Contractor will include the following paragraph verbatim in any subcontracts they sign relative to this project:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NDDOT deems appropriate.

Section 18. Other Provisions. The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them:

Safety Jurisdiction. FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from any private nonprofit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

Section 19. Statement of Financial Assistance. This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

Section 20. Government-Wide Suspension and Debarment. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.



The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Section 21. Nondiscrimination – Compliance with Laws. The Contractor agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

Section 22. Applicable Law. Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and conduct its activities so as not to endanger any person or property.

Section 23. Charter Service Operations. The Contractor agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

Section 24. School Transportation Operations. The recipients agree that neither it nor any transit operator performing work in connection with the project will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as qualified under specified exemptions permitted by 49 USC 5323(f) and FTA regulations, "School Bus Operations" 49 CFR Part 605 and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the grant agreement or cooperative agreement. When operating exclusive school bus service under an allowable exemption, federally funded equipment, vehicles, or facilities may not be used.

Section 25. Buy America.

Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000) Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Section 26. Energy Conservation. 42 USC 6321 and 49 CFR Part 18. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Section 27. Bus Testing. In the purchase of rolling stock the Contractor (manufacturer) agrees to comply with 49 USC 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the bus testing requirements set forth therein.



Section 28. Pre-Award and Post-Delivery Audit Requirements. The recipient agrees to comply with requirements of 49 USC 5323(m) and FTA regulations "Pre-Award and Post-Delivery Audits" of rolling stock purchases 49 CFR Part 663 and any revision thereto.

Section 29. Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et. seq.]. Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 40 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Section 30. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement (from FTA MA (25) dated October 1, 2018) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 31. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§7401 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with federal assistance provided by FTA.

Section 32. Clean Water. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with federal assistance provided by FTA.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et. seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

Section 34. Disputes. 49 CFR Part 18, FTA Cir. 4220.1E. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by



the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Section 35. Merger and Waiver. This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Section 36. No Obligation by the Federal Government. The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Section 37. Insurance. The Contractor shall maintain insurance coverage on the project equipment in an amount adequate to protect the fair market value of the equipment throughout the duration of this agreement.

Section 38. Labor Protection. The Contractor stipulates it has read and agrees to abide by the provision of the labor protection warranty issued under Section 13C para. 1609 of the Transportation Act of 1964 and the National (Model) Agreement referenced therein.

Section 39. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.



Section 40. Davis-Bacon And Copeland Anti-Kickback Acts. The Contractor agrees to comply with the requirements of 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5) for any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

Section 41. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.



Section 42. Risk Management. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

DR Timothy J. Mahoney

NAME (TYPE OR PRINT)

SIGNATURE

MAYOR

TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

**NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 1073 (Div. 38)
L.D. Approved 9-8-08, 6-19



CERTIFICATION OF LOCAL MATCH

It is hereby certified that _____ will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided for Transit Provider. Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

Source: farebox, advertising, vending, general fund

Executed at _____, North Dakota, the last date below signed.

WITNESS:

APPROVED:

SIGNATURE

Dr Timothy J. MAHONEY
NAME (TYPE OR PRINT)

DATE

SIGNATURE

* MAYOR
TITLE

DATE

*Director or President of Transit Board

CLA 1073 (Div. 38)
L.D. Approved 9-8-08, 6-19



Risk Management Appendix

Routine* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: **State** – State of North Dakota, its agencies, officers and employees
Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees
Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 5-09



Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, City of FARGO, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Dr. Timothy J. MAHOONEY Name and Title of Contractor's Authorized Official

Date

Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Buy America Requirements – Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000) Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Cargo Preference - Use of US-Flag Vessels – Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

Energy Conservation – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$250,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

Lobbying – Applicability – Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$250,000 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$250,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports – Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(j), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Clean Air – Applicability – All contracts over \$250,000. 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

Recycled Products – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

No Government Obligation to Third Parties – Applicability – All contracts except micropurchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice or termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or properly supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government-Wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000 The Recipient agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements – Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable

requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: (1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005,

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Breaches and Dispute Resolution – Applicability – All contracts over \$250,000 Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is

19%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Prompt Payment – Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements:

Full and Open Competition - In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications - Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture - Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities - Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation - To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-

Assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections - Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data - (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference - All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Federal Single Audit Requirements - For State Administered Federally Aid Funded Projects Only Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments. Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

Veterans Preference - As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

Catalog of Federal Domestic Assistance (CFDA) Identification Number - The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

The CFDA number for the Federal Transit Administration - Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Organizational Conflicts of Interest - The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions. (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, _____, hereby certify (Name and title of official)

On behalf of _____ that: (Name of Bidder/Company Name)

- o No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- o If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- o The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name _____

Type or print name _____

Signature of Authorized representative _____ Date _____

Signature of notary and SEAL _____

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- 1. It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,
2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
1. Debarred
2. Suspended
3. Proposed for debarment
4. Declared ineligible
5. Voluntarily excluded
6. Disqualified
b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
2. Violation of any Federal or State antitrust statute, or
3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property
c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,
f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
1. Equals or exceeds \$25,000,
2. Is for audit services, or
3. Requires the consent of a Federal official, and
g. It will require that each covered lower tier contractor and subcontractor:
1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
a. Debarred from participation in its federally funded Project,
b. Suspended from participation in its federally funded Project,
c. Proposed for debarment from participation in its federally funded Project,
d. Declared ineligible to participate in its federally funded Project,
e. Voluntarily excluded from participation in its federally funded Project, or
f. Disqualified from participation in its federally funded Project, and
3. It will provide a written explanation as indicated on a page attached in FTA's TrAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor City of PAAGO

Signature of Authorized Official _____ Date 1/1

Name and Title of Contractor's Authorized Official DR. Timothy J. MAHONEY, Mayor

**BUY AMERICA CERTIFICATION
(STEEL OR MANUFACTURED PRODUCTS)
[61 FR 6302, Feb. 16, 1996, as amended at 74 FR 30239, June 25, 2009]**

General Requirement (as stated in 49 CFR 661.5)

- a. Except as provided in 49 CFR 661.7 and 49 CFR 661.11, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.
- b. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.
- c. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as, transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.
- d. For a manufactured product to be considered produced in the United States:
 - 1. All of the manufacturing processes for the product must take place in the United States; and
 - 2. All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Company CITY OF FARGO
 Name DR. TIMOTHY J. MABONEL Title MAYOR
 Signature _____ Date _____

Certificate of Non-Compliance with Buy America Steel or Manufactured Products Requirements The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Company _____
 Name _____ Title _____
 Signature _____ Date _____

Attachment A

Project Name

Fargo MAT

SFY 2019 (April 1, 2019 - June 30, 2020)

	Local match percentage	Funding Source Section	TOTAL Federal Share	Local Share	Total
Funding Category					
Purchase Stationary Bus Fare Collection Equipment	20	5339	750,000	250,000	1,000,000
Rehab/Renovate -- Misc Support Equipment	20	5339	78,156	19,540	97,696
Purchase DEP Filter Cleaner	20	5339	26,800	6,700	33,500
TOTALS			854,956	276,240	1,131,196

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

CFDA Title	CFDA No.	Title 49 USC Chapter 53 Section	Award Name
Capital Assistance Program	CFDA No 20.526	5339	Bus and Bus Facilities Formula
Section 5339 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing mass transportation.			

North Dakota Department of Transportation
SECTION 5310 TRANSIT GRANT AGREEMENT

Federal Award Information – To be provided by NDDOT

CFDA No.: 20.513

CFDA Title: Capital Assistance Program

Award Name: Elderly & Persons with Disabilities Program Awarding Fed. Agency: FTA

NDDOT Program Mgr.: Becky Hanson Telephone: 701-328-2542

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.

WHEREAS, Section 5310 of the Fixing America's Surface Transportation (FAST) Act, provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and disabled persons for whom mass transportation services are unavailable, insufficient, or inappropriate; and

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds for the transportation needs of the elderly and disabled citizens of the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this agreement is to provide grant funds to purchase vehicles and equipment for use in providing transportation services for the elderly and disabled citizens, hereinafter referred to as the project. The grant amount is \$283,760.

Section 2. Project Obligation. The Contractor shall undertake and complete the project as described in the attached Project Description and Budget (Attachment A), and as described in the Contractor's approved grant application, on file with NDDOT.

Section 3. Period of Performance. The Contractor shall commence, carry on, and complete purchase of the project vehicles and equipment with all practicable dispatch, in a sound, economical, and efficient manner. This agreement shall begin upon execution of this agreement by both parties and terminate on June 30, 2021.

Section 4. Project Participation. Participation in the project costs shall be as indicated in the attached Project Description and Budget. The Contractor will provide sufficient non-federal funds which together with the grant will pay the project costs. In the event that the actual project costs are less than what is



shown in the project budget or if a rebate is given, this reduction in cost shall be applied to the Contractor and NDDOT in proportion to the participation rates of each.

Section 5. Purchase of Project Equipment. The purchase of all project equipment financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and 49 CFR 18 (Common Rule).

Section 6. Use of Project Equipment. The Contractor agrees that the project equipment shall be used for providing transportation service in accordance with the project description in the grant application. Such equipment shall be used for the duration of its useful life. If any project equipment is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition.

Section 7. Subcontracting. The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

Section 8. Assignments. Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or equipment and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

Section 9. Subcontract Provisions. The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

"This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

Section 10. Records and Reports.

- a. The Contractor shall submit project operational data and information as requested by NDDOT.
- b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.
- c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.
- d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

Section 11. Audit and Inspection. The Contractor shall permit NDDOT, the comptroller general of the United States, and the secretary of the US Department of Transportation or their authorized representatives to inspect all vehicles, facilities, and equipment used by the Contractor as part of the



project and all relevant project data and records. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

Section 12. Termination.

NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

Section 13. Action Upon Termination. The Contractor agrees to dispose of the project equipment in accordance with 49 CFR 18.32 (Common Rule) and NDDOT's program policy, copies of which will be made available by NDDOT upon request.

Section 14. Contract Changes. All modifications of this agreement shall be made in writing and agreed upon by both parties.

Section 15. Prohibited Interest. No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

Section 16. Civil Rights. The following requirements apply to this contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to this contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.



(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Section 17. Disadvantaged Business Enterprise. The Contractor will comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et. seq.).

The Contractor will include the following paragraph verbatim in any subcontracts they sign relative to this project:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NDDOT deems appropriate.

Section 18. Other Provisions. The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them:

Safety Jurisdiction. FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from any private nonprofit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

Section 19. Statement of Financial Assistance. This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

Section 20. Government-Wide Suspension and Debarment. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its



principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Section 21. Nondiscrimination – Compliance with Laws. The Contractor agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

Section 22. Applicable Law. Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and conduct its activities so as not to endanger any person or property.

Section 23. Charter Service Operations. The Contractor agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

Section 24. School Transportation Operations. The Contractor agrees that neither it nor any transit operator performing work in connection with the project will engage in school transportation operations exclusively for the transportation of students or school personnel in competition with private school transportation operators, except as qualified under specified exemptions permitted by 49 USC 5323(f) and FTA regulations, "School Bus Operations" 49 CFR Part 605 and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the grant agreement or cooperative agreement. When operating exclusive school bus service under an allowable exemption, federally funded equipment, vehicles, or facilities may not be used.

Section 25. Buy America.

Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000) Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Section 26. Energy Conservation. 42 USC 6321 and 49 CFR Part 18. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.



Section 27. Bus Testing. In the purchase of rolling stock the Contractor (manufacturer) agrees to comply with 49 USC 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the bus testing requirements set forth therein.

Section 28. Pre-Award and Post-Delivery Audit Requirements. The Contractor agrees to comply with requirements of 49 USC 5323(m) and FTA regulations "Pre-Award and Post-Delivery Audits" of rolling stock purchases 49 CFR Part 663 and any revision thereto.

Section 29. Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et. seq.]. Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 40 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to NDDOT.

Section 30. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement (from FTA MA (25) dated October 1, 2018) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 31. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§7401 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with federal assistance provided by FTA.

Section 32. Clean Water. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with federal assistance provided by FTA.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et. seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.



Section 34. Disputes. 49 CFR Part 18, FTA Cir. 4220.1E. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Section 35. Merger and Waiver. This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Section 36. No Obligation by the Federal Government. The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Section 37. Drug and Alcohol Testing - The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of NDDOT or the NDDOT, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 before July 1 and to submit the Management Information System (MIS) reports before March 1 to the NDDOT Transit Office, 608 East Boulevard, Bismarck, ND 58505-0700. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Section 38. Insurance. The Contractor shall maintain insurance coverage on the project equipment in an amount adequate to protect the fair market value of the equipment throughout the duration of this agreement.

Section 39. Labor Protection. The Contractor stipulates it has read and agrees to abide by the provision of the labor protection warranty issued under Section 13C para. 1609 of the Transportation Act of 1964 and the National (Model) Agreement referenced therein.

Section 40. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:



The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Section 41. Davis-Bacon And Copeland Anti-Kickback Acts. The Contractor agrees to comply with the requirements of 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5) for any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

Section 42. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.



Section 43. Risk Management. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

DR. Timothy J. MAHONEY

NAME (TYPE OR PRINT)

SIGNATURE

MAYOR

TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 17014 (Div. 38)
L.D. Approved 7-17-89; 6-19



CERTIFICATION OF LOCAL MATCH

It is hereby certified that City of Fargo will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided for Transit Provider. Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

Source: Fareboxes, ADVERTISING, vending, GENERAL FUND

Executed at _____, North Dakota, the last date below signed.

WITNESS:

APPROVED:

SIGNATURE

NAME (TYPE OR PRINT)

DATE

SIGNATURE

*

TITLE

DATE

*Director or President of Transit Board

CLA 17014 (Div. 38)
L.D. Approved 7-17-89; 6-19



Risk Management Appendix

Routine* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: **State** – State of North Dakota, its agencies, officers and employees
Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees
Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability** insurance – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation** insurance meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.



Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, CITY OF FARGO, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

DR. Timothy J. Mahoney, Mayor Name and Title of Contractor's Authorized Official

Date

Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Buy America Requirements – Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000) Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Cargo Preference - Use of US-Flag Vessels – Applicability – Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.) c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material, or commodities by ocean vessel.

Energy Conservation – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water – Applicability – All Contracts and Subcontracts over \$250,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

Bus Testing – Applicability – Rolling Stock/Turnkey Contractor [manufacturer] shall comply with 49 USC A5323(c) and FTA's implementing regulation 49 CFR 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient prior to the recipient's final acceptance of the first vehicle.
- 2) A manufacturer who releases a report under para. 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to the recipient's final acceptance of the first vehicle. If configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the US before Oct. 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

Pre-Award & Post-Delivery Audit Requirements – Applicability – Rolling Stock/Turnkey Contractor shall comply with 49 USC 5323(l) and FTA's implementing regulation 49 CFR 663 and submit the following certifications:

1) Buy America Requirements: Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:

- A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
- B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

Lobbying – Applicability – Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$250,000 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$250,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds

with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Page 7875 Access to Records and Reports – Applicability – As shown below, These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(j)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Clean Air – Applicability – All contracts over \$250,000. 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. 2) Contractor shall include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with FTA assistance.

