

FARGO CITY COMMISSION AGENDA
Wednesday, January 2, 2019 - 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, December 17, 2018).

CONSENT AGENDA – APPROVE THE FOLLOWING:

- 1. Receive and file an Ordinance Amending Section 2-0203 and Enacting Section 2-0205 of Article 2-02 of Chapter 2 of the Fargo Municipal Code Relating to Elections.
- 2. Waive requirement to receive and file an Ordinance one week prior to 1st reading and 1st reading of an Ordinance Amending Section 7-0302 of Article 7-03 of Chapter 7 of the Fargo Municipal Code Relating to the Fire Department.
- 3. 1st reading of 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.
- 4. Applications for property tax exemptions for improvements made to buildings:
 - a. Steven T. and Eileen A. Carroll, 43 18th Avenue North (5 year).
 - b. Vicki A. Fredrikson, 1551 32nd Street South, Unit 201E (3 year).
 - c. James L. Alsop, 1607 8th Street South (5 year).
 - d. Joel D. Swanson, 617 9th Avenue North (5 year).
 - e. Eric K. Johnson, 3713 12th Street South (5 year).
 - f. Dennis and Beverly Sumwalt, 14401 Broadway North Unit 103 (5 year).
 - g. Jeffrey E. and Michelle Vanyo, 1514 14th Avenue South (5 year).
 - h. Jason J. and Angela J. Lech, 2609 34th Avenue South (3 year).
 - i. Joshua A. Boschee, 517 1st Street North (5 year).
 - j. AHWA Realty LLC, 3301 13th Avenue South (5 year).
 - k. Paula J. Sebelius and Scott M. Hekman, 324 22nd Street South (5 year).
 - l. Douglas Anderson, 209 Linden Avenue (5 year).
 - m. Michael P. and Casinda Langseth, 2402 33rd Avenue South (3 year).
 - n. David M. and Renee L. Olson, 2824 38th Avenue South (3 year).
 - o. Cynthia L. Crary Trust, 4110 18th Street South (3 year).
 - p. Jeanette Rehkamp, 1409 9th Street South (5 year).
- 5. Receive and file complaint filed by Scot Kelsh in U.S. District Court District of North Dakota Eastern Division.

6. Applications for Games of Chance:
 - a. El Zagal 57 Director's Staff for a raffle on 9/21/19.
 - b. The Outdoor Adventure Foundation for a raffle and raffle board on 3/17/19.
 - c. Red River Fraternal Order of Police Lodge No. 1 for a raffle board on 1/19/19.
 - d. Atonement Lutheran Church for a raffle on 2/7/19.
7. Resolution Authorizing Officers to Make Deposits and Withdrawals and approval of the designated depositories.
8. Purchase Agreement for property located at 173 South Woodcrest Drive North in the amount of \$762,000.00.
9. Purchase of Service Agreement with Cass County Social Services for in-home services.
10. Amendments to the Community Development Block Grant (CBDG) 5-Year Consolidated Plan and Annual Action Plan.
11. Purchase one aerial lift truck from ABM Truck Equipment in the amount of \$115,950.00 (RFP18352).
12. Agreements for Tree and Stump Removal Services – 2019 with Cougar Tree Care, Inc. (RFP181090) and Landscape Maintenance Services – 2019 with All-Terrain Grounds Maintenance (RFP17025).
13. Purchase one negotiations truck from Herr Display Vans in the amount of \$159,965.00 (RFP18311).
14. Negative Final Balancing Change Order No. 2 in the amount of -\$85.10 for Project No. TM-18-A1.
15. Bid award for lime chemical for the Water Treatment Plant for 2019.
16. Contract and bond (mechanical) for Project No. WW1701.
17. Bills.
18. Memorandum of Offer to Landowner for Temporary Easement across a portion of City-owned property at 501 Main Avenue for Improvement District No. BR-18-A.
19. Memorandum of Offer to Landowner for Temporary Easement across a portion of City-owned property at 1 2nd Street North for Improvement District No. BR-18-A.
20. Access Agreement and Easement, and Memorandum of Offer to Landowner with Lake Agassiz Regional Development Corporation for Improvement District No. BR-18-A.
21. Amended Engineer's Report for Improvement District No. BN-19-A.

