

FARGO CITY COMMISSION AGENDA
Monday, December 17, 2018 - 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, December 3, 2018).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Receive and file the following Ordinances:
 - a. Amending Section 8-0305 and Enacting Section 8-0323 of Article 8-03 of Chapter 8 of the Fargo Municipal Code Relating to Regulations Governing Operators.
 - b. Amending Section 1-0305 of Article 1-03 of Chapter 1 of the Fargo Municipal Code Relating to Penalties for Non-Criminal Violations.
- 2. 2nd reading and final adoption of the following Ordinances; 1st reading 12/3/18:
 - a. Amending Section 10-0318 of Article 10-03 of Chapter 10 of the Fargo Municipal Code Relating to Public Safety, Morals and Welfare.
 - b. Amending Section 25-1506 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages.
 - c. Rezoning Certain Parcels of Land Lying in Eddy Place Addition, Eddy & Fullers Auditors Lots, Case, Peake & Hall Addition and Fullers Addition.
 - d. Rezoning Certain Parcels of Land Lying in West Acres Fourth Addition.
- 3. Direct the City Attorney to prepare the necessary ordinance or ordinances to implement the Approval Voting Home Rule Charter amendment.
- 4. Purchase Agreement with Montplaisir Ag and Rental, LLP and LaVerne A. Montplaisir Family Trust.
- 5. Applications for property tax exemptions for improvements made to buildings:
 - a. Jerry L. and Lorrie A. Thoemke, 3526 22nd Street South (3 year).
 - b. Joel S. and Sherri J. Thomsen, 2404 Centennial Rose Drive South (3 year).
 - c. Scott T. and Lisa A. Gail, 2617 38th Avenue South (3 year).
 - d. David M. Jr. and Nancy J. Skjei, 1515 38th Avenue South (3 year).
 - e. Todd J. and Wanda Meyers, 906 19th Avenue South (5 year).
 - f. Chris J. and Mary E. Reynolds, 1545 4th Avenue South (5 year).
 - g. Charles N. and Alvina F. Lillibridge, 910 5th Avenue South (5 year).
 - h. Franklin D. and Ranae L. Charon, 1410 12th Avenue South (5 year).
 - i. Matthew R. and Crystal J. Dunham, 1111 10th Street North (5 year).
 - j. Kevin Sowold and Tamara Dawn Anderson, 1110 3rd Avenue North Unit 201 W (5 year).

- k. Frank E. and Linnea J. Anderson, 1725 Elm Street North (5 year).
 - l. Kelly J. and Jill S. Erickson, 401 14th Avenue North (5 year).
 - m. Kelly J. and Jill S. Erickson, 401 14th Avenue North (5 year).
 - n. Ryan M. and Tanja R. Goellner, 3025 36th Avenue South (3 year).
 - o. Jared Twogood and Sara Bush, 1040 University Drive North (5 year).
 - p. Barret T. and Jennifer L. Wood, 2308 34 1/2 Avenue South (3 year).
- 6. Applications for Games of Chance:
 - a. North Dakota State University Saddle & Sirloin Club for a raffle on 2/9/19.
 - b. Amber Porter Benefit for a raffle on 2/14/19 (Public Spirited Resolution).
 - c. TNT Kid's Fitness for a raffle and raffle board on 1/10/19.
 - 7. Receive and file General Fund – Budget to Actual through November 30, 2018 (unaudited).
 - 8. Change Order No. 1 for an increase of \$22,500.00 for Project No. SR-18-A1.
 - 9. Change Order No. 2 for an increase of \$29,580.00 for Project No. SR-18-A1.
 - 10. Change Order No. 3 for an increase of \$7,106.00 for Project No. TR-17-B1.
 - 11. Change Order No. 5 for an increase of \$11,050.00 for Project No. FM-15-K1.
 - 12. Final Balancing Change Order No. 3 for an increase of \$5,342.89 for Project No. FM-14-11.
 - 13. Negative Final Balancing Change Order No. 2 in the amount of \$-24,428.30 for Project No. HD-17-A1.
 - 14. Revision to the Over Dimensional Vehicle Policy regarding Snow Permit Time Restrictions.
 - 15. Pre-Disaster Mitigation Program grant application for the Red River Intake Pump House at the Water Treatment Plant.
 - 16. Right of Way Use Agreement with DFI Dillard, LLC.
 - 17. Bid award for cooling tower repair work at the FARGODOME.
 - 18. Revisions to the Purchasing Policy effective January 1, 2019.
 - 19. Receive the GFOA Certificate of Achievement in Excellence in Financial Reporting Award for the year ending 12/31/17.
 - 20. Lease with Option to Purchase Agreements with CapFirst Equipment Finance for three Bobcat skid steers.
 - 21. Amended Contract with the ND Department of Health for the Public Health Emergency Preparedness City Readiness Initiative (CFDA #93.074)
 - 22. Purchase of Service Agreement Amendment for HIV Counseling, Testing and Referral contract with the ND Department of Health (CFDA #93.940)
 - 23. Contract Agreement with Media Productions for breastfeeding friendly environment support.
 - 24. Agreement with Ed's Towing Service, Inc. for junk vehicle removal services for 2019.

26. Amended Agreement for additional engineering services for the Civic Center parking ramp restoration project.
27. 2019 City Arts Fund recommendations and Agreement with The Arts Partnership to administer the City Arts Partnership Grants for 2019 in the amount of \$102,000.00.
28. Acceptance of the Walmart Community Grant Program Award in the amount of \$5,000.00 for the Police Department.
29. Agreement for Services between the City of Fargo and Real Property Services Inc. for trash and recycling services in Roberts Alley.
30. Change Orders in the amount of \$17,274.95 (general contract), \$1,055.00 (mechanical contract) and \$7,062.01 (electrical contract) for Project No. SW 16-03 Phase II.
31. Reject Bid for Ground Transportation Center Renovation and Rebid as a Request for Proposal for Design/Bid/Build Services.
32. NDDOT grant application for the purchase of replacement vehicles for the Transit Department (CFDA# 20.526).
33. Contracts and bonds for Project No. WW1701.
34. Bills.
35. Change Order No. 1 for an increase of \$111,114.40 for Improvement District No. BR-18-C1.
36. Change Order No. 2 for a time extension to 1/15/19 for Improvement District No. BN-18-K1.
37. Change Order No. 2 for an increase of \$31,253.21 and Time Extension to 9/17/18 for Improvement District No. BN-16-H1.
38. Change Order No. 3 for an increase of \$22,254.11 for Improvement District No. UN-15-B1.
39. Change Order No. 3 for an increase of \$64,557.95 for Improvement District No. BR-18-E1.
40. Negative Final Balancing Change Order No. 1 in the amount of -\$43,180.67 for Improvement District No. BR-18-J1.
41. Negative Final Balancing Change Order No. 1 in the amount of -\$1,549.68 for Improvement District No. AN-17-F1.
42. Negative Final Balancing Change Order No. 1 in the amount of -\$32,646.86 for Improvement District No. PR-18-E1.
43. Negative Final Balancing Change Order No. 3 in the amount of -\$6,686.48 for Improvement District No. BN-16-H1.
44. Negative Final Balancing Change Order No. 4 in the amount of -\$29,510.16 for Improvement District No. UN-15-B1.

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45. Final Balancing Change Order No. 1 for an increase of \$1,036.87 for Improvement District No. BR-17-G1.
 46. Final Balancing Change Order No. 2 in the amount of \$41,462.13 for Improvement District No. PN-18-A1.
 47. Final Balancing Change Order No. 2 for an increase of \$15,398.36 for Improvement District No. BR-17-H1.
 48. Final Balancing Change Order No. 4 for an increase of \$16,592.36 for Improvement District No. BR-17-J1.
 49. Final Balancing Change Order No. 4 for an increase of \$18,735.26 for Improvement District No. NR-17-A1.
 50. Change Order No. 4 in the amount of \$-82,597.45 and Payment Approvals in the amount of \$78,947.45 and \$3,650.00 for Improvement District No. BN-17-A1.
 51. Utility Relocation and authorize payment to Cass County Electric in the amount of \$34,400.00 for additional work associated with Improvement District No. BN-17-A1.
 52. Utility Relocation and authorize payment to Cass County Electric in the amount of \$35,282.00 for additional work associated with Improvement District No. BN-17-B1.
 53. Memorandum of Offer to Landowner for Temporary and Permanent Easements from B&B Holdings, LCC and B2C, LCC (Improvement District No. BN-19-A1).
 54. Change Order No. 1 for an increase of \$16,147.00 for Improvement District No. NR-17-B2.
 55. Change Order No. 2 for an increase of \$14,767.20 for Improvement District No. NR-17-B1.

REGULAR AGENDA:

56. Appointments to the Historic Preservation Commission.
57. Recommendation to approve the North Dakota Department of Transportation Section 5339 Transit Grant Agreement.
58. Public Hearings - 5:15 pm:
 - a. Proposed increase in MAT Paratransit Service Agency Rate effective January 1, 2019.
 - b. Amendments to Community Development Block Grant (CBDG) 5-Year Consolidated Plan and Annual Action Plans Program.
59. Presentation and discussion regarding 17th Avenue South Corridor Study.
60. Application for Abatement or Refund of Taxes #4477 made by Robert Hill Law, Ltd. representing Shoppes at Osgood, LLC/Super Valu at 4151 45th Street South requesting that the valuation for 2018 be reduced from \$6,900,000.00 to \$3,306,650.00; denial recommended by the Assessment Department.
61. Budget and Time Changes to the C-1 TIF District.

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.



Dr. Timothy J. Mahoney, Mayor

Fargo City Hall
200 3rd Street North
Fargo, ND 58102


Phone 701.241.1310 | Fax: 701.476.4136

TMahoney@FargoND.gov

(56)

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: MAYOR TIMOTHY J. MAHONEY 

DATE: DECEMBER 10, 2018

SUBJECT: APPOINTMENTS TO THE HISTORIC PRESERVATION COMMISSION

The terms of Michael Burns and Christine Kloubec on the Historic Preservation Commission expired on October 31, 2018.

Ms. Kloubec is willing to accept reappointment; however, Mr. Burns is not interested in continuing his service on the Commission.

Jay Nelson has submitted an application indicating interest in serving on the Board and I am recommending his appointment. I have attached a copy of his application for your information.

Your favorable consideration of this recommendation will be greatly appreciated.

RECOMMENDED MOTION: To approve the reappointment of Christine Kloubec and the appointment of Jay Nelson to the Historic Preservation Commission for three-year terms ending October 31, 2021.

TJM:ka

Attachment

mmappt18hpc

Kember Anderson

From: noreply@cityoffargo.com
Sent: Friday, August 11, 2017 4:18 PM
To: Commissions Applications
Subject: New Form Submission: Getting involved in government

Name:

[Jay Nelson]

Mailing Address:

[524 14th Street South]

City:

[Fargo]

State:

[North Dakota]

Zip:

[58103]

Work Phone:

[701-730-0290]

Home Phone:

[701-730-0290]

E-mail:

[jaynelson@archercommercial.com]

Which boards or commissions would you like to be considered for?

[Historic Preservation Commission]

Briefly state why you would like to be on this panel:

[As a commercial realtor, I've completed nearly 75 commercial real estate transactions in downtown Fargo over the last 10 years, and have gained an appreciation for the history and architecture in and around downtown. I'd like to assist on protecting and enhancing our history.]

How many hours per month could you volunteer as a panel member?

[10 - 15.]

Please list any past experience you have with city government here or in other cities:

[Fargo Schools District boundary task force, 2015.]

Please describe any professional experience you have related to the responsibilities of the panel you are interested in:

[As a full time commercial realtor, with an emphasis on historic downtown properties, I have the experience and knowledge that may benefit the commission.]

If you have a resume you would like to submit, please paste it below.

[BLANK]

We will retain your application for three years and consider you for the board you have indicated interest in when a vacancy arises.

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December 17, 2018

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

Dear Commissioners:

Through a competitive grant process, the State of North Dakota Department of Transportation (ND DOT) has awarded the City of Fargo \$1,591,000 in capital 5339 funds to renovate the Ground Transportation Center (GTC). The local match for the contract award is \$397,750 which has been included in the Transit budget.

ND DOT Contract No. 38181779, CFDA No. 20.526 is attached.

The requested motion is to approve ND DOT Contract No. 38181779.

Thank you.

Sincerely,



Julie Bommelman
Transit Director
City of Fargo

\Attachment

**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, hereinafter referred to as the Contractor, whose address is 650 23rd St N, Fargo, ND 58102.

WHEREAS, Section 5339 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005, provides for grants for the specific purpose of assisting in financing capital projects that will benefit the country's transit projects.

WHEREAS, the Governor of the state of North Dakota, in accordance with a request by the Federal Transit Administration (FTA), has designated NDDOT to evaluate and select projects and to coordinate the grant applications; and

WHEREAS, NDDOT and the Contractor desire to secure and utilize grant funds to finance capital projects such as rolling stock, equipment, and/or capital improvements that will benefit transit projects that serve the state of North Dakota; now

THEREFORE, in consideration of the mutual interests herein set forth, NDDOT and the Contractor agree as follows:

Section 1. Purpose of Agreement. The purpose of this agreement is to provide grant funds to finance rolling stock, equipment, and/or capital improvements, hereinafter referred to as the project. The grant amount is \$1,591,000.

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 December 1, 2018, and terminate on December 31, 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. (Applies only if purchase is over \$100,000.) The Contractor agrees to comply with 49 USC 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15-passenger vans and 15-passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than \$100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

Section 26. Energy Conservation. 42 USC 6321 and 49 CFR Part 18. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Section 27. Bus Testing. In the purchase of rolling stock the Contractor (manufacturer) agrees to comply with 49 USC 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the bus testing requirements set forth therein.

Section 28. Pre-Award and Post-Delivery Audit Requirements. The recipient agrees to comply with requirements of 49 USC 5323(m) and FTA regulations "Pre-Award and Post-Delivery Audits" of rolling stock purchases 49 CFR Part 663 and any revision thereto.



Section 29. Byrd Anti-Lobbying Amendment, 31 USC 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 USC §1601, et. seq.]. Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 40 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 USC 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 USC 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Section 30. Federal Changes. Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement (from FTA MA (2) dated October 1995) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Section 31. Clean Air. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§7401 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

Section 32. Clean Water. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§1251 et. seq. The Contractor agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with federal assistance provided by FTA.

Section 33. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§3801 et. seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

Section 34. Disputes. 49 CFR Part 18, FTA Cir. 4220.1E. Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NDDOT Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision



of the Director shall be binding upon the Contractor, and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by NDDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Section 35. Merger and Waiver. This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

Section 36. No Obligation by the Federal Government. The purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Section 37. Insurance. The Contractor shall maintain insurance coverage on the project equipment in an amount adequate to protect the fair market value of the equipment throughout the duration of this agreement.

Section 38. Labor Protection. The Contractor stipulates it has read and agrees to abide by the provision of the labor protection warranty issued under Section 13C para. 1609 of the Transportation Act of 1964 and the National (Model) Agreement referenced therein.

Section 39. Contracts Involving Federal Privacy Act Requirements. The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 USC §552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Section 40. Davis-Bacon And Copeland Anti-Kickback Acts. The Contractor agrees to comply with the requirements of 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5) for any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for



purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating."

Section 41. Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any NDDOT requests which would cause NDDOT to be in violation of the FTA terms and conditions.



Section 42. Risk Management. The Risk Management Appendix, attached, is hereby incorporated and made a part of this agreement.

EXECUTED the date last below signed.

WITNESS:

Steve Sprague, City Auditor
NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

Timothy J. Mahoney
NAME (TYPE OR PRINT)

SIGNATURE

Mayor, City of Fargo
TITLE

DATE

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

**NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION**

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

LOCAL GOVERNMENT ENGINEER (TYPE OR PRINT)

SIGNATURE

DATE

CLA 1073 (Div. 38)
L.D. Approved 9-8-08, 8-15



CERTIFICATION OF LOCAL MATCH

It is hereby certified that the 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:

advertising revenue, vending, general fund

Executed at Fargo, North Dakota, the last date below signed.

WITNESS:

Steve Sprague, City Auditor
SIGNATURE

DATE

APPROVED:

Timothy J. Mahoney
NAME (TYPE OR PRINT)

SIGNATURE

* Mayor, City of Fargo
TITLE

DATE

*Director or President of Transit Board

CLA 1073 (Div. 38)
L.D. Approved 9-8-08, 8-15



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

Timothy J. Mahoney, Mayor Name and Title of Contractor's Authorized Official

Date

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



Page 2 **Fly America Requirements**

Applicability – all contracts involving transportation of persons or property, by air between the U.S. and/or places outside the U.S. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). Contractor shall comply with 49 USC 40118 (the "Fly America" Act) in accordance with General Services Administration regulations 41 CFR 301-10, stating that recipients and subrecipients of Federal funds and their contractors are required to use US Flag air carriers for US Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a US flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor shall include the requirements of this section in all subcontracts that may involve international air transportation.

Buy America Certification (Steel and Manufactured Products)

Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$150,000)
Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, as amended by MAP-21 stating that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than \$150,000) made with capital, operating or planning funds. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed Buy America certification shall be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Cargo Preference

Contracts involving equipment, materials or commodities which may be transported by ocean vessels. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000). Contractor shall: a. use privately owned US-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, material or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for US flag commercial vessels; b. furnish within 20 working days following the loading date of shipments originating within the US or within 30 working days following the loading date of shipments originating outside the US, a legible copy of a rated, "on-board" commercial bill-of-lading in English for each shipment of cargo described herein to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the recipient (through contractor in the case of a subcontractor's bill-of-lading.); c. include these requirements in all subcontracts issued pursuant to this contract when the subcontract involves the transport of equipment, material or commodities by ocean vessel.

Seismic Safety

Construction of new buildings or additions to existing buildings. These requirements do not apply to micro-purchases (\$3,500 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

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

Clean Water

Applicability – All Contracts and Subcontracts over \$150,000. Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with FTA assistance.

Lobbying

Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts over \$150,000 Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104- 65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$150,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non- Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Access to Records and Reports

Applicability – As shown below. These requirements do not apply to micro-purchases (\$3,500 or less, except for construction contracts over \$2,000) The following access to records requirements apply to this Contract:

1. Where the purchaser is not a State but a local government and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 18.36(i), contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also, pursuant to 49 CFR 633.17, provide authorized FTA representatives, including any PMO contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which is receiving FTA assistance through the programs described at 49 USC 5307, 5309 or 5311.
2. Where the purchaser is a State and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 633.17, contractor shall provide the purchaser, authorized FTA representatives, including any PMO Contractor, access to contractor's records and construction sites pertaining to a capital project, defined at 49 USC 5302(a)1, which receives FTA assistance through the programs described at 49 USC 5307, 5309 or 5311. By definition, a capital project excludes contracts of less than the simplified acquisition threshold currently set at \$150,000.
3. Where the purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 CFR 19.48, contractor shall provide the purchaser, the FTA, the US Comptroller General or their authorized representatives, access to any books, documents, papers and record of the contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
4. Where a purchaser which is an FTA recipient or a subgrantee of FTA recipient in accordance with 49 USC

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

All Contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

Bonding Requirements

Applicability – For those construction or facility improvement contracts or subcontracts exceeding \$150,000, FTA may accept the bonding policy and requirements of the recipient, provided that they meet the minimum requirements for construction contracts as follows:

a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

b. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

- (1) 50% of the contract price if the contract price is not more than \$1 million;
- (2) 40% of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
- (3) \$2.5 million if the contract price is more than \$5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Bid Bond Requirements (Construction)

(a) Bid Security - A Bid Bond must be issued by a fully qualified surety company acceptable to (Recipient) and

(b) Rights Reserved - In submitting this Bid, it is understood and agreed by bidder that the right is reserved by (Recipient) to reject any and all bids, or part of any bid, and it is agreed that the Bid may not be withdrawn for a period of [ninety (90)] days subsequent to the opening of bids, without the written consent of (Recipient). It is also understood and agreed that if the undersigned bidder should withdraw any part or all of his bid within [ninety (90)] days after the bid opening without the written consent of (Recipient), shall refuse or be unable to enter into this Contract, as provided above, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, as provided above, or refuse or be unable to furnish adequate and acceptable insurance, as provided above, he shall forfeit his bid security to the extent of (Recipient's) damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by (Recipient) as provided in [Item x "Bid Security" of the Instructions to Bidders]) shall prove inadequate to fully recompense (Recipient) for the damages occasioned by default, then the undersigned bidder agrees to indemnify (Recipient) and pay over to (Recipient) the difference between the bid security and (Recipient's) total damages, so as to make (Recipient) whole.

The undersigned understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million.
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is more than \$5 million.
2. If the original contract price is \$5 million or less, the (Recipient) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect the (Recipient's) interest.

- (a) The following situations may warrant a performance bond:

compensation (as in retention of salvaged material).

2. A contractor sells assets to or merges with another concern, and the (Recipient), after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
3. Substantial progress payments are made before delivery of end items starts.
4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the (Recipient) determines that a lesser amount would be adequate for the protection of the (Recipient).
2. The (Recipient) may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. The (Recipient) may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the (Recipient's) interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:
 - (i) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (ii) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. The (recipient) shall determine the amount of the advance payment bond necessary to protect the (Recipient).