Contract Work Hours & Safety Standards Act – Applicability – Contracts over \$250,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

No Government Obligation to Third Parties – Applicability – All contracts except micropurchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. the recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work. Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's

convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government-Wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000 The Recipient agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

Contracts Involving Federal Privacy Act Requirements – Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will,

prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.10ther applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities, (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance,

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2,

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient

agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: 1) Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Breaches and Dispute Resolution – Applicability – All contracts over \$250,000 Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the recipient and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the recipient or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Prompt Payment – Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements:

Full and Open Competition - In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications - Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture - Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities - Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation - To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

Environmental Protections - Compliance is required with any applicable Federal laws imposing environmental and resource conservation

requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data - (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference - All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Federal Single Audit Requirements - For State Administered Federally Aid Funded Projects Only Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments. Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

Veterans Preference - As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) - (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

Catalog of Federal Domestic Assistance (CFDA) Identification Number - The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

The CFDA number for the Federal Transit Administration - Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Organizational Conflicts of Interest - The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party

Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

CERTIFICATION AND RESTRICTIONS ON LOBBYING

I, _____, hereby certify (Name and title of official)
On behalf of _____ that: (Name of Bidder/Company Name)

- o No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- o If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- o The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801, et seq., are applicable thereto.

Name of Bidder/Company Name CITY OF FARGO
 Type or print name DR. TIMOTHY J. MAHONEY
 Signature of Authorized representative _____ Date _____
 Signature of notary and SEAL _____

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- 1. It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180.
2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
1. Debarred
2. Suspended
3. Proposed for debarment
4. Declared ineligible
5. Voluntarily excluded
6. Disqualified
b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
2. Violation of any Federal or State antitrust statute, or
3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property
c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,
f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
1. Equals or exceeds \$25,000,
2. Is for audit services, or
3. Requires the consent of a Federal official, and
g. It will require that each covered lower tier contractor and subcontractor:
1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
a. Debarred from participation in its federally funded Project,
b. Suspended from participation in its federally funded Project,
c. Proposed for debarment from participation in its federally funded Project,
d. Declared ineligible to participate in its federally funded Project,
e. Voluntarily excluded from participation in its federally funded Project, or
f. Disqualified from participation in its federally funded Project, and
3. It will provide a written explanation as indicated on a page attached in FTA's TRAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor City of Fargo
Signature of Authorized Official [Signature] Date 1/1
Name and Title of Contractor's Authorized Official DR. TIMOTHY J. MAHONEY, Mayor

BUS TESTING CERTIFICATION

The undersigned bidder [Contractor/Manufacturer] certifies that the vehicle model or vehicle models offered in this bid submission complies with 49 CFR Part 665.

A copy of the test report (for each bid ITEM) prepared by the Federal Transit Administration's (FTA) Altoona, Pennsylvania Bus Testing Center is attached to this certification and is a true and correct copy of the test report as prepared by the facility.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the U.S. Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

City of Fargo

Name of Bidder/Company Name

DR. Timothy J. Mahoney

Type or print name

Signature of authorized representative

Signature of notary and SEAL

Date of Signature: _____

BUY AMERICA REQUIREMENTS

Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If contractor certifies compliance with Buy America, it shall submit documentation listing:

- A. Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
- B. The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- C. Solicitation Specification Requirements: Contractor shall submit evidence that it will be capable of meeting the bid specifications.
- D. Federal Motor Vehicle Safety Standards (FMVSS): Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the buses will not be subject to FMVSS regulations.

As required by Title 49 of the CFR, Part 663 – Subpart B, _____ (the recipient) is satisfied that the buses to be purchased, _____ (number and description of buses) from _____ (the manufacturer), meet the requirements of Section 165(b)(3) of the

Surface Transportation Assistance Act of 1982, as amended. The recipient or its appointed analyst _____ the analyst – not the manufacturer or its agent), has reviewed

documentation provided by the manufacturer, which lists (1) the proposed component and subcomponent parts of the buses identified by manufacturer, country of origin, and cost; and (2) the proposed location of the final assembly point for the buses, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

PRE-AWARD PURCHASER'S REQUIREMENTS CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart B, _____ (the recipient) certifies that the buses to be purchased, _____ (number and description of buses) from _____ (the manufacturer), are the same product described in the recipient's

solicitation specification and that the proposed manufacturer is a responsible manufacturer with the capability to produce a bus that meets the specifications.

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart D, _____ the recipient) certifies that it received, at the pre-award stage, a copy of _____'s (the manufacturer) self-certification information stating that the buses,

_____ (number and description of buses), will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, Part 571.

Date _____

Signature _____

Title MAYOR

DR Timothy J. Mahoney

PRE-AWARD AUDIT REQUIREMENTS

A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.

DESCRIPTION OF PRE-AWARD AUDIT

A pre-award audit under this part includes— (a) A Buy America certification; (b) A purchaser's requirements certification; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information.

PRE-AWARD BUY AMERICA CERTIFICATION

For purposes of this part, a pre-award Buy America certification is a certification that the recipient keeps on file that:

- a. There is a letter from FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
- b. The recipient is satisfied that the rolling stock to be purchased meets the requirements of section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
 - 1. The Component and subcomponent parts of the rolling stock that are produced in the United States is more than 60% for FY2016 and 2017, more than 65% for FY2018 and 2019, more than 70% for FY2020 of the cost of all components and subcomponents of the vehicle identified by the manufacturer; and
 - 2. The location of the final assembly must take place in the United States (49 CFR 661.11), including a description of the activities that will take place at the final assembly point and the cost of final assembly.

PRE-AWARD PURCHASERS REQUIREMENTS CERTIFICATION

For purposes of this part, a pre-award purchaser's requirements certification is a certification a recipient keeps on file that:

- a. The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and
- b. The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirements in 49 CFR 661.13(b).

PRE-AWARD FMVSS COMPLIANCE CERTIFICATION

As required by Title 49 of the CFR, Part 663 – Subpart D, the recipient certifies that it received, at the pre-award stage, a copy of the manufacturers self-certification information stating that the buses will comply with the relevant Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in Title 49 of the Code of Federal Regulations, Part 571.

Bidder or offeror Certificate of:

COMPLIANCE with Buy America and FMVSS Rolling Stock Requirements

As required by 49 CFR Part 663, the bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations of 49 CFR 661.11.

Company City of Fargo
 Name DR Timothy J. Mahoney Title MAYOR
 Signature _____ Date _____

NON-COMPLIANCE with Buy America and FMVSS Rolling Stock Requirements

As required by 49 CFR Part 663, the bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but may qualify for an exception to the requirement consistent with 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Company _____
Name _____ Title _____
Signature _____ Date _____

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Post-Delivery purchaser's requirement, in compliance with the federal requirements of 49 U.S.C. Section 5323(m))

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 10 vehicles for areas >200,000 in population)

As required by 49 CFR Part 663-Subpart C, the

_____ (Recipient's name)
Certifies that a resident inspector,

_____ (Name of inspector)
Was at _____ (the manufacturer's) manufacturing site during the period of manufacture of the
buses, _____ (description of buses).

The inspector visually inspecting the buses, the _____ (the recipient) has reviewed the inspection
documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 20 vehicles for areas < 200,000 in population)

As required by 49 CFR Part 663-Subpart C, the

_____ (Recipient's name)
Certifies that a resident inspector,

_____ (Name of inspector)
Was at _____ (the manufacturer's) manufacturing site during the period of manufacture of the
buses, _____ (description of buses).

The inspector visually inspecting the buses, the _____ (the recipient) has reviewed the inspection documentation, maintains
a copy of this report, and certifies that the buses meet the contract specifications.

Signature _____ Date _____
Title _____

TRANSIT VEHICLE MANUFACTURER (TVM) CERTIFICATION

Pursuant to the provisions of Section 105(f) of the Surface Transportation Assistance Act of 1982, each bidder for this contract must certify that it has complied with the requirements of 49 CFR Part 26.49, regarding the participation of Disadvantaged Business Enterprises (DBE) in FTA assisted procurements of transit vehicles. Absent this certification, properly completed and signed, a bid shall be deemed non-responsive.

Certification:

I hereby certify, for the bidder named below, that it has complied with the provisions of 49 CFR Part 26.49 and that I am duly authorized by said bidder to make this certification.

BIDDER/COMPANY

Name of Bidder/Company City of FARGO
Signature of Representative _____
Type or Print Name DR. Timothy J. MAHONEY
Title MAYOR
Date _____

BIDDER/NOTARY

Type or Print Name _____
Signature of Notary _____

Place Notary SEAL Here:

Attachment A

Project Name City of Fargo
 SFY 2020 (July 1, 2019 - June 30, 2021)

	Local match percentage	Funding Source Section	TOTAL Federal Share Share	Local Share	Total
Funding Category					
Replacement Bus <30 ft FDA12131	20	5310	72,000	18,000	90,000
Replacement Bus <30 ft FDA12132	20	5310	72,000	18,000	90,000
Replacement Bus <30 ft FDA12133	20	5310	72,000	18,000	90,000
TOTALS			216,000	54,000	270,000

Replacement Buses

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

CFDA Title	CFDA No.	Title 49 USC Chapter 53 Section	Award Name
Capital Assistance Program	CFDA No 20.513	5310	Elderly and Persons with Disabilities Program

Section 5310 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and disabled persons for whom mass transportation services are unavailable, insufficient, or inappropriate

**North Dakota Department of Transportation
SECTION 5310 TRANSIT GRANT AGREEMENT**

Federal Award Information – To be provided by NDDOT

CFDA No.: 20.513

CFDA Title: Capital Assistance Program

Award Name: Elderly & Persons with Disabilities Program Awarding Fed. Agency: FTA

NDDOT Program Mgr.: Becky Hanson Telephone: 701-328-2542

Notice to Subrecipients: Federal awards may have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

This contract is between the state of North Dakota, acting by and through its Director of Transportation, hereinafter referred to as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, a Political Subdivision, hereinafter referred to as the Contractor, whose address is 650 23rd Street North, Fargo, ND 58102.

WHEREAS, Section 5310 of the Fixing America's Surface Transportation (FAST) Act, provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and disabled persons for whom mass transportation services are unavailable, insufficient, or inappropriate; and

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds for the transportation needs of the elderly and disabled citizens of the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this agreement is to provide grant funds to purchase vehicles and equipment for use in providing transportation services for the elderly and disabled citizens, hereinafter referred to as the project. The grant amount is \$80,880.

Section 2. Project Obligation. The Contractor shall undertake and complete the project as described in the attached Project Description and Budget (Attachment A), and as described in the Contractor's approved grant application, on file with NDDOT.

Section 3. Period of Performance. The Contractor shall commence, carry on, and complete purchase of the project vehicles and equipment with all practicable dispatch, in a sound, economical, and efficient manner. This agreement shall begin upon execution of this agreement by both parties and terminate on June 30, 2020.

Section 4. Project Participation. Participation in the project costs shall be as indicated in the attached Project Description and Budget. The Contractor will provide sufficient non-federal funds which together with the grant will pay the project costs. In the event that the actual project costs are less than what is



shown in the project budget or if a rebate is given, this reduction in cost shall be applied to the Contractor and NDDOT in proportion to the participation rates of each.

Section 5. Purchase of Project Equipment. The purchase of all project equipment financed, in whole or in part, pursuant to this agreement shall be undertaken by the Contractor in accordance with NDDOT's procurement procedures and 49 CFR 18 (Common Rule).

Section 6. Use of Project Equipment. The Contractor agrees that the project equipment shall be used for providing transportation service in accordance with the project description in the grant application. Such equipment shall be used for the duration of its useful life. If any project equipment is not used in this manner or is withdrawn from service before the end of its useful life, the Contractor shall immediately notify NDDOT of that condition.

Section 7. Subcontracting. The Contractor shall not assign any portion of the work under this agreement, execute any contract, or obligate itself in any manner with a third party with respect to its rights and responsibilities to this agreement without written consent of NDDOT. Any agreement with a subcontractor does not create a contractual relationship between the NDDOT and the subcontractor.

Section 8. Assignments. Unless authorized in writing by NDDOT, the Contractor shall not assign any portion of the work or equipment and vehicles under this agreement; execute any contract, amendment, or change order thereto; or obligate in any manner with a third party with respect to rights and responsibilities under this agreement.

Section 9. Subcontract Provisions. The Contractor shall include in all subcontracts entered into, pursuant to this agreement, all of the above-required sections. In addition, the following statement of financial assistance shall be included in any advertisement or invitation to bid for any procurement under this agreement:

"This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT."

Section 10. Records and Reports.

- a. The Contractor shall submit project operational data and information as requested by NDDOT.
- b. The Contractor shall also submit financial statements, data, records, contracts, and other documents related to the project as requested by NDDOT.
- c. All charges to the project account shall be supported by executed invoices, contracts, or vouchers showing the nature of the charges. All checks, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to the project shall be clearly identified; readily accessible; and, to the extent feasible, kept separate and apart from all other such documents.
- d. The Contractor shall maintain all accounting and project records NDDOT may require. Such records shall be made available to NDDOT and the federal government for inspection and audit during the agreement term and for three years after the date of final payment, unless any litigation, claim, or audit is started before the expiration of the three years, in which case the records shall be retained until such action is satisfied.

Section 11. Audit and Inspection. The Contractor shall permit NDDOT, the comptroller general of the United States, and the secretary of the US Department of Transportation or their authorized representatives to inspect all vehicles, facilities, and equipment used by the Contractor as part of the



project and all relevant project data and records. Entities that receive federal funds through NDDOT may be required to obtain an audit in accordance with 2 C.F.R. Part 200, Subpart F. A copy of such audit shall be submitted to NDDOT. Entities that spend less than \$750,000 of federal funds from all sources may be subject to reviews by NDDOT at its discretion. Additionally, all entities receiving federal funds through NDDOT shall certify whether a Single Audit has been completed as part of the annual Federal award process. These requirements are applicable to counties, cities, state agencies, Indian tribes, colleges, hospitals, and non-profit businesses.

Section 12. Termination.

NDDOT reserves the right, with or without cause, to terminate this agreement by written notice. In the event of termination without cause, NDDOT will reimburse the Contractor for costs incurred prior to the termination date without further liability.

Section 13. Action Upon Termination. The Contractor agrees to dispose of the project equipment in accordance with 49 CFR 18.32 (Common Rule) and NDDOT's program policy, copies of which will be made available by NDDOT upon request.

Section 14. Contract Changes. All modifications of this agreement shall be made in writing and agreed upon by both parties.

Section 15. Prohibited Interest. No member, officer, or employee of the Contractor during his tenure or for one year thereafter shall have any personal interest, direct or indirect, in this contract or the proceeds thereof.

Section 16. Civil Rights. The following requirements apply to this contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to this contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.



(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Section 17. Disadvantaged Business Enterprise. The Contractor will comply with the Disadvantaged Business Enterprise (DBE) requirements established by NDDOT for the project.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. NDDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Contractor of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et. seq.).

The Contractor will include the following paragraph verbatim in any subcontracts they sign relative to this project:

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the NDDOT deems appropriate.

Section 18. Other Provisions. The Contractor acknowledges the following provisions and agrees to cooperate with NDDOT in abiding by them:

Safety Jurisdiction. FTA's authority in the area of transit safety is set forth in section 22 of the Federal Transit Act Amendments of 1991. Under this section, FTA may withhold further financial assistance from any private nonprofit agency recipient who fails to correct any condition which FTA believes "creates a serious hazard of death or injury."

Section 19. Statement of Financial Assistance. This contract is subject to a financial assistance contract between the state of North Dakota and the USDOT.

Section 20. Government-Wide Suspension and Debarment. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, its



principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are not excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

Section 21. Nondiscrimination – Compliance with Laws. The Contractor agrees to comply with all applicable laws and rules, including, but not limited to, those relating to nondiscrimination, accessibility, and civil rights.

Section 22. Applicable Law. Indemnity. Contractor shall comply with all applicable federal, state, and local laws, rules, and ordinances at all times in the performance of this agreement, and conduct its activities so as not to endanger any person or property.