REGULAR AGENDA:

22. Ground Transportation Center (GTC) Capital Improvements Presentation and recommendation to approve the North Dakota Department of Transportation Section 5339 Transit Grant Agreement; action delayed from the 12/17/18 Regular Meeting.

23. Application for Abatement or Refund of Taxes #4478 submitted by Mike and Linda Bergh for property at 6568 Christianson Parkway South requesting that the valuation for 2018 be reduced from \$539,800.00 to \$525,576.00.
24. Public Hearings - 5:15 pm:
 - a. Zoning Change from SR-4, Single-Dwelling Residential and GC, General Commercial to GC, General Commercial in Egbert, O'Neil and Haggart's Subdivision (404 25th Street South); approval recommended by the Planning Commission on 12/4/18:
 1. 1st reading of rezoning Ordinance.
 - b. Hearing on a dangerous building located at 703 10th Avenue North; continued from the 12/3/18 Regular Meeting.
 - c. Transfer of a Class "C" Alcoholic Beverage License from Men's Hair World LLC d/b/a Hair Salon to Men's Hair World LLC d/b/a Men's Hair World at 1801 45th Street South, Suite L1.
 - d. Application filed by Touchmark at Harwood Groves, LLC d/b/a Touchmark for a Class "F" Alcoholic Beverage License at 1200 Harwood Drive South.
25. Recommendation to reappoint Dean Bresciani to the Renaissance Zone Authority.
26. State Water Commission request for Cost Reimbursement for FM Diversion Flood Project costs in the amount of \$255,691.15.
27. Update on FM Area Diversion Project.

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.



22

December 27, 2018

To: Board of City Commissioners
Fr: Michael Redlinger, Assistant City Administrator
Re: Ground Transportation Center (GTC) Capital Improvements Presentation & Approval of FTA/NDDOT Grant for GTC Renovations

At the request of the City Commission on December 17, 2018, time is scheduled for a presentation from Wade Kline, KLG Engineering, and City staff on proposed capital improvement projects at the Ground Transportation Center for transit operations (above-grade) and parking operations (below-grade). In addition to Mr. Kline's presentation on January 2nd to the Commission, City staff has included the following background materials for reference:

- MATBUS Transit Hub Analysis Study Memo & NDDOT Transit Grant Agreement (**Attachment #1**)
- C-1 TIF District Agenda Materials – December 17, 2018 City Commission meeting (**Attachment #2**)

Recommended Action: Approve NDDOT Grant Award (Contract No. 38181779, CFDA No. 20.526) and authorize City staff to conduct an RFP process in January 2019 for various above- and below-grade improvement projects at the GTC for transit and the parking authority, respectively.

Attachments: MATBUS Transit Hub Analysis Study Memo & NDDOT Transit Grant Agreement
C-1 TIF District Agenda Materials – *December 17, 2018 City Commission Meeting*

Memorandum



To: Fargo City Commissioners

Cc: Bruce Grubb, City Administrator
Michael Redlinger, Assistant City Administrator
Kent Costin, Finance Director

From: Julie Bommelman, Transit Director

Subject: MATBUS Transit Hub Analysis Study

Background:

In December 2016, Metro COG completed the 2016-2020 Transit Development Plan (TDP). The TDP established MATBUS' vision for public transportation, assessed needs, and identified a framework for program implementation. The TDP considered both long-range and short-range strategies and actions to better enable the development of an integrated multimodal transportation system that efficiently moves people and addresses transportation demands. The TDP specifically identified the need to upgrade and rehab equipment and facilities to meet the demands of transit in the area.

As part of the regional transportation planning process, the Fargo-Moorhead Metropolitan Council of Governments (Metro COG), in coordination with Metro Area Transit (MATBUS), issued a Request for Proposal (RFP) for a study to conduct a transit facility analysis for the region with the intention of building upon the work of the 2016-2020 TDP and other applicable planning documents in the region. The purpose of the RFP was to analyze current MATBUS transit facilities (with major emphasis on transit hubs and the transit garage) and prepare a five-year strategy for existing transit hubs, and the potential addition of new transit hubs in the event of future system expansion (up to twenty years).