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The (recipient) shall determine the amount of the patent indemnity to protect the (Recipient).

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to (Recipient), the Architect and/or Engineer that all materials and equipment furnished under this Contract will be of highest quality and new unless otherwise specified by (Recipient), free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these standards shall be considered defective. If required by the [Project Manager], the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after

workmanship during the period of the guarantee at no cost to (Recipient). As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment [as provided in Item X below], furnish separate Maintenance (or Guarantee) Bonds in form acceptable to (Recipient) written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

Clean Air

Applicability – All contracts over \$150,000.

- 1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.
- 2) Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with FTA assistance.

Recycled Products

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. 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. (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. (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. (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. (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

...of compliance required by paragraph (a)(3)(i)(D) 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.

Contract Work Hours & Safety Standards Act

Applicability – Contracts over \$150,000

(1) Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in para. (1) of this section, contractor and any subcontractor responsible therefore shall be liable for the unpaid

...in addition, such contractor and subcontractor shall be liable for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in para. (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in para. (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - the recipient shall upon its own action or upon written request of USDOL withhold or cause to be withheld, from any moneys payable on account of work performed by contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours & Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in para. (2) of this section.

(4) Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

No Government Obligation to Third Parties

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

(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 (\$3,500 or less, except for construction contracts over \$2,000)

(1) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

(2) If contractor makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification to the US Government under a contract connected with a project that is financed in whole or in part with FTA assistance under the authority of 49 USC 5307, the Government reserves the right to impose the penalties of 18 USC 1001 and 49 USC 5307(n)(1) on contractor, to the extent the US Government deems appropriate.

(3) Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Applicability – All Contracts over \$10,000, except contracts with nonprofit organizations and institutions of higher learning, where the threshold is \$150,000

a. Termination for Convenience (General Provision) the recipient may terminate this contract, in whole or in part, at any time by written notice to contractor when it is in the recipient's best interest. Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination.

Contractor shall promptly submit its termination claim to the recipient. If contractor is in possession of any of the recipient's property, contractor shall account for same, and dispose of it as the recipient directs.

b. Termination for Default [Breach or Cause] (General Provision) If contractor does not deliver items in accordance with the contract delivery schedule, or, if the contract is for services, and contractor fails to perform in the manner called for in the contract, or if contractor fails to comply with any other provisions of the contract, the recipient may terminate this contract for default. Termination shall be effected by serving a notice of termination to contractor setting forth the manner in which contractor is in default. Contractor shall only be paid the contract price for supplies delivered and accepted, or for services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after 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

j. Termination for Convenience or Default (Cost-Type Contracts) the recipient may terminate this contract, or any portion of it, by serving a notice of termination on contractor. The notice shall state whether termination is for convenience of the recipient or for default of contractor. If termination is for default, the notice shall state the manner in which contractor has failed to perform the requirements of the contract. Contractor shall account for any property in its possession paid for from funds received from the recipient, or property supplied to contractor by the recipient. If termination is for default, the recipient may fix the fee, if the contract provides for a fee, to be paid to contractor in proportion to the value, if any, of work performed up to the time of termination. Contractor shall promptly submit its termination claim to the recipient and the parties shall negotiate the termination settlement to be paid to contractor. If termination is for the recipient's convenience, contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the recipient determines that contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of contractor, the recipient, after setting up a new work schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

Government Wide Debarment and Suspension (Non Procurement)

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <http://https.www.sam.gov.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <http://https.www.sam.gov.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debar, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Civil Rights Requirements

Applicability – All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The following requirements apply to the underlying contract:

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or Program, including an Indian Tribe or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service:

a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute): (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,

b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are

employed and employees are treated during employment without discrimination on the basis of their: 1 Race, 2 Color, 3 Religion, 4 Sex, 5 Disability, 6 Age, or 7 National origin, (b) Take affirmative action that includes, but is not limited to: 1 Recruitment advertising, 2 Recruitment, 3 Employment, 4 Rates of pay, 5 Other forms of compensation, 6 Selection for training, including apprenticeship, 7 Upgrading, 8 Transfers, 9 Demotions, 10 Layoffs, and 11 Terminations, but (b) Indian Tribe. Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer".

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with: (a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and (b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by applicable Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows: 1) Requirements. The Recipient agrees to comply with: (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note, (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, (2) Assurance. As required by 49 C.F.R. § 26.13(a), (b) DBE Program Requirements. Recipients receiving planning, capital and/or operating assistance that will award prime third party contracts exceeding \$250,000 in a Federal fiscal year must: 1 Have a DBE program meeting the requirements of 49 C.F.R. part 26, 2 Implement a DBE program approved by FTA, and 3 Establish an annual DBE participation goal, (c) Special Requirements for a Transit Vehicle Manufacturer. The Recipient understands and agrees that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, (d) the Recipient provides assurance that: The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49

C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.,

(2) Exception for the Tribal Transit Program. FTA exempts Indian tribes from the Disadvantaged Business Enterprise regulations at 49 C.F.R. part 26 under MAP-21 and previous legislation,

e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq., (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and (3) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with Federal prohibitions against discrimination on the basis of age, including: (1) The Age Discrimination in Employment Act (ADEA), 29 U.S.C. §§

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,

(a) 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: 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,

g. 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,

h. 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,

i. 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)

j. Remedies. Remedies for failure to comply with applicable Federal Civil Rights laws and Federal regulations may be enforced as provided in those Federal laws or Federal regulations.

Breaches and Dispute Resolution

All contracts over \$150,000

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the recipient's authorized representative. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the recipient's CEO. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the recipient's CEO shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance 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

Contracts over \$3,500 awarded on the basis of a bid or proposal offering to use DBEs

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The recipient's overall goal for DBE participation is listed elsewhere. If a separate contract goal for DBE participation has been established for this procurement, it is listed elsewhere.

b. The contractor shall not discriminate on the basis of race, color, religion, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

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

All contracts except micro-purchases (\$3,500 or less, except for construction contracts over \$2,000)

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The contractor shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the recipient to be in violation of FTA terms and conditions.

Other Federal Requirements

The following requirements are not federal clauses.

Full and Open Competition

In accordance with 49 U.S.C. § 5325(a) all procurement transactions shall be conducted in a manner that provides full and open competition.

Prohibition Against Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements

using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

Access Requirements for Persons with Disabilities

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Notification of Federal Participation

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of \$500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

Interest of Members or Delegates to Congress

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

Ineligible Contractors and Subcontractors

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

Other Contract Requirements

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those provisions attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the recipient.

Compliance with Federal Regulations

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Page 41 Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by FAST Act, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Access to Services for Persons with Limited English Proficiency

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

Environmental Justice

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1)

Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, 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

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Geographic Preference

All project activities must be advertised without geographic preference, (except in A/E under certain circumstances, preference for hiring veterans on transit construction projects and geographic-based hiring preferences as proposes to be amended in 2 CFR Part 1201).

Organizational Conflicts of Interest

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows: (1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage: (a) To that Third Party Participant or another Third Party Participant performing the Project work, and

Page 42 (b) That impairs that Third Party Participant's objectivity in performing the Project work, or (2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions, (3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient: (a) Any instances of organizational conflict of interest, or (b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and (4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

Federal Single Audit Requirements for State Administered Federally Aid Funded Projects Only

Non Federal entities that expend \$750,000 or more in a year in Federal awards from all sources are required to comply with the Federal Single Audit Act provisions contained in U.S. Office of Management and Budget (OMB) Circular No. A 133, "Audits of States, Local Governments, and Non Profit Organizations" (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable). Non Federal entities that expend Federal awards from a single source may provide a program specific audit, as defined in the Circular. Non Federal entities that expend less than the amount above in a year in Federal awards from all sources are exempt from Federal audit requirements for that year, except as noted in Sec. 215 (a) of OMB Circular A-133 Subpart B--Audits, records must be available for review or audit by appropriate officials of the cognizant Federal agency the New York State Department of Transportation, the New York State Comptrollers Office and the U.S. Governmental Accountability Office (GAO). Non Federal entities are required to submit a copy of all audits, as described above, within 30 days of issuance of audit report, but no later than 9 months after the end of the entity's fiscal year, to the New York State Department of Transportation, Contract Audit Bureau, 50 Wolf Road, Albany, NY 12232. Unless a time extension has been granted by the cognizant Federal Agency and has been filed with the New York State Department of Transportation's Contract Audit Bureau, failure to comply with the requirements of OMB Circular A-133 may result in suspension or termination of Federal award payments.

Veterans Preference

Veterans Preference. As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

- (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
- (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Safe Operation of Motor Vehicles

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or AGENCY.

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and

CFDA number for the Federal Transportation Administration

Nonurbanized Area Formula (Section 5311) is 20.509. A Recipient covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," (replaced with 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" effective December 26, 2014 as applicable) agrees to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. The Recipient agrees to accomplish this by identifying expenditures for Federal awards made under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

I, Timothy J. Mahoney, Mayor, hereby certify
(Name and title of official)

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

Signature of authorized representative _____ Date / /

Signature of notary and SEAL _____

Instructions for Certification: By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

- (1) It will comply and facilitate compliance with U.S. DOT regulations, “Nonprocurement Suspension and Debarment,” 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180,
- (2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:
 - a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:
 - (1) Debarred,
 - (2) Suspended,
 - (3) Proposed for debarment,
 - (4) Declared ineligible,
 - (5) Voluntarily excluded, or
 - (6) Disqualified,
 - b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:
 - (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
 - (2) Violation of any Federal or State antitrust statute, or
 - (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,
 - c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,
 - d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,
 - e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a - 2.d above, it will promptly provide that information to FTA,

- f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:
 - (1) Equals or exceeds \$25,000,
 - (2) Is for audit services, or
 - (3) Requires the consent of a Federal official, and

- g. It will require that each covered lower tier contractor and subcontractor:
 - (1) Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
 - (2) Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
 - a. Debarred from participation in its federally funded Project,
 - b. Suspended from participation in its federally funded Project,
 - c. Proposed for debarment from participation in its federally funded Project,
 - d. Declared ineligible to participate in its federally funded Project,
 - e. Voluntarily excluded from participation in its federally funded Project, or
 - f. Disqualified from participation in its federally funded Project, and

3. It will provide a written explanation as indicated on a page attached in FTA's TEAM-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

Timothy J. Mahoney, Mayor

Attachment A

Project Name

MatBus

SFY 2019 (December 1, 2018 - December 31, 2020)

	Local match percentage	Funding Source Section	TOTAL Federal Share Share	Local Share	Total
Funding Category					
Rehab/Renovate Bus Terminal	20	5339	1,591,000	397,750	1,988,750
TOTALS			1,591,000	397,750	1,988,750

Notice to Subrecipients: Each Federal program is governed by different regulations. Federal awards have specific compliance requirements. If you are not aware of the specific requirements for your award, please contact your NDDOT Program Manager.

CFDA Title	CFDA No.	Title 49 USC Chapter 53 Section	Award Name
Capital Assistance Program	CFDA No 20.526	5339	Bus and Bus Facilities Formula
Section 5339 provides for capital grants to private nonprofit corporations and associations for the specific purpose of providing mass transportation services			

58a

December 17, 2018

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

Dear Commissioners:

Attached is the notice setting a public hearing for Monday, December 17, 2018, regarding the increase for agency rates for specific user groups in paratransit services effective January 1, 2019.

The *agency rate* applies only to medical trips provided to residents of skilled nursing facilities, and day program trips provided to residents of the ICF/IID facilities. The proposed agency rate increases from \$25.00 to \$38.00 per one-way trip (origin to destination). Skilled nursing and ICF/IID facilities are paid a designated rate by Medicaid to provide routine services, which includes transportation. It is the responsibility of the facility to provide transportation to their residents.

Since 2007, new/additional skilled nursing homes and day program locations have come on-line. Any new qualifying facilities will be added to the list. A review of rides taken in July 2018 from the skilled nursing homes and day programs showed no medical or day program trips taken from residents of those facilities, however we do want to keep the Agency Rate up-to-date with our current operating costs.

The joint Fargo-Moorhead MAT Coordinating Board met on October 2, 2018, regarding the agency rate. It was the consensus of the members present to recommend the increase.

Notices of the public hearing were posted on the MATBUS website and published in the newspaper December 10 and 17, 2018. Letters were sent in November to the Skilled Nursing Facilities and day program sites regarding the rate increase.

The requested motion is to approve an increase from \$25.00 to \$38.00 agency rate for medical trips for skilled nursing facilities and day program trips for day programs.

Sincerely,



Julie Bommelman
Transit Director
City of Fargo

/enc

NOTICE OF PUBLIC HEARING

MAT PARATRANSIT SERVICE

Agency Rate

Effective January 1, 2019

A public hearing has been scheduled regarding the increase of the agency rate from \$25.00 to \$38.00 per one-way trip on MAT Paratransit. If approved the change would become effective January 1, 2019.

The agency rate would apply **only** to medical trips provided to residents of skilled nursing facilities, and day program trips provided to residents of ICF/IID. Non-medical related trips would continue to be provided at the existing fare of \$3.00 per one-way trip.

Hearing Dates

Fargo City Commission
Monday, December 17, 2018
5:15 p.m.
Fargo City Hall, Commission Chambers
200 N 3rd Avenue, Fargo

For questions or comments call 701-241-8140

Written comments may be submitted in advance of the public hearing on matbus.com or to:

City of Fargo: Shaun Crowell, 650 23rd St. N, Fargo, ND 58102
Email: scrowell@matbus.com
Transit Office 701-241-8140 or Ground Transportation Center 701-232-7500

If auxiliary aids or services are required at the public hearing, please notify the following:
City of Fargo: Commission Office 701-241-1310 or TDD 241-8258.

Publish 12/10/18 ND Legals
Publish 12/17/18 MN Legals

NOTICE OF PUBLIC HEARING
MAT PARATRANSIT SERVICE
Agency Rate
Effective February 1, 2019

A public hearing has been scheduled regarding the increase of the agency rate from \$25.00 to \$38.00 per one-way trip on MAT Paratransit. If approved the change would become effective February 1, 2019.

The agency rate would apply **only** to medical trips provided to residents of skilled nursing facilities, and day program trips provided to residents of ICF/IID: Non-medical related trips would continue to be provided at the existing fare of \$3.00 per one-way trip.

Hearing Dates

Moorhead City Council
Monday January 28, 2019 5:45 p.m.
Moorhead City Hall, First Floor
500 Center Avenue Moorhead

For questions or comments call 701-241-8140

Written comments may be submitted in advance of the public hearing on matbus.com or to:
City of Fargo: Shaun Crowell, 650 23rd St. N, Fargo, ND 58102, Email: scrowell@matbus.com
Transit Office 701-241-8140 or Ground Transportation Center 701-232-7500.

If auxiliary aids or services are required at the public hearing, please notify the following:
City of Moorhead: Clerk's Office at 218-299-5166 (voice) or 711 (TDD/TTY).

Publish in *The FM Extra*
Minnesota Legals
Thursday, January 10, 2019
Send 4 Affidavits of Publication

Bill City of Moorhead for Minnesota ad
Accounting Dept.
500 Center Avenue PO Box 779
Moorhead, MN 56561

MEMORANDUM

58b

TO: Board of City Commissioners
FROM: Nicole Crutchfield, Planning Director, *NC*
DATE: December 13, 2018
RE: Public Hearing for Amendments to Community Development Block Grant 5-Year Consolidated Plan & Annual Action Plans

The Department of Planning & Development would like to amend the City of Fargo's Community Development Block Grant (CDBG) 5-Year Consolidated Plan (2015-2019) and Annual Action Plans. Proposed amendments include:

- Cancelling 3 projects that did not come to fruition
- Adding 2 public improvement projects benefiting youth from low to moderate income households and people who are homeless
- Increasing the budget for Slum & Blight Abatement/Hazardous Property Clearance by reallocating funds from unfulfilled or over-budgeted projects and higher than expected program income
- Expanding the project area for the Slum & Blight Abatement/Hazardous Property Clearance to city-wide on a spot basis

Each proposed amendment is detailed in the attached public notice, which was published in the November 30, 2018 Forum newspaper. This proposal was presented to and approved by the Planning Commission on December 4. It will also be presented to the Community Development Committee on December 18, 2018. The timeline for this amendment, including the 30-day public comment period, is outlined in the attached public notice. Once approved by citizens and the City, the amendment will be submitted to HUD for approval.

It is part of the City's adopted citizen participation plan to present all substantial amendments to the Community Development Committee, Planning Commission, and City Commission as part of the review and approval process.

Recommended Motion: This meeting is for a public hearing only, no action is required at this time. Final consideration of the amendments is scheduled for January 2, 2019.

**Notice of Public Hearing & Public Comment Period
5-Year Consolidated Plan & Annual Action Plan Amendments
for Housing and Community Development
Community Development Block Grant (CDBG) Program**

The City of Fargo is considering amendments to its Community Development Block Grant (CDBG), a grant awarded to the City by the U.S. Department of Housing and Urban Development (HUD). Following a public comment period and subsequent City Commission action on January 2, 2019, a recommendation regarding these amendments will be forwarded to HUD for their consideration and approval. All citizens are welcome to submit comments at any time during the public comment period or at the public hearing. In advance of the public hearing, alternative formats of this information and accommodation for persons with disabilities will be made upon request (10 hour notice is required). To arrange for services call 701.241.1474; for TDD/Relay service dial 701.241.8258.

Public Comment Period: December 1, 2018 through December 30, 2018

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

Public Hearing: Monday, December 17, 2018 - 5:15 p.m.
City Commission Chambers
200 3rd Street North, Fargo ND 58102

Final City Commission Consideration: Wednesday, January 2, 2019

Electronic Comments: planning@FargoND.gov

Summary of Proposed Amendment:

1. Revised Activity: Slum & Blight Abatement/Hazardous Property Clearance + \$520,585

May include any of the following clearance and remediation activities: acquisition, environmental remediation, clearance, demolition, rehabilitation to the extent necessary to eliminate a specific condition detrimental to public health and safety, and relocation benefits to qualified tenants or owners as required by state or federal law. The purpose of the amendment is to expand project location to city-wide, allowing for slum and blight removal to occur on a "spot basis" rather than in a specified area (i.e., slum blight area) and to increase the budget to help the City of Fargo meet timely expenditure requirements. Amendment would revise 5-Year Consolidated Plan and 2016/2017/2018 annual action plans. National Objective: Slum & Blight Spot Basis [24 CFR Part 570.208 (b)(2)]; potential HUD Matrix Codes: 04 Clearance and Demolition; 14G Acquisition for Rehabilitation

Priorities – Blighted/Hazardous structures and properties in deteriorated condition, including those under the City's abatement/code enforcement authority when the owner has not complied.

Financial – This amendment would increase the budget for this activity from \$100,000 to approximately \$620,585. Approximately \$520,585 will be obligated from unallocated resources due to over-budgeted activities, cancelled activities, and program income receipts higher than expected.

Amount	Source
\$100,000	Existing approved 2018 budget for Slum & Blight Abatement
\$165,000	Full reallocation of Public Facilities Improvements projects (i.e., Great Plains Food Bank - \$75,000/Jeremiah Program - \$50,000/Youthworks - \$40,000)
\$45,000	Partial reallocation of Rape & Abuse Crisis Center Public Facilities Improvements (Owner reduced scope of work)
\$100,000	Reallocation of 2017 Storefront Rehabilitation unused (2016 budget was over-budgeted and used to fund actual 2017 projects)
\$210,585	Program Income – Nokomis
\$620,585	TOTAL BUDGET (approx.)

Any additional CDBG program income received in 2018 will also be used for this activity. Program income is primarily based on sporadic single family loan repayments. It fluctuates from year to year and annual estimations may be over or under actual.

2. Canceled Activity: Great Plains Food Bank

CDBG funds were designated to support a facility upgrade at the Great Plains Food Bank (1720 3rd Avenue North). Based on factors such as availability of contractors and timing of donor pledge payments, Great Plains Food Bank notified the City of Fargo that they were not in a position to fulfill the federal requirements of the grant and declined the 2016 award. National Objective: 570.208(a)(1) – LMA/Eligibility 570.201(c); HUD Matrix Code 03E – Neighborhood Facilities.

Financial: \$75,000 is proposed to be redirected from the Great Plains Food Bank project to Slum & Blight Abatement/Hazardous Property Clearance.

3. Canceled Activity: Jeremiah Program Fargo-Moorhead

The Jeremiah Program Fargo-Moorhead (801 Page Drive South), which houses and assists low-to-moderate income single mothers working on post-secondary education, declined a 2017 award for a public facilities improvement(s) project. Contractors and sub-contractors did not register in the System for Award Management prior to their construction deadline. Registration is required prior to entering into contracts on federally funded projects. National Objective: 570.208(a)(2) LMC/Eligibility 570.201(c); HUD Matrix Code 03C – Homeless Facilities – Not Operating Costs

Financial – \$50,000 is proposed to be redirected from the Jeremiah Program Fargo-Moorhead project to Slum & Blight Abatement/Hazardous Property Clearance.