Section 23. Charter Service Operations. The Contractor agrees to comply with 49 USC 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally-funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

Section 24. School Transportation Operations. The Contractor agrees that neither it nor any transit operator performing work in connection with the project will engage in school transportation operations exclusively for the transportation of students or school personnel in competition with private school transportation operators, except as qualified under specified exemptions permitted by 49 USC 5323(f) and FTA regulations, "School Bus Operations" 49 CFR Part 605 and any amendments thereto that may be issued. Any school transportation agreement required by these regulations is incorporated by reference and made part of the grant agreement or cooperative agreement. When operating exclusive school bus service under an allowable exemption, federally funded equipment, vehicles, or facilities may not be used.

Section 25. Buy America.

Applicability – Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000) Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 60% domestic content for FY2016 and FY2017, a minimum 65% domestic content for FY2018 and FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Section 26. Energy Conservation. 42 USC 6321 and 49 CFR Part 18. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.



Section 27. Bus Testing. In the purchase of rolling stock the Contractor (manufacturer) agrees to comply with 49 USC 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the bus testing requirements set forth therein.

Section 28. Pre-Award and Post-Delivery Audit Requirements. The Contractor agrees to comply with requirements of 49 USC 5323(m) and FTA regulations "Pre-Award and Post-Delivery Audits" of rolling stock purchases 49 CFR Part 663 and any revision thereto.

Section 29. Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et. seq.]. Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 40 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to NDDOT.

Section 30. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement (from FTA MA (25) dated October 1, 2018) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 31. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§7401 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with federal assistance provided by FTA.

Section 32. Clean Water. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$250,000 financed in whole or in part with federal assistance provided by FTA.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et. seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.



Section 34. Disputes. 49 CFR Part 18, FTA Cir. 4220.1E. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Section 35. Merger and Waiver. This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Section 36. No Obligation by the Federal Government. The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Section 37. Drug and Alcohol Testing - The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of NDDOT or the NDDOT, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 before July 1 and to submit the Management Information System (MIS) reports before March 1 to the NDDOT Transit Office, 608 East Boulevard, Bismarck, ND 58505-0700. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Section 38. Insurance. The Contractor shall maintain insurance coverage on the project equipment in an amount adequate to protect the fair market value of the equipment throughout the duration of this agreement.

Section 39. Labor Protection. The Contractor stipulates it has read and agrees to abide by the provision of the labor protection warranty issued under Section 13C para. 1609 of the Transportation Act of 1964 and the National (Model) Agreement referenced therein.

Section 40. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:



The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Section 41. Davis-Bacon And Copeland Anti-Kickback Acts. The Contractor agrees to comply with the requirements of 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5) for any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

Section 42. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.



Section 43. Risk Management. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

DR. Timothy J. MAHONEY

NAME (TYPE OR PRINT)

SIGNATURE

MAYOR

TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 17014 (Div. 38)
L.D. Approved 7-17-89; 6-19



CERTIFICATION OF LOCAL MATCH

It is hereby certified that CITY OF FARGO will provide non-federal funds, unless expressly allowed by federal regulation to use federal funds as match. The source of the non-federal funds is identified below, as match for the amount the Transit Provider is obligated to pay under the terms of the attached agreement with the North Dakota Department of Transportation. The certified amount does not duplicate any federal claims for reimbursement, nor are the funds used to match other federal funds, unless expressly allowed by federal regulation.

Non-Federal Match Funds provided for Transit Provider. Please designate the source(s) of funds that will be used to match the federal funds obligated for this grant through the North Dakota Department of Transportation.

Source: POD BOX REVENUE, ADVERTISING; READING &
GENERAL FUND

Executed at _____, North Dakota, the last date below signed.

WITNESS:

SIGNATURE

DATE

APPROVED:

DR. Timothy J. Mathoney
NAME (TYPE OR PRINT)

SIGNATURE

* MAYOR
TITLE

DATE

*Director or President of Transit Board

CLA 17014 (Div. 38)
L.D. Approved 7-17-89; 6-19



Risk Management Appendix

Routine* Transit Agreements With Sovereign Entities and Political Subdivisions of the State of North Dakota:

Parties: **State** – State of North Dakota, its agencies, officers and employees

Governmental Entity – The Governmental Entity executing the attached document, its agencies, officers and employees
Governments – State and Government Entity, as defined above

Each party agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorney's fees which may in any manner result from or arise out of this agreement.

Each party shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) **Commercial general liability and automobile liability insurance** – minimum limits of liability required of the Governmental Entity are **\$250,000 per person and \$500,000 per occurrence**. The minimum limits of liability required of the State are **\$250,000 per person and \$1,000,000 per occurrence**.
- 2) **Workers compensation insurance** meeting all statutory limits.
- 3) The policies and endorsements may not be canceled or modified without **thirty (30) days prior written notice** to the undersigned State representative.

The State reserves the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

Each party that hires subcontractors shall require any non-public subcontractors, prior to commencement of work set out under an agreement between that party and the non-public subcontractor, to:

Defend, indemnify, and hold harmless the Governments, their agencies, officers and employees, from and against claims based on the vicarious liability of the Governments or its agents, but not against claims based on the Government's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by the Subcontractor to the Governments under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the Governments is necessary. Subcontractor also agrees to defend, indemnify, and hold the Governments harmless for all costs, expenses and attorneys' fees incurred if the Governments prevail in an action against the Subcontractor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

Subcontractor shall secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds authorized to do business in North Dakota: 1) commercial general liability; 2) automobile liability; and 3) workers compensation insurance all covering the Subcontractor for any and all claims of any nature which may in any manner arise out of or result from this agreement. The minimum limits of liability required are \$250,000 per person and \$1,000,000 per occurrence for commercial general liability and automobile liability coverages, and statutory limits for workers compensation. The Governments shall be endorsed on the commercial general liability policy and automobile liability policy as additional insureds. Said endorsement shall contain a "Waiver of Subrogation" waiving any right of recovery the insurance company may have against the Governments as well as provisions that the policy and/or endorsement may not be canceled or modified without thirty (30) days prior written notice to the undersigned representatives of the Governments, and that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. Section 54-12-08. Subcontractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the Governments. Any insurance, self-insurance or self-retention maintained by the Governments shall be excess of the Contractor's insurance and the Subcontractor's insurance and shall not contribute with them. The insolvency or bankruptcy of the insured Subcontractor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Subcontractor from meeting the retention limit under the policy. Any deductible amount or other obligations under the Subcontractor's policy(ies) shall be the sole responsibility of the Subcontractor. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and be placed with insurers rated "A-" or better by A.M. Best Company, Inc. The Governments will be indemnified, saved, and held harmless to the full extent of any coverage actually secured by the Subcontractor in excess of the minimum requirements set forth above. The Government Entity that hired the Subcontractor shall be held responsible for ensuring compliance with the above requirements by all Subcontractors. The Governments reserve the right to obtain complete, certified copies of all required insurance documents, policies, or endorsements at any time.

*See *North Dakota Risk Management Manual*, section 5.1 for discussion of "unique" and "routine" agreements.

RM Consulted 2007
Revised 5-09



Fly America Requirements – Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Charter Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 5323(d) and (g) and 49 CFR 604, which state that recipients and subrecipients of FTA assistance may provide charter service for transportation projects that uses equipment or facilities acquired with Federal assistance authorized under the Federal transit laws (except as permitted by 49 CFR 604.2), or under 23 U.S.C. 133 or 142, only in compliance with those laws and FTA regulations, "Charter Service," 49 CFR part 604, the terms and conditions of which are incorporated herein by reference.

School Bus Requirements – Applicability – Operational Service Contracts. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000). Pursuant to 69 USC 5323(f) or (g) as amended by MAP-21, 23 USC 133, 23 USC 142, and 49 CFR 605, recipients and subrecipients of FTA assistance shall not engage in school bus operations exclusively for transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients shall not use federally funded equipment, vehicles, or facilities. Violations. If a Recipient or any Third Party Participant that has operated school bus service in violation of FTA's School Bus laws and regulations, FTA may: (1) Require the Recipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or (2) Bar the Recipient or Third Party Participant from receiving Federal transit funds.

Energy Conservation – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Access to Records and Reports – Applicability – As shown below. These requirements do not apply to micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$250,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC 5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Re: 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

Federal Changes – Applicability – All Contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the recipient and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Recycled Products – Applicability – All contracts for items designated by the EPA, when the purchaser or contractor procures \$10,000 or more of one of these items during the current or previous fiscal year using Federal funds. The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

No Government Obligation to Third Parties – Applicability – All contracts except micropurchases (\$10,000 or less, except for construction contracts over \$2,000)

- (1) The recipient and contractor acknowledge and agree that, notwithstanding any concurrence by the US Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the US Government, the US Government is not a party to this contract and shall

not be subject to any obligations or liabilities to the recipient, the contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with FTA assistance. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate. (3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Termination – Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$250,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract. If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination. If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government-Wide Debarment and Suspension (Nonprocurement) – Applicability – Contracts over \$25,000 The Recipient agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <https://www.sam.gov>, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements – Applicability – When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000) The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with FTA Circular 4704.1 other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing. (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer". (3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: (1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of Map-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq., (2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under Map-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§ 621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities: (1) Federal laws, including: (a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities, (b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, 1 General. Titles I, II, and III of the ADA apply to FTA Recipients, but 2 Indian Tribes. While Titles II and III of the ADA apply to Indian Tribes, Title I of the ADA exempts Indian Tribes from the definition of "employer," (c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, (d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and (e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities. (2) Federal regulations, including: (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37, (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27, (c) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39, (d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35, (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36, (g) U.S.

EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F, (i) U.S. ATCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and (3) Other applicable Federal civil rights and nondiscrimination guidance.

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient agrees to comply with the confidentiality and civil rights protections of: (1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 et seq., (2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 et seq., and (3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd - 290dd-2.

i. Access to Services for People with Limited English Proficiency. Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote accessibility of public transportation services to people whose understanding of English is limited by following: (1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and (2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 Fed. Reg. 74087, December 14, 2005.

j. Other Nondiscrimination Laws. Except as the Federal Government determines otherwise in writing, the Recipient agrees to: (1) Comply with other applicable Federal nondiscrimination laws and regulations, and (2) Follow Federal guidance prohibiting discrimination.

k. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Transit Employee Protective Provisions – Applicability – Contracts for transit operations except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

Public Transportation Employee Protective Arrangements. The Recipient agrees that 49 U.S.C. § 5333(b) requires employee protective arrangements to be in place as a condition of award of FTA assistance made available or appropriated for FTA programs involving public transportation operations. U.S. DOL recognizes the following categories of arrangements:

(1) U.S. DOL Certification. When its Project involves public transportation operations and is financed with funding made available or appropriated for 49 U.S.C. §§ 5307, 5309, 5312, 5337, or 5339, as amended by Map-21, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a Certification of employee protective arrangements before FTA may provide financial assistance for the Project. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must carry out the Project as provided in its U.S. DOL Certification, which contains the terms and conditions that U.S. DOL has determined to be fair and equitable to protect the interests of any employees affected by the Project, (b) It must comply with 49 U.S.C. § 5333(b), and any future amendments thereto, (c) It will follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (d) It must comply with the terms and conditions of the U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, including: 1 Alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (e) It must comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement for the Project: 1 The U.S. DOL certification of public transportation employee protective arrangements for the Project, which certification is dated as identified on the Underlying Agreement, 2 The documents cited in that U.S. DOL certification for the Project, 3 Any alternative comparable arrangements that U.S. DOL has specified for the Project, and 4 Any revisions that U.S. DOL has specified for the Project.

(2) Special Warranty. When its Project involves public transportation operations, and is financed with funding made available or appropriated for 49 U.S.C. § 5311, as amended by Map-21, for former 49 U.S.C. § 5311 in effect in FY 2012, or a previous fiscal year, or for section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, U.S. DOL will provide a Special Warranty for those projects, including projects under the Tribal Transit Program. Therefore, the Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that: (a) It must comply with Federal transit laws, specifically 49 U.S.C. § 5333(b), (b) Follow the U.S. DOL guidelines, "Guidelines, Section 5333(b), Federal Transit Law," 29 C.F.R. part 215, except as U.S. DOL determines otherwise in writing, (c) It will comply with the U.S. DOL Special Warranty for its Project that is most current on the date when it executed the Underlying Agreement, and documents cited therein, including: 1 Any alternative comparable arrangements U.S. DOL has specified for the Project, 2 Any revisions U.S. DOL has specified for the Project, or 3 Both, and (d) It will comply with the following documents and provisions incorporated by reference in and made part of the Underlying Agreement: 1 The U.S. DOL Special Warranty for its Project, 2 Documents cited in that Special Warranty, 3 Alternative comparable arrangements U.S. DOL specifies for the Project, and 4 Any revisions that U.S. DOL has specified for the Project, and

(3) Special Arrangements for 49 U.S.C. § 5310 Projects. The Recipient understands and agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. §§ 5310 or 5317, FTA has determined that it was not "necessary or appropriate" to apply the conditions of 49 U.S.C. § 5333(b) to Subrecipients participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make the following exceptions: (a) FTA will make case-by-case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and (b) FTA reserves the right to make other exceptions as it deems appropriate.

Disadvantaged Business Enterprise (DBE) – Applicability – Contracts over \$10,000 awarded on the basis of a bid or proposal offering to use DBEs

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.
- b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).
- c. If a separate contract goal has been established, Bidders/offers are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.
- d. If no separate contract goal has been established, the successful bidder/offers will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.
- f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Prompt Payment – Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms – Applicability – All contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Drug & Alcohol Abuse and Testing – Applicability – Operational service contracts except micro-purchases (\$10,000 or less, except for construction contracts over \$2,000)

The Contractor agrees to comply with the following Federal substance abuse regulations: a. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 32, that implements the Drug-Free Workplace Act of 1988 as amended, 41 U.S.C. §§ 8103 et seq., and 2 CFR part 182, b. Alcohol Misuse and Prohibited Drug Use. FTA Regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 USC 5331, as amended by Map-21, 49 CFR part 40, 49 USC chapter 53, 49 CFR Part 655, to the extent applicable.

Other Federal Requirements:

Full and Open Competition - In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications - Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture - Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities - Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation - To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress - No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors - Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements - To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance With Federal Regulations - Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Real Property - Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency - To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice - Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance.

Environmental Protections - Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

Geographic Information and Related Spatial Data - (NOT APPLICABLE TO THE TRIBAL TRANSIT PROGRAM) Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference - All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Federal Single Audit Requirements - For State Administered Federally Aid Funded Projects Only Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments. Catalog of Federal Domestic Assistance (CFDA) Identification Number The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

Veterans Preference - As provided by 49 U.S.C. 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by: (1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and (2) Including a "Seat Belt Use" provision in each third party agreement related to the Award. b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with: (1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225), (2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and (3) The following U.S. DOT Special Provision pertaining to Distracted Driving: (a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award, (b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and (c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

Catalog of Federal Domestic Assistance (CFDA) Identification Number - The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass through entity.

The CFDA number for the Federal Transit Administration - Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

Organizational Conflicts of Interest - The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- 1. It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180.
2. To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
1. Debarred
2. Suspended
3. Proposed for debarment
4. Declared ineligible
5. Voluntarily excluded
6. Disqualified
b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
2. Violation of any Federal or State antitrust statute, or
3. Proposed for debarment commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property
c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,
f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
1. Equals or exceeds \$25,000,
2. Is for audit services, or
3. Requires the consent of a Federal official, and
g. It will require that each covered lower tier contractor and subcontractor:
1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
a. Debarred from participation in its federally funded Project,
b. Suspended from participation in its federally funded Project,
c. Proposed for debarment from participation in its federally funded Project,
d. Declared ineligible to participate in its federally funded Project,
e. Voluntarily excluded from participation in its federally funded Project, or
f. Disqualified from participation in its federally funded Project, and
3. It will provide a written explanation as indicated on a page attached in FTA's TRAMS-Web or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group.