The Federal Transit Administration (FTA) and State of North Dakota Department of Transportation (NDDOT), who fund up to 80% of the capital requirements for transit, require the transit systems within their jurisdiction to establish Transit Asset Management Plans (TAM) and Performance Measures for all assets, including facilities. There is a level of repair and maintenance required to keep federally funded assets in a state of good repair.

Transit Hub Analysis Study Project Objectives:

- 1) Identify broad areas where future transit hubs may need to be located based upon development patterns within the region;

- 2) Analyze the capacity needs and the expansion opportunity for the MATBUS transit garage;
- 3) Analyze the placement, condition, and amenities of other transit facilities such as transit shelters;
- 4) Evaluate existing and planned transportation uses including transit, freight, pedestrian, bicycle, and general traffic;
- 5) Evaluate existing urban design features and community visions for future needs, including previous design and transportation planning studies;
- 6) Develop 2020 and 2040 hub alternatives including conceptual design plans and preliminary projects; and
- 7) Work with stakeholders to develop a preferred hub plan that will be the focus of the final development strategy.

Ground Transportation Center (GTC):

The GTC is the main transit hub for MATBUS, providing a location where most Moorhead and Fargo routes pulse out of every half hour. Operations at this facility were to be studied in order to determine any needs as well as look at the building itself for opportunities to update the facility. NP Avenue, which provides access to the facility, is slated to be reconstructed within the next few years. An objective of the study was to determine the impacts of the new roadway cross-section on operations at the GTC and make recommendations for potential street improvements to accommodate buses.

MATBUS Metro Transit Garage:

As the transit system has expanded, additional office space and additional room for bus storage has become necessary. The current facility was constructed in 2006 and since then the expansion of transit service in the Fargo Moorhead region has created space deficiencies, namely office space for staff, employee parking, and space to store the bus fleet.

The Transit Hub Analysis Study:

KLJ, Inc. was awarded the contract to perform the Transit Hub Analysis Study. Subconsultants included Foss Architecture & Interiors, Chris Hawley Architects, and Kimley Horn. Following award of the contract, KLJ met with the Metropolitan Council of Governments, City Transit staff, the City of Fargo Planning Department, the Downtown Community Partnership & Kilbourne Group, various focus groups, the Metro Area Transit Coordinating Board, held open public forums, and conducted surveys to garner information for the study. The draft report issued by KLJ identified a multitude of opportunities for the different facilities within the study along with estimated costs. The outcome of the study identified repairs and updates to the GTC including internally and externally.

Ground Transportation Center (GTC):

There is a critical need for substantial renovations to the main transfer facility, the Ground Transportation Center (GTC). The GTC was built in 1984 and has had only one renovation in 2004 other than the bus deck overlays every 5-6 years. The useful life of the GTC as an asset is 40 years, which will be in 2024 – currently making the facility approximately 35 years old and in need of updated HVAC, flooring inside and out (numerous tripping hazards), renovation of office and restroom spaces, lobby seating, relocation of the dispatch area, upgrades to lighting, removal of the exterior canopy and replacement with a more functional covering, and several

aesthetic repairs. There is an immediate need to develop a safer and more secure environment at the Ground Transportation Center (GTC), as there has been a steady increase in the number of safety incidents at the facility. Finally, Jefferson Lines is preparing to join MATBUS at the GTC to create a truly multi-modal operation. The current Municipal Court facility had been constructed for and utilized by, Greyhound until 2009. Jefferson Lines has secured a grant to assist with constructing space for their operations within the GTC and will be entering into a five-year lease agreement with the City.

Funding Opportunities for GTC:

The availability of funding for capital repairs/renovations to a facility or equipment is limited. The City of Fargo makes limited capital funds available each year. In addition, FTA and the State make various grants available throughout the year which normally fund up to 80% of capital – we are required to match the grant(s) with the remaining up to 20% to obtain the grant opportunities. Over the course of the last 10-15 years, capital repairs to the GTC have steadily fallen behind, creating substantial concerns with the facility and leaving it in poor condition. The most critical needs are identified in the paragraph above as well as the Transit Hub Analysis Study.