4. Canceled Activity: Youthworks

Youthworks (315 University Drive South), which houses and assists homeless youth and young adults, declined a 2017 award for a public facilities improvement(s) project. They were unable to secure a contractor to complete the project following federal regulations of Davis Bacon Labor Standards (prevailing wages) and registration in the System for Award Management. Registration is required prior to entering into contracts on federally funded projects. National Objective: 570.208(a)(2) LMC/Eligibility 570.201(c); HUD Matrix Code 03Q – Facilities for Abused and Neglected Children

Financial – \$40,000 is proposed to be redirected from the Youthworks project to Slum & Blight Abatement/Hazardous Property Clearance.

5. New Activity – Gladys Ray Emergency Homeless Shelter Facilities Improvements or Relocation + \$150,000

The Gladys Ray Emergency Homeless Shelter (1519 1 Avenue South) provides a safe, temporary shelter to people who cannot access other shelter options in the community, and to help connect people to housing and services in a welcoming and non-judgmental environment. It has a capacity for 25 adult males and 10 adult females and is sponsored by the VA Health Care System to provide a Veteran's Drop-In Center. It also provides short-term residential, social (non-medical) detoxification services at its Withdrawal Management Unit (WMU). Since the shelter has occupied the space (2007), there has been no significant rehabilitation to the facility. The shelter has various needs for improvement including, but not limited to improvements in public common areas, sleeping areas, restrooms, the WMU, and exterior areas. It is possible that funds may be used for relocation to a different building if the costs of improvements outweigh the costs of relocation. This new goal would be added to the 5-Year Consolidated Plan, with the specific activity being added to the 2018 Annual Action Plan. National Objective: 570.208(a)(2) LMC/Eligibility 570.201(c); HUD Matrix Code 03C – Homeless Facilities (non-operating costs)

Financial – \$150,000 is proposed to be redirected from – multiple years of unallocated resources due to over-budgeted activities, cancelled activities, and program income receipts higher than expected.

6. New Activity – Washington Elementary School Playground Improvements + \$150,000

Playground equipment at the Fargo Public School's Washington Elementary is 30 years old and replacement parts are no longer available to repair the old playground. Replacing equipment and surfaces/landscaping would increase accessibility and safety as new equipment and playground-related codes have been changed significantly in the past 30 years. This playground also functions as a neighborhood playground and may be used by anyone. This new goal would be added to the 5-Year Consolidated Plan, with the specific activity being added to the 2018 Annual Action Plan. National Objective: 570.208(a)(1) – LMA/Eligibility 570.201(c); HUD Matrix Code 03F – Parks, Recreational Facilities

Financial – \$150,000 is proposed to be redirected from multiple years of unallocated resources due to over-budgeted activities, cancelled activities, and program income receipts higher than expected.

Page 54
Comments and suggestions from the public are encouraged during the public comment period and/or at the public hearing (see item above). In advance of the public hearing, alternative formats of this information or accommodation for persons with disabilities or limited English proficiency will be made upon request (10 hours notice is required). To arrange for services, call 701.241.1474; for TDD/Relay service dial 701.241.8258

**PUBLIC
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for Housing and Community Development
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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

Public Hearing: Monday, December 17, 2018 - 5:15 p.m.
City Commission Chambers
200 3rd Street North, Fargo ND 58102

Final City Commission Consideration: Wednesday, January 2, 2019

Electronic Comments: planning@FargoND.gov

Summary of Proposed Amendment:

1. Revised Activity: Slum & Blight Abatement/Hazardous Property Clearance + \$520,585 May include any of the following clearance and remediation activities: acquisition, environmental remediation, clearance, demolition, rehabilitation to the extent necessary to eliminate a specific condition detrimental to public health and safety, and relocation benefits to qualified tenants or owners as required by state or federal law. The purpose of the amendment is to expand project location to city-wide, allowing for slum and blight removal to occur on a "spot basis" rather than in a specified area (i.e., slum blight area) and to increase the budget to help the City of Fargo meet timely expenditure requirements. Amendment would revise 5-Year Consolidated Plan and 2016/2017/2018 annual action plans. National Objective: Slum & Blight Spot Basis [24 CFR Part 570.208 (b)(2)]; potential HUD Matrix Codes: 04 Clearance and Demolition; 14G Acquisition for Rehabilitation

Priorities – Blighted/Hazardous structures and properties in deteriorated condition, including those under the City's abatement/code enforcement authority when the owner has not complied.

Financial – This amendment would increase the budget for this activity from \$100,000 to approximately \$620,585. Approximately \$520,585 will be obligated from unallocated resources due to over-budgeted activities, cancelled activities, and program income receipts higher than expected.

Amount Source

\$100,000 Existing approved 2018 budget for Slum & Blight Abatement
\$165,000 Full reallocation of Public Facilities Improvements projects (i.e., Great Plains Food Bank - \$75,000/Jeremiah Program - \$50,000/Youthworks - \$40,000)
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\$620,585 TOTAL BUDGET (approx.)

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Financial – \$150,000 is proposed to be redirected from multiple years of unallocated resources due to over-budgeted activities, cancelled activities, and program income receipts higher than expected.

Comments and suggestions from the public are encouraged during the public comment period and/or at the public hearing (schedule above). In advance of the public hearing, alternative formats of this information or accommodation for persons with disabilities or limited English proficiency will be made upon request (10 hours notice is required). To arrange for services, call 701.241.1474; for TDD/Relay service dial 701.241.8258





To: Mayor Mahoney and Honorable City Commissioners

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

Date: December 12, 2018

Subject: 17th Avenue S Corridor Study Presentation and Discussion

17th Avenue S is a very popular collector street in Fargo. It runs completely across town from the Red River to Sheyenne Street in West Fargo. We have noticed over the last five to ten years that it has some operational issues associated with it. Knowing that, we collaborated with MetroCOG to complete a corridor study on the Fargo section of this street to look at its strengths, weaknesses, and opportunities for improvement. We released an RFP in the 2nd quarter of 2017 and selected KLJ as the consulting firm of choice. We initiated the corridor study based on four main items. The first was evaluating the existing conditions with respect to mobility and safety along the corridor, particularly from 32nd Street to 45th Street, and to see what could be done to improve operations. Secondly, we have long identified the stretch from 5th Street to 35th Street as a missing link in the bicycle network. It is the central part of the city and there are no bicycle facilities anywhere near here, but it could provide a great opportunity to move people east and west to connect the river path system to the western part of the city. Third, we know the pavement is in fair to poor condition for much of this stretch, and we would like to start planning for reconstruction in the short to mid-term timeframe. Lastly, we know the stretch between 42nd Street and 45th Street gets very busy at times and we wanted to see what short-term, low cost improvements could be implemented there to cut down on delay while improving safety at the same time.

Beginning at 5th Street and running to 34th Street, the majority of the road cuts through residentially zoned properties which then transitions to office and commercial properties west of I-29 and continuing to 45th Street. Beyond 45th Street the adjacent properties transition back to residential properties to the City Limit. This avenue was highlighted in the 2014 Long Range Transportation Plan as being an avenue that will be operating under congested conditions in 2020 between 25th Street and 42nd Street, and will continue to do so in 2040 when the extents of the congestion extend further west to 45th Street.

I have attached the Executive Summary of the Corridor Study that is very near completion. KLJ will give a presentation on the Corridor Study at the meeting. They have presented it to both the Planning Commission and the Public Works Project Evaluation Committee recently. I believe the study has been a tremendous success and I look forward to the discussion next week. The plan is to present the draft Corridor Study to you next week to receive any feedback that you may have, and then return for final approval in January, pending any feedback from the public.

Recommended Motion

To receive and file.

Attachment



17TH AVENUE SOUTH CORRIDOR STUDY



JUNE 2018

BACKGROUND

Fargo's 17th Avenue is a heavily used corridor that stretches the entire length of the city and into West Fargo. While it is primarily residential, the corridor supports some of the most intense retail and commercial development in the metro, including West Acres. It serves many major bicycle and pedestrian generators including schools and parks in West Fargo, Fargo, and Moorhead. This corridor is an important roadway for all modes of transportation.

The purpose of this study is to understand the current and long-term vision of 17th Avenue to identify and analyze the impacts of potential improvements which will address declining operations and the identified need for a cross-town bicycle route. To develop and assess the most appropriate alternatives, the study area was broken into two segments:

- » The west segment from the western City of Fargo limits at 51st Street to 38th Street, which includes residential, commercial, and retail land uses. This segment is primarily three- and four-lane sections.
- » The east segment from 38th Street to 5th Street, which includes predominately residential land uses with limited commercial. This segment is primarily a two-lane section.

The overall goals of the study were identified by the project's Study Review Committee and public via value profiles which helped the study team calibrate needs and expectations of the corridor evolved from east to west, shown in Figure 1.3.

APPROACH

The approach to the 17th Avenue Corridor Study included three phases, as shown in Figure 1.1. The study spanned approximately 12 months from beginning to end. It kicked off in July 2017 and concluded in June 2018. The general study timeline is shown in Figure 1.2. A separate timeline for public engagement is shown later.

Figure 1.1 Study Approach



Study Review Committee Meeting
Public Input Meeting

Figure 1.2 Study Timeline of Deliverables

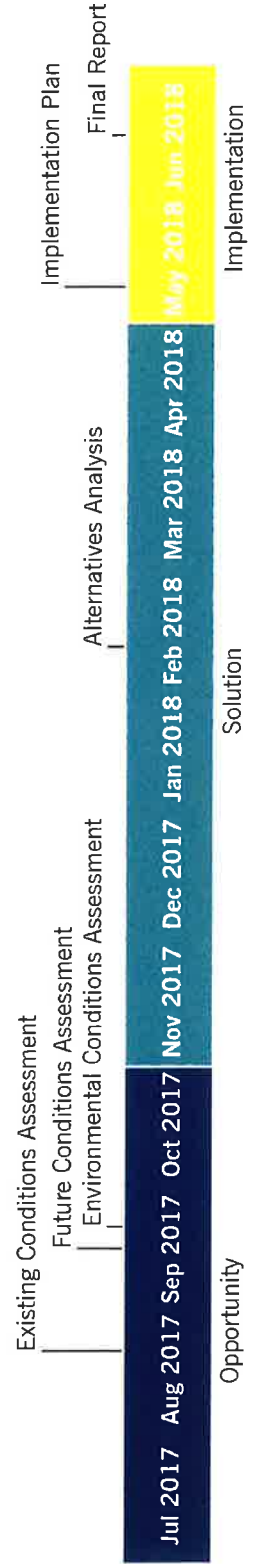


Figure 1-3: Study Area



The value profile weights shown above were established by the Study Review Committee and the public at the first public input meeting.

EXECUTIVE SUMMARY

PUBLIC AND STAKEHOLDER INVOLVEMENT

Public and stakeholder involvement occurred regularly throughout the study process and brought together a diverse set of stakeholders and opinions. The following includes a summary of the different stakeholders, processes, and marketing plan used.

TIMELINE AND PROCESS

MONTHLY METRO COG STATUS REPORT

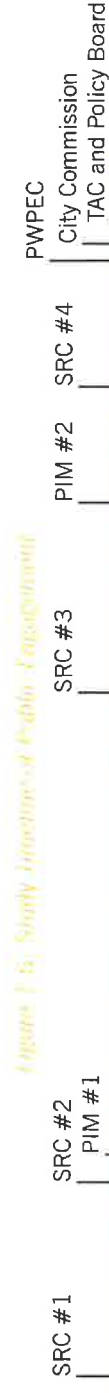
Every month during the study process, the project team briefed the Fargo-Moorhead Metropolitan Council of Governments' (Metro COG) with a formal status report.

STUDY REVIEW COMMITTEE MEETINGS

Four times throughout the process, the project's Study Review Committee met to discuss, review, and refine methods, assumptions, and technical analysis. Members of the Study Review Committee included Fargo Engineering, Planning, Public Works, MATBUS, Metro COG, NDDOT, and Federal Highway Administration. West Fargo planning was also part of the Study Review Committee. The four meetings covered various topics, discussed below.

- » The Project Kick Off meeting discussed the overall intent and purpose of the project, the public engagement process, the existing conditions and a future scenario workshop.
- » The second SRC meeting reviewed the future conditions scenarios and refined the traffic projections as well as reviewed the environmental conditions. At this meeting the SRC completed the Value Profile exercise used to weight the alternatives analysis.
- » The third SRC meeting included a presentation of the alternatives and allowed the SRC to review, refine, and rank the alternatives.
- » The fourth SRC meeting summarized the public comments and collaboratively developed an implementation plan.

Figure 1-6: Study Timeline & Public Engagement



PUBLIC ENGAGEMENT METHODS

The public engagement process included two open houses with formal presentations and a public hearing at the City Commission.

- » The first round of public meetings was held in October, 2017. It included two events.

- > A community bike audit allowed members of the public to ride the

corridor and identify issues and opportunities.

Around 20 people attended the bike audit.



- > The public meeting and open house included a formal presentation and issues map to allow the public to identify their key issues and opportunities. More than 50 people attended.

The second public

meeting was held in April, 2018. It included two formal presentations and an open house. Nearly 100 people attended.

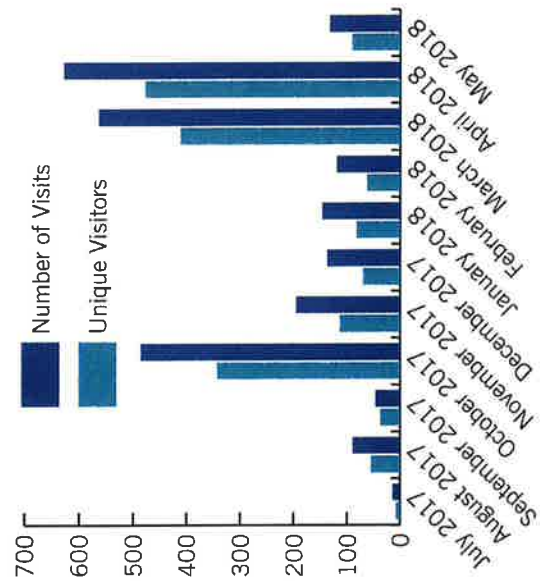


Survey

An online survey was posted to the project's website to solicit feedback on the alternatives. It was completed by 150 members of the community. Up to 25 additional surveys were collected at the second public meeting, depending on the alternative. The survey was divided by road segment (5th Street to University Drive, University Drive to 25th Street, 25th Street to 38th Street, and 38th Street to 51st Street) and by mode (vehicle, bicycle, pedestrian, transit). This allowed people to provide feedback on as many or as few alternatives as they preferred.

Using the first choice selection, the results were incorporated into the overall score, which averaged the technical score, SRC support score, and Community support score. The full results are included in Appendix A.

Figure 1.7 Website Analytics



WEBSITE

The project website, www.commute17.com, was a repository for all the study's activity and effort. It included the project background, news and articles, reports, videos, and a portal for comments. Over the course of the study, there were more than 1,600 unique visitors to the website, with more than 2,400 visits to the website.

The website included nearly 20 updates throughout the process, on average once every three weeks. The updates included public engagement opportunities and summaries, reports, videos, and the following activities:

- » The issues mapping exercise allowed the public to identify issues and "like" and comment on other's identification.
- » The meeting recordings included segmented videos from the public input meeting presentation.
- » Interactive alternatives map allowed users to review the different alternatives and visualizations to see how they would look and feel.
- » A survey was posted asking the public to complete a value profile activity, to weight vehicle mobility and safety, pedestrian and bicycle mobility and safety, and cost and impacts, and an alternatives survey.

Figure 1.8 Website Views



5TH STREET TO 25TH STREET

5TH STREET TO UNIVERSITY DRIVE

From 5th Street to University Drive, 17th Avenue is a two lane roadway with sidewalks on both sides of the road. A series of thin overlays have kept the surface quality of pavement in this segment in good condition, however the road has begun to shift and will require reconstruction. The area surrounding the corridor is primarily residential, with limited commercial and institutional uses at the University Drive intersection.

There are no dedicated bicycle facilities along this segment. However, traffic volumes are very low, currently around 3,200 vehicles per day. They are not expected to increase significantly. Future traffic growth projections estimate around 4,000 vehicles per day by 2040. Neither speeding nor crash trends were identified; operations are acceptable through 2040. Analysis at the University Drive intersection was outside the scope of the study.

The primary needs identified in this segment include:

- » Dedicated bicycle facilities
- » Improved pedestrian crossing at Essentia Health

Neither the technical analysis nor the public engagement identified vehicular needs.

IMPROVEMENT STRATEGIES Bicycle Alternatives

From 5th Street to University Drive, the High Impact: Cycle Track alternative received the greatest overall score. The public gave the same number of first choice votes (29) to the Medium Impact: Bike Lanes and High Impact: Cycle Track alternatives.

A cycle track would provide a much safer bicycling experience, with research finding a 30 to 40 percent reduction in all crash types. Cycle tracks have also been found to attract higher ridership; up to 171 percent increase compared to no dedicated bicycle facilities.

- » Cycle Track: \$160,000

Table 1.1. Summary of 5th Street to University Drive Bicycle Alternatives

Alternative	Technical Score	SRC Support	Community Support*	Overall Score
High Impact: Cycle Track	5.2	5.0	6.8	5.7
Medium Impact: Bike Lanes	5.2	5.0	5.6	5.3
Do Nothing	5.2	5.0	5.0	5.1
Low Impact: Sharrow	5.2	5.0	5.0	5.1

Figure 1.9. 17th Avenue address 7th street and University Drive



Pedestrian Alternatives

The high impact alternative to install post and overhead flashing beacons with a raised crosswalk at the Essentia Health crossing was the highest ranked alternative. It received the most first choice votes from the public and had unanimous support from the SRC.

Research has found flashing beacons have a compliance rate between 72 and 96 percent and a 30 percent increase in yielding distance of 10 feet or more. Flashing beacons have also been found to reduce vehicle-pedestrian crash potential by 69 percent. Raised crosswalks have been found to reduce vehicle-pedestrian crashes 33 to 48 percent and reduce 85th percentile speeds between six and 1.3 miles per hour.

- » Post and overhead mounted RRFBs with raised crosswalk: \$90,000

Table 1.3. Summary of 5th Street to University Drive Pedestrian Alternatives

Alternative	Technical Score	SRC Support	Community Support	Overall Score
High Impact: Post and Overhead RRFB with Raised Crosswalk	5.2	5.0	6.8	5.7
Medium Impact: Post and Overhead RRFB	5.2	5.0	5.6	5.3
Low Impact: Do Nothing	5.2	5.0	5.0	5.1

UNIVERSITY DRIVE TO 25TH STREET

From University Drive to 25th Street, 17th Avenue is a two lane roadway with sidewalks on both sides of the road. A series of thin overlays have kept the surface quality of pavement in this segment in good condition, however the road has begun to shift and will require reconstruction. The area surrounding the corridor is primarily residential, with limited commercial at the University Drive intersection. South High School and Lewis and Clark Elementary are also located along this segment of 17th Avenue.

Traffic volumes are relatively low and grow from east to west. On the east side of this segment, around 4,500 vehicles per day use the corridor, expected to grow to about 6,000 by 2040. On the west side of this segment, around 7,700 vehicles per day use the corridor, expected to grow to about 9,500 by 2040. Crash trends were noted at the 25th Street intersection, but this intersection was outside the scope of the study. It should continue to be monitored as part of other studies and projects.

Speeding was a noted problem along this segment of the corridor. Around 90 percent of vehicles are speeding, with the 85th percentile speed more than seven miles per hour over the posted speeds. This creates safety concerns for cyclists and pedestrians.

There are no dedicated bicycle facilities along this segment.

The primary needs identified in this segment include:

- » Dedicated bicycle facilities
- » Improved pedestrian crossing at South High School
- » Traffic calming to reduce speeds

IMPROVEMENT STRATEGIES Bicycle Alternatives

From University Drive to 25th Street, the bicycle alternatives received varying support. The High Impact: Cycle Track alternative received the most first choice votes from the community. Ultimately, 74 percent of people who voted preferred improved bicycle facilities.

Figure 1.10 - 17th Avenue between University Drive and 25th Street



A cycle track would provide a much safer bicycling experience, with research finding a 30 to 40 percent reduction in all crash types. Cycle tracks have also been found to attract higher ridership; up to 171 percent increase compared to no dedicated bicycle facilities.

- » Cycle Track: \$190,000

Table 1.3. Summary of Housewife Drive to 25th Street Bicycle Alternatives

Alternative	Technical Score	SRC Support	Community Support*	Overall Score
High Impact: Cycle Track	6.5	6.5	6.5	6.5
Medium Impact: Buffered Bike Lanes	4.4	4.4	4.4	4.4
Do Nothing	3.2	3.2	3.2	3.2
Low Impact: Bike Lanes	3.2	3.2	3.2	3.2

Pedestrian Alternatives

The high impact alternative to install pedestrian actuated rectangular rapid flashing beacons at the Fargo South High School crossing received the highest overall score. It received the most first choice votes from the community (57 percent) and the SRC.

Research has found flashing beacons have a compliance rate between 72 and 96 percent and a 30 percent increase in yielding distance of 10 feet or more. Flashing beacons have also been found to reduce vehicle-pedestrian crash potential by 69 percent.