Certification

Contractor City of Fargo
Signature of Authorized Official Date 1/1
Name and Title of Contractor's Authorized Official DR Timothy J. Mahoney, Mayor

Attachment A

Project Name City of Fargo
 SFY 2020 (July 1, 2019 - June 30, 2020)

Funding Category	Local match percentage	Funding Source Section	TOTAL Federal Share	Local Share	Total
Capital - Mobility Manager	20	5310	80,880	20,220	101,100
TOTALS			80,880	20,220	101,100



Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

CFDA Title	CFDA No.	Title 49 USC Chapter 53 Section	Award Name
Capital Assistance Program	CFDA No 20.513	5310	Elderly and Persons with Disabilities Program

Section 5310 provides for capital grants to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of elderly and disabled persons for whom mass transportation services are unavailable, insufficient, or inappropriate

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

32

Improvement District No. BN-18-F2 Type: Change Order #2 & Time Extension

Location: Madelyn's Meadow Date of Hearing: 8/19/2019

<u>Routing</u>	<u>Date</u>
City Commission	8/26/2019
PWPEC File	X
Project File	Jason Leonard

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, regarding Change Order #2 in the amount of \$3,301.98, for additional work, along with the associated time extension to the Substantial and Final Completion Dates.

Staff is recommending approval of Change Order #2 and the time extension to the Substantial and Final Completion Dates as shown below:

Original Completion Dates	Revised This Memo
Substantial – July 23, 2019 Final – August 22, 2019	Substantial – August 13, 2019 Final – September 12, 2019

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #2 & time extension as described above.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #2 in the amount of \$3,301.98, bringing the total contract amount to \$1,940,525.82, and the time extension to the Substantial and Final Completion Dates.

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
<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 type="checkbox"/>	<input 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: Jason Leonard, Project Engineer

Date: August 14, 2019

Re: Improvement District No. BN-18-F2 –Change Order #2

Background:

Improvement District No. BN-18-F2 is for the new construction of underground utilities, asphalt pavement, street lights and incidentals on 72nd Avenue South, 73rd Avenue South, 26th Street South, 30th Street South and Madelyn Way South.

Northern Improvement Company is the Contractor for this project.

The connection to the existing water main on 73rd Avenue South and 25th Street South was a different size from what was shown on the plans so the Contractor had extra work to make the connection to the existing WM. The Contractor had to exploratory dig in the vicinity of the Cass Rural Water District water main as it was not shown on the plans. The storm sewer tie-in on 73rd Avenue South required additional work as the existing pipe was plugged.

Weather delay time extension. For the duration of the contract from September 2018 to July 2019 it is anticipated that 23 calendar days are going to be lost due to weather. The actual days lost due to weather on ID BN-18-F2 was 43 calendar days. An additional 20 calendar days will be added to the final and substantial completion dates. One calendar day will be added for the extra work associated with this change order.

Recommended Motion:

Approve Change Order #2 in the amount of \$3,301.98 and the time extension to the Substantial and Final Completion Date as shown below:

Original Completion Dates	Revised This Memo
Substantial – July 23, 2019 Final – August 22, 2019	Substantial – August 13, 2019 Final – September 12, 2019



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Improvement District No	BN-18-F2	Change Order No	2
Project Name	Sanitary Sewer, Water Main, Storm Sewer, Concrete Curb & Gutter, Asphalt Pavement, Site Grading, Str		
Date Entered	6/27/2019	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: Change Order # 2

The connection to the existing water main on 73rd Avenue South and 25th Street South was a different size from what was shown on the plans so the contractor had extra work to make the connection to the existing WM.
The Contractor had to exploratory dig in the vicinity of the Cass Rural Water District water main as it was not shown on the plans.
The storm sewer tie-in on 73rd Avenue South required additional work as the existing pipe was plugged.

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 (\$)
Cass Rural Water District Water Main	104	Connect Pipe to Exist Pipe	EA	0.00	0.00	0.00	1.00	1.00	1,502.58	1,502.58
	105	Extra - WaterMains	LS	0.00	0.00	0.00	1.00	1.00	663.50	663.50
Cass Rural Water District Water Main Sub Total (\$)										2,166.08
Storm Sewer	106	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	1,135.90	1,135.90
Storm Sewer Sub Total (\$)										1,135.90

Summary

Source Of Funding	Cass Rural WJUD Funds, Special Assessments
Net Amount Change Order # 2 (\$)	3,301.98
Previous Change Orders (\$)	108,725.46
Original Contract Amount (\$)	1,828,498.38
Total Contract Amount (\$)	1,940,525.82

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
07/23/2019	08/22/2019	21.00	21.00	08/13/2019	09/12/2019



CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT

Description

Weather delay time extension. For the duration of the contract from September 2018 to July 2019 it is anticipated that 23 calendar days are going to be lost due to weather. The actual days lost due to weather on ID BN-18-F2 was 43 calendar days. An additional 20 calendar days will be added to the final and substantial completion dates.

1 calendar day will be added for the extra work associated with this change order.

APPROVED

For Contractor 

Title VICE PRESIDENT

APPROVED DATE

Department Head 
Mayor 8/25/19

Attest



HOME OFFICE
 FARGO, NORTH DAKOTA
 4000 12th Avenue N.W.
 58108-2846
 P.O. Box 2846
 Phone 701-277-1225
 Fax 701-277-1516

OFFICE AT
 BISMARCK, NORTH DAKOTA
 58502-1254
 P.O. Box 1254
 Phone 701-223-6695
 Fax 701-224-0937

OFFICE AT
 DICKINSON, NORTH DAKOTA
 58602-1035
 P.O. Box 1035
 Phone 701-225-5197
 Fax 701-225-0207

NORTHERN IMPROVEMENT COMPANY

Thomas McCormick, President/CEO
 Steve McCormick, Executive Vice-President

DATE: 7/26/2019

TO: City of Fargo Engineering Department
 Jason Leonard

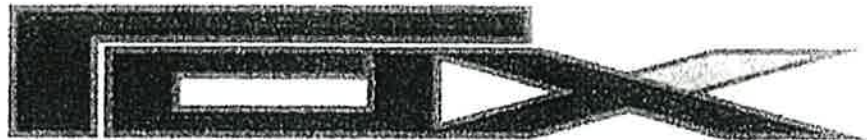
RE: Imp Dist BN-18-F2
 Fox Extra Work Order Summary

Northern Improvement Company is requesting that additional compensation be paid base on the following:

Description	Qty.	Unit	Unit Price	Price
<u>Includes:</u>				
Fox Work Order 3	1	LS		\$1,365.98
Fox Work Order 4	1	LS		\$603.18
Fox Work Order 5	1	LS		\$1,032.64
10% Subcontractor Markup	1	LS		<u>\$300.18</u>
			Lump Sum Total:	\$3,301.98

Respectfully Submitted,
 NORTHERN IMPROVEMENT COMPANY

Scott J. Pederson
 Estimator/Project Manager



UNDERGROUND

PO Box 739 - West Fargo, ND 58078 - 701.361.1919

Extra Work 3

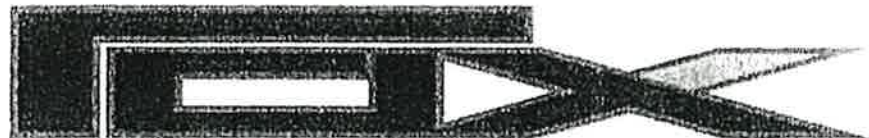
Water Tie In - Existing Pipe Different Size

PROJECT: Fargo BN-18-F2

LOCATION: 25th St S & 73rd Ave S

Date 6/30/2019

No.	Price Breakdown	QUAN	UNIT	PRICE	EXTENSION
Equipment					
	CAT 336 Excavator	1.75	hr	153.53	268.68
	Kubota Skid Loader	1.75	hr	43.41	75.97
	Loader	1.75	hr	60.02	105.04
					-
					-
				Equipment Total	449.68
Labor					
	Nick	1.75	hrs	27.00	47.25
	Brodie	1.75	hrs	19.00	33.25
	Taz	1.75	hrs	18.50	32.38
	Tyler	1.75	hrs	24.00	42.00
					-
					-
				Sub-Total	154.88
				Payroll Taxes at 20%	30.98
				Sub-Total	185.85
				25% Overhead and Profit	46.46
				Labor Total	201.34
Material					
	Core & Main - Stick 12" Pipe & 12" x 8" Reducer	1.00	Isun	571.97	571.97
					-
				Sub-Total	571.97
				25% Overhead and Profit	142.99
				Material Total	714.96
Subcontractor					
					-
				Sub-Total	-
				10% Subcontractor Allowance	-
				Subcontractor Total	-
				Equip Total	449.68
				Labor Total	201.34
				Material Total	714.96
				Subcontractor Total	-
				Extra Work Total	1,365.98



UNDERGROUND

PO Box 739 - West Fargo, ND 58078 - 701.361.1919

Extra Work 4

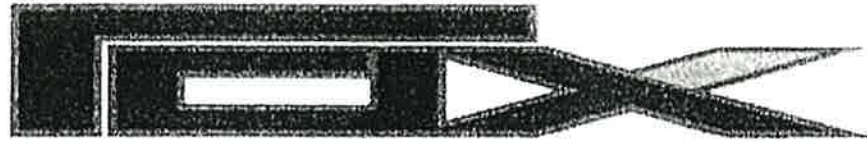
Water Tie In Location (Exploration Dig)

PROJECT: Fargo BN-18-F2

LOCATION: 25th St S & 73rd Ave S

Date 6/30/2019

No.	Price Breakdown	QUAN	UNIT	PRICE	EXTENSION
Equipment					
	CAT 336 Excavator	2.00	hr	153.53	307.06
	Kubota Skid Loader	2.00	hr	43.41	86.82
					-
					-
					-
				Equipment Total	393.88
Labor					
	Nick	2.00	hrs	27.00	54.00
	Brodie	2.00	hrs	19.00	38.00
	Taz	2.00	hrs	18.50	37.00
	Jordan	2.00	hrs	16.00	32.00
					-
					-
				Sub-Total	161.00
				Payroll Taxes at 20%	32.20
				Sub-Total	193.20
				25% Overhead and Profit	48.30
				Labor Total	209.30
Material					
					-
					-
				Sub-Total	-
				25% Overhead and Profit	-
				Material Total	-
Subcontractor					
					-
					-
				Sub-Total	-
				10% Subcontractor Allowance	-
				Subcontractor Total	-
				Equip Total	393.88
				Labor Total	209.30
				Material Total	-
				Subcontractor Total	-
				Extra Work Total	603.18



UNDERGROUND

PO Box 739 - West Fargo, ND 58078 - 701.361.1919

Extra Work 5 Explore and Remove 21" Pipe RCP at Connection to get Grade

PROJECT: Fargo BN-18-F2 Disposed Removed Pipe

LOCATION: 25th St S & 73rd Ave S

Date 6/30/2019

No.	Price Breakdown	QUAN	UNIT	PRICE	EXTENSION
Equipment					
	CAT 336 Excavator	2.50	hr	153.53	383.83
	Kubota Skid Loader	2.50	hr	43.41	108.53
	Dump Truck	2.00	hrs	53.48	106.96
				Equipment Total	599.31
Labor					
	Jerry	2.50	hrs	26.00	65.00
	Ty	2.50	hrs	24.00	60.00
	Zack	2.50	hrs	18.50	46.25
	Tyler	2.50	hrs	24.00	60.00
	Vic	2.00	hrs	27.00	54.00
				Sub-Total	285.25
				Payroll Taxes at 20%	57.05
				Sub-Total	342.30
				25% Overhead and Profit	85.58
				Labor Total	370.83
Material					
	Dump Fees	1.00	lsum	50.00	50.00
				Sub-Total	50.00
				25% Overhead and Profit	12.50
				Material Total	62.50
Subcontractor					
				Sub-Total	-
				10% Subcontractor Allowance	-
				Subcontractor Total	-
				Equip Total	599.31
				Labor Total	370.83
				Material Total	62.50
				Subcontractor Total	-
				Extra Work Total	1,032.64



Home Office
Fargo, North Dakota
4000-12th Avenue North
58102-2910
PO Box 2846
58108-2846
Phone 701-277-1225
Fax 701-277-1516

Office
Bismarck, North Dakota
PO Box 1254
58502-1254
Phone 701-223-6695
Fax 701-224-0937

Office
Dickinson, North Dakota
PO Box 1035
58602-1035
Phone 701-225-5197
Fax 701-225-0207

IMPROVEMENT COMPANY

Thomas M^CCormick, President/CEO
Steve M^CCormick, Executive Vice-President

Via E-mail and U.S. Mail

July 31, 2019

Jason Leonard
City of Fargo Engineering Department
225 4th Street N
Fargo, ND 58102

Re: Proposed Change Order No. 2
Improvement District BN-18-F2 – Madelyn’s Meadows

Dear Mr. Leonard:

Introduction

Scott Pederson asked me to review proposed Change Order No. 2, and I am writing to share my thoughts and suggest a cooperative resolution to the time extension issue.

By letter dated June 19, 2019, we requested that 31 days be added to both the July 23, 2019 substantial completion deadline and the August 22, 2019 final completion deadline. This included five specific rain days, plus 26 days in late April and early May when frozen ground and flooding prevented our subcontractor from performing critical-path work on the project.

Your response to our request—which offered 4 additional days, rather than the 31 we requested—relied on a Minnesota Department of Transportation time extension spec. (the “Minnesota Specification”) that is obviously not part of the contract between the City of Fargo and Northern Improvement Co. (“NIC”). That Minnesota Specification essentially prohibits time extensions for “normal” weather delays.

The Inapplicable Minnesota Specification

While I don’t agree with your reliance on the Minnesota Specification, I can understand why you referenced it. If a bidder can reasonably expect two rain days between April 16 and April 30 based on climate averages, they should not be surprised when they get two rain days in late April. A key difference here is that frozen soils and emergency-level flooding—which prevented us from working for nearly one month—is a completely different issue than inclement weather.

I hesitate to analyze the issue through the framework of the Minnesota Specification, but I feel that your change order description warrants a response. You stated that “[f]or the duration of the



contract period from September 2018 to July 2019 it is anticipated that 27 working days are going to be lost due to weather.” I think that math is wrong, but it’s not important. Here is a summary of actual weather we experienced in Fargo between September 2018 and July 2019, excluding the November 15 – April 15 winter period:

<u>MONTH</u>	<u># OF DAYS WITH MORE THAN TRACE RAINFALL</u>
September 2018	11
October 2018	12
November 1-15, 2018	9
April 16-30, 2019	7
May 2019	12
June 2019	12
July 2019	12

As summarized above, Fargo received more than trace rainfall on 75 different days during the time period you identified in proposed Change Order No. 2. Your analysis didn’t account for that. It also didn’t account for our unseasonably cold fall, where we experienced several below-freezing high temperatures prior to November 15, 2018.

If the Minnesota Specification was a binding City of Fargo specification, we would have requested more than the five rain days in our June 19 letter. And the City would have been required to consider many of the 75 rain days when comparing actual weather to that which should have been reasonably anticipated at bid time.

Proposed Compromise

The Minnesota Specification cannot be used as a basis to analyze and reject our time extension request. Ignoring the month we lost in late April and early May, weather during our contract period has been slightly wetter and slightly colder than historic averages.

To compromise, we propose that NIC drop the request for 5 weather days in exchange for a time extension covering the period of 27 calendar days (April 16 – May 12, 2019) when Fox Underground was unable to perform critical path excavation.