The last three years of capital funding made available to Transit have gone into upgrading the transit fleet, consisting of vehicles four to five years beyond their useful life. Now the opportunity to focus on the transit facilities is available in the form of a \$1,591,000 grant awarded to Fargo Transit by the State of North Dakota – the local match required is \$397,750 for a total of \$1,988,750.

The competitive grant opportunity was the State of North Dakota making \$2.5M available for public transportation (transit). The grant opportunity was NDDOT re-issuing solicitations for remaining discretionary 5339 CFDA No. 20.526 funds (for bus and bus facilities by the Federal Transit Administration (FTA) and administered by the NDDOT) that were not awarded in the original applications solicited in the spring of 2018.

These funds will be added to an existing federal transit capital grant and the funds owed to FTA for the Municipal Court payback per the attached.

Requested motion: approve attached ND DOT Contract No. 38181779 for renovations to the Ground Transportation Center.

(ND DOT Contract No. 38181779, CFDA No. 20.526)

12-17-18
57

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:

Shaeve 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



Federal Clauses – over \$100,000 - Construction

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)

Contractor shall comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy & Conservation Act.

Clean Water

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

Lobbying

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

Access to Records and Reports

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

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

5325(a) enters into a contract for a capital project or improvement (defined at 49 USC 5302(a)1) through other than competitive bidding, contractor shall make available records related to the contract to the purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. Contractor shall maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the recipient, FTA Administrator, US Comptroller General, or any of their authorized 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

listed as a company currently authorized under 31 CFR, Part 223 as possessing a Certificate of Authority as described thereunder.

(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:

1. (Recipient) property or funds are to be provided to the contractor for use in performing the contract or as partial 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

Final Payment by (Recipient) and shall replace or repair any defective materials or equipment or faulty 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 and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S.

Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for

determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof. (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage

determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting

determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met: (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (2) The classification is utilized in the area by the construction industry; and (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting

officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the grantee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the recipient for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following: (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete; (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3; (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract. (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the

"Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code. (iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and

Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of Eligibility - (i) By entering into this contract, contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1). (iii) The penalty for making false statements is prescribed in 18 USC 1001.

Contract Work Hours & Safety Standards Act

Applicability – Contracts over \$150,000

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

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

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

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

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

No Government Obligation to Third Parties

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

(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.

Termination

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

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

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

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

If it is later determined by the recipient that contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of contractor, the recipient, after setting up a new delivery or performance schedule, may allow contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) the recipient in its sole discretion may, in the case of a termination for breach or default, allow contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination shall state the time period in which cure is permitted and other appropriate conditions. If contractor fails to remedy to the recipient's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by contractor or written notice from the recipient setting forth the nature of said breach or default, the recipient shall have the right to terminate the Contract without any further obligation to contractor. Any such termination for default shall not in any way operate to preclude the recipient from also pursuing all available remedies against contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that the recipient elects to waive its remedies for any breach by contractor of any covenant, term or condition of this Contract, such waiver by the recipient shall not limit its remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Convenience (Professional or Transit Service Contracts) the recipient, by written notice, may terminate this contract, in whole or in part, when it is in the recipient's interest. If the contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

f. Termination for Default (Supplies and Service) If contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. Contractor shall only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

g. Termination for Default (Transportation Services) If contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default.

Contractor shall only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while contractor has possession of the recipient goods, contractor shall, as directed by the recipient, protect and preserve the goods until surrendered to the recipient or its agent. Contractor and the recipient shall agree on payment for the preservation and protection of goods. Failure to agree on an amount shall be resolved under the Dispute clause. If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

h. Termination for Default (Construction) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified, or any extension, or fails to complete the work within this time, or if contractor fails to comply with any other provisions of this contract, the recipient may terminate this contract for default. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature of default. In this event, the recipient may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. Contractor and its sureties shall be liable for any damage to the recipient resulting from contractor's refusal or failure to complete the work within specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the recipient in completing the work.