- » Pedestrian actuated RRFB: \$15,000

Table 1.4. Summary of University Drive to 25th Street Pedestrian Alternatives

Alternative	Technical Score	SRC Support	Community Support	Overall Score
High Impact: Pedestrian Actuated RRFB	6.1	6.1	6.1	6.1
Medium Impact: In-Roadway Sign	4.0	4.0	4.0	4.0
Low Impact: Do Nothing	3.2	3.2	3.2	3.2

IMPLEMENTATION STRATEGIES

The projects identified through this segment of 17th Avenue are very low cost and could be implemented at any time. However, without improvements between 25th Street and 38th Street, the cycle track provides limited connectivity and may not be widely utilized.

Extending the improvements from 38th Street to 25th Street to include the bicycle and pedestrian improvement from 25th Street to 5th Street would complete a south-side bicycle facility along 17th Avenue through Fargo. Even without changes to the segment west of 38th Street, the cycle track could tie into the existing shared use path until such time that a project is identified and constructed.

Additionally, poor pavement on this section of the corridor will require rehabilitation. Opportunities to combine pavement rehabilitation with the other multimodal improvements should be evaluated to limit impacts to the corridor.

25TH STREET TO 38TH STREET

From 25th Street to 38th Street, 17th Avenue is a primarily two lane roadway with turn lanes at the major intersections. All-way stop control is placed at 38th Street, 34th Street, and 32nd street intersections. There are sidewalks on both sides of the road. A series of thin overlays have kept the surface quality of pavement in this segment in good condition, however the road has begun to shift and will require reconstruction. The area surrounding the corridor is almost exclusively residential.

Traffic volumes continue to increase from east to west through this segment, carrying around 10,000 vehicles per day currently, growing to around 12,100 vehicles per day by 2040. The all-way stop control creates significant congestion during peak hours resulting in stop and go traffic and driver frustration. The crash trends identified in this segment are also related to poor operations when queues extend across adjacent intersections resulting in rear end crashes. Poor distribution of mainline to sidestreet traffic can contribute to non-compliance and speeding after the stop as drivers may feel it was unnecessary.

There are no dedicated bicycle facilities along this segment of 17th Avenue. The higher volumes and poor operations make cycling on the road difficult.

The primary needs identified in this segment include:

- » Poor vehicular operations at the all-way stop controlled intersections
- » Dedicated bicycle facilities
- » Improved pedestrian crossing at West Gateway Circle

Figure 3.11: 17th Avenue Between 25th Street and 38th Street



IMPROVEMENT STRATEGIES BICYCLE ALTERNATIVES

From 25th Street to 38th Street, the bicycle alternatives received varying support. The High Impact: Cycle Track alternative received 36 percent of first choice votes. Ultimately, 71 percent of people who voted preferred improved bicycle facilities.

A cycle track would provide a much safer bicycling experience, with research finding a 30 to 40 percent reduction in all crash types. Cycle tracks have also been found to attract higher ridership; up to 171 percent increase compared to no dedicated bicycle facilities.

» Cycle Track: \$675,000

Table 3.5: Summary of 17th Street to 38th Street Bicycle Alternatives

Alternative	Technical Score	SRC Support	Community Support*	Overall Score
High Impact: Cycle Track	5.3	5.3	5.3	5.3
Medium Impact: Shared Use Path and Bike Lanes	2.1	2.1	2.1	2.1
Do Nothing	1.8	1.8	1.8	1.8
Low Impact: Shared Use Path	1.8	1.8	1.8	1.8

VEHICLE ALTERNATIVES

From 25th Street to 38th Street, the vehicle alternatives received varying support. The SRC was split between the High Impact: Roundabouts alternative and Medium Impact: Traffic Signals. From the community support perspective, the traffic signals alternative received just one more first place vote than the roundabout alternative. Ultimately, 79 percent of people who voted preferred improved traffic control. However, if right-of-way and utility impacts are too great, traffic signals may be considered.

Roundabouts have been found to reduce total crashes by 35 percent and injury crashes by 76 percent. The curvature in roundabouts also reduce speeds to about 15 to 25 miles per hour. Raised splitter islands on each approach allow pedestrians to cross the road in two stages. Roundabouts also provide opportunities to include landscaping and aesthetic features.

Table 1.6: Summary of 15th Street to 28th Street Vehicle Alternatives

Alternative	Technical Score	SRC Support	Community Support	Overall Score
High Impact: Roundabouts	5.5	5.5	5.5	5.5
Medium Impact: Traffic Signals	5.0	5.0	5.0	5.0
Do Nothing	2.3	2.3	2.3	2.3
Low Impact: Stop Control with Merge Lanes	2.1	2.1	2.1	2.1

» Roundabouts: \$1,100,000

PEDESTRIAN ALTERNATIVES

The high impact alternative to install pedestrian actuated rectangular rapid flashing beacons received the highest overall score for the West Gateway Circle intersection. It received the most first choice votes from the community (63 percent).

Research has found flashing beacons have a compliance rate between 72 and 96 percent and a 30 percent increase in yielding distance of 10 feet or more. Flashing beacons have also been found to reduce vehicle-pedestrian crash potential by 69 percent.

Table 1.7: Summary of 15th Street to 38th Street Pedestrian Alternatives

Alternative	Technical Score	SRC Support	Community Support	Overall Score
High Impact: Pedestrian Actuated RRFB	6.3	6.3	6.3	6.3
Medium Impact: In-Rightway Sign	3.9	3.9	3.9	3.9
Low Impact: Do Nothing	3.1	3.1	3.1	3.1

» Pedestrian actuated RRFB: \$15,000

IMPLEMENTATION STRATEGIES

Poor vehicular operations and lack of dedicated bicycle facilities give this segment of 17th Avenue the highest existing needs. The highest ranked alternatives for this segment would incorporate mini roundabouts at the 32nd Street and 34th Street intersections and a full roundabout at the 38th Street intersection. A cycle track would be constructed on the south side of the road.

With the poor pavement conditions, the opportunity to tie the multimodal improvements to reconstruction would result in much higher costs than estimated but would limit future impacts to the corridor.

Figure 1-15 Simulation of Cycle Track Alternatives on 17th Avenue between 27th Street and 28th Street

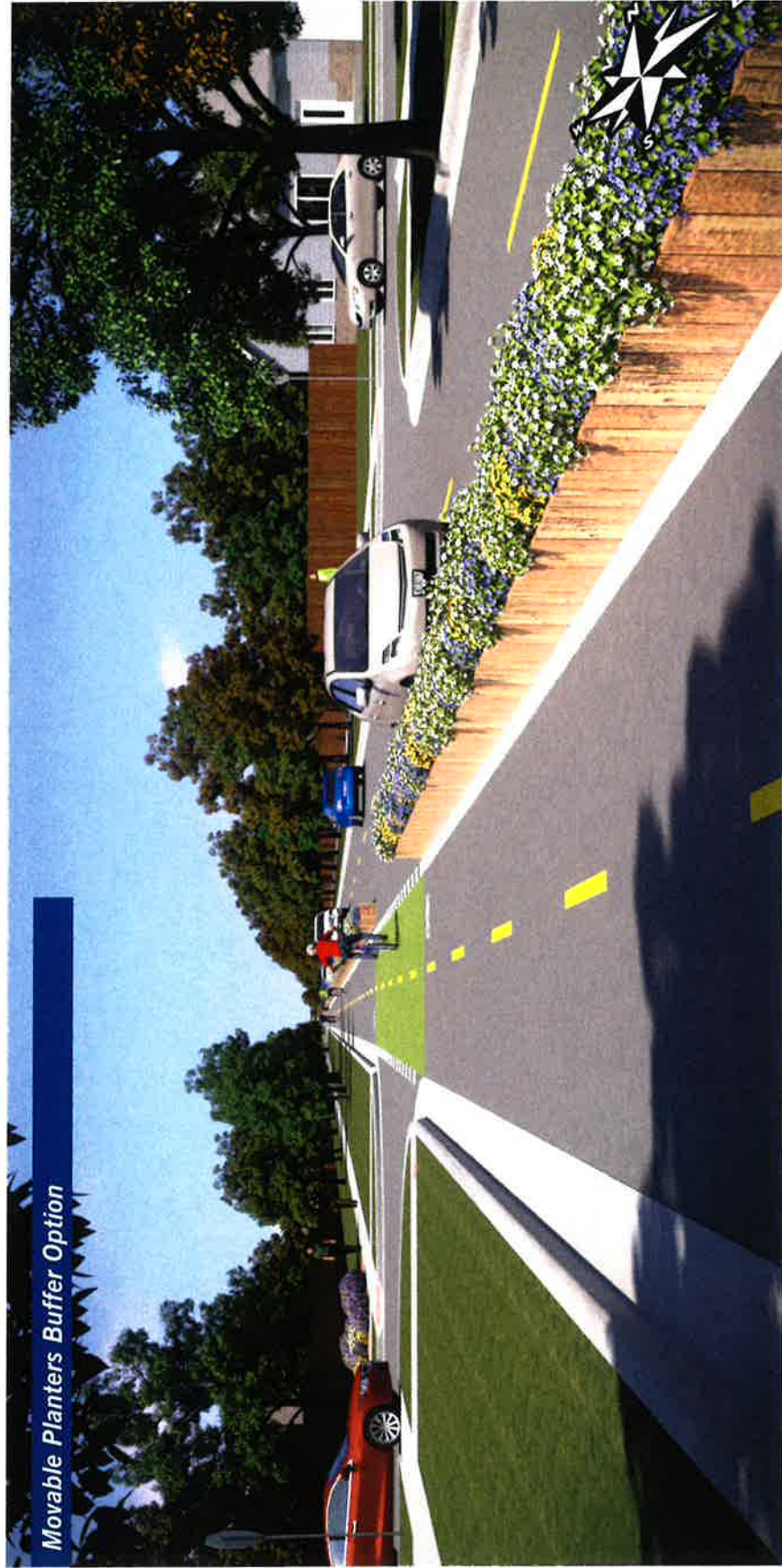
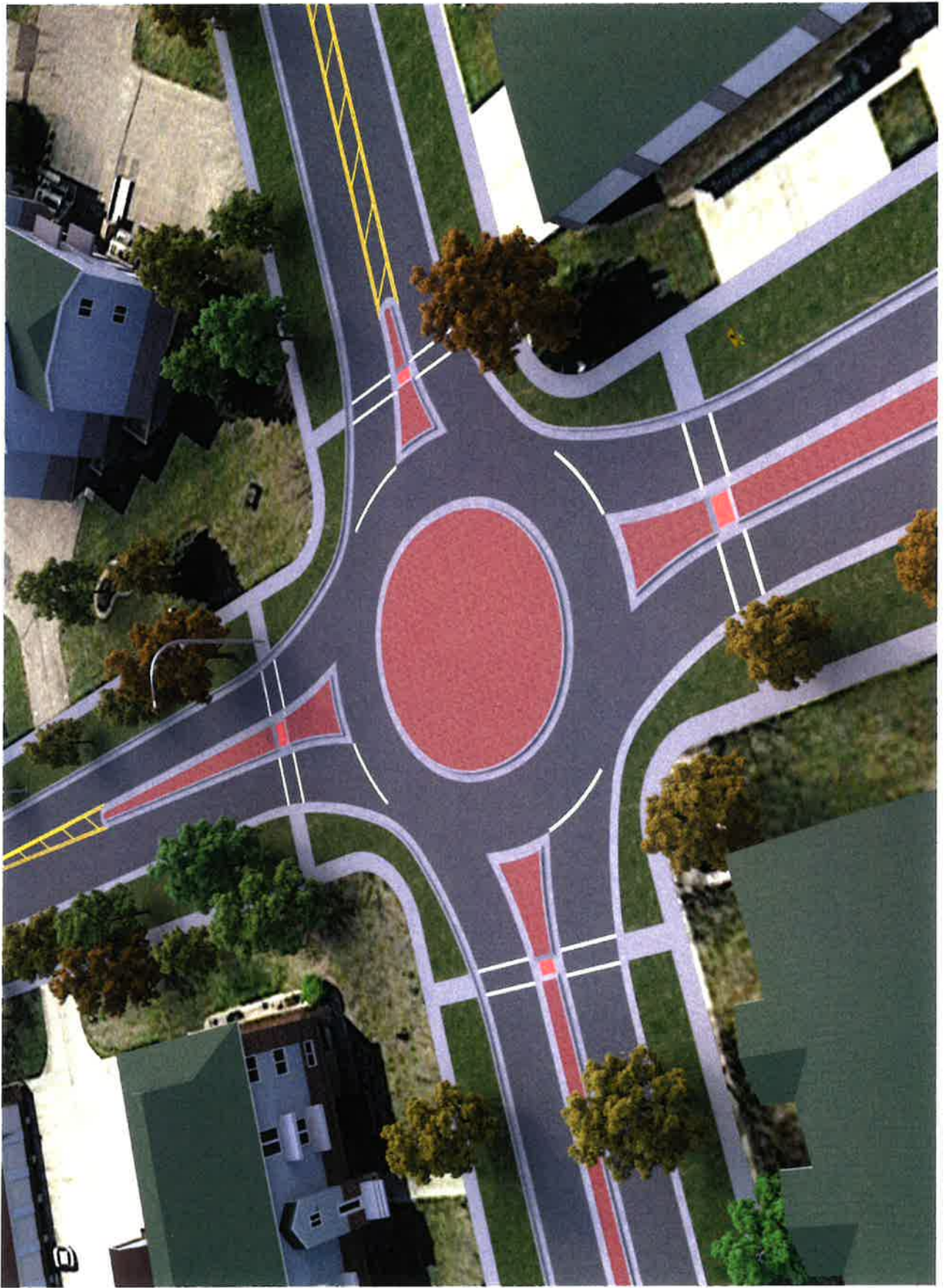


Figure 1.13 Simulation of Roundabout at 17th Avenue and 14th Street Interchange



38TH STREET TO 51ST STREET

From 38th Street to 51st Street, 17th Avenue is a three or four lane section: from 38th Street to 42nd Street, 17th Avenue is a three lane section with one lane in each direction and a center left turn lane and from 42nd Street to 45th Street, 17th Avenue is a four lane section with two lanes in each direction. This segment of 17th Avenue stretches through some of the most intense commercial development in the metro area. The pavement in this segment is in mostly good condition and does not require reconstruction in the short term.

Half of all crashes along 17th Avenue in Fargo occur between 42nd Street and 45th Street. Most crashes are associated with the four-lane section resulting in rear end crashes due to left-turning vehicles. There are also critical crash rates at three intersections along this segment: 42nd Street, 44th Street, and 45th Street. The dense access spacing and driveways west of the 45th Street intersection also elevate crash potential as queues block site lines from the driveways.

This segment of 17th Avenue also carries the most traffic, between 12,800 and 14,300 vehicles per day currently. Redevelopment and infill development could push traffic volumes close to 20,000 vehicles per day between 42nd Street and 45th Street. Vehicular operations in this segment are primarily constrained by the 42nd Street and 45th Street intersections currently. However, future traffic growth may require additional roadway capacity.

A shared-use path on the south side of 17th Avenue provides basic east-west bicycle mobility. However, high volume intersections reduce bicycle crossing safety. Because there is only a shared-use path on the south side of 17th Avenue, vehicles may not look right for westbound bicycles, resulting in crossing challenges.



Figure 1-10 17th Avenue between 42nd Street and 45th Street

The primary needs identified in this segment include:

- » Poor vehicle operations at the 42nd Street and 45th Street intersections
- » Access management west of 45th Street
- » Vehicular safety
- » Improved bicycle facilities
- » Improved pedestrian crossing at 40th Street

IMPROVEMENT STRATEGIES

BICYCLE ALTERNATIVES

From 38th Street to 51st Street, the High Impact: Cycle Track bicycle alternative received the highest overall score. The community preferred the High Impact: Cycle Track alternative with 36 percent of first choice votes. Ultimately, 60 percent of people who voted preferred improved bicycle facilities (the medium and high impact alternatives).

A cycle track would provide a much safer bicycling experience, with research finding a 30 to 40 percent reduction in all crash types. Cycle tracks have also been found to attract higher ridership; up to 126 percent increase compared to regular bicycle facilities (shared use path, sharrows, bike lanes).

- » High Impact: Cycle Track: \$3,925,000

Table 1-8 Summary of SRC Scores for 38th Street Bicycle Alternatives

Alternative	Technical Score	SRC Support	Community Support*	Overall Score
High Impact: Cycle Track	5.1	5.0	5.0	5.1
Medium Impact: North Side Shared Use Path	3.3	3.3	3.3	3.3
Do Nothing	2.5	2.5	2.5	2.5
Low Impact: Intersection Safety Improvements	1.9	1.9	1.9	1.9

Figure 15. Structure of Cycle-lanes on 27th Avenue between 40th Street and 45th Street



VEHICLE ALTERNATIVES

From 38th Street to 51st Street, the High Impact: Widen to Median Divided Section from 38th Street to 47th Street vehicle alternative received the highest overall score. The SRC supported the High Impact: Widen to Median Divided Section and the Road Diet: 3-Lane Section with Buffered Bike Lanes equally (43 percent). The community most supported the High Impact: Widen to Median Divided Section (34 percent). The Do Nothing (21 percent) and the Road Diet: 3-Lane Section with Buffered Bike Lanes (20 percent) also received support.

Raised medians have been found to reduce overall crash occurrence by about 40 percent. When combined with additional treatments, like marked crosswalks, medians have been found to reduce vehicle-pedestrian conflicts by 46 percent. Medians also reduce access risk by converting driveways to right-in/right-out. This access management would reduce access risk by 44 percent. This alternative will mitigate deficient operations expected by 2040.

- » High Impact: Widen to Median Divided Section: \$5,545,000

Table 14. Summary of 40th Street to 45th Street Vehicle Alternatives

Alternative	Technical Score	SRC Support	Community Support	Overall Score
High Impact: Widen to Median Divided Section from 38th Street to 45th Street with Access Management and Spot Improvements	4.8	4.8	4.8	4.8
Road Diet, 3-Lane Section with Buffered Bike Lanes	3.2	3.2	3.2	3.2
Medium Impact: Widen 42nd Street to 45th Street with Spot Improvements	2.6	2.6	2.6	2.6
Low Impact: Spot Improvements and Access Management	2.0	2.0	2.0	2.0
Do Nothing	1.9	1.9	1.9	1.9

It is important to note that there is a significant amount of overlap with the Cycle Track alternative and the Widen to Median Divided Section alternative, so the costs should not be added together.

PEDESTRIAN ALTERNATIVES

The high impact alternative to install pedestrian actuated rectangular rapid flashing beacons received the highest overall score for the 40th Street intersection. It received the most first choice votes from the community (55 percent).

Pedestrian refuge islands reduce the unprotected crossing length for pedestrians by allowing them to cross one direction of traffic at a time. Pedestrian refuge islands have been found to reduce vehicle-pedestrian conflicts up to 46 percent at unsignalized intersections on multi-lane roads. The addition of RRFBs increases stop compliance up to 96 percent, increases yielding distance up to 30 percent, and reduces vehicle-pedestrian crash potential by 69 percent.

- » Pedestrian actuated RRFB and refuge island: \$45,000

Table 15. Summary of 40th Street to 45th Street Pedestrian Alternatives

Alternative	Technical Score	SRC Support	Community Support	Overall Score
High Impact: Refuge Island and RRFB	7.0	7.0	7.0	7.0
Medium Impact: Refuge Island	3.3	3.3	3.3	3.3
Low Impact: Do Nothing	3.0	3.0	3.0	3.0

IMPLEMENTATION STRATEGIES

SHORT TERM SPOT IMPROVEMENTS

Until significant development occurs along the corridor, this segment of 17th Avenue will not need additional capacity. In the short term, a series of smaller projects can help address the safety and operational needs of the corridor.

Implementing the spot improvements at 45th Street and 42nd Street intersections would mitigate some of the congestion and queuing.

- » At 45th Street, change the westbound approach from a single left-turn lane with two through lanes and a right turn lane to a double left turn lane with one through, and a shared through/right lane. This mitigates long queues on the westbound approach that impacts driveways east of 45th Street. This spot improvement would also extend the lane drop to 47th Street, instead of the Happy Harry's driveway, and extend the median approximately 200 feet to minimize conflict at the driveways.
- » At 42nd Street, change the second eastbound through lane that drops after the intersection to a right-turn lane.

Other improvements that should be constructed in the short term include:

- » RRFB and pedestrian refuge island at the 40th Street intersection to improve crossing safety for pedestrians

SHORT TERM ROADWAY RECONFIGURATION

In addition to the intersection and pedestrian improvements discussed in the short term spot improvements implementation strategies above, a 2+1+1 roadway configuration between 44th Street and 42nd Street was developed to address the safety needs of this segment, as shown in Figure 1.16. This alternative would maintain the two eastbound lanes from 45th Street to 42nd Street, but would convert the inside westbound lane to a center left-turn lane, and maintain one lane for westbound traffic.