This proposed compromise is consistent with our contract, which entitles NIC to additional time for delays beyond our control. This is not a simple issue of inclement weather—rather, we were dealing with frozen ground, flooding to the extent that Mayor Mahoney declared a state of emergency, and emergency levee work. A time extension for these unanticipated issues should not be controversial.

We respectfully request that you revise the draft of Change Order No. 2 to add a total of 27 calendar days to both completion deadlines. This new substantial completion deadline would be August 19, 2019, and the new final completion deadline would be September 18, 2019.

Feel free to contact me or Scott with any questions. Thank you.

Sincerely,

NORTHERN IMPROVEMENT COMPANY

A handwritten signature in black ink, appearing to read "Robert M. Sande". The signature is written in a cursive style with a large, prominent initial "R".

Robert M. Sande
VP & Corporate Counsel

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

33

Improvement District No. BR-18-A1 Type: Change Order #3
 Location: Main Ave, 2nd St - Broadway Date of Hearing: 8/19/2019

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/26/2019</u>
PWPEC File	<u>X</u>
Project File	<u>Rick Larson</u>

The Committee reviewed the accompanying correspondence from Project Manager, Rick Larson, related to Change Order #3 submitted by NDDOT for the reconstruction of Main Avenue from 2nd Street to Broadway.

Dakota Underground is the Prime Contractor.

Change Order #3 is for curb stop castings, adjust pull box, and adding tree grate covers.

Staff is recommending approval of Change Order #3 in the amount of \$10,590.60.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #3.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Change Order #3 in the amount of \$10,590.60.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Fed Hwy, NDDOT, Water Utility, WW Utility, Sales Tax & Special Assessments

	<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

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
				<u><input checked="" type="checkbox"/></u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Mark Williams</u>
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Bruce Grubb, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Tom Knakmuhs</u>
Kent Costin, Finance Director	<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: Rick Larson, Project Manager
Date: August 12, 2019
Re: Improvement District No. BR-18-A1 – Change Order #3

Background:

Improvement District BR-18-A1 is a cost participating project between the North Dakota Department of Transportation and the City of Fargo for the reconstruction of Main Avenue from 2nd Street to Broadway. Portions of this project including the Water Main, Sanitary Sewer, and the Landscaping Structural Soil are 100% City funds.

Dakota Underground is the prime contractor.

Change Order #3 – Add Curb Stop Castings, Adjust Pull Box, and add Tree Grate Covers: (Approved Previously by Engineer)

Curb Stop castings were requested by City Staff to go over the curb stop boxes when they are located in concrete. The castings will prevent the curb stop box from pushing up above the sidewalk during freeze and thaw cycles. With 7 curb stop covers needed at \$324.00 each the total cost of this work is \$2,268.00.

Adjust Pull Box was for the lowering of one existing City owned pull box and the removal of another one.
The lump sum cost of this work is \$3,097.60.

Tree Grate Covers were ordered to fill the 16" hole in the center of the new tree grates until the trees are planted next year. With 38-tree grate covers needed at \$137.50 each, the total cost of this work is \$5,225.00.

The total cost of Change Orders #3 is \$10,590.60, which will be 100% City of Fargo costs.

Recommended Motion:

Approve Change Order #3 in the amount of \$10,590.60 for Improvement District BR-18-A1.

RJL/klb
Attachment

C: Thomas Knakmuhs

North Dakota Department of Transportation
Change Order

Change Order No: 3

Project: CPU-NHU-8-010(043)940

PCN: 22352

SubProject: 3 CITY WATERMAIN, SANITARY SEWER, AND LANDSC. County: Cass

For: PORTLAND CEMENT CONCRETE PAVEMENT, CURB & GUTTER, ST

Contractor: DAKOTA UNDERGROUND COMPANY
4001 15TH AVE N
FARGO, ND 58102-2832

Original Contract Amount:
\$10,295,720.11

Date Created: 08/01/2019

Date Approved:

Spec No	Code No	Item of Work	Unit	Original Quantity	+ or - Quantity	Unit Price	Increase Amount	Decrease Amount
ADDED CONTRACT ITEM								
NON-PARTICIPATING (FARGO CITY FUNDS)								
722	321	Curb Stop Casting	EA	0.00	7.00	324.000	2,268.00	
772	2954	Adjust Pull Box	L SUM	0.00	1.00	3,097.600	3,097.60	
970	602	Tree Grate Cover	EA	0.00	38.00	137.500	5,225.00	
Net Increase or Decrease to Date			Part	61,850.60	Non-Part	TOTALS	10,590.60	
							NON-PARTICIPATING	10,590.60
							PARTICIPATING	

Due to This Change, the Contract Time:
NO CHANGE.

Classification

Change Approved In Field by P.E.

EXPLANATION OF CHANGE IN PLAN RECOMMENDED

If the federal funds authorized in the cost participation agreement with the local agency is exceeded and federal funds are not available for this change, the local agency will assume the total cost of this change order.

See the attached documentation for Explanation of Change in Plan.

Bob John 8/5/19
CONTRACTOR DATE

Approval Recommended Approved
PROJECT ENGINEER DATE

CITY/COUNTY/OTHER OFFICIAL DATE

Approval Recommended Approved
DISTRICT ENGINEER DATE

REPRESENTING DATE

Approval Recommended Approved
OFFICE OF OPERATIONS DATE

**Explanation of Change in Plan
Change Order 3
CPU-NHU-8-010(043)940**

722 321 Curb Stop Casting

Representatives from City of Fargo Engineering Department requested that castings should be installed around water service line curb stop boxes when they are located within the sidewalks. This would help prevent future trip hazards and eliminate maintenance issues if the curb stops move with freeze-thaw action. There are 7 locations on the project where these castings will be needed.

The contractor was notified of this request and submitted a price of \$324.00/ea to supply and install these castings. This price is fair and justified based on prices found online to purchase this type of casting as shown in the attached documentation.

772 2954 Adjust Pull Box

There were 2 existing 24"X36" composite concrete pull boxes which house City fiber optic utilities that needed to be adjusted to match the location and grade of the new sidewalk in the SE corner of Main Ave & 4th St. Representatives from City of Fargo Engineering Department determined that the lines could be consolidated into a single pull box and recommended removing one of them. The other had to be rotated and lowered in order for the grades of the sidewalk landing in the corner to be ADA compliant. The contractor was notified of this and submitted a price of \$3,097.60 to complete this extra work. This price was evaluated by the City of Fargo Engineering Department and was determined to be fair and consistent with competitive bid prices for the scope of work involved.

970 602 Tree Grate Cover

Cast iron covers were required to cover the 16" hole in the center of all 38 tree grates that were installed in order to make them ADA compliant, since trees will not be planted under this contract. Representatives from City of Fargo Engineering Department recommended that a change order for these be issued and requested to retain possession of these covers for use on future projects. The contractor submitted a price of \$137.50/ea to supply and install these covers. This price was determined to be fair by the City, based on prices obtained on previous projects.

Prices for these items include the allowable prime contractor markup in accordance with Section 109.03 E.5 of the standard specifications. See the attached documentation for additional information regarding this change order.

Kelsch, Aaron W.

From: Kelsch, Aaron W.
Sent: Tuesday, June 11, 2019 1:45 PM
To: Bob; 'Rick Larson'; 'Jared Heller'; 'James Mickelson'
Cc: 'Stevenson, Emily'
Subject: Re: R-1973

That will work, thanks.

From: Bob <Bobert@dakotaunderground.net>
Sent: Tuesday, June 11, 2019 1:13:16 PM
To: 'Rick Larson'; Kelsch, Aaron W.; 'Jared Heller'; 'James Mickelson'
Cc: 'Stevenson, Emily'
Subject: RE: R-1973

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

All,
I asked Core & Main to Special Order the (7) R-1973 water boxes with the understanding that "water" will not be available on the lid.
Please let me know if we need to do anything different.
Thanks,
Bob

From: Rick Larson [mailto:RLarson@FargoND.gov]
Sent: Tuesday, June 11, 2019 9:57 AM
To: Bob <Bobert@dakotaunderground.net>; Kelsch, Aaron W. <akelsch@nd.gov>; 'Jared Heller' <jared@dakotaunderground.net>; James Mickelson <James.Mickelson@apexenggroup.com>
Subject: FW: R-1973

I received this from Neenah today...

From: Mike Lenarz <mike.lenarz@neenahenterprises.com>
Sent: Tuesday, June 11, 2019 9:30 AM
To: Rick Larson <RLarson@FargoND.gov>
Subject: R-1973

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

Rick,

We do not have a lid for the R-1973 lettered "WATER". Please call me with any questions you may have.

Page 841
Thank you,

Mike

--

Mike Lenarz
District Sales Manager
Neenah Enterprises, Inc.
Mobile: 651-399-4535



This message is the property of Neenah Enterprises, Inc. It may be confidential and is intended only for the use of the addressee(s). No addressee should forward, print, copy or otherwise reproduce this message in any manner that would allow it to be viewed by any individual not originally listed as a recipient or otherwise authorized to view same by the company. If the reader of this message is not the intended recipient or otherwise authorized to view this email, you are hereby notified that any unauthorized disclosure, dissemination, distribution, copying or the taking of any action in reliance on the information herein is strictly prohibited. If you have received this communication in error, please immediately notify the sender and delete this message. Thank you.

Kelsch, Aaron W.

From: Kelsch, Aaron W.
Sent: Tuesday, June 11, 2019 9:06 AM
To: Bob
Cc: Jared Heller; James Mickelson; 'Rick Larson'
Subject: RE: Casting around curb stop boxes

Bob,
We would like to go with the smaller ones. Is it possible to see if there is an option to have the word "water" included on the lids, similar to a gate valve cover?

Thanks,
Aaron

From: Bob <Bobert@dakotaunderground.net>
Sent: Monday, June 10, 2019 5:22 PM
To: Kelsch, Aaron W. <akelsch@nd.gov>
Cc: Jared Heller <Jared@DakotaUnderground.net>; James Mickelson <James.Mickelson@apexenggroup.com>; 'Rick Larson' <RLarson@FargoND.gov>
Subject: FW: Casting around curb stop boxes

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

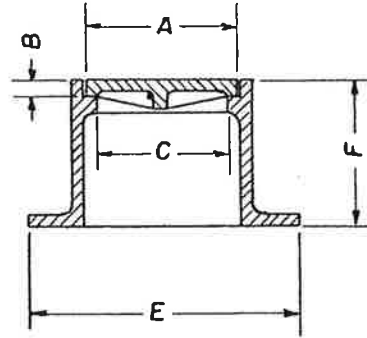
Aaron,
Our supplier said the R1973 is a non-stock item for them, and (7) are available in Shakopee, but availability could change. Installed price on these would be \$324.00 each.
They do stock the R1976 but it is a little bigger than the R1973. Installed price on the R1976 would be \$281.34 each. See the attachment for size differences.

Bob

**R-1970 to R-1978 Series
Lamphole/Monument/Inspection Frame, Solid Lid**

Heavy Duty

Furnished standard with as-cast bearing surfaces unless otherwise noted.



Illustrating R-1978



Illustrating R-1976

Catalog No.	Dimensions in inches				
	A	B	C	E	F
Round					
R-1970	7	2 1/8	5 3/4	13 1/8	7
R-1971 *	8	3/4	6 1/2	10 1/2	10
R-1973	7 1/2	3/4	6 1/2	13 1/4	7
R-1973-1	7 3/4	3/4	6 3/4	13 1/4	7
R-1973-A	8 7/8	11/16	7 3/4	15 3/4	8
R-1974-A	9	1	8	16	6 1/2
R-1975	9 1/2	1/2	8 1/2	20	11
R-1975-A	9 7/8	7/8	9	15 5/8	6
R-1975-A2	10	1	9	16	8
R-1975-A3	10	2	9	16	8
R-1976	11 1/4	1 1/4	10	20	8
R-1977 ***	11 1/2	1 1/2	6 1/2	16	12
Square					
R-1978 **	6 7/8 x 6 7/8	1	5 x 5	13 x 13	10
R-1978-A3	7 7/8 x 7 7/8	7/8	6 1/2 x 6 1/2	16 1/2 x 16 1/2	6 7/8
R-1978-A10	7 7/8 x 7 7/8	7/8	6 1/2 x 6 1/2	16 3/4 x 16 3/4	10
R-1978-A15	7 7/8 x 7 7/8	7/8	6 5/8 x 6 5/8	17 1/4 x 17 1/4	15
R-1978-B	12 x 12	3/4	10 5/8 x 10 5/8	20 1/2 x 20 1/2	7 3/8

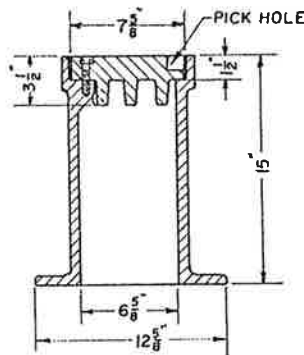
* Base consists of 4 bolting lugs for 1/2" bolt on 9-1/2" bolt circle instead of full flange.

** Furnished with machined horizontal bearing surfaces.

*** Lid bolted to frame.

**R-1978-A2
Lamphole/Monument/Inspection Frame, Solid Lid**

Heavy Duty



Kelsch, Aaron W.

From: Brent Muscha <Brent.Muscha@apexenggroup.com>
Sent: Saturday, June 8, 2019 10:18 AM
To: Kelsch, Aaron W.
Cc: James Mickelson
Subject: RE: Casting around curb stop boxes

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

Aaron,
What's the best way to work this into the contract, since we don't know exactly how many we might use? Is it something we can get a price for, track how many we use, then add the CO at the end?

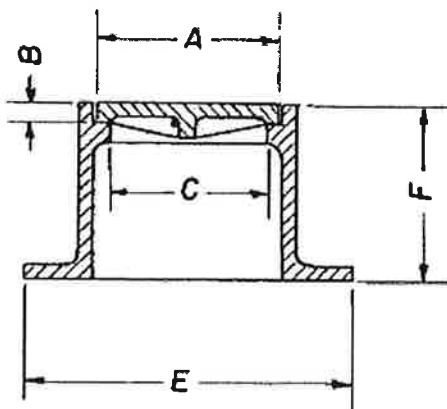
I found a price online for \$305/ea <https://www.trenchdrainsupply.com/proddetail.asp?prod=R-1973>. I would expect Dakota's installed price to be a little higher than that, but we're still not looking at a significant cost to add this where needed.

Brent Muscha, PE
Associate | Civil Engineer

Apex Engineering Group

From: Thomas Knakmuhs <TKnakmuhs@FargoND.gov>
Sent: Thursday, June 6, 2019 1:26 PM
To: Brent Muscha <Brent.Muscha@apexenggroup.com>; James Mickelson <James.Mickelson@apexenggroup.com>; Kelsch, Aaron W. <akelsch@nd.gov>
Cc: Scott Olson <solson@FargoND.gov>; Rick Larson <RLarson@FargoND.gov>
Subject: Casting around curb stop boxes

As I mentioned after our meeting today, I think we should be looking at using a casting around our curb stop boxes when they are located within the pedestrian walking corridor. I think it would help with eliminating future tripping hazards and maintenance issues. Ideally we would be placing curb stop boxes in the furnishing zone, but that will be difficult at times due to conflicts with existing utilities and the proposed tree pits. I would recommend we use a Neenah R-1973, or approved equal. If you agree, I would ask that you work to get a price from Dakota Underground on these.