Contractor's right to proceed shall not be terminated nor shall contractor be charged with damages under this clause if:

1. Delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such causes include: acts of God, acts of the recipient, acts of another contractor in the performance of a contract with the recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. Contractor, within 10 days from the beginning of any delay, notifies the recipient in writing of the causes of delay. If in the recipient's judgment, delay is excusable, the time for completing the work shall be extended. The recipient's judgment shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of contractor's right to proceed, it is determined that contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if termination had been issued for the recipient's convenience.

i. Termination for Convenience or Default (Architect & Engineering) the recipient may terminate this contract in whole or in part, for the recipient's convenience or because of contractor's failure to fulfill contract obligations. The recipient shall terminate by delivering to contractor a notice of termination specifying the nature, extent, and effective date of termination. Upon receipt of the notice, contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the recipient all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. If termination is for the recipient's convenience, it shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services. If termination is for contractor's failure to fulfill contract obligations, the recipient may complete the work by contract or otherwise and contractor shall be liable for any additional cost incurred by the recipient.

If, after termination for failure to fulfill contract obligations, it is determined that contractor was not in default, the

rights and obligations of the parties shall be the same as if termination had been issued for the recipient's convenience.

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

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

Government Wide Debarment and Suspension (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, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel,

Contracts Involving Federal Privacy Act Requirements

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

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

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

those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

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

Civil Rights Requirements

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

The following requirements apply to the underlying contract:

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

- a. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to, and assures that each Third Party Participant will, comply with Federal transit law, 49 U.S.C. § 5332 (FTA's "Nondiscrimination" statute):
 - (1) FTA's "Nondiscrimination" statute prohibits discrimination on the basis of: (a) Race, (b) Color, (c) Religion, (d) National origin, (e) Sex, (f) Disability, (g) Age, or (h) Gender identity and (2) The FTA "Nondiscrimination" statute's prohibition against discrimination includes: (a) Exclusion from participation, (b) Denial of program benefits, or (c) Discrimination, including discrimination in employment or business opportunity, (3) Except as FTA determines otherwise in writing: (a) General. Follow: 1 The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance, and 2 Other applicable Federal guidance that may be issued, but (b) Exception for the Tribal Transit Program. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its projects funded under the Tribal Transit Program,
- b. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will: (1) Prohibit discrimination based on: (a) Race, (b) Color, or (c) National origin, (2) Comply with: (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq., (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the preceding section a, and (3) Except as FTA determines otherwise in writing, follow: (a) The most recent edition of FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance. (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and (c) Other applicable Federal guidance that may be issued,
- c. Equal Employment Opportunity. (1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and: (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a, and (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing, (2) General. The Recipient agrees to: (a) Ensure that applicants for employment are

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

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

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

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

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

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

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

621 – 634, which prohibits discrimination on the basis of age, (2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, which implements the ADEA, (3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., which prohibits discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal funds, (4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, which implements the Age Discrimination Act of 1975, and (5) Federal transit law, specifically 49 U.S.C. § 5332, as stated in section a,

(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)

Follow Federal guidance prohibiting discrimination.

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)).

c. If a separate contract goal has been established, Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.

d. If no separate contract goal has been established, the successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

e. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the recipient. In addition, the contractor may not hold retainage from its subcontractors or must return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the recipient and contractor's receipt of the partial retainage payment related to the subcontractor's work.

f. The contractor must promptly notify the recipient whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the recipient.

Prompt payment

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

Incorporation of Federal Transit Administration (FTA) Terms

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

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

Other Federal Requirements

The following requirements are not federal clauses.

Full and Open Competition

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

Prohibition Against Exclusionary or Discriminatory Specifications

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

using exclusionary or discriminatory specifications.

Conformance with ITS National Architecture

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

Access Requirements for Persons with Disabilities

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

Notification of Federal Participation

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

Interest of Members or Delegates to Congress

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

Ineligible Contractors and Subcontractors

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

Other Contract Requirements

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

Compliance with Federal Regulations

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

Real Property

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

Access to Services for Persons with Limited English Proficiency

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

Environmental Justice

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

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

(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 Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.