A three-lane road diet alternative was presented analyzed and presented to the public at the second public input meeting. This alternative included on-street bicycle facilities between 42nd Street and 45th Street, but none from 42nd Street to 38th Street, where they would connect to the cycle track, as discussed above. The short segment of bicycle facility that would force a cyclist from the street to the shared-use path back to the street is likely to have limited appeal to cyclists. The three-lane section would also not be able to accommodate the southbound double left-turn lane at the 45th Street intersection because it would lack a second receiving lane and/or require a merge maneuver, similar to the west approach in front of Happy Harry's. For these reasons, the 2+1+1 configuration was developed. This configuration combines elements of the five-lane section and the road diet, which received strong support from the community and the Study Review Committee.



Figure 1.16: 2+1+1 Concept on 17th Avenue Between 44th Street and 42nd Street

WFO TO LONG TERM

The 2+1+1 concept was developed to effectively utilize the existing roadway space and improve safety and operations. The 2+1+1 concept

- » reflects prevailing traffic conditions. The eastbound movement carries 14 to 22 percent more traffic on a typical weekday and weekend day, respectively. The eastbound direction carries, on average, 20 percent more traffic between 7:00 AM and 8:00 PM, when nearly 90 percent of daily traffic occurs.
- » would provide acceptable operations (LOS "D" or better) at the study intersections under current traffic volumes. This segment of 17th Avenue carries around 13,400 vehicles currently and with significant development along the corridor, discussed in the Future Conditions section of this report, daily traffic could increase to around 19,400 vehicles per day. Traffic operations analysis for the road diet alternative found delay is expected to increase just 12 percent compared to the current configuration. While dependent on a variety of factors, most three-lane sections can carry between 10,000 and 17,000 vehicles per day, with most four-lane sections carrying between 12,000 and 20,000 vehicles per day.
- » would improve safety. Nearly half the total crashes along 17th Avenue, occur between 42nd Street and 45th Street (221 over the last five years). The center left-turn lane in the 2+1+1 alternative would reduce the rear-end crash potential through this section by allowing vehicles to move out of the through lane to safely wait for an acceptable gap. Rear-end crashes made up 28 percent of all crashes along this segment of 17th Avenue. Road diets have been found to reduce most crash types up to 46 percent.
- » maintain the existing bicycle facilities on the shared-use path on the south side of the roadway.

This alternative improves safety and maintains mobility in the short-term with an estimated cost of \$425,000, which includes the 45th Street and 42nd Street intersection improvements. This is a low cost improvement that is expected to have significant positive impacts to safety along the 17th Avenue corridor.

The implementation of the 2+1+1 concept will address many of the most pressing needs of this segment of 17th Avenue. However, growth should be continually monitored to determine if, or when, further expansion is needed. Additionally, once the cycle track is completed on the east segment of 17th Avenue (38th Street to 5th Street), the buffered cycle track can be revisited in this segment as well.

Many of the capacity needs along this segment of 17th Avenue are contingent on future development surrounding the corridor. At such time operational conditions warrant, construct a median divided five-lane section from 38th Street to 47th Street. This construction project would incorporate a buffered two-way cycle track on the south side of 17th Avenue to connect to the two-way cycle track east of 38th Street and the shared use path on the south side of 17th Avenue west of 45th Street. This would complete the high quality bicycle facility across the City of Fargo.

Figure 1.17 Illustration of Median Divided Five Lane Section on 17th Avenue between 42nd Street and 45th Street



EXECUTIVE SUMMARY

TRANSIT

Fargo is served by Metro Area Transit (MAT). Currently, 23 fixed routes serve the metro area. MAT Bus does not run on dedicated stops, a transit rider can request a ride at any corner along a route. The 17th Avenue corridor is serviced by Route 24 between 45th Avenue and the West Acres Shopping Center (via east of 42nd Street) and by Route 16 between the West Acres Shopping Center (via 38th Street) and 5th Street. Additional routes (14, 15, 21, and 22) have transfer points at the West Acres hub.

Almost all areas along the study corridor with residential densities of seven per acre or higher are within one-quarter mile of the existing Route 16, which runs bi-directionally on 17th Avenue with hourly service.

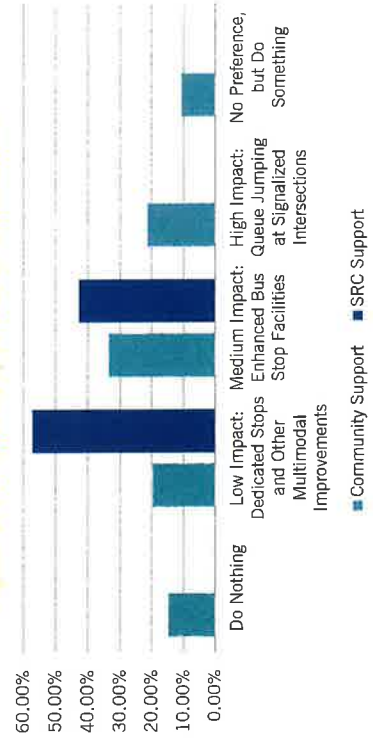
IMPROVEMENT STRATEGIES

Support was split for the transit alternatives. The community most supported the Medium Impact: Enhanced Bus Stop Facilities (34 percent), while the SRC most supported the Low Impact: Dedicated Stops and Other Multimodal Improvements (57 percent). MAT Bus is currently undergoing a study to develop new stop level designs so no costs are available at this time.

IMPLEMENTATION STRATEGIES

A variety of transit improvements were identified and ranked in this study, many of which have been identified in previous studies and are in process for implementation. MAT Bus has ultimate authority over the implementation of transit improvements. The City should continue to work with them to encourage the implementation of dedicated stops and providing enhanced bus stop facilities at strategic locations. The City can continue to improve the multimodal connections to bus stops to expand access to transit.

Figure 1.18: Summary of Transit Alternatives



BARRIER CROSSINGS

Even with marked crosswalks and protected crossings, the major signalized intersections (45th Street, 42nd Street, 25th Street, University Drive) remain a barrier for bicycle and pedestrian traffic. Improvements to the signalized intersections that may be considered include:

- » Lead pedestrian intervals which give pedestrians a small amount of time, typically three to five seconds, to begin crossing the street before a green light is given to vehicles. This allows pedestrians to enter the crosswalk and improve visibility before vehicles can begin making their movements. Lead pedestrian intervals have been found to reduce pedestrian-vehicle crashes by 60 percent. Lead pedestrian intervals are demonstrated in Figure 1.19.

Figure 1.19: Lead Pedestrian Interval



- » Bicycle signal heads give bicyclists a small amount of time to begin crossing the street before a green light is given to vehicles, improving visibility. Bicycle signal heads are shown in Figure 1.20.



NEXT STEPS

IDENTIFYING FUNDING

While identified as a gap in the bicycle network in Metro 2040, the Fargo-Moorhead Long Range Transportation Plan (LRTP), and the 2016 Bicycle and Pedestrian Plan, no projects have been included in a cost-constrained plan. This means there has been no identified funding for 17th Avenue. With two projects identified, the City will need to identify funding opportunities. Federal funds could be available for the 17th Avenue corridor, but are not available until at least 2023 and would require an environmental document be completed. Local funding increases flexibility and accelerates implementation and would rely on normal city funding mechanisms, including assessments.

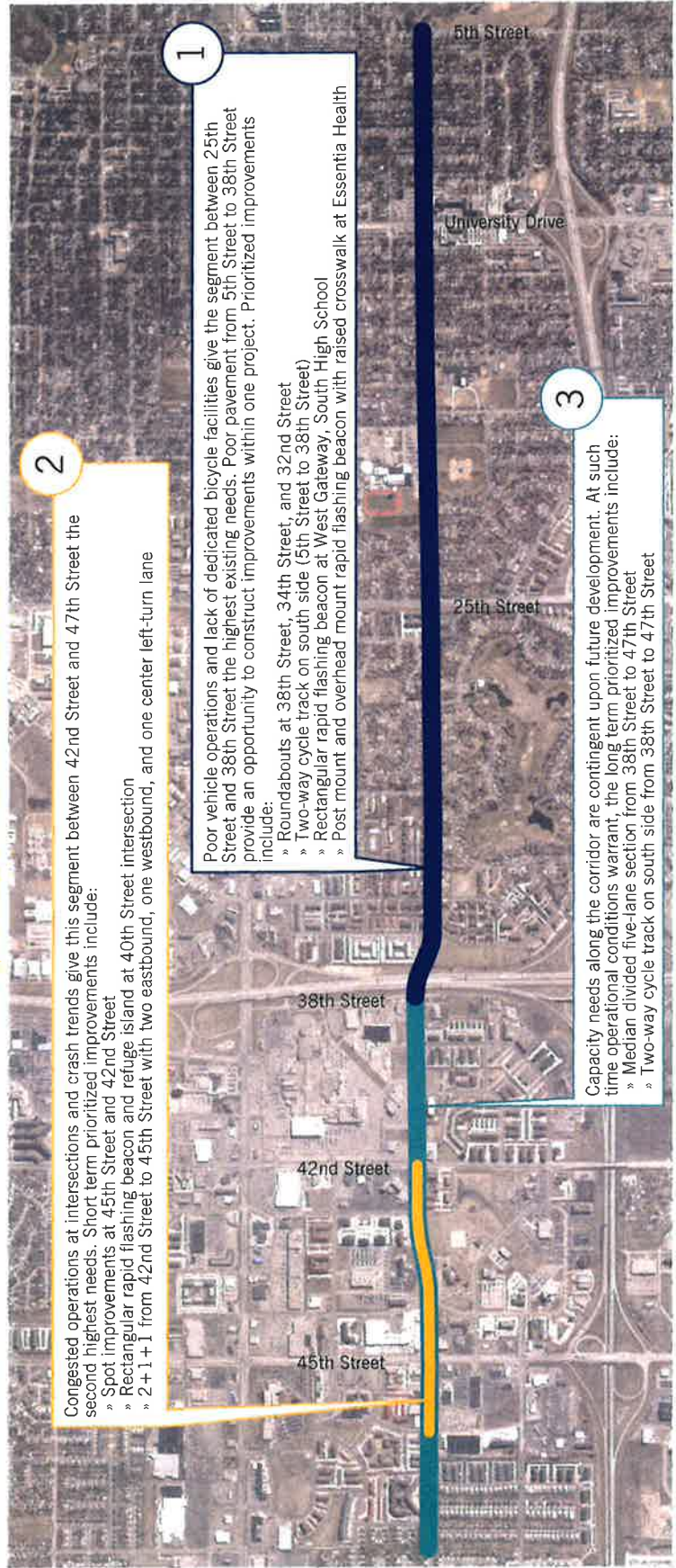
SUMMARY OF IMPLEMENTATION

The projects prioritized in this study would:

- » Create a bicycle corridor in Fargo that would extend from the eastern border and the Red River Trail across the city into West Fargo. Protected bicycle facilities reduce crashes up to 40 percent and increase ridership up to 171 percent compared to no bicycle facilities.
- » Mitigate congestion at five of the major intersections across the corridor. Reconfiguring lanes at 45th Street and 42nd Street will reduce queues and rear end crash potential. Roundabouts at 38th Street, 34th Street, and 32nd Street will improve operations at these locations and calm traffic speeds through that segment of the corridor.
- » Improve vehicular safety through the addition of turn lanes and medians between 42nd Street and 45th Street
- » Improve pedestrian crossing safety at four key crossing locations.

The summary of implementation is shown in Figure 1.21, with the summary of the highest ranked improvements in Figure 1.22.

Figure 1.22 Summary of Highest Ranked Improvements



2
 Congested operations at intersections and crash trends give this segment between 42nd Street and 47th Street the second highest needs. Short term prioritized improvements include:
 » Spot improvements at 45th Street and 42nd Street
 » Rectangular rapid flashing beacon and refuge island at 40th Street intersection
 » 2+1+1 from 42nd Street to 45th Street with two eastbound, one westbound, and one center left-turn lane

1
 Poor vehicle operations and lack of dedicated bicycle facilities give the segment between 25th Street and 38th Street the highest existing needs. Poor pavement from 5th Street to 38th Street provide an opportunity to construct improvements within one project. Prioritized improvements include:
 » Roundabouts at 38th Street, 34th Street, and 32nd Street
 » Two-way cycle track on south side (5th Street to 38th Street)
 » Rectangular rapid flashing beacon at West Gateway, South High School
 » Post mount and overhead mount rapid flashing beacon with raised crosswalk at Essentia Health

3
 Capacity needs along the corridor are contingent upon future development. At such time operational conditions warrant, the long term prioritized improvements include:
 » Median divided five-lane section from 38th Street to 47th Street
 » Two-way cycle track on south side from 38th Street to 47th Street

Summary of Highest Ranked Alternatives

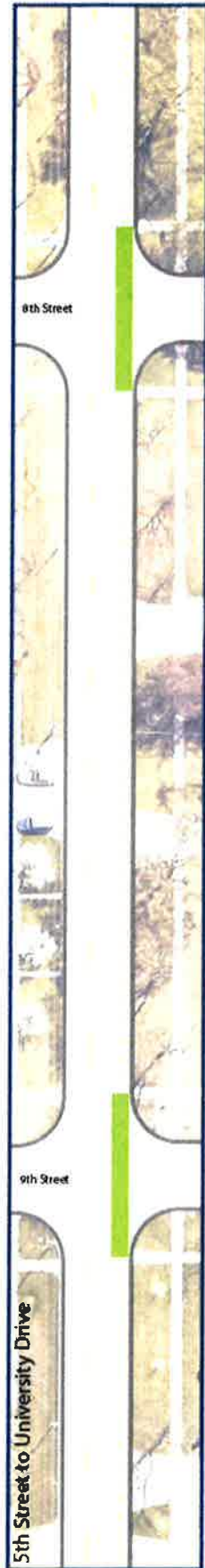


Mode Category	Technical Score	Notes	Overall Score
Vehicular Efficiency	●●●●●●●●	Widening and spot improvements in the west segment improve vehicle operations and safety. Roundabouts at 38th Street, 34th Street, and 32nd Street intersections improve vehicular operations and safety and act to calm traffic, preserving the residential nature of the corridor.	●●●●●●●●
Bicycle and Pedestrian Mobility	●●●●●●●●	A continuous, dedicated, and separated bicycle facility improves bicycle mobility and safety. Pedestrian crossing improvements improve pedestrian safety and mobility.	●●●●●●●●
Cost and Impacts	●○○○○○○○○	Large construction impacts, particularly on the west side to accommodate all improvements. Roundabouts on the east side may require ROW. Limited cost and impacts east of 25th Street.	●●●●●●●●

Summary of Highest Ranked Alternatives

Legend

- Boulevard
- Sidewalk
- Median



Long Term Improvement Plan

Short Term Improvement Plan





December 12, 2018

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of an application for abatement of taxes made by Robert Hill Law, Ltd. Representing Shoppes at Osgood, LLC / SuperValu. The application is for the Hornbachers property at 4151 45th St. S. and is requesting that the valuation for 2018 be reduced from \$6,900,000 to \$3,306,650.

Our current valuation is a result of our original appraisal of the completed building for the 2007 tax year of \$5,380,000 with subsequent recalculations and adjustments based on market analysis. Our appraised value is for the fee simple interest of the entire parcel including any leased spaces not occupied or used by SuperValu / Hornbachers.

We have arrived at our current value using the same valuation methodology and approaches that we have used to arrive at the valuations of all other similar properties in the city. We have provided various breakdowns indicating how our current value of the subject property is supported by sales and is consistent with our value on competing properties

The only information included by the applicant in addition to the application are simply printouts from the Cass County Treasurer and City of Fargo websites showing basic property information and valuations and taxes levied for the years 2010-1017.

No appraisal or valuation analysis was provided to support the value requested by the applicant.

SUGGESTED MOTION:

Denial of Application For Abatement Or Refund Of Taxes #4477 submitted by Robert Hill Law, Ltd. on behalf of Shoppes at Osgood, LLC / SuperValu on 4151 45th St. S..

Sincerely,

A handwritten signature in black ink that reads "Ben Hushka".

Ben Hushka
Fargo City Assessor

4151 45 ST S

THE SHOPPES AT OSGOOD, LLP

01-8100-00010-000

Robert Hill Law, Ltd (Agent)

Robert Hill Law, Ltd, as agent, has filed an application for abatement and refund of taxes on the above referenced property. The application, County Auditor's File No. 4477, for the 2018 assessment year, is requesting a value of \$3,306,650 or a reduction of \$3,593,350 (incorrectly stated as \$359,350 on the application) on behalf of The Shoppes at Osgood, LLC¹ / SuperValu (or Hornbacher's as the operator).

The applicant has provided no supporting documentation for the requested value reduction.

Recapped on the left portion of the following table is the value indication from the abatement application and the difference between that value and the certified 2018 value. Also recapped on the right portion of the table is the "reviewed" 2018 value and the "certified" values for 2018, 2017, 2016, 2015, and 2014 assessment years. Relevant sales and the valuation of competing properties as recapped in following tables provide the basis for the "reviewed" value and support the 2018 "certified" value.

Robert Hill Law, Ltd		Assessment Department					
		Reviewed 2018	Certified 2018	Certified 2017	Certified 2016	Certified 2015	Certified 2014
Land Value	\$ 1,193,000	\$ 2,387,000	\$ 2,387,000	\$ 2,387,000	\$ 1,193,000	\$ 1,193,000	\$ 1,193,000
Improvement Value	\$ 2,113,650	\$ 4,513,000	\$ 4,513,000	\$ 4,513,000	\$ 5,802,800	\$ 5,469,700	\$ 4,864,000
True & Full Value	\$ 3,306,650	\$ 6,900,000	\$ 6,900,000	\$ 6,900,000	\$ 6,995,800	\$ 6,662,700	\$ 6,057,000
Building Area (sf) ¹	66,761	66,761	66,761	66,761	66,761	66,761	66,761
Total Value / sf (Bldg Area)	\$ 49.53	\$ 103.35	\$ 103.35	\$ 103.35	\$ 104.79	\$ 99.80	\$ 90.73
Improvement Value / sf (Bldg Area)	\$ 31.66	\$ 67.60	\$ 67.60	\$ 67.60	\$ 86.92	\$ 81.93	\$ 72.86
Land Value / sf (Land Area)	\$ 5.00	\$ 10.00	\$ 10.00	\$ 10.00	\$ 5.00	\$ 5.00	\$ 5.00
Dollar Change (from 2018 Certified Value) ²	\$ (3,593,350)	\$ -	\$ -	\$ (95,800)	\$ 333,100	\$ 605,700	(from Prior Year)
Percent Change (from 2018 Certified Value)	-52.1%	0.0%	0.0%	-1.4%	5.0%	10.0%	(from Prior Year)
Dollar Change from Respective Reviewed Value	\$ (3,593,350)						
Percent Change (from Respective Reviewed Value)	-52.1%						
		Review	No Change	Reappraisal	Market Index	Market Index	Change Cause

¹ Building Area Corrected on 08/19/16 after discovery of error.

² Abatement Application indicates "The Difference of \$359,350 ..."

The property consists of an improvement constructed in 2005 (with completion in 2006) currently occupied by a local grocer/supermarket under lease from The Shoppes at Osgood, LLP. The improvement consists of masonry construction with 66,133 square feet of building area (excluding an office mezzanine level with 2,499 square feet of area), a 2,500 square vehicle canopy, and approximately 140,000 square feet of asphalt paving. The property also houses a retail pharmacy, coffee shop, and a branch for a local bank.

Local land and improved sales, as recapped in the first and second tables on the following pages, support the 2018 certified and reviewed value as recapped in the preceding table. While considered, the income approach to value was not utilized in this analysis due to the extreme lack of reliable rental data for this property type. In addition, the valuation of competing properties reflects uniformity in the valuation process.

ASSESSMENT DEPARTMENT RECOMMENDATION

Retain the current value of \$6,900,000 as certified for 2018.

¹ As of June 2017 the correct legal owner for this property is The Shoppes at Osgood, LLP.

4151 45 ST S

THE SHOPPES AT OSGOOD, LLP

01-8100-00010-000

Robert Hill Law, Ltd (Agent)

The land sales as recapped in the following table occurred between January 2015 and December 2017 all located within the vicinity of the subject property. These sales are of similar zoning and bracket the subject site in size. In aggregate, these sales support the current land value of \$10.00 per square foot or \$2,387,000.