Catalog No.	Dimensions in inches				
	A	B	C	E	F
	<i>Round</i>				
R-1970	7	2 1/8	5 3/4	13 1/8	7
R-1971 *	8	3/4	6 1/2	10 1/2	10
R-1973	7 1/2	3/4	6 1/2	13 1/4	7



Tom Knakmuhs, PE
Assistant City Engineer
City of Fargo
225 4th St N
Fargo, ND 58102
tknakmuhs@fargond.gov
Direct: (701) 241-8562

Kelsch, Aaron W.

From: Jacob Rick <JRick@FargoND.gov>
Sent: Monday, July 8, 2019 6:08 PM
To: Kelsch, Aaron W.; Rick Larson
Subject: RE: Pull Box Adjustment Change Order
Attachments: RE: Main ave

This was the email thread on these vaults. See attached(it's at the bottom).

From: Kelsch, Aaron W. <akelsch@nd.gov>
Sent: Thursday, July 4, 2019 10:42 AM
To: Jacob Rick <JRick@FargoND.gov>; Rick Larson <RLarson@FargoND.gov>
Subject: Pull Box Adjustment Change Order

Jake & Rick,

I have heard that Strata had submitted a price to adjust the 2 pull boxes in the SE corner of 4th St & Main Ave to match the new sidewalk grade, then ended up turning one of them and removing the other. I have also heard that this price was acceptable. I would like to take care of the change order for this work. Could you please send me this price and approval if you have it?

Thanks,

Aaron Kelsch
Transportation Project Manager
NDDOT – Fargo District
503 38th St S
Fargo, ND 58103
(701) 799-1249
akelsch@nd.gov

Kelsch, Aaron W.

From: Rick Larson <RLarson@FargoND.gov>
Sent: Friday, June 14, 2019 9:05 AM
To: Jacob Rick
Cc: Scott Olson
Subject: RE: Main ave

We will CO it in with the DOT. Is it a matter of just vactoring around these and lowering them or is there splicing involved?

RL

From: Jacob Rick <JRick@FargoND.gov>
Sent: Friday, June 14, 2019 9:01 AM
To: Rick Larson <RLarson@FargoND.gov>
Cc: Scott Olson <solson@FargoND.gov>
Subject: RE: Main ave

This is not being ran through the project? It needs to be done, so if we have to pay for it, the traffic dept is good for it!!!

From: Rick Larson <RLarson@FargoND.gov>
Sent: Friday, June 14, 2019 8:47 AM
To: Jacob Rick <JRick@FargoND.gov>
Cc: Scott Olson <solson@FargoND.gov>
Subject: FW: Main ave

Jake,

Will you weigh in on this please?

Rick

From: Bob <Bobert@dakotaunderground.net>
Sent: Friday, June 14, 2019 8:45 AM
To: Scott Olson <solson@FargoND.gov>; Rick Larson <RLarson@FargoND.gov>
Cc: Jared Heller <Jared@DakotaUnderground.net>
Subject: FW: Main ave

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

Scott/Rick,

As requested, here is the price from Strata to relocate the fiber boxes.

Let me know if they should proceed as early as you can. We have AJ Construction coming Monday to complete the sidewalks early next week. We need to get Strata done and out of his way.

Thanks,

Bob

Page 848

From: Keith Wolter [<mailto:Keith.Wolter@stratacorporation.com>]

Sent: Friday, June 14, 2019 8:28 AM

To: Bob Nelson <Bobert@dakotaunderground.net>

Subject: Main ave

Price to lower 2 fiber boxes \$2,816.00 + 10% markup = \$3,097.60

Keith Wolter

Strata Corporation

Electrical Manager

Phone: 701-775-4205

Cell: 701-741-0901

Kelsch, Aaron W.

From: Rick Larson <RLarson@FargoND.gov>
Sent: Wednesday, July 10, 2019 6:37 PM
To: Bob; Kelsch, Aaron W.; James Mickelson
Cc: Jared Heller
Subject: RE: Tree Grate Cover Change order

We are good with it. I will need to send this and the additional SS MH C.O. thru to PWPEC for the July 22nd meeting for final approval.

Thanks,

Rick Larson
Project Manager
City of Fargo
Engineering Dept.
Office: (701) 476-6634
Cell: (701) 730-8664
rlarson@FargoND.gov

From: Bob <Bobert@dakotaunderground.net>
Sent: Wednesday, July 10, 2019 2:36 PM
To: Aaron Kelsch <akelsch@nd.gov>; James Mickelson <James.Mickelson@apexenggroup.com>; Rick Larson <RLarson@FargoND.gov>
Cc: Jared Heller <Jared@DakotaUnderground.net>
Subject: FW: Tree Grate Cover Change order

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

Gentlemen,
Here is the prices for the temp tree grate covers from Mike at Turf Tamers. \$125 ea + 10% markup = \$137.50 each.
Let us know if he should order.
Thanks,
Bob

From: Mike Svaleson [<mailto:turftamersfargo@gmail.com>]
Sent: Wednesday, July 10, 2019 12:14 PM
To: Bob Nelson <bobert@dakotaunderground.net>; Jared Heller <jared@dakotaunderground.net>
Subject: Tree Grate Cover Change order

The city had wanted a price to order covers for the tree grates.

I can get them they are about 5-6 weeks out. I just wanted to give you the price as I am sure if it is added to this job it will need to go through you guys.

Page 850

The grates are \$125 a piece. So the total of the 38 the total would be \$4,750.

Let me know if I need to write something up? Or if I should order these.

--

Thank you,

Mike Svaleson

Turf Tamers

701-388-1474 Cell

701-356-2990 Office

701-205-3831 Fax

WWW.TURFTAMERSFARGO.COM

Turf Tamers LLC.
 PO Box 9435
 Fargo, ND 58106-9435

Invoice

Date	Invoice #
7/31/2019	21468

Bill To
Dakota Underground 4001 15th Ave NW Fargo, ND 58102

P.O. No.	Terms	Project
	Due on receipt	

Item	Description	Est Amt	Prior Amt	Prior %	Qty	U/M	Rate	Curr %	Total %	Amount
Landsca...	Grate covers 16" for City Of Fargo	4,750.00			38		125.00	100.00%	100.00%	4,750.00

$$\begin{array}{r}
 \$ 125.00 \\
 + 10\% \\
 \hline
 \$ 137.50 \text{ ea} \\
 (38) \times \$ 137.50 = \$ 5,225
 \end{array}$$

Total							\$4,750.00			
Payments/Credits							\$0.00			
Balance Due							\$4,750.00			

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

3A

Improvement District No. NR-18-A1 Type: Change Order #4 & Time Extension
 Location: Lift Station #21 & #54 Date of Hearing: 8/19/2019

Routing Date
 City Commission 8/26/2019
 PWPEC File X
 Project File Rob Hasey

The Committee reviewed the accompanying correspondence from Project Manager, Rob Hasey, regarding Change Order #4 in the amount of \$9,097.43, for additional work, along with the associated time extension to the Final Completion Date.

Staff is recommending approval of Change Order #4 and the time extension to the Final Completion Date as shown below:

Original Completion Dates	Revised Previously	Revised This Memo
Final – June 15 th , 2019	-	Final – September 30 th , 2019

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #4 & time extension as described above.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #4 in the amount of \$9,097.43, bringing the total contract amount to \$512,588.49 and a time extension to the Final Completion Date.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Storm Utility Fund 524 & Special Assessments


	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/A

COMMITTEE

	Present	Yes	No	Unanimous
				<input checked="" type="checkbox"/>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Bruce Grubb, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Tom Knakmuhs
Kent Costin, Finance Director	<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: Rob Hasey, Civil Engineer I, Storm Sewer Utility
Cc: Jody Bertrand, Division Engineer
Date: August 13, 2019
Re: Improvement District #NR-18-A1 – Change Order #4 & Time Extension

Background:

Improvement District #NR-18-A1 is for replacing pumps, installing catwalks, sluice gates and other miscellaneous improvements at storm sewer lift stations #21 and #54. Below is a breakdown for extras at each lift station site:

STS LS #21 – west of 18th Street North and north of 12th Avenue North:

Street Department personnel requested that we modify the location of the vactor cleaning line to the center of the lift station vs. having it installed adjacent to the wall as shown on the plans. CC Steel incurred extra material and labor costs associated with getting a longer piece of ductile iron pipe and supporting it from the ceiling. Breakdown is as follows: Materials - \$974.13, labor - \$520, 10% O/P - \$149.41. Total cost: \$1,643.54. This work has been completed.

The Contractor requested that the City clean out the bottom of the lift station prior to installing the new pumps. The Street Department cleaned the lift station the previous fall but lift station #21 does receive a lot of miscellaneous debris and silt from the open channel upstream from the lift station. We agreed to split the cost for CC Steel to hire Jetway to use a vactor truck to remove and dispose the debris. Total cost: \$750.00. This work has been completed.

STS LS #54 – on 36th Street South between Drain 27 and 40th Avenue South:

Street Department personnel requested that we modify the location of the vactor cleaning line to the center of the lift station vs. having it installed adjacent to the wall as shown on the plans. CC Steel incurred extra material and labor costs associated with getting a longer piece of ductile iron pipe and supporting it from the ceiling. Breakdown is as follows: Materials - \$778.35, labor - \$650, 10% O/P - \$142.84. Total cost: \$1,571.19. This work has been completed.

CC Steel also had to make a field adjustment and modify the air release valve orientation as they were not fitting as planned. Materials - \$154, labor - \$195, 10% O/P - \$34.90. Total cost \$383.90. This work has been completed.

During the control panel startup it was brought to my attention that the inside of the lift station did not have lights. I requested a quote from CC Steel and their subcontractor JDP Electric to furnish and install LED lighting. To add lights inside the lift station for maintenance personnel would be \$1,408 in material and JDP labor, 10% O/P for CC Steel \$140.80. Total cost \$1,548.80. This work has not been completed but will be completed upon change order approval.

Also as a condition of the NDDOT allowing us to install a guardrail in DOT right of way to protect lift station #54 from vehicles that lose control on northbound I29 we need to add geotextile fabric and rock between the guardrail and the DOT chain link fence since there is not enough room to mow between the two. CC Steel provided an estimate of \$2,100 for labor to haul and place the material and \$1,100 for fabric and rock. This work has not been completed but will be completed upon change order approval.

A time extension to September 30th to install the LED lighting and rock for the guardrail will be added to the contract to allow this work to be completed.

Source of funding:

STS LS #21: \$2,393.54 – 50% special assessments / 50% Storm Utility Fund 524
 STS LS #54: \$6,703.89 - 100% Storm Utility Fund 524

Recommended Motion:

Approve Change Order #4 as shown:

Original Contract Amount	Previous Change Orders	Change Order #4	New Contract Amount
\$424,725.00	\$78,766.06	\$9,097.43	\$512,588.49

Original Completion Dates	Revised Previously	Revised This Memo
Final – June 15 th , 2019	-	Final – September 30 th , 2019

Improvement District No NR-18-A1 Change Order No 4
 Project Name Storm Sewer Lift Station Modifications & Incidentals
 Date Entered 6/13/2019 For CC Steel, LLC

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: Field modifications necessary at lifts #21 & #54

STS LS #21 west of 18th Street and north of 12th Avenue North
 STS LS #54 on 36th Street South between 40th Avenue South and Drain 27

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 (\$)
Site #1 (STS LS #21)	27	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	1,643.54	1,643.54
	30	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	750.00	750.00
Site #1 (STS LS #21) Sub Total (\$)										
Site #2 (STS LS #54)	28	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	1,571.19	1,571.19
	29	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	383.90	383.90
	31	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	1,548.80	1,548.80
	32	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	3,200.00	3,200.00
Site #2 (STS LS #54) Sub Total (\$)										
6,703.89										

Summary

Source Of Funding Special Assessments, Utility Funds - Stormwater - 524

Net Amount Change Order # 4 (\$)	9,097.43
Previous Change Orders (\$)	78,766.06
Original Contract Amount (\$)	424,725.00
Total Contract Amount (\$)	512,588.49

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
04/17/2019	09/01/2019	0.00	0.00	04/17/2019	09/01/2019

Description

APPROVED

For Contractor

Title

Kevin M. Trio

CC Steel, LLC by Kevin M. Trio

CEO

APPROVED DATE

[Signature]

Department Head

Mayor

Attest

8/20/19

35

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-17-A1 Type: Change Order #7 & Time Extension

Location: 19th Ave N from 45th St to 57th St Date of Hearing: 8/19/2019

<u>Routing</u>	<u>Date</u>
City Commission	<u>8/26/2019</u>
PWPEC File	<u>X</u>
Project File	<u>Jason Leonard</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jason Leonard, for Change Order #7 in the amount of \$25,189.85, bringing the total contract amount to \$8,039,309.95, along with the associated time extension to the Final Completion Date.

Staff is recommending approval of Change Order #7 and a 3-day time extension adjusting the Final Completion Date to July 28, 2019.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #7 and a 3-day time extension to the Final Completion Date to Master Construction.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #7 in the amount of \$25,189.85, bringing the total contract amount to \$8,039,309.95, and the 3-day time extension to the Final Completion Date.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project:	<u>Special Assessments</u>	Yes	No
Developer meets City policy for payment of delinquent specials			<u>N/A</u>
Agreement for payment of specials required of developer			<u>N/A</u>
Letter of Credit required (per policy approved 5-28-13)			<u>N/A</u>

COMMITTEE

	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
Tim Mahoney, Mayor	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Mark Williams</u>
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Bruce Grubb, City Administrator	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Ben Dow, Director of Operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Sprague, City Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Brenda Derrig, City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Tom Knakmuhs</u>
Kent Costin, Finance Director	<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 Manager
Date: August 15, 2019
Re: Improvement District No. BN-17-A1 - Change Order # 7

I concur with KLJ's recommendation for the Change Order and Time Extension for Improvement District No. BN-17-A1 as requested by Master Construction Inc. Please see attached documentation supporting the Change Order and Time Extension request.

Recommended Motion:

Approve Change Order #7 in the amount of \$25,189.85 and time extension to Final Completion Date as shown below:

Original Contract	Revised This Memo
7/25/2019 - Final Completion Date	7/28/2019 - Final Completion Date

JTL/klb
Attachment

C: Scott Middaugh



**CITY OF FARGO
ENGINEERING DEPARTMENT
CHANGE ORDER REPORT**

Improvement District No	BN-17-A1	Change Order No	7
Project Name	Sanitary Sewer, Water Main, Storm Sewer, Site Grading, PC Concrete Paving, Street Lighting & Inciden		
Date Entered	8/15/2019	For	Master Construction 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 # 7

During the end of construction on the referenced project, there were some changes made in the field that required the relocation of a fire hydrant, the addition of a manhole, and the relocation of a flared end section. These changes were discussed with the Master Construction and the City of Fargo. This work was tracked in the field. Please see the attached invoices provided by Master Construction totaling \$25,189.85 for the extra work.

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 Manhole 5' Dia Reinf Conc	EA	5.00	0.00	5.00	1.00	6.00	3,300.00	3,300.00
	66	F&I Pipe 15" Dia Reinf Conc	LF	979.00	0.00	979.00	46.00	1,025.00	41.00	1,886.00
	75	Remove Pipe All Sizes All Types	LF	150.00	0.00	150.00	22.00	172.00	5.00	110.00
	166	Extra - StormSewers	LS	0.00	0.00	0.00	1.00	1.00	15,566.35	15,566.35
Storm Sewer Sub Total (\$)									20,862.35	
Water Main	165	Salvage Hydrant	EA	0.00	0.00	0.00	1.00	1.00	4,327.50	4,327.50
	Water Main Sub Total (\$)									4,327.50

Summary

Source Of Funding: Special Assessments

Net Amount Change Order # 7 (\$)	25,189.85
Previous Change Orders (\$)	-30,648.35
Original Contract Amount (\$)	8,044,768.45
Total Contract Amount (\$)	8,039,309.95

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
08/20/2018		0.00	0.00	08/20/2018	

Description
Due to this added work, we are also recommending a 31 day time extension be added to the final completion of the project.