Catalog of Federal Domestic Assistance (CFDA) Identification Number

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

name of the pass through entity.

CFDA number for the Federal Transportation Administration

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

I, 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			



MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS

FROM: JIM GILMOUR, ^{RG}DIRECTOR 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	\$	266,000
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	

CITY OF
Fargo
ASSESSMENT DEPARTMENT

23

December 26, 2018

Board of City Commissioners
City Hall
Fargo, ND 58102

Dear Commissioners:

Attached is a copy of *Application For Abatement Or Refund Of Taxes #4478* made by Mike and Linda Bergh. The application is for the property at 6568 Christianson Pkwy S. and is requesting that the valuation for 2018 be reduced from \$539,800 to \$525,576.

Our current valuation is the result of an informal review we conducted at the request of the property owner after they purchased the property in January of 2018. The contract purchase price was \$513,000 and the buyer assumed an outstanding balance of unpaid special assessments of \$19,800. The adjusted price including special assessments was \$532,800.

Our current valuation of \$539,800 is within 1.3% of the actual consideration obligated to acquire the property.

We originally arrived at a value for 2018 of \$616,400 using a cost model, based on recent sales, and applying the model to property information currently on file and certain additional assumptions. We were not able to view the property to gather current information during the reappraisal of that area during the summer of 2017. After the request for a review of the value, the new owner allowed us to view the property and the current value of \$539,800 was arrived at.

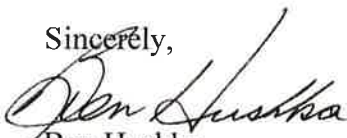
Page 1 of the attached information contains a list of comparable properties comparing the subject property value with how we have other properties assessed. It also contains a list of how the subject is valued compared to sales of comparable properties. Both lists indicate that the subject property is somewhat under-valued compared to assessed values and sales of similar properties. Pages 2-5 contain photos and a sketch of the home as well as the original mass appraisal valuation approach and the revised approach used to arrive at the current valuation.

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 #4478 submitted by Mike and Linda Bergh on 6568 Christianson Pkwy S.