Land Sales

Address	Parcel No	Seg Id	Sale Date	Adjusted Sale Price	Seg SF	Cont Sale \$ / SF	Total Sale \$ / SF	Specials / SF	Zoning	Acres
4302 17 AVE S	01-3823-00015-030	1	09-Jul-15	\$ 1,437,300	147,226	\$ 9.68	\$ 9.76	\$ 0.08	GC	3.3798
4476 31 AVE S	01-7180-00801-000	2	08-Nov-17	\$ 2,942,900	408,411	\$ 6.75	\$ 7.21	\$ 0.46	LC	9.3758
4450 31 AVE S	01-7180-00830-000	1	21-Dec-17	\$ 2,214,600	279,328	\$ 7.52	\$ 7.93	\$ 0.41	LC	6.4125
4900 23 AVE S	01-7680-00103-000	1	10-Aug-17	\$ 1,274,600	108,808	\$ 11.26	\$ 11.71	\$ 0.46	LC	2.4979
4055 41 AVE S	01-7910-00300-000	1	20-Sep-16	\$ 2,267,300	309,574	\$ 6.89	\$ 7.32	\$ 0.44	LC	7.1068
4624 28 AVE S	01-8150-00100-000	1	10-Feb-17	\$ 2,136,600	181,413	\$ 9.50	\$ 11.78	\$ 2.28	LC	4.1647
3825 53 AVE S	01-8380-00020-000	1	01-Dec-15	\$ 1,991,200	142,958	\$ 10.64	\$ 13.93	\$ 3.29	LC	3.2819
3751 53 AVE S	01-8380-00090-000	1	26-Jul-17	\$ 1,600,900	169,747	\$ 5.89	\$ 9.43	\$ 3.54	LC	3.8969
	01-8473-00100-000									
	01-8473-00200-000									
2301 55 ST S	01-8516-00100-000	1	01-Jul-16	\$ 4,651,890	274,267	\$ 13.42	\$ 16.96	\$ 3.54	LC	6.2963
4110 51 AVE S	01-8503-00300-000	1	28-Jan-15	\$ 3,018,900	315,182	\$ 9.52	\$ 9.58	\$ 0.06	GC	7.2356
5600 38 AVE S	01-8556-00230-000	1	14-Apr-15	\$ 2,474,579	309,229	\$ 5.25	\$ 8.00	\$ 2.75	LC	7.0989
4671 38 ST S	01-8605-00100-000	1	07-Jul-16	\$ 1,085,600	162,130	\$ 5.25	\$ 6.70	\$ 1.45	LC	3.7220
4014 17 AVE S	01-8652-00200-000	1	28-Jun-17	\$ 1,600,600	113,479	\$ 13.66	\$ 14.10	\$ 0.45	GC	2.6051
	Minimum		28-Jan-15		108,808	\$ 5.25	\$ 6.70	\$ 0.06		2.4979
	Maximum		21-Dec-17		408,411	\$ 13.66	\$ 16.96	\$ 3.54		9.3758
	Median				181,413	\$ 9.50	\$ 9.58	\$ 0.46		4.1647
	Mean				224,750	\$ 8.86	\$ 10.34	\$ 1.48		5.1596
Shoppes at Osgood / Hornbachers	Seg Id			Land Value	Seg SF		Total Value / sf		Zoning	Acres
4151 45 ST S	01-8100-00010-000	3		\$ 2,387,000	238,696		\$ 10.00		LC	5.4797

The improved sales, all located in the Fargo real estate market, as recapped in the following table occurred between December 2008 and June 2017. These sales bracket the subject properties age and building area. The blue highlighted sales are included as support only (they have been excluded from the statistical analysis). Furthermore, the yellow highlighted sale is of the subject property and two adjoining parcels, sold in June 2017 at \$170.65 per square foot of total building area. A second transfer for the remaining five parcels owned by The Shoppes at Osgood LLC occurred on the same date to the same grantee included several pieces of vacant land, the adjoining strip mall, and the fueling facility and car wash at a reported \$290.71 per square foot of total building area.

Improved Sales

Bldg Name	Parcel No	Seg Id	Sale Date	Sale Price Adjusted	Occupancy	Yr Bult	Bldg SF	Land SF	Bldg to Land	Site Coverage	Land Value / sf	Total Sale \$ / sf	Impr Sale \$ / sf	Bldg Sale \$ / sf
4302 13 AVE S	01-2332-00080-080	1	23-Dec-08	\$ 8,177,500	Strip Mall	2006	39,688	150,084	3.78	26.4%	\$ 7.00	\$ 206.04	\$ 179.56	\$ 174.93
2790 UNIVERSITY DR S	01-3500-04504-000	1	31-Aug-11	\$ 858,200	Retail	1997	6,528	29,866	4.58	21.9%	\$ 5.02	\$ 131.46	\$ 108.49	\$ 103.05
2619 UNIVERSITY DR S	01-0066-00225-000	1	02-Dec-11	\$ 1,175,000	Strip Mall	1985	12,534	50,317	4.01	24.9%	\$ 5.24	\$ 93.75	\$ 72.71	\$ 67.90
2802 BROADWAY	01-4181-00020-000	1	03-Dec-12	\$ 675,400	Strip Mall	1985	7,985	29,182	3.65	27.4%	\$ 1.99	\$ 84.58	\$ 77.32	\$ 73.07
4101 13 AVE S ²	01-3600-00230-000	1-4	14-Aug-14	\$ 9,843,860	Strip Mall	1977	127,393	521,038	4.09	24.4%	\$ 6.75	\$ 77.27	\$ 49.66	\$ 44.27
2300 13 AVE S	01-2840-00195-010	1	29-Dec-12	\$ 909,767	Retail	1994	6,400	47,894	7.48	13.4%	\$ 4.99	\$ 142.15	\$ 104.81	\$ 104.81
4427 13 AVE S	01-0277-00010-000	1	30-May-13	\$ 7,425,400	Discount	1991	95,096	365,989	3.85	26.0%	\$ 5.75	\$ 78.08	\$ 55.96	\$ 50.49
1126 43 ST S	01-3610-00605-000	1	01-Jul-13	\$ 5,168,900	Discount	1994	48,004	105,788	2.20	45.4%	\$ 6.52	\$ 107.68	\$ 93.30	\$ 90.30
1201 42 ST S	01-3600-00255-000	1			Retail									
2119 13 AVE S	01-1050-00081-000	1	13-Sep-13	\$ 2,160,700	Strip Mall	2004	15,500	89,171	5.75	17.4%	\$ 2.00	\$ 139.40	\$ 127.92	\$ 121.95
4861 13 AVE S	01-2333-00200-000	1	05-Aug-14	\$ 1,123,500	Retail	1996	7,790	35,903	4.61	21.7%	\$ 6.99	\$ 144.22	\$ 112.00	\$ 105.30
1431 UNIVERSITY DR S ²	01-2040-03415-000	1	18-Nov-14	\$ 2,864,000	Strip Mall	1962	30,233	101,493	3.36	29.8%	\$ 5.00	\$ 94.73	\$ 77.96	\$ 72.14
1339 34 ST S	01-2580-00115-000	1	30-Jun-15	\$ 1,783,000	Strip Mall	2000	16,190	56,250	3.47	28.8%	\$ 4.00	\$ 110.13	\$ 96.23	\$ 93.95
4151 45 ST S	01-8100-00010-000	1	01-Jun-17	\$ 22,723,370	Supermarket	2005	133,161	625,164	4.69	17.9%	\$ 10.00	\$ 170.65	\$ 123.70	\$ 113.32
4201 45 ST S	01-8100-00030-000	1			Branch Bank	2006								
4265 45 ST S	01-8100-00040-000	1			Strip Mall	2005								
3730 36 ST S	01-1970-00011-000	1-5	26-Feb-16	\$ 24,173,000	Discount	1994	263,350	1,385,956	5.26	19.0%	\$ 3.00	\$ 91.79	\$ 76.00	\$ 67.33
5100 14 AVE S	01-6230-00135-000	1	01-Apr-16	\$ 6,401,900	Discount	2000	55,723	169,082	3.03	33.0%	\$ 5.79	\$ 114.89	\$ 97.32	\$ 94.36
5050 13 AVE S	01-6230-00133-000	1	01-Jul-16	\$ 15,021,200	Strip Mall	2001	97,559	349,935	3.59	27.9%	\$ 6.72	\$ 153.97	\$ 129.86	\$ 124.32
4900 13 AVE S	01-5690-00111-000	1												
4950 13 AVE S	01-5690-00113-000	1												
4761 13 AVE S	01-2333-00300-000	1	13-Jul-16	\$ 1,905,400	Retail	1992	8,944	36,051	4.03	24.8%	\$ 6.99	\$ 213.04	\$ 184.86	\$ 180.61
	Mean		Excluded due to age of improvements		1996	54,297	235,109	4.27	25.0%	\$ 5.47	\$ 132.12	\$ 109.34	\$ 104.38	
	Median				1995	16,190	89,171	4.01	24.9%	\$ 5.75	\$ 131.46	\$ 104.81	\$ 103.05	
	Minimum				1985	6,400	29,182	2.20	13.4%	\$ 1.99	\$ 78.08	\$ 55.96	\$ 50.49	
	Maximum				2006	263,350	1,385,956	7.48	45.4%	\$ 10.00	\$ 213.04	\$ 184.86	\$ 180.61	
Bldg Name	Parcel No	Seg Id	Assessment Year	T&F Value	Occupancy	Yr Bult	Bldg SF	Land SF	Bldg to Land	Site Coverage	Land Value / sf	Total Sale \$ / sf	Impr Sale \$ / sf	Bldg Sale \$ / sf
4151 45 ST S - Hornbachers	01-8100-00010-000	1	2018	\$ 6,900,000	Grocer	2005	66,761	238,696	3.58	28.0%	\$ 10.00	\$ 103.35	\$ 67.60	\$ 60.99
Reviewed Value	Updated Cost¹		2018	\$ 6,900,000	Grocer	2005	66,761	238,696	3.58	28.0%	\$ 10.00	\$ 103.35	\$ 67.60	\$ 60.99

¹ Based on Marshall & Swift Cost Estimator utilizing model specifications developed from sales of retail parcels for the 2017 reappraisal effort.

4151 45 ST S

THE SHOPPES AT OSGOOD, LLP

01-8100-00010-000

Robert Hill Law, Ltd (Agent)

Competitive Properties - Bracketed by Yr Blt (Age)

Bldg Name	Full Land Value	Full Impr Value	T&P Value	Prop Type	Yr Blt	Bldg sf	Seg sf	Bldg to Land Ratio	Site Coverage	Land Val/ sf	Total Val/ sf	Impr Val/ sf	Bldg Val/ sf
1801 45 ST S	\$ 849,000	\$ 5,437,000	\$ 6,286,000	Strip Mall	2003	52,470	89,384	1.70	58.7%	\$ 9.50	\$ 119.80	\$ 103.62	\$ 103.46
1895 45 ST S	\$ 175,000	\$ 775,600	\$ 950,600	Retail	2007	7,296	18,397	2.52	39.7%	\$ 9.51	\$ 130.29	\$ 106.30	\$ 104.08
2119 13 AVE S	\$ 178,000	\$ 1,601,000	\$ 1,779,000	Strip Mall	2004	15,500	59,171	3.82	26.2%	\$ 3.01	\$ 114.77	\$ 103.29	\$ 97.33
1609 32 AVE S	\$ 440,000	\$ 1,035,000	\$ 1,475,000	Retail	2000	10,044	62,841	6.26	16.0%	\$ 7.00	\$ 146.85	\$ 103.05	\$ 97.87
1617 32 AVE S	\$ 659,000	\$ 1,748,000	\$ 2,407,000	Strip Mall	2001	22,407	94,196	4.20	23.8%	\$ 7.00	\$ 107.42	\$ 78.01	\$ 74.11
2512 7 AVE S	\$ 282,000	\$ 1,242,000	\$ 1,524,000	Strip Mall	2006	11,167	49,022	3.72	26.9%	\$ 5.75	\$ 115.74	\$ 94.33	\$ 89.10
4302 13 AVE S	\$ 1,486,000	\$ 4,911,000	\$ 6,397,000	Strip Mall	2006	39,688	150,084	3.78	26.4%	\$ 9.00	\$ 161.18	\$ 123.74	\$ 112.28
3402 13 AVE S	\$ 492,000	\$ 1,377,700	\$ 1,869,700	Retail	2005	15,407	68,365	4.44	22.5%	\$ 7.20	\$ 121.35	\$ 89.42	\$ 85.23
1303 34 ST S	\$ 391,000	\$ 1,150,100	\$ 1,541,100	Retail	2008	9,988	48,820	4.89	20.5%	\$ 8.01	\$ 154.30	\$ 115.15	\$ 103.87
1339 34 ST S	\$ 366,000	\$ 1,475,000	\$ 1,841,000	Strip Mall	2000	16,190	56,250	3.47	28.8%	\$ 6.51	\$ 113.71	\$ 91.11	\$ 88.41
2424 13 AVE S	\$ 472,000	\$ 1,375,500	\$ 2,047,500	Retail	2006	14,767	74,942	5.07	19.7%	\$ 6.30	\$ 138.65	\$ 106.69	\$ 101.48
1015 MAIN AVE:	\$ 224,000	\$ 869,000	\$ 1,093,000	Strip Mall	2002	12,096	27,998	2.31	43.2%	\$ 8.00	\$ 90.36	\$ 71.84	\$ 69.21
4201 13 AVE S	\$ 452,000	\$ 1,068,600	\$ 1,520,600	Discount	2008	11,534	47,799	4.14	24.1%	\$ 9.46	\$ 131.84	\$ 92.65	\$ 86.23
4401 13 AVE S	\$ 414,000	\$ 429,000	\$ 843,000	Discount	2003	7,700	37,679	4.89	20.4%	\$ 10.99	\$ 109.48	\$ 55.71	\$ 48.99
1750 45 ST S	\$ 414,000	\$ 931,000	\$ 1,345,000	Discount	2003	12,491	37,679	3.02	33.2%	\$ 10.99	\$ 107.68	\$ 74.53	\$ 70.39
4474 23 AVE S	\$ 2,671,000	\$ 4,612,000	\$ 7,283,000	Strip Mall	2005	50,638	242,775	4.79	20.9%	\$ 11.00	\$ 143.82	\$ 91.08	\$ 85.32
1570 32 AVE S	\$ 301,000	\$ 484,900	\$ 785,900	Retail	2006	6,800	42,930	6.31	15.8%	\$ 7.01	\$ 115.57	\$ 71.31	\$ 65.50
2551 45 ST S	\$ 2,046,000	\$ 3,256,000	\$ 5,302,000	Strip Mall	2001	44,494	170,466	3.83	26.1%	\$ 12.00	\$ 119.16	\$ 73.18	\$ 70.31
2501 45 ST S	\$ 430,000	\$ 380,600	\$ 810,600	Discount	2001	6,448	35,869	5.56	18.0%	\$ 11.99	\$ 125.71	\$ 59.03	\$ 53.94
4900 13 AVE S	\$ 881,000	\$ 2,396,000	\$ 3,277,000	Strip Mall	2002	19,658	80,122	4.08	24.5%	\$ 11.00	\$ 166.70	\$ 121.88	\$ 116.04
4950 13 AVE S	\$ 1,440,000	\$ 4,635,000	\$ 6,075,000	Strip Mall	2004	43,809	130,901	2.99	22.4%	\$ 11.00	\$ 138.67	\$ 105.80	\$ 102.86
4501 15 AVE S	\$ 1,773,000	\$ 3,094,000	\$ 4,867,000	Strip Mall	2000	36,620	168,834	4.61	21.7%	\$ 10.50	\$ 132.91	\$ 84.49	\$ 78.81
4700 17 AVE S	\$ 4,780,000	\$ 5,518,000	\$ 10,298,000	Discount	2002	118,193	503,196	4.26	23.5%	\$ 9.50	\$ 87.13	\$ 46.69	\$ 43.16
5050 13 AVE S	\$ 1,375,000	\$ 3,682,000	\$ 5,057,000	Strip Mall	2001	34,092	138,912	4.07	24.5%	\$ 9.00	\$ 148.33	\$ 108.00	\$ 102.37
5100 14 AVE S	\$ 1,522,000	\$ 4,446,000	\$ 5,968,000	Discount	2000	55,723	169,082	3.03	33.0%	\$ 9.00	\$ 107.10	\$ 79.79	\$ 77.39
5001 13 AVE S	\$ 6,285,000	\$ 6,270,000	\$ 12,555,000	Discount	2002	141,474	698,348	4.94	20.3%	\$ 9.00	\$ 88.74	\$ 44.32	\$ 36.07
3201 43 ST S	\$ 747,000	\$ 668,700	\$ 1,415,700	Retail	2006	14,957	82,983	5.55	18.0%	\$ 9.00	\$ 94.65	\$ 44.32	\$ 39.29
2511 KIRSTIN LN S	\$ 1,076,000	\$ 2,867,000	\$ 3,943,000	Strip Mall	2004	25,352	153,792	6.07	16.5%	\$ 7.00	\$ 155.53	\$ 113.09	\$ 101.01
4601 23 AVE S	\$ 3,027,000	\$ 6,798,700	\$ 9,825,700	Discount	2004	120,419	252,258	2.07	26.7%	\$ 12.00	\$ 81.60	\$ 56.46	\$ 53.90
4701 AGASSIZ CROSSING S	\$ 1,727,000	\$ 1,089,800	\$ 2,816,800	Retail	2005	25,456	132,810	5.22	19.2%	\$ 13.00	\$ 110.65	\$ 42.81	\$ 38.14
4523 23 AVE S	\$ 872,000	\$ 324,300	\$ 1,196,300	Discount	2007	9,812	67,041	6.83	14.6%	\$ 13.01	\$ 121.92	\$ 33.05	\$ 36.19
4265 45 ST S	\$ 3,444,000	\$ 4,749,000	\$ 8,193,000	Strip Mall	2005	63,672	344,382	5.41	12.3%	\$ 10.00	\$ 128.68	\$ 74.59	\$ 68.30
4457 MAIN AVE:	\$ 234,000	\$ 695,000	\$ 929,000	Retail	2007	9,775	51,899	5.31	18.8%	\$ 4.51	\$ 95.04	\$ 71.10	\$ 67.01
3757 55 AVE S	\$ 10,010,000	\$ 10,525,300	\$ 20,535,300	Discount	2008	191,151	1,000,960	5.24	19.1%	\$ 10.00	\$ 107.43	\$ 55.06	\$ 50.97
1000 45 ST S	\$ 791,000	\$ 1,905,000	\$ 2,696,000	Strip Mall	2007	19,854	92,460	4.66	21.5%	\$ 8.56	\$ 135.79	\$ 95.95	\$ 91.39
Minimum					2000	6,448	18,397	1.70	12.3%	\$ 3.01	\$ 81.60	\$ 33.05	\$ 36.07
Maximum					2008	191,151	1,000,960	6.83	58.7%	\$ 13.01	\$ 166.70	\$ 123.74	\$ 116.04
Mean					2004	37,118	156,647	4.37	24.2%	\$ 9.09	\$ 121.96	\$ 82.34	\$ 77.43
Median					2004	19,658	82,983	4.44	22.4%	\$ 9.50	\$ 119.80	\$ 84.49	\$ 78.81

Address	Full Land Value	Full Impr Value	T&P Value	Prop Type	Yr Bldt	Bldg SF	Seg Sqft	Bldg to Land Ratio	Site Coverage	Land Val/ sf	Total Val/ sf	Impr Val/ sf	Bldg Val/ sf
4151 45 St S/Hornbachers (2018)	\$ 2,387,000	\$ 4,513,000	\$ 6,900,000	Supermarket	2005	66,761	238,696	3.58	28.0%	\$ 10.00	\$ 103.35	\$ 67.60	\$ 60.99

The valuation of properties bracketing the subject's age (year built) indicate the subject may be slightly under-valued.

Competitive Properties - Bracketed by Bldg sf (+/- 30% of Subject)

Bldg Name	Full Land Value	Full Impr Value	T&P Value	Prop Type	Yr Blt	Bldg sf	Seg sf	Bldg to Land Ratio	Site Coverage	Land Val/ sf	Total Val/ sf	Impr Val/ sf	Bldg Val/ sf
1801 45 ST S	\$ 849,000	\$ 5,437,000	\$ 6,286,000	Strip Mall	2003	52,470	89,384	1.70	58.7%	\$ 9.50	\$ 119.80	\$ 103.62	\$ 103.46
4474 23 AVE S	\$ 2,671,000	\$ 4,612,000	\$ 7,283,000	Strip Mall	2005	50,638	242,775	4.79	20.9%	\$ 11.00	\$ 143.82	\$ 91.08	\$ 85.32
5100 14 AVE S	\$ 1,522,000	\$ 4,446,000	\$ 5,968,000	Discount	2000	55,723	169,082	3.03	33.0%	\$ 9.00	\$ 107.10	\$ 79.79	\$ 77.39
1615 38 ST S	\$ 1,461,000	\$ 3,118,000	\$ 4,579,000	Discount	1994	46,319	170,927	3.69	27.1%	\$ 8.55	\$ 98.86	\$ 67.32	\$ 62.36
4265 45 ST S	\$ 3,444,000	\$ 4,749,000	\$ 8,193,000	Strip Mall	2005	63,672	344,382	5.41	12.3%	\$ 10.00	\$ 128.68	\$ 74.59	\$ 68.30
1600 45 ST S	\$ 1,977,000	\$ 5,377,900	\$ 7,354,900	Discount	2013	83,407	209,258	2.51	39.9%	\$ 9.45	\$ 88.18	\$ 64.48	\$ 61.10
1650 45 ST S	\$ 2,656,000	\$ 8,253,200	\$ 10,909,200	Strip Mall	2013	63,940	268,296	4.20	19.5%	\$ 9.90	\$ 170.62	\$ 129.08	\$ 125.96
Minimum					1994	46,319	89,384	1.70	12.3%	\$ 8.55	\$ 88.18	\$ 64.48	\$ 61.10
Maximum					2013	83,407	344,382	5.41	58.7%	\$ 11.00	\$ 170.62	\$ 129.08	\$ 125.96
Mean					2005	59,453	213,443	3.62	30.2%	\$ 9.63	\$ 122.44	\$ 87.13	\$ 83.41
Median					2005	55,723	209,258	3.69	27.1%	\$ 9.50	\$ 119.80	\$ 79.79	\$ 77.39

Address	Full Land Value	Full Impr Value	T&P Value	Prop Type	Yr Bldt	Bldg SF	Seg Sqft	Bldg to Land Ratio	Site Coverage	Land Val/ sf	Total Val/ sf	Impr Val/ sf	Bldg Val/ sf
4151 45 St S/Hornbachers (2018)	\$ 2,387,000	\$ 4,513,000	\$ 6,900,000	Supermarket	2005	66,761	238,696	3.58	28.0%	\$ 10.00	\$ 103.35	\$ 67.60	\$ 60.99

The valuation of properties bracketing the subject's building area (square footage) also indicates the subject property may be slightly under-valued.