APPROVED

For Contractor

Jason Winter
Project Manager

Title

APPROVED DATE

Department Head
[Signature]
Mayor

8/21/19

Attest



3203 32nd Avenue South, Suite 201
 Fargo, ND 58103-6242
 701 232 5353
 KLJENG.COM

August 15, 2019

Jason Leonard
 City of Fargo
 225 4th Street north
 Fargo, ND 58102

Re: BN-17-A1 – Underground Utility Change Order Request

Dear Jason:

During the end of construction on the referenced project, there were some changes made in the field that required the relocation of a fire hydrant, the addition of a manhole, and the relocation of a flared end section. These changes were discussed with the Master Construction and the City of Fargo. This work was tracked in the field. Please see the attached invoices provided by Master Construction totaling \$25,189.85 for the extra work.

We are proposing the following bid items be increased/added to the project:

<i>Item Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Unit Price</i>	<i>Total</i>
F&I Manhole 5' Dai Reinf Conc	EA	1	\$ 3,300.00	\$ 3,300.00
Remove Pipe All Sizes All Types	LF	22	\$ 5.00	\$ 110.00
F&I Pipe 15" Dia Reinf Conc	LF	46	\$ 41.00	\$ 1,886.00
Salvage Hydrant	EA	1	\$ 4,327.50	\$ 4,327.50
Extra-Storm Sewer	LS	1	\$ 15,566.35	\$ 15,566.35
Total				\$ 25,189.85

Due to this added work, we are also recommending a 3-day time extension be added to the final completion of the project.

If you have any questions, feel free to contact me at 701.271.4871 or scott.middaugh@kljeng.com.

Sincerely,

KLJ

Scott Middaugh
 Project Manager

Enclosure(s): Master Construction Invoices
 Project #: 14417100



Change Order / Extra Work Formula

Date:
 Job Number: BN-17-A1
 Job Name: 19th Ave 57th to 45th st
 Description: Add St 26
 Engineer: City Of Fargo
 Field Inspector: Jason Leonard / Scott Middaugh

LABOR

	Quantity	Hours	Hourly Rate		Total
Foreman	1	13	\$ 50.00	\$	650.00
Pipe Layer/Labor	1	13	\$ 22.00	\$	286.00
Top Man/Labor	1	13	\$ 22.00	\$	286.00
Operator	1	13	\$ 35.00	\$	455.00
				\$	1,677.00

Equipment

Make	Size	Description	Utilized Hours	Hourly Rate	Total
John Deere	135	Excavator	13.00	\$ 120.00	\$ 1,560.00
Skid Steer		Skid Steer	2.00	\$ 90.00	\$ 180.00
Small Tools		Small Tools	13.00	\$ 30.00	\$ 390.00
				\$	-
				\$	-
				\$	-
Dump Trucks			10.00	\$ 95.00	\$ 950.00
Mob Of Equipmnt	3	EA	2.00	\$ 450.00	\$ 900.00
				\$	3,980.00

Materials

Description	Quantity	Cost	OH / Profit (25%)	Total
ST 26 60in Structure Base	EA 1	\$ 600.00	\$ 150.00	\$ 750.00
ST 26 60in Structure	LF 8	\$ 273.00	\$ 546.00	\$ 2,730.00
ST 26 60in Structure Cove	EA 1	\$ 580.00	\$ 145.00	\$ 725.00
Class 3	Ton 96	\$ 9.00	\$ 216.00	\$ 1,080.00
Concrete	Cy 3	\$ 110.00	\$ 49.50	\$ 379.50
Casting and Grate	EA 1	\$ 359.00	\$ 53.85	\$ 412.85
			\$	-
			\$	6,077.35

Subcontractors

Description	Quantity	Cost	OH / Profit (10%)	Total
			\$ -	\$ -
			\$ -	\$ -
			\$ -	\$ -
			\$	-

Notes:
 Addition of ST 26

Total Labor	\$ 1,677.00
Total Equipment	\$ 3,980.00
Total Materials	\$ 6,077.35
Total Subcontractors	\$ -
Grand Total	\$ 11,734.35



Change Order / Extra Work Formula

Date:
 Job Number: BN-17-A1
 Job Name: 19th Ave 57th to 45th st
 Description: Hydrant Relocate Station L2
 Engineer: City Of Fargo
 Field Inspector: Jason Leonard / Scott Middaugh

LABOR

	Quantity	Hours	Hourly Rate		Total
Foreman	1	8	\$ 50.00	\$	400.00
Pipe Layer/Labor	1	8	\$ 22.00	\$	176.00
Top Man/Labor	1	8	\$ 22.00	\$	176.00
Operator	1	8	\$ 35.00	\$	280.00
				\$	1,032.00

Equipment

Make	Size	Description	Utilized Hours	Hourly Rate		Total
Komatsu	138	Excavator	6.00	\$ 120.00	\$	720.00
Skid Steer		Skid Steer	2.00	\$ 90.00	\$	180.00
Small Tools		Small Tools	8.00	\$ 30.00	\$	240.00
Bobcat	E55	Excavator	2.00	\$ 95.00	\$	190.00
				\$	-	
				\$	-	
				\$	-	
Mob Of Equipmnt	3	EA	2.00	\$ 450.00	\$	900.00
				\$	2,230.00	

Materials

Description	Quantity	Cost	OH / Profit (25%)	Total
6 in 45 degree bends	EA 2	\$ 75.60	\$ 37.80	\$ 189.00
6in C900	FT 20	\$ 5.56	\$ 27.80	\$ 139.00
3/4 in stainless rods	FT 40	\$ 7.25	\$ 72.50	\$ 362.50
1 1/2 in rock	Ton 10	\$ 30.00	\$ 75.00	\$ 375.00
		\$	\$	\$
		\$	\$	\$
				\$ 1,065.50
				\$ 1,065.50

Subcontractors

Description	Quantity	Cost	OH / Profit (10%)	Total
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
				\$

Notes:

The Hydrant by L2 had to be relocated due to depth concerns.

Total Labor	\$	1,032.00
Total Equipment	\$	2,230.00
Total Materials	\$	1,065.50
Total Subcontractors	\$	-
Grand Total	\$	4,327.50

Memorandum

To: PWPEC
From: Tom Knakmuhs, Assistant City Engineer
Date: August 13, 2019
Re: 2020 Street Reconstruction Design – Task Orders

Back on July 8, 2019, the members of PWPEC approved the solicitation of quotes through our MSA for preliminary survey and project design for street reconstruction projects planned for construction in 2020. Since then, the Engineering Department has solicited proposals, selected four different local firms (Apex, Houston, KLJ, and Moore), and met individually with each firm to discuss project details. We currently have an agreed upon scope and a not-to-exceed fee from two of those firms (Apex and KLJ). We are still working on a scope and fee with the other two firms (Houston and Moore) and will bring those to PWPEC once we have them.

Below is a brief summary of the scope and fee:

- BR-20-C0 (3rd Ave N, 11th St N, and 12th St N)
 - Selected Consultant: Apex Engineering
 - Provide project administration, preliminary topo survey, preliminary and final design and plan preparation, design support during construction (change orders, plan revisions, etc.), and aid in a property owner meeting.
 - Not-to-exceed fee: \$235,200 or about 9.7% of the preliminary estimated cost of construction
- BR-20-E0 (17th St S and 25th Ave S)
 - Selected Consultant: KLJ
 - Provide project administration, preliminary and final design and plan preparation, design support during construction (change orders, plan revisions, etc.), and aid in a property owner meeting.
 - Not-to-exceed fee: \$110,375 or about 7.4% of the preliminary estimated cost of construction

Recommended Motion:

Approve a task order to Apex Engineering for the not-to-exceed amount of \$235,200 and a task order to KLJ for the not-to-exceed amount of \$110,375.

In accordance with paragraph 1.1 of the Task Order Agreement between Owner and Engineer for Master Professional Services, dated February 13, 2019 ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

A. Project Title: BR-20-C1

B. Description: This Task Order is only for preliminary survey and design services for BR-20-C1 which will include sanitary sewer, water main, storm sewer, paving, and incidentals.

2. Services of Engineer

Services to be completed by the Engineer are as specified in the proposal submitted by Apex dated August 12, 2019. Proposal is attachment A of this Task Order.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Master Services Agreement dated February 13, 2019.

4. Times for Rendering Services

Phase	Completion Date
Task 1: Project Administration	As necessary to facilitate Tasks 1 thru 6
Task 2: Preliminary Survey	September 2019
Task 3: Preliminary Engineering	October 2019
Task 4: Public Meeting	October 2019
Task 5: Final Design and Plan Preparation	November 2019
Task 6: Construction Support and Misc. Expenses	2020 Construction Season

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered as follows:

Phase	Compensation Method	Lump Sum, or Estimate of Compensation for Services
Task 1:	Hourly Not to Exceed	\$17,510
Task 2:	Hourly Not to Exceed	\$20,290
Task 3:	Hourly Not to Exceed	\$28,160
Task 4:	Hourly Not to Exceed	\$3,672
Task 5:	Hourly Not to Exceed	\$153,448
Task 6:	Hourly Not to Exceed	\$12,120
		Total Services = \$235,200

B. The terms of payment are set forth in Article 3 of the Master Services Agreement.

6. Attachments

Attachment A – Proposal submitted by Apex dated August 12, 2019.

Attachment B – Commission ROA dated August 26, 2019.

Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement, which is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is August 27, 2019.

Owner:

Engineer:

By: _____

By: Matthew T. Kinsella

Name: Dr. Tim Mahoney

Name: Matthew T. Kinsella

Title: Mayor

Title: Vice President

Designated Representative for Task Order:

Designated Representative for Task Order:

Name: Tom Knakmuhs, PE

Name: Brent Muscha, PE

Title: Assistant City Engineer

Title: Project Manager

Approval Requirements

\$15,000 or less – City Engineer

\$15,001 - \$150,000 – PWPEC

Over \$150,000 – PWPEC & Commission

MOTION:

On a motion by Terry Ludlum, seconded by Tom Knakmuhs, the Utility Committee voted to approve Change Order #5 from ICS, Inc. for Improvement District NR-17-B1 in the amount of \$42,554.50.

<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 Superintendent		X		
Mark Miller, Wastewater Plant Supt.		X		
Bruce Grubb, City Administrator		X		
Scott Liudahl, City Forester		X		
Terry Ludlum, Solid Waste Utility Director		X		
Jim Hausauer, Wastewater Utility Director		X		
Troy Hall, Water Utility Director		X		
Ben Dow, Public Works Operations Director				
Brenda Derrig, City Engineer		X		(Proxy – T Knakmuhs)

ATTEST:




Jim Hausauer
Wastewater Utility Director

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

MEMORANDUM

August 22, 2019

To: Utility Committee

From: Jim Hausauer, Wastewater Utility Director 

Re: Improvement District (ID) NR-17-B1
ICS, Inc. - Change Order #5
Broadway Interceptor SSO Reduction Project

Background

If you recall, the City of Fargo was approved for FEMA Hazard Mitigation Grant Program (HMGP) funding for project DR-1981-ND-9R (Broadway Interceptor SSO Reduction Project). The HMGP funding that was available consisted of 85% project grant funds for the City, with a funding formula of 75% Federal, 10% State, and 15% Local. The Broadway SSO Reduction Project will reduce hazards associated with sanitary sewer overflows and sanitary sewer backups within the Broadway Interceptor Service Area caused by wet weather conditions and river flooding. To accomplish this reduction in hazards, the project will include three main components:

1. **Structure Improvements:** This will include modifications to sanitary Lift Station (LS) #1, LS #2, and the West Side Interceptor Overflow Improvements.
2. **Broadway Relief Force Main:** This will include the construction of 22,000' of relief force main from LS #1 & LS #2 and will convey wet weather flows to the WWTP or wastewater stabilization ponds (WWSP).
3. **WWTP Effluent Force Main Rehabilitation:** This will include the rehab of 2,000 ft of the existing 30" ductile iron Effluent Force Main from the WWTP to the stabilization ponds.

ID NR-17- B1

Historically, sanitary Lift Station (LS) 1 & 2 service areas (SA) have experienced issues with wet weather flows during extreme rain events, which exceeded the capacity of the existing lift stations and the Broadway Interceptor. The NR-17-B improvements include the construction of new wet weather lift stations that are attached to the existing sanitary lift stations 1 & 2. Along with the new construction, improvements/replacement of various components within the existing lift stations are to be included with this improvement district.

Change Order #5 consists of the following items:

1. The new 16" PVC force main will be extended into the existing bypass vault and connect to the existing valve, which will result in a full replacement of this section of older pipe. Also, an existing clay storm drain line located over the force main will be replaced with new PVC within the excavation to improve the integrity of this line. (\$8,278.00)
2. Exterior stairs and handrail will be added around the exterior of the LS #1 wet well inlet structure for easier access and safety. (\$10,775.00)
3. The concrete driveway for LS#1 and the adjacent storm lift station will be widened to allow easier access for the vactor truck that is periodically used for this site. With the widening of the driveway the existing fire hydrant will be moved south of the driveway and a storm manhole casting will be raised to match the top of the concrete. (\$20,526.50)
4. A vent pipe will be added over an existing opening in the wet well at LS #2 to provide and air inlet to account for air being pulled from the wet well odor control scrubber. (2,975.00)

<u>Change Order #5</u>	<u>Federal (75%)</u>	<u>State (10%)</u>	<u>City (15%)</u>	<u>Special Assessment</u>
\$42,554.50	\$31,915.88	\$4,255.45	\$5,762.32	\$620.85

As per the HMGP Funding formula, the City of Fargo will be responsible for \$5,762.32 which will be funded with Wastewater Infrastructure Sales Tax Fund 455.

Your consideration in this matter is greatly appreciated.

Recommended Motion

Approve attached Change Order #5 for Improvement District NR-17-B1 from ICS, Inc. for an increase of \$42,554.50.



August 14, 2019

Mr. Jim Hausauer, REHS
 Wastewater Utility Director
 City of Fargo
 Wastewater Treatment Plant
 3400 Broadway North
 Fargo, ND 58102

**Re: Change Order No. 5
 Contract No. 1 Broadway Interceptor Wet Weather Improvements
 Improvement District NR-17-B**

Dear Jim:

Enclosed please find three (3) copies of Change Order No. 5 for the above-referenced project for your review and approval. This Change Order pertains to the following changes:

The following is a description of the work contained within Change Order No. 5:

1. The new 16-inch PVC force main will be extended into the existing bypass vault and connect to the existing valve, which results in full replacement of this section of older force main. The existing clay storm drain line running over the force main will be replaced with new PVC within the excavation limits to improve the integrity of this line.
2. Exterior stairs and handrail will be added around the exterior LS1 wet well inlet structure for easier access to LS1 and safety when working on the inlet structure.
3. The concrete driveway for access to WS1/LS1 and the storm lift station will be widened to allow easier access for the vac truck that is periodically used at the site. With the widening of the driveway the existing fire hydrant will be moved south of the driveway limit and the storm manhole casting will be raised to match the top of concrete.
4. A vent pipe will be added over an existing opening in the wet well at LS2 to provide an air inlet to account for the air being pulled from the wet well with the new odor scrubber.

The cost impact to Contract No. 1 is summarized in the following:

<u>Item</u>	<u>Cost</u>
1. LS1 Site Piping Modifications	\$8,278.00
2. LS1 Exterior Stairs and Handrail	\$10,775.00
3. WS1 Additional Driveway Width	\$20,526.50
4. LS2/WS2 Wet Well Vent	\$2,975.00
Total for Change Order No. 5 =	\$42,554.50

Re: **Change Order No. 5****Contract No. 1 Broadway Interceptor Wet Weather Improvements
Improvement District NR-17-B****August 14, 2019 Page 2 of 2**

The funding summary for this change order includes the following:

- FEMA: \$31,915.88
- State HMGP: \$4,255.45
- City Sales Tax: \$5,762.32
- Special Assessment: \$620.85

Upon the City of Fargo's acceptance of Change Order No. 4, please sign and date the three (3) original copies. Retain one copy for your records and return the remaining two (2) copies to AE2S. AE2S will forward one (1) copy to ICS, Inc. and will retain the remaining copy for our records. Please contact me if you have any questions or need additional information.

In Service,

AE2S



Ben Julson, PE
Project Engineer

Change Order No. 5

Date of Issuance: 08/26/2019 Effective Date: 08/26/2019

Project: Broadway Interceptor Wet Weather Improvements – Phase III	Owner: City of Fargo	Owner's Contract No.: NR-17-B
Contract: Contract No. 1 – General Contractor		Date of Contract: July 3, 2017
Contractor: ICS, Inc.		Engineer's Project No.: P00803-2014-000

The Contract Documents are modified as follows upon execution of this Change Order:

Description: See attached Description of Work.

Attachments: Description of Work
Supporting documents for Change Order Items

<u>CHANGE IN CONTRACT PRICE:</u>	<u>CHANGE IN CONTRACT TIMES:</u>
Original Contract Price: \$ <u>4,970,950.00</u> [Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>4</u> : \$ <u>509,966.62</u>	Original Contract Times: <input checked="" type="checkbox"/> Working days <input type="checkbox"/> Calendar days- Substantial completion (days or date): <u>WS1-8/31/2018 : WS2-5/31/2018</u> Ready for final payment (days or date): <u>WS1-10/31/2018 : WS2-6/30/2018</u> [Increase] [Decrease] from previously approved Change Orders No. <u>1</u> to No. <u>4</u> : Substantial completion (days): <u>+ 82 days</u> Ready for final payment (days): <u>+ 82 days</u>
Contract Price prior to this Change Order: \$ <u>5,480,916.62</u>	Contract Times prior to this Change Order: Substantial completion (days or date): <u>WS1-11/21/2018 : WS2-8/21/2018</u> Ready for final payment (days or date): <u>WS1-1/21/2019 : WS2-9/20/2018</u>
[Increase] [Decrease] of this Change Order: \$ <u>\$42,554.50</u>	[Increase] [Decrease] of this Change Order: Substantial completion (days or date): _____ Ready for final payment (days or date): _____
Contract Price incorporating this Change Order: \$ <u>5,523,471.12</u>	Contract Times with all approved Change Orders: Substantial completion (days or date): _____ Ready for final payment (days or date): _____

RECOMMENDED: By: <u>Ben Johnson</u> Engineer (Authorized Signature)	ACCEPTED: By: _____ Owner (Authorized Signature)	ACCEPTED: By: <u>[Signature]</u> Contractor (Authorized Signature)
Date: <u>8-20-2019</u>	Date: _____	Date: <u>8/16/19</u>
Approved by Funding Agency (if applicable): _____	Date: _____	

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.

Contract No. 1 - Change Order No. 5 Description of Work

The following is a description of the work contained within Change Order No. 5:

1. The new 16-inch PVC force main will be extended into the existing bypass vault and connect to the existing valve, which results in full replacement of this section of older force main. The existing clay storm drain line running over the force main will be replaced with new PVC within the excavation limits to improve the integrity of this line.
2. Exterior stairs and handrail will be added around the exterior LS1 wet well inlet structure for easier access to LS1 and safety when working on the inlet structure.
3. The concrete driveway for access to WS1/LS1 and the storm lift station will be widened to allow easier access for the vac truck that is periodically used at the site. With the widening of the driveway the existing fire hydrant will be moved south of the driveway limit and the storm manhole casting will be raised to match the top of concrete.
4. A vent pipe will be added over an existing opening in the wet well at LS2 to provide an air inlet to account for the air being pulled from the wet well with the new odor scrubber.

The cost impact to Contract No. 1 is summarized in the following:

<u>Item</u>	<u>Cost</u>
1. LS1 Site Piping Modifications	\$8,278.00
2. LS1 Exterior Stairs and Handrail	\$10,775.00
3. WS1 Additional Driveway Width	\$20,526.50
4. LS2/WS2 Wet Well Vent	\$2,975.00
Total for Change Order No. 5 =	\$42,554.50

Change Item No. 1



P.O. Box 13158 • Grand Forks, ND 58208-3158
(P) 701.775.8480 (F) 701.775.8479
www.icsgf.com

06/12/19

AE2S
Attn: Ben Julson
3101 Frontage Rd S.
Moorhead, MN 56560

Re: Broadway Interceptor WWI-Phase III – Connect PVC to LS1 Bypass Manhole

Mr. Julson,

The attached pricing is to run the PVC pipe into the LS1 bypass manhole and connect to an existing valve in the manhole. The price includes removing part of the existing ductile iron that was originally designed to remain in place and to remove and replace a section of clay tile pipe with PVC pipe to facilitate the LS1 bypass manhole connection.

DESCRIPTION	U.M.	UNITS	UNIT PRICE	EXT. PRICE
Labor	LS	1.00	\$3,778.00	\$3,778.00
Equipment	LS	1.00	\$1,725.00	\$1,725.00
Material	LS	1.00	\$2,775.00	\$2,775.00
TOTAL PRICE:				\$8,278.00

Pricing includes:

- Labor, Equipment & Material to connect PVC to the existing LS1 bypass manhole.

If you have any questions regarding the above, please contact me at your earliest convenience.

Sincerely,

Gary Beeter
ICS, Inc.
Vice President

Change Item No. 2



06/20/19

AE2S

Attn: Ben Julson
 3101 Frontage Rd S.
 Moorhead, MN 56560

Re: **Broadway Interceptor WWI-Phase III – LS1 Aluminum Stairs and Railing**

Mr. Julson,

The attached pricing is to add aluminum stairs and railing to the exterior of LS1 per drawing S1.

DESCRIPTION	U.M.	UNITS	UNIT PRICE	EXT. PRICE
Material - Aluminum Railing	LS	1.00	\$4,975.00	\$4,975.00
Labor – Aluminum Railing	LS	1.00	\$1,325.00	\$1,325.00
Material – 40" Stair Height	LS	1.00	\$2,150.00	\$2,150.00
Labor – 40" Stair Height	LS	1.00	\$500.00	\$500.00
Material – 18" Stair Height	LS	1.00	\$1,500.00	\$1,500.00
Labor – 18" Stair Height	LS	1.00	\$325.00	\$325.00
TOTAL PRICE:				\$10,775.00

Pricing includes:

- Material – Aluminum Railing: Railing made from ½" aluminum pipe with 2 horizontal rails and kick plate. Aluminum to be mill finished. All sections of railing will be removable. Includes anchors to secure the railing to the concrete structure.
- Labor – Aluminum Railing: Labor to install aluminum railing.
- Material – 40" Stair Height: EZ-Access Fortress 4 step that adjusts from 27.5" to 42.5" (OSHA compliant at 34" and 42.5"). Platform of 40" W x 60" L included. Rated load of 100 lbs. sq. ft. with 300 lbs. concentrated load.
- Labor – 40" Stair Height: Labor to adjust and install steps.
- Material – 18" Stair Height: Custom build 2 step with no landing or handrail. Aluminum to be mill finished. Stair treads to be reinforced plastic treads.
- Labor – 18" Stair Height: Labor to install steps.

The existing concrete is deteriorated in several locations where the new railing would be attached. We recommend removing this concrete and replacing it with high strength grout. We did not supply a price for this work because we are unsure the extent of the concrete removals. Most of the concrete is very soft and can be picked off by hand with no tools. The extent of the soft concrete would need to be determined before an overall price could be developed.

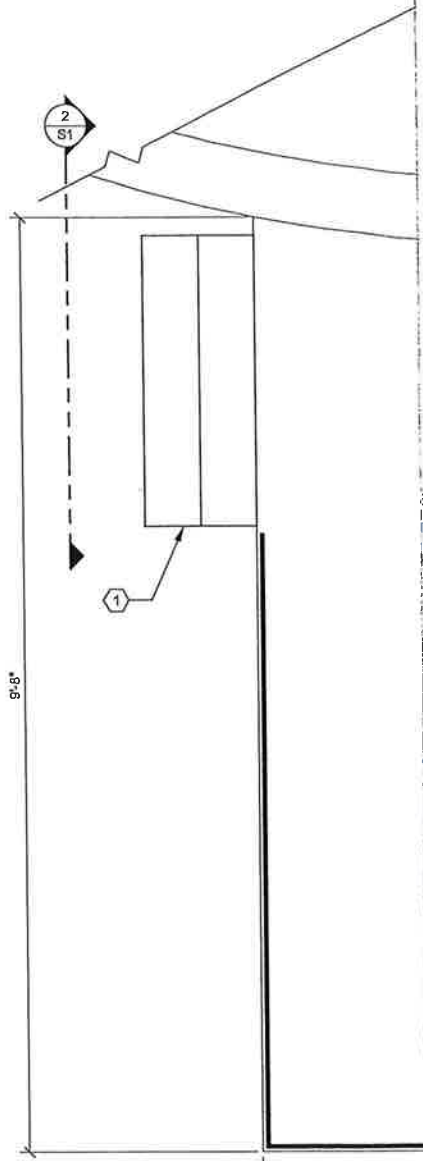
A custom stair could also be offered for the 40" stair height. The custom stair for the 40" stair height would add \$6,206.00 to the price. The custom steps would be equipment with reinforced plastic treads.

If you have any questions regarding the above, please contact me at your earliest convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Beeter".

Gary Beeter
ICS, Inc.
Vice President



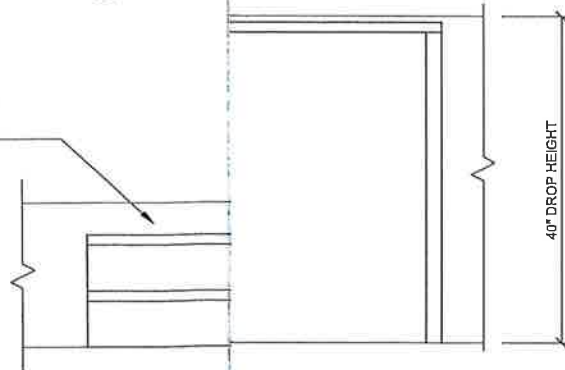
BUILDING STRUCTURE
 ELEVATED SLAB STRUCTURE

NOTES

- 1. VERIFY OSHA ALUMINUM STAIR SYSTEM AND EQUAL - VERIFY HEIGHT REQUIREMENTS
- 2. VERIFY ALUMINUM RAIL SYSTEM AND EQUAL - VERIFY LENGTH REQUIREMENTS

1 STAIR A
 1" = 1'-0"

NEW ALUMINUM STAIR SYSTEM SEE PLAN



2 WEST STAIR ELEVATION
 1" = 1'-0"

RECORD DRAWING

THESE RECORD DRAWINGS REPRESENT ASBUILT INFORMATION AS PROVIDED BY THE CONTRACTOR(S). ALL ASBUILT INFORMATION NEEDS TO BE FIELD VERIFIED. NO WARRANTY IS IMPLIED OR INTENDED.



BROADWAY INTERCEPTOR STAIRS/RAILS
 PHASE III

FARGO, NORTH DAKOTA

LS1 STAIR AND HANDRAIL LAYOUT

DRAWING TYPE
CONSTRUCTION

PREPARED BY
MS

CHECKED / APPROVED
MS / BJ

DATE
6/6/19

PROJECT NUMBER
P00803-2014-000

SHEET
1 of 1

DRAWING
S1

Change Item No. 3



06/12/19 Rev 1

AE2S
 Attn: Ben Julson
 3101 Frontage Rd S.
 Moorhead, MN 56560

Re: Broadway Interceptor WWI-Phase III – LS1/WS1 Concrete Driveway Modifications

Mr. Julson,

The attached pricing is to widen the concrete driveway, add concrete around the LS1 bypass vault and remove the bypass riser (detail 5/SD/C3) from the contract. To widen the concrete driveway one fire hydrant will be moved and a floating casting will be added to a manhole that will now be in the concrete driveway. The change reduces the sidewalk quantity for the sidewalk that was poured under a different contract.

DESCRIPTION	U.M.	UNITS	UNIT PRICE	EXT. PRICE
Driveway Conc. Add	SY	109.00	\$212.75	\$23,189.75
Concrete at LS1 Bypass Vault	SY	9.00	\$212.75	\$1,914.75
Delete Sidewalk	LS	1.00	-\$8,065.00	-\$8,065.00
Floating Manhole Casting	EA	1.00	\$1,679.00	\$1,679.00
Move Fire Hydrant	EA	1.00	\$10,523.00	\$10,523.00
Delete Bypass Riser	LS	1.00	-\$7,715.00	-\$8,715.00
TOTAL PRICE:				\$20,526.50

Pricing includes:

- Labor, Material and Equipment include to complete the above work.
 - Concrete Driveway Widening and Concrete at LS1 Bypass Vault include excavating existing grade, installing fabric & 12" of aggregate base and 7" of concrete paving.
 - Delete sidewalk at LS1/WS1 along 4th St. that was installed under a different contract.
 - Floating Casting includes adding a floating casting to the existing manhole that will be within the concrete pavement to comply with City Standard Specifications.
 - Move Fire Hydrant includes adding sheet piling to protect the existing concrete excavating moving and backfilling the existing fire hydrant and valve 6-8 ft south. After the fire hydrant is backfilled the sheet piling will be removed. The existing fire hydrant, valve and piping will be reused. New megaflanges and gaskets will be installed to reconnect the system.
 - Delete Bypass Riser includes excavating, shoring, coring into the manhole, riser pipe material (including linkseal, fixed pipe clamp, PVC pipe, flanged fitting & landscaping valve box) and backfilling. The total deduct represents the full amount to remove this work from our contract scope of work.

If you have any questions regarding the above, please contact me at your earliest convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Beeter". The signature is stylized with a large initial "G" and a cursive "Beeter".

Gary Beeter
ICS, Inc.
Vice President

Change Item No. 4



P.O. Box 13158 • Grand Forks, ND 58208-3158
 (P) 701.775.8480 (F) 701.775.8479
 www.icsgf.com

08/14/19

AE25
 Attn: Ben Julson
 3101 Frontage Rd S.
 Moorhead, MN 56560

Re: Broadway Interceptor WWI-Phase III – LS2 Wetwell Vent Pipe

Mr. Julson,

The attached pricing is to add a vent pipe to the LS2 wetwell per updated drawing WS2/S2

DESCRIPTION	U.M.	UNITS	UNIT PRICE	EXT. PRICE
Material	LS	1.00	\$2,415.00	\$2,415.00
Labor	LS	1.00	\$560.00	\$560.00
TOTAL PRICE:				\$2,975.00

Pricing includes:

- Material
 - New 24"x24"x1/4" galvanized plate.
 - New 12" galvanized pipe with 180 degree return for vent. 180 degree return will be mounted 18" off the top of galvanized plate. Pipe will be welded to the plate.
 - 5/8" wedge anchors to secure the galvanized plate to the concrete wetwell.
 - Stainless Steel vent screen
- Labor – Includes removing existing aluminum plate and installing new plate with vent pipe attached.

Pricing excludes:

- Painting

If you have any questions regarding the above, please contact me at your earliest convenience.

Sincerely,

Gary Beeter
 ICS, Inc.
 Vice President