4151 45 ST S

THE SHOPPES AT OSGOOD, LLP

01-8100-00010-000

Robert Hill Law, Ltd (Agent)

Competitive Properties - Single Tenant Retail

Bldg Name	Full Land Value	Full Impr Value	T&F Value	Prop Type	Yr Blt	Bldg sf	Seg sq ft	Bldg to Land Ratio	Site Coverage	Land Val/ sf	Total Val/ sf	Impr Val/ sf	Bldg Val/ sf
2425 13 A VE S	\$ 612,000	\$ 1,875,800	\$ 2,487,800	Retail	2011	16,194	87,481	5.40	18.9%	\$ 7.00	\$ 153.62	\$ 115.83	\$ 112.84
2515 UNIVERSITY DR S	\$ 291,000	\$ 1,380,200	\$ 1,671,200	Retail	2013	12,139	48,572	4.00	25.0%	\$ 5.99	\$ 137.67	\$ 113.70	\$ 109.58
1895 45 ST S	\$ 175,000	\$ 775,600	\$ 950,600	Retail	2007	7,296	18,397	2.52	39.7%	\$ 9.51	\$ 130.29	\$ 106.30	\$ 104.08
3207 MAIN A VE	\$ 342,000	\$ 903,700	\$ 1,245,700	Discount	1994	17,500	75,898	4.34	23.1%	\$ 4.51	\$ 71.18	\$ 51.64	\$ 45.28
1601 32 A VE S	\$ 465,000	\$ 740,600	\$ 1,205,600	Retail	1997	15,284	66,379	4.34	23.0%	\$ 7.01	\$ 78.88	\$ 48.46	\$ 42.82
1609 32 A VE S	\$ 440,000	\$ 1,035,000	\$ 1,475,000	Retail	2000	10,044	62,841	6.26	16.0%	\$ 7.00	\$ 146.85	\$ 103.05	\$ 97.87
3730 36 ST S	\$ 6,930,000	\$ 14,611,000	\$ 21,541,000	Discount	1994	254,830	1,385,967	5.44	18.4%	\$ 5.00	\$ 84.53	\$ 57.34	\$ 48.01
4603 13 A VE S	\$ 1,124,000	\$ 2,115,000	\$ 3,239,000	Discount	1995	30,533	118,923	3.89	25.7%	\$ 9.45	\$ 106.08	\$ 69.27	\$ 64.78
4420 13 A VE S	\$ 413,000	\$ 983,000	\$ 1,396,000	Retail	2011	10,000	37,556	3.76	26.6%	\$ 11.00	\$ 139.60	\$ 98.30	\$ 93.90
3402 13 A VE S	\$ 492,000	\$ 1,377,700	\$ 1,869,700	Retail	2005	15,407	68,365	4.44	22.5%	\$ 7.20	\$ 121.35	\$ 89.42	\$ 85.23
1303 34 ST S	\$ 391,000	\$ 1,150,100	\$ 1,541,100	Retail	2008	9,988	48,820	4.89	20.5%	\$ 8.01	\$ 154.30	\$ 115.15	\$ 103.87
2790 UNIVERSITY DR S	\$ 179,000	\$ 600,500	\$ 779,500	Retail	1997	6,528	29,866	4.58	21.9%	\$ 5.99	\$ 119.41	\$ 91.99	\$ 86.55
4201 13 A VE S	\$ 452,000	\$ 1,068,600	\$ 1,520,600	Discount	2008	11,534	47,799	4.14	24.1%	\$ 9.46	\$ 131.84	\$ 92.65	\$ 86.23
1201 42 ST S	\$ 926,000	\$ 2,406,000	\$ 3,332,000	Retail	1994	30,000	108,304	3.61	27.7%	\$ 8.55	\$ 111.07	\$ 80.20	\$ 76.68
1126 43 ST S	\$ 452,000	\$ 1,293,700	\$ 1,745,700	Retail	1994	18,004	52,894	2.94	34.0%	\$ 8.55	\$ 96.96	\$ 71.86	\$ 69.15
1429 42 ST S	\$ 518,000	\$ 1,322,000	\$ 1,840,000	Retail	1995	14,148	47,963	3.39	29.5%	\$ 10.80	\$ 130.05	\$ 93.44	\$ 87.99
4430 17 A VE S	\$ 414,000	\$ 429,000	\$ 843,000	Discount	2003	7,700	37,679	4.89	20.4%	\$ 10.99	\$ 109.48	\$ 55.71	\$ 48.99
1750 45 ST S	\$ 414,000	\$ 931,000	\$ 1,345,000	Discount	2003	12,491	37,679	3.02	33.2%	\$ 10.99	\$ 107.68	\$ 74.53	\$ 70.39
909 45 ST SW	\$ 1,144,000	\$ 2,289,000	\$ 3,433,000	Discount	1999	44,100	120,376	2.73	36.6%	\$ 9.50	\$ 77.85	\$ 51.90	\$ 49.57
2801 FUSCINI DR S	\$ 495,000	\$ 170,500	\$ 665,500	Discount	1997	8,362	90,044	10.77	9.3%	\$ 5.50	\$ 79.59	\$ 20.39	\$ 18.45
1570 32 A VE S	\$ 301,000	\$ 484,900	\$ 785,900	Retail	2006	6,800	42,930	6.31	15.8%	\$ 7.01	\$ 115.57	\$ 71.31	\$ 65.30
2501 45 ST S	\$ 430,000	\$ 380,600	\$ 810,600	Discount	2001	6,448	35,869	5.56	18.0%	\$ 11.99	\$ 125.71	\$ 59.03	\$ 53.94
4700 17 A VE S	\$ 4,780,000	\$ 5,518,000	\$ 10,298,000	Discount	2002	118,193	503,196	4.26	23.5%	\$ 9.50	\$ 87.13	\$ 46.69	\$ 43.16
5100 14 A VE S	\$ 1,522,000	\$ 4,446,000	\$ 5,968,000	Discount	2000	55,723	169,082	3.03	33.0%	\$ 9.00	\$ 107.10	\$ 79.79	\$ 73.39
1615 38 ST S	\$ 1,461,000	\$ 3,118,000	\$ 4,579,000	Discount	1994	46,319	170,927	3.69	27.1%	\$ 8.55	\$ 98.86	\$ 67.32	\$ 62.36
5001 13 A VE S	\$ 6,285,000	\$ 6,270,000	\$ 12,555,000	Discount	2002	141,474	698,348	4.94	20.3%	\$ 9.00	\$ 88.74	\$ 44.32	\$ 36.07
3201 43 ST S	\$ 747,000	\$ 668,700	\$ 1,415,700	Retail	2006	14,957	82,983	5.55	18.0%	\$ 9.00	\$ 94.65	\$ 44.71	\$ 39.29
4601 23 A VE S	\$ 3,027,000	\$ 6,798,700	\$ 9,825,700	Discount	2004	120,419	252,258	2.07	26.7%	\$ 12.00	\$ 81.60	\$ 56.46	\$ 53.90
4701 AGASSIZ CROSSING S	\$ 1,727,000	\$ 1,089,800	\$ 2,816,800	Retail	2005	25,456	132,810	5.22	19.2%	\$ 13.00	\$ 110.65	\$ 42.81	\$ 38.14
4523 23 A VE S	\$ 872,000	\$ 324,300	\$ 1,196,300	Discount	2007	9,812	67,041	6.83	14.6%	\$ 13.01	\$ 121.92	\$ 33.05	\$ 36.19
4457 MAIN A VE	\$ 234,000	\$ 695,000	\$ 929,000	Retail	2007	9,775	51,899	5.31	18.8%	\$ 4.51	\$ 95.04	\$ 71.10	\$ 67.01
3757 55 A VE S	\$ 10,010,000	\$ 10,525,300	\$ 20,535,300	Discount	2008	191,151	1,000,960	5.24	19.1%	\$ 10.00	\$ 107.43	\$ 55.06	\$ 50.97
4039 MAIN A VE	\$ 120,000	\$ 513,000	\$ 633,000	Discount	2011	7,416	29,702	4.01	25.0%	\$ 4.04	\$ 85.36	\$ 69.17	\$ 66.48
1600 45 ST S	\$ 1,977,000	\$ 5,377,900	\$ 7,354,900	Discount	2013	83,407	209,258	2.51	39.9%	\$ 9.45	\$ 88.18	\$ 64.48	\$ 61.10
Minimum					1994	6,448	18,397	2.07	9.3%	\$ 4.04	\$ 71.18	\$ 20.39	\$ 18.45
Maximum					2013	254,830	1,385,967	10.77	39.9%	\$ 13.01	\$ 154.30	\$ 115.83	\$ 112.84
Mean					2003	40,866	177,620	4.53	24.0%	\$ 8.59	\$ 108.71	\$ 70.78	\$ 66.29
Median					2003	15,121	67,703	4.34	23.0%	\$ 9.00	\$ 107.55	\$ 69.22	\$ 65.14

Address	Full Land Value	Full Impr Value	T&F Value	Prop Type	Yr Blt	Bldg SF	Seg Sq Ft	Bldg to Land Ratio	Site Coverage	Land Val/ sf	Total Val/ sf	Impr Val/ sf	Bldg Val/ sf
4151 45 St S/Hornbacher's (2018)	\$ 2,387,000	\$ 4,513,000	\$ 6,900,000	Supermarket	2005	66,761	238,696	3.58	28.0%	\$ 10.00	\$ 103.35	\$ 67.60	\$ 60.99

The valuation of properties bracketing the subject's general use as a retail facility also indicates the subject property may be slightly under-valued.

Supermarket / Grocery Store Properties

Bldg Name	Full Land Value	Full Impr Value	T&F Value	Prop Type	Yr Blt	Bldg sf	Seg sq ft	Bldg to Land Ratio	Site Coverage	Land Val/ sf	Total Val/ sf	Impr Val/ sf	Bldg Val/ sf
1401 33 St S/Cash Wise Segment (All Land)	\$ 3,653,000	\$ 4,666,000	\$ 8,319,000	Supermarket	1984	105,343	561,932	5.33	18.8%	\$ 6.50	\$ 78.97	\$ 44.29	\$ 32.77
724 University Dr N/Family Fare	\$ 585,000	\$ 968,000	\$ 1,553,000	Supermarket	1961	24,150	106,306	4.40	22.7%	\$ 5.50	\$ 64.31	\$ 40.08	\$ 32.58
4517 13 Ave S/Natural Grocers	\$ 991,000	\$ 2,037,000	\$ 3,028,000	Supermarket	1999	26,598	104,904	3.94	25.4%	\$ 9.45	\$ 113.84	\$ 76.58	\$ 69.76
2510 Broadway N/Hornbacher's Segment	\$ 105,000	\$ 2,621,600	\$ 2,726,600	Supermarket	1956	51,116	52,399	1.03	97.6%	\$ 2.00	\$ 53.34	\$ 51.29	\$ 49.50
4101 13 Ave S/Hornbacher's Segment	\$ 2,246,000	\$ 1,983,000	\$ 4,229,000	Supermarket	1977	53,882	213,919	3.97	25.2%	\$ 10.50	\$ 78.49	\$ 36.80	\$ 30.87
3175 25 St S/Family Fare	\$ 1,233,000	\$ 3,963,000	\$ 5,196,000	Supermarket	1992	56,930	176,119	3.09	32.3%	\$ 7.00	\$ 91.27	\$ 69.61	\$ 62.55
1532 32 Ave S/Hornbacher's	\$ 1,551,000	\$ 3,299,200	\$ 4,850,200	Supermarket	1993	56,278	221,620	3.94	25.4%	\$ 7.00	\$ 86.18	\$ 58.62	\$ 53.13
1431 University Dr S/Strip Mall	\$ 507,000	\$ 2,260,000	\$ 2,767,000	Supermarket	1962	30,233	101,493	3.36	29.8%	\$ 5.00	\$ 91.52	\$ 74.75	\$ 66.67
1100 13 Ave E West Fargo/Family Fare	\$ 2,436,800	\$ 4,144,600	\$ 6,581,400	Supermarket	1998	75,376	387,800	5.14	19.4%	\$ 6.28	\$ 87.31	\$ 54.99	NA
755 32 Ave S, West Fargo/Cash Wise	\$ 2,666,600	\$ 5,287,200	\$ 7,953,800	Supermarket	2015	66,885	333,322	4.98	20.1%	\$ 8.00	\$ 118.92	\$ 79.05	NA
Minimum					1956	24,150	52,399	1.03	18.8%	\$ 2.00	\$ 53.34	\$ 36.80	\$ 30.87
Maximum					2015	105,343	561,932	5.33	97.6%	\$ 10.50	\$ 118.92	\$ 79.05	\$ 69.76
Mean					1984	54,679	225,981	3.92	31.7%	\$ 6.72	\$ 86.42	\$ 58.61	\$ 49.73
Median					1988	55,080	195,019	3.96	25.3%	\$ 6.75	\$ 86.75	\$ 56.80	\$ 51.31

Address	Full Land Value	Full Impr Value	T&F Value	Prop Type	Yr Blt	Bldg SF	Seg Sq Ft	Bldg to Land Ratio	Site Coverage	Land Val/ sf	Total Val/ sf	Impr Val/ sf	Bldg Val/ sf
4151 45 St S/Hornbacher's (2018)	\$ 2,387,000	\$ 4,513,000	\$ 6,900,000	Supermarket	2005	66,761	238,696	3.58	28.0%	\$ 10.00	\$ 103.35	\$ 67.60	\$ 60.99

The valuation of properties bracketing the subject's specific use as a supermarket/grocer indicates the subject property may be slightly over-valued; however, these properties are, on average, nearly 20 years older than the subject's age.

4151 45 ST S

THE SHOPPES AT OSGOOD, LLP

01-8100-00010-000

Robert Hill Law, Ltd (Agent)



Subject Property (Looking West)



October 11, 2018

Auditor

Michael Montplaisir, CPA
701-241-5601

Treasurer

Charlotte Sandvik
701-241-5611

Steve Sprague
City of Fargo
PO BOX 2083
Fargo, ND 58107-2083

Dear Mr. Sprague,

Enclosed is the application for abatement and settlement of taxes submitted by The Shoppes at Osgood LLC/Supervalu.

Please be reminded that Section 57-23-06 of the North Dakota Century Code states the following: "Within ten days after receiving an application for abatement, the city auditor or the township clerk shall give the applicant a notice of a hearing to be held before the governing body of the city or township, or such other committee as it may designate, in which the assessed property is located. Said hearing shall be set for no more than sixty days after the date of the notice of hearing. The applicant may waive, in writing, the hearing before such governing body or designated committee at any time before the hearing".

Please have your city commission make a recommendation on the back of the abatement, sign it, and return it to this office.

Sincerely,

A handwritten signature in black ink that reads "Michael Montplaisir".

Michael Montplaisir
Cass County Auditor

dkb

Enclosure

Box 2806
211 Ninth Street South
Fargo, North Dakota 58103

Fax 701-241-5728

www.casscountynd.gov

Recommendation of the Governing Body of the City or Township

Recommendation of the governing board of _____

On _____, the governing board of this municipality, after examination of this application and the facts, passed a resolution recommending to the Board of County Commissioners that the application be _____

Dated this _____ day of _____, _____
City Auditor or Township Clerk

Action by the Board of County Commissioners

Application was _____ by action of _____ County Board of Commissioners.
Approved/Rejected

Based upon an examination of the facts and the provisions of North Dakota Century Code § 57-23-04, we approve this application. The taxable valuation is reduced from \$ _____ to \$ _____ and the taxes are reduced accordingly. The taxes, if paid, will be refunded to the extent of \$ _____. The Board accepts \$ _____ in full settlement of taxes for the tax year _____.

We reject this application in whole or in part for the following reason(s). Written explanation of the rationale for the decision must be attached.

Dated _____

County Auditor _____ Chairperson

Certification of County Auditor

I certify that the Board of County Commissioners took the action stated above and the records of my office and the office of the County Treasurer show the following facts as to the assessment and the payment of taxes on the property described in this application.

Year	Taxable Value	Tax	Date Paid (if paid)	Payment Made Under Written Protest?
				yes/no

I further certify that the taxable valuation and the taxes ordered abated or refunded by the Board of County Commissioner are as follows:

Year	Reduction in Taxable Valuation	Reduction in Taxes

County Auditor Date

RECEIVED

OCT 12 2018

FARGO ASSESSOR

Application For Abatement
Or Refund Of Taxes

Name of Applicant: *The Shoppers at Osprey LLC*
County Auditor's File No.: *4477*
Supervalue

Date Application Was Filed With The County Auditor: *10/9/18*

Date County Auditor Mailed Application to Township Clerk or City Auditor: *10/10/18*
(must be within five business days of filing date)

Application For Abatement Or Refund Of Taxes

North Dakota Century Code § 57-23-04

File with the County Auditor on or before November 1 of the year following the year in which the tax becomes delinquent.

State of North Dakota Assessment District Fargo
County of Cass Property I.D. No. 01-8100-00010-000
Name The Shoppes at Osgood LLC/Supervalu Telephone No. (952) 828-1485
Address PO Box 990, Minneapolis, MN55440

Legal description of the property involved in this application:

4151 45th Street South
Fargo, ND 58104
The Shoppes at Osgood LT 1 BLK 1

Table with 2 columns: 'Total true and full value of the property described above for the year 2018 is:' and 'Total true and full value of the property described above for the year 2018 should be:'. Rows include Land, Improvements, and Total values.

The difference of \$ 359,350.00 true and full value between (1) and (2) above is due to the following reason(s):

- 1. Agricultural property true and full value exceeds its agricultural value defined in N.D.C.C. § 57-02-27.2
2. Residential or commercial property's true and full value exceeds the market value
3. Error in property description, entering the description, or extending the tax
4. Nonexisting improvement assessed
5. Complainant or property is exempt from taxation. Attach a copy of Application for Property Tax Exemption.
6. Duplicate assessment
7. Property improvement was destroyed or damaged by fire, flood, tornado, or other natural disaster (see N.D.C.C. § 57-23-04(1)(g))
8. Error in noting payment of taxes, taxes erroneously paid
9. Property qualifies for Homestead Credit according to N.D.C.C. § 57-02-08.1. Attach a copy of Homestead Credit Application.
10. Other (explain)

The following facts relate to the market value of the residential or commercial property described above. For agricultural property, go directly to question #5.
1. Purchase price of property: \$ Date of purchase:
Terms: Cash Contract Trade Other (explain)
Was there personal property involved in the purchase price? Estimated value: \$
2. Has the property been offered for sale on the open market? If yes, how long?
Asking price: \$ Terms of sale:
3. The property was independently appraised: Purpose of appraisal:
Market value estimate: \$
Appraisal was made by whom?
4. The applicant's estimate of market value of the property involved in this application is \$ 3,306,650
5. The estimated agricultural productive value of this property is excessive because of the following condition(s):

Applicant asks that

By filing this application, I consent to an inspection of the above-described property by an authorized assessment official for the purpose of making an appraisal of the property. I understand the official will give me reasonable notification of the inspection. See N.D.C.C. § 57-23-05.1.

I declare under the penalties of N.D.C.C. § 12.1-11-02, which provides for a Class A misdemeanor for making a false statement in a governmental matter, that this application is, to the best of my knowledge and belief, a true and correct application.

Signature of Preparer (if other than applicant) Date Signature of Applicant Date

ROBERT HILL LAW, LTD.

ATTORNEYS AT LAW

1161 WAYZATA BOULEVARD EAST, #399
WAYZATA, MINNESOTA 55391
E-MAIL: bob@roberthilllaw.com

GENERAL TELEPHONE: 952-426-7373

ROBERT A. HILL*
*Also Admitted in Virginia

June 12, 2018

VIA FEDEX

Cass County Auditor
Cass County Courthouse
211 9th Street South
Fargo, ND 58103

Re: Super Value Stores Inc

Dear County Auditor:

Enclosed for filing are two copies of the Application for Abatement or Refund of Taxes for the following property:

4151 45th Street South, Property I.D. No. 01-8100-00010-000

Please advise of the time and place the hearing will be held. Thank you for your attention to this matter and please do not hesitate to call with any questions.

Sincerely,



Robert A. Hill

RAH/kka

Property Detail Report

01-8100-00010-000 **Newest Statement (2017 - #170129260)**
 Owner: THE SHOPPES AT OSGOOD LLP Mill Levy Rate: 260.63
 Address: 4151 45 ST S Consolidated: \$89,917.35
 FARGO ND 58104
 Mail To: THE SHOPPES AT OSGOOD LLP Specials: \$13,286.91
 PO BOX 10552
 FARGO ND 58106-0552
 Jurisdiction: Fargo City Drains: \$1,508.70
 Mortgage Company: Other: \$0.00
 Discounts: \$4,495.87
 Pen/Int: \$0.00
 1st Due: \$0.00
 2nd Due: \$0.00
 Amount Due: **\$0.00**
 Grand Total Due: **\$0.00**

Legal Description

Lot: 1 Block: 1 THE SHOPPES AT OSGOOD LT 1 BLK 1

Statement: #170129260 Year: 2017

Type:	Real Estate	Ag Land:	\$0.00
Mill Levy Rate:	260.63	Res Land:	\$0.00
Tax:	\$104,712.96	Res Building:	\$0.00
Penalty:	\$0.00	Comm Land:	\$2,387,000.00
Interest:	\$0.00	Comm Building:	\$4,513,000.00
Discount:	\$4,495.87	Total:	\$6,900,000.00
Paid:	\$100,217.09	Taxable Value Before Credits:	\$345,000.00
Balance:	\$0.00	Homestead Credits:	\$0.00
		Veteran Credits:	\$0.00
		Total Credits:	\$0.00
		Net Taxable Value:	\$345,000.00

Type	Description	Amount
Consolidated County		\$16,080.45
Consolidated State		\$345.00
Consolidated County Soil Conservation		\$155.25
Consolidated <u>City of Fargo</u>		\$17,595.00
Consolidated Fargo Park District		\$9,591.00
Consolidated West Fargo Public School District #6		\$44,598.15
Consolidated Southeast Water Resource District		\$1,552.50
Special <u>City of Fargo Specials</u>		\$13,286.91
Drain	Southeast Cass SC-2	\$1,508.70
Total		\$104,712.96

Statement: #160129278 Year: 2016

Type:	Real Estate	Ag Land:	\$0.00
Mill Levy Rate:	276.45	Res Land:	\$0.00
Tax:	\$98,725.82	Res Building:	\$0.00
Penalty:	\$0.00	Comm Land:	\$1,193,000.00
Interest:	\$0.00	Comm Building:	\$5,707,000.00
Discount:	\$4,196.51	Total:	\$6,900,000.00
Paid:	\$94,529.31	Taxable Value Before Credits:	\$345,000.00
Balance:	\$0.00	Homestead Credits:	\$0.00
		Veteran Credits:	\$0.00
		Total Credits:	\$0.00
		Net Taxable Value:	\$345,000.00

Type	Description	Amount
Consolidated County		\$16,625.14
Consolidated State		\$303.60
Consolidated County Soil Conservation		\$118.40
Consolidated <u>City of Fargo</u>		\$16,090.80
Consolidated Fargo Park District		\$8,686.00
Consolidated West Fargo Public School District #6		\$40,466.84
Consolidated Southeast Water Resource District		\$1,639.44

Special City of Fargo Specials \$13,286.90
 Drain Southeast Cass SC-2 \$1,508.70
Total \$98,725.82

Statement: #150129305 Year: 2015

Type:	Real Estate	Ag Land:	\$0.00
Mill Levy Rate:	290.68	Res Land:	\$0.00
Tax:	\$99,764.96	Res Building:	\$0.00
Penalty:	\$1,714.72	Comm Land:	\$1,193,000.00
Interest:	\$0.00	Comm Building:	\$5,469,700.00
Discount:	\$0.00	Total:	\$6,662,700.00
Paid:	\$101,479.68	Taxable Value Before Credits:	\$333,135.00
Balance:	\$0.00	Homestead Credits:	\$0.00
		Veteran Credits:	\$0.00
		Total Credits:	\$0.00
		Net Taxable Value:	\$333,135.00

Type	Description	Amount
Consolidated County		\$17,390.18
Consolidated State		\$293.16
Consolidated County Soil Conservation		\$184.69
Consolidated <u>City of Fargo</u>		\$16,123.74
Consolidated Fargo Park District		\$8,654.05
Consolidated West Fargo Public School District #6		\$40,957.22
Consolidated Southeast Water Resource District		\$1,612.37
Special <u>City of Fargo Specials</u>		\$13,286.92
Drain 27M Developed Land SE Cass WRD		\$1,262.63
Total		\$99,764.96

Statement: #140129329 Year: 2014

Type:	Real Estate	Ag Land:	\$0.00
Mill Levy Rate:	302.27	Res Land:	\$0.00
Tax:	\$95,106.91	Res Building:	\$0.00

Penalty:	\$0.00	Comm Land:	\$1,193,000.00
Interest:	\$0.00	Comm Building:	\$4,864,000.00
Discount:	\$4,027.87	Total:	\$6,057,000.00
Paid:	\$91,079.04	Taxable Value Before Credits:	\$302,850.00
Balance:	\$0.00	Homestead Credits:	\$0.00
		Veteran Credits:	\$0.00
		Total Credits:	\$0.00
		Net Taxable Value:	\$302,850.00

Type	Description	Amount
Consolidated County		\$17,235.07
Consolidated State		\$266.51
Consolidated County Soil Conservation		\$117.26
Consolidated <u>City of Fargo</u>		\$15,257.58
Consolidated Fargo Park District		\$8,184.46
Consolidated West Fargo Public School District #6		\$37,897.44
Consolidated Southeast Water Resource District		\$1,599.05
Special <u>City of Fargo Specials</u>		\$13,286.91
Drain	Drain 27M Developed Land SE Cass WRD	\$1,262.63
Total		\$95,106.91

Statement: #130130318 Year: 2013

Type:	Real Estate	Ag Land:	\$0.00
Mill Levy Rate:	302.56	Res Land:	\$0.00
Tax:	\$92,809.83	Res Building:	\$0.00
Penalty:	\$0.00	Comm Land:	\$1,193,000.00
Interest:	\$0.00	Comm Building:	\$4,687,600.00
Discount:	\$3,914.32	Total:	\$5,880,600.00
Paid:	\$88,895.52	Taxable Value Before Credits:	\$294,030.00
Balance:	\$0.00	Homestead Credits:	\$0.00
		Veteran Credits:	\$0.00
		Total Credits:	\$0.00
		Net Taxable Value:	\$294,030.00

Type	Description	Amount
Consolidated County		\$16,733.13
Consolidated State		\$258.75
Consolidated County Soil Conservation		\$181.12
Consolidated <u>City of Fargo</u>		\$14,813.23
Consolidated Fargo Park District		\$7,953.86
Consolidated West Fargo Public School District #6		\$36,793.74
Consolidated Southeast Water Resource District		\$1,552.48
Special <u>City of Fargo Specials</u>		\$13,260.89
Drain	Drain 27M Developed Land SE Cass WRD	\$1,262.63
Total		\$92,809.83

Statement: #120230995 Year: 2012

Type:	Real Estate	Ag Land:	\$0.00
Mill Levy Rate:	354.98	Res Land:	\$0.00
Tax:	\$116,818.26	Res Building:	\$0.00
Penalty:	\$0.00	Comm Land:	\$1,193,000.00
Interest:	\$0.00	Comm Building:	\$4,572,300.00
Discount:	\$5,116.42	Total:	\$5,765,300.00
Paid:	\$111,701.85	Taxable Value Before Credits:	\$288,265.00
Balance:	\$0.00	Homestead Credits:	\$0.00
		Veteran Credits:	\$0.00
		Total Credits:	\$0.00
		Net Taxable Value:	\$288,265.00

Type	Description	Amount
Consolidated County		\$18,910.18
Consolidated State		\$288.27
Consolidated County Soil Conservation		\$196.02
Consolidated <u>City of Fargo</u>		\$16,791.44
Consolidated Fargo Park District		\$9,008.28
Consolidated West Fargo Public School District #6		\$55,404.53
Consolidated Southeast Water Resource District		\$1,729.59

Special City of Fargo Specials \$13,260.89
 Drain Drain 27M Developed Land SE Cass WRD \$1,229.06
Total \$116,818.26

Statement: #110231042 Year: 2011

Type:	Real Estate	Ag Land:	\$0.00
Mill Levy Rate:	357.37	Res Land:	\$0.00
Tax:	\$111,028.71	Res Building:	\$0.00
Penalty:	\$0.00	Comm Land:	\$1,193,000.00
Interest:	\$0.00	Comm Building:	\$4,404,400.00
Discount:	\$5,000.86	Total:	\$5,597,400.00
Paid:	\$106,027.86	Taxable Value Before Credits:	\$279,870.00
Balance:	\$0.00	Homestead Credits:	\$0.00
		Veteran Credits:	\$0.00
		Total Credits:	\$0.00
		Net Taxable Value:	\$279,870.00

Type	Description	Amount
Consolidated County		\$18,961.19
Consolidated State		\$279.87
Consolidated County Soil Conservation		\$232.29
Consolidated <u>City of Fargo</u>		\$16,302.43
Consolidated Fargo Park District		\$8,771.13
Consolidated West Fargo Public School District #6		\$53,791.01
Consolidated Southeast Water Resource District		\$1,679.22
Special <u>City of Fargo Specials</u>		\$9,782.51
Drain	Drain 27M Developed Land SE Cass WRD	\$1,229.06
Total		\$111,028.71

Statement: #100231140 Year: 2010

Type:	Real Estate	Ag Land:	\$0.00
Mill Levy Rate:	334.18	Res Land:	\$0.00
Tax:	\$100,213.78	Res Building:	\$0.00

Penalty:	\$0.00	Comm Land:	\$1,193,000.00
Interest:	\$0.00	Comm Building:	\$4,294,600.00
Discount:	\$4,584.62	Total:	\$5,487,600.00
Paid:	\$95,629.17	Taxable Value Before Credits:	\$274,380.00
Balance:	\$0.00	Homestead Credits:	\$0.00
		Veteran Credits:	\$0.00
		Total Credits:	\$0.00
		Net Taxable Value:	\$274,380.00

Type	Description	Amount
Consolidated County		\$18,109.08
Consolidated State		\$274.38
Consolidated County Soil Conservation		\$246.94
Consolidated <u>City of Fargo</u>		\$15,982.64
Consolidated Fargo Park District		\$8,612.79
Consolidated West Fargo Public School District #6		\$46,820.20
Consolidated Southeast Water Resource District		\$1,646.28
Special <u>City of Fargo Specials</u>		\$8,341.73
Drain	Drain 27M Developed Land SE Cass WRD	\$179.74
Total		\$100,213.78

Authorization of Agency

This letter is to serve as our authorization to you for Robert A. Hill, Esq., of Robert Hill Law, Ltd, law firm, phone number 952-426-7373 and Suzanne Grimm, of Cresa Minneapolis, phone number 612-373-0293, to represent the interest of The Shoppes at Osgood, LLC/Supervalu, and our affiliated entities in our appeal of the 2018 valuations for our properties located in the State of North Dakota. A photocopy of this letter is attached to each property appeal on our behalf, and may be relied upon by you as such during the review proceedings.

Should you have any questions regarding this authorization, please contact Aaron Barrett at 952-828-4485.

Sincerely,

The Shoppes at Osgood, LLC / Supervalu,


Owner


Date

Assessment Information

Property Information	
<p>For additional information, visit the Assessor's Office website (https://fargond.gov/city-government/departments/assessors).</p>	
<p>Parcel No 01-8100-00010-000</p>	<p>Year Built 2005</p>
<p>Segment Number 3</p>	<p>Story Height (residential only) N/A</p>
<p>Address 4151 45 ST S</p>	<p>Main Floor Sq. Ft. (residential only)</p>
<p>Ownership Information THE SHOPPES AT OSGOOD LLP</p>	<p>Total Building Sq. Ft. 66,761</p>
<p>School District 6 - West Fargo</p>	<p>Number of Apartment Units 0</p>
<p>Land Use Commercial</p>	
<p>Property Type Supermarket</p>	
<p>Lot Width (Front) 466.92</p>	<p>Lot Width (Back) 465.82</p>
<p>Lot Depth (Side 1) 511.26</p>	<p>Lot Depth (Side 2) 471.27</p>
<p>Lot Area 238,696 sq. ft. (5.480 acres)</p>	<p>Special Assessment Front Footage 514.9</p>
<p>Special Assessment Square Footage 238,696</p>	

Valuations			
2018 Appraised Value (Current Certified)			
	Land	Improvements	Total
Full Appraised Value	\$2,387,000	\$4,513,000	\$6,900,000
Net Taxable Appraised Value	\$2,387,000	\$4,513,000	\$6,900,000
Assessment (Local, State, Exempt)			
Local			
<hr/>			
2019 Proposed Appraised Value (subject to change)			
	Land	Improvements	Total
Full Appraised Value	\$2,387,000	\$4,513,000	\$6,900,000
Net Taxable Appraised Value	\$2,387,000	\$4,513,000	\$6,900,000
Assessment (Local, State, Exempt)			
Local			

Special Assessment Information

For additional information or to contact the Special Assessments Office visit the Payment Methods webpage (<https://fargond.gov/city-government/departments/engineering/special-assessments/payment-methods>).

NOTE: Special assessment information pertains to the entire parcel, not individual segments.

Current Projects

Project Number	Current Annual Installment	Un-Certified Balance Remaining (principal only)	Deferred Balance
531402	\$505.03	\$5,496.86	
562000	\$2,384.09	\$22,075.04	
570000	\$1,440.78	\$16,711.28	
598803	\$3,016.50	\$21,720.40	
618100	\$66.47	\$566.33	
TN-16-C1	\$291.10	\$3,154.39	
541601	\$3,254.36	\$26,750.32	
544600	\$477.71	\$3,855.93	
548400	\$177.69	\$1,525.85	
553700	\$237.95	\$2,043.31	
567800	\$879.41	\$8,475.81	
542100	\$385.04	\$3,711.06	
583800	\$461.87	\$5,536.60	
Totals:	\$13,578.00	\$121,623.18	

Work Complete / Work in Progress

Project Number	Work Complete (pending approval)	Work in Progress (estimate only)	Deferred Balance
Totals:			

Principal & Interest Breakdown

Year	Principal Amount	Interest Amount	Total Payment
2017	\$6,861.89	\$6,425.02	\$13,286.91
2016	\$6,529.58	\$6,757.32	\$13,286.90
2015	\$6,213.41	\$7,073.51	\$13,286.92

Contact Information

Please contact the following departments if you have any questions or wish to request more information:

- **Assessor's Office:** For parcel number, lot dimensions, property value, ownership, legal description information or feedback
 - Use our Contact Form (<https://fargond.gov/city-government/departments/assessors/contact-us>) or call 701.241.1340 (tel:701.241.1340)
- **Special Assessments:** For questions or feedback pertaining to special assessments
 - Use our Contact Form (<https://fargond.gov/city-government/departments/assessors/contact-us>) or call 701.241.1326 (tel:701.241.1326)
 - Complete the online Special Assessment Form (<https://lf.cityoffargo.com/Forms/SpecialAssessmentRequest>) for payoff amount.

Disclaimer

The City of Fargo provides property information to the public "as is" without warranty of any kind, expressed or implied. Assessed values are subject to change by the City of Fargo. In no event will the City of Fargo be liable to anyone for damages arising from the use of the property data. You assume responsibility for the selection of data to achieve your intended results and for the installation and use of the results obtained from the property data.

Assessment records are for the sole purpose of identifying the land being taxed. In some cases to attain efficiency, Assessor's Office legal descriptions may be shortened yet will retain sufficient information to identify the land. Since tax statements and records are not deeds and may contain abbreviated descriptions, they should not be used as a basis for a survey or a legal document and should not be used by surveyors or others as the primary source of a property description.



A handwritten number "61" is circled in a simple, hand-drawn oval.

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: JIM GILMOUR, ²²DIRECTOR OF STRATEGIC PLANNING AND RESEARCH

DATE: DECEMBER 11, 2018

SUBJECT: BUDGET AND TIME CHANGES TO THE C-1 TIF DISTRICT

The Finance Committee is recommending budget changes and a delay in the closeout of the C-1 TIF District. The delay in the closeout would be until 2020 when the obligation to purchase the land is due, and the restoration budgets have been increased for the Island Park Ramp and the Ground Transportation Center (GTC).

Background of the C-1 District

The C-1 Renewal Plan and TIF District were approved in 1980 support new development in the downtown, including the Dakota building and the Wells Fargo building. The Plan and District were amended in 1999 to build the Island Park Ramp.

2017 Amendment

The City Commission amended the C-1 TIF District on July 3, 2017 to add activities and use TIF money to implement four parking related activities within the District. The four added activities were:

- Repairs to the Island Park Ramp,
- Early purchase of land under the Island Park Ramp,
- New parking control equipment at the Island Park Ramp, and
- Repairs to the GTC.

Island Park Ramp Repair

Repair work on the Island Park Ramp is substantially complete, at a cost of \$239,833. In addition to this work, the need for a new security camera system was identified and should be added to this project. A new camera system is estimated at \$140,245.

Island Park Ramp Land Purchase

The land under the Island Park Ramp is being leased until 2020, at which time there is an agreement for the City to purchase the land at market value. The banks expressed a willingness to sell this year rather than 2020. The City appraised the land, and offered to purchase it for the appraised value of \$728,625.00 (\$16.75 a square foot). The banks countered by asking for \$1,196,250 (\$27.50 a square foot). The land is valued by the City Assessor for tax purposes at \$11.00 a square foot.

We have requested a meeting with the banks to discuss the land value and timing of the purchase. If no agreement is reached, the City could hold the money until the 2020 purchase year in the lease agreement.

Island Park Ramp Equipment

The City no longer needs to purchase parking control equipment for the Island Park Ramp because the equipment formerly located at the 2nd Avenue lot can be reused in that Ramp.

GTC Parking Garage Repair

Repair work to the below ground portions of the GTC are substantially complete, at a cost of \$121,649. However, the City did not receive any bids for mechanical work needed in the parking garage and the plans to bid out this work next year. The mechanical work is estimated to be \$83,000.00.

There are high priority repairs needed to maintain the structure of the GTC, and will be accomplished by additional transit directed improvements to the above ground space. Costs of the structural repairs are over \$600,000.

Additional TIF Revenue

When these four activities were added to the TIF plan, the City Commission voted to end the District as construction bonds were paid, and staff expected the debt for the land to be paid in 2017.

The TIF amendment was approved in July 2017, but this was after the Fargo TIF list for 2017 had been submitted to Cass County in May of 2017. Because of the timing of the submittal of the list to the county, another \$284,000 of TIF income was received in the spring of 2018.

There continued to be an outstanding obligation for the land purchase, and the C-1 TIF District was again included on the TIF list submitted to the County in May 2018. Another \$266,000 is budgeted to be received in 2019.

Staff is requesting direction from the City Commission to either:

1. Amend the TIF District Budget to approve use of the 2017 and 2018 tax year funds, or to
2. Return the 2017 TIF revenue to the county to be distributed to the taxing jurisdictions, and also return the 2018 TIF revenue when it is received next year.

Recommendation

The Finance Committee is recommending increasing the TIF district budgets and delaying the closing of the TIF District until the land purchase can be completed. The specific budget recommendations from the Finance Committee are as follows:

- Increase the budget for Island Park Ramp Repairs to \$380,078, to include replacement of the camera system.
- Increase the budget for Island Park Land purchase to \$728,625.
- Eliminate the budget for equipment purchase.
- Increase the budget for GTC repairs to \$559,297.

Attached is a summary of the proposed budget for 2019 compared to the 2017 budget.

RECOMMENDED MOTION: To delay the closeout of the C-1 TIF District until the obligation to purchase the land is complete, and to increase the budget for restoration costs for the Island Park Ramp and the GTC parking garage as shown on the attachment.

Attachment

Balance on July 3, 2017	\$	1,118,140
TIF Received in March, 2018	\$	284,000
TIF Budgeted for March, 2019	\$	<u>266,000</u>
Total	\$	<u>1,668,140</u>

	<u>2017 Budget</u>	<u>2019 Budget</u>	<u>Status</u>
Island Park Ramp Restoration/Repairs	\$ 200,000	\$ 239,833	Substantially Complete
Island Park Ramp - Camera System	\$ -	\$ 140,245	Project to be bid
Island Park Ramp - Land Purchase	\$ 450,000	\$ 728,625	Hold for purchase in 2020
Parking Control Equipment	\$ 15,000	\$ -	Plan to re-use existing equipment
GTC - Parking	\$ 453,140	\$ 121,649	Substantially Complete
GTC - Parking		\$ 83,000	Mechanical to be bid (\$83,000 Estimate)
GTC - General		\$ 354,648	Structural Repairs
Total Budget	\$ 1,118,140	\$ 1,668,000	
TIF Estimate	\$ 1,118,140	\$ 1,668,000	