Sincerely,


Ben Hushka
Fargo City Assessor

6568 Christianson Pkwy S

Parcel Number 01-7020-02430-000

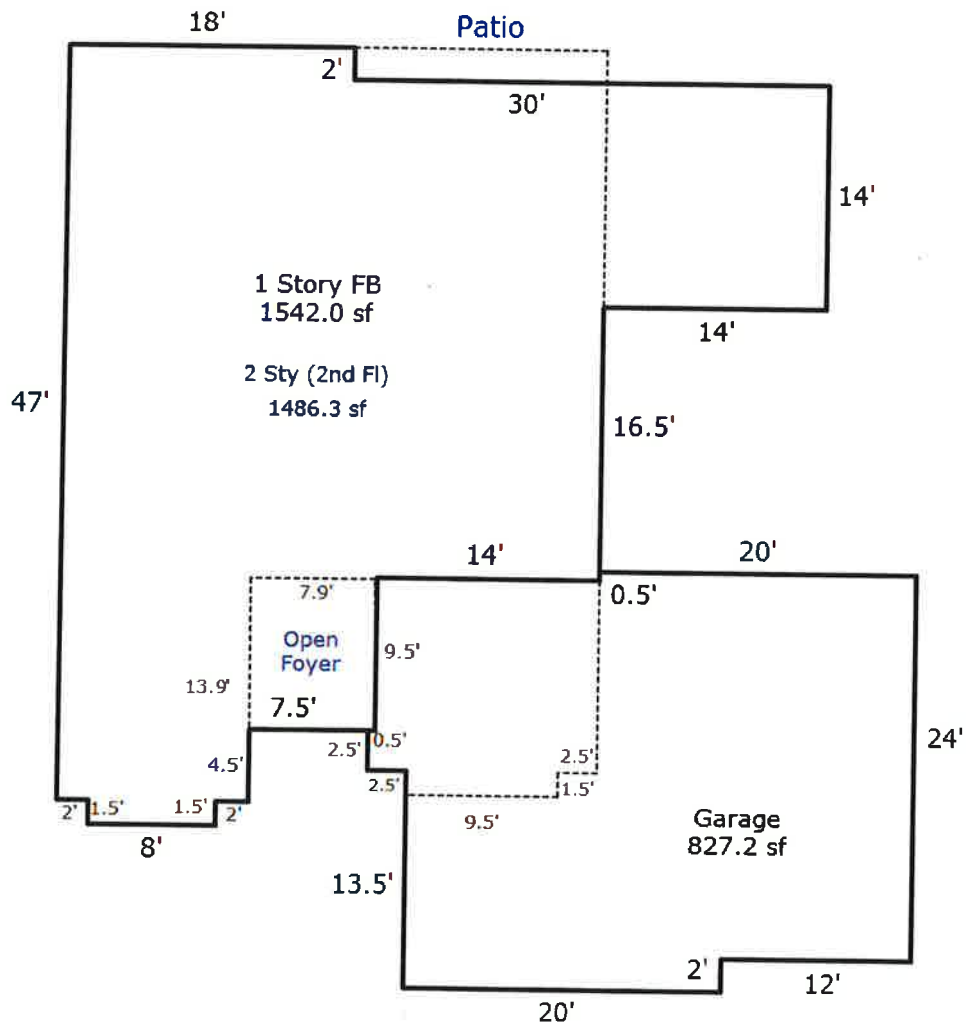
Owner: Bergh



6568 Christianson Pkwy S

Parcel Number 01-7020-02430-000

Owner: Bergh



PROPERTY SKETCH

6568 Christianson Pkwy S

Parcel Number 01-7020-02430-000

Owner: Bergh



Printed By: bhushka

Printed: 12/26/2018 11:40 AM
As of: 03/07/2018 11:47 AM

Parcel Number 01-7020-02430-000
Segment 2
Owner LINDA K BERGH REVOCABLE TRUST ET AL
Parcel Address 6568 CHRISTIANSON PKWY S FARGO ND 58104
Mailing Address 6568 CHRISTIANSON PKWY S FARGO ND 58104

	Cost	Total
Structure (Based on Area)		
Property Type	Single Family	
Story Height	2 Story	
Grade	Very Good	
Land Rate Adjustment	V Good Low	
Base Price Adjustment (% as Multiplier)	88	
Dwelling (SqFt & \$/SF)	3104	155 11 481,461
Basement (Based on Area)		
Main Floor Square Footage	1,542	
Basement Area (as %)	Full	
Basement Area Deduction Sqr Ft	0	-13 00
Basement Finished (as %)	75 %	
Basement Area Sqr Ft	1,157	25 00 28,925
Interior Options		
Built In's	Average	2,600
Fireplace(s)	Fireplace	5,200
Air Conditioning	Central	5,200
Bathrooms	3 or 3½	11,700
Other #1		
Other #2		
Other #3		
Exterior Options		
Porch & Deck	Patio	2,000
Garage Stalls	Three (or Two w/ Loft)	19,500
Extras	None	
Building Before Depreciation		556,586
Depreciation		
Year Built & Age (in Years)	2012 6	
Building Condition	Very Good	
Depreciation (% & Amnt)	-2	-11,132
Parcel Totals		
Building After Depreciation		545,500
Land Value		70,900
Parcel Total		616,400
Value / Sq Ft		199
Indicated Value by the Cost Approach		616,400

**MASS APPRAISAL COST RUN #10359 (3/1/2018)
PART OF REAPPRAISAL #200727 ON 658 PARCELS**

6568 Christianson Pkwy S

Parcel Number 01-7020-02430-000

Owner: Bergh

NAME: asRpt60100		Comparable Parcels From Sales Database			
DATE: 05/01/2018 2:34 PM					
ENTITY: City of Fargo					
USER: JWARK					
Property Address	Subject	Comp 1	Comp 2	Comp 3	
Parcel Number:	01-7020-02430-000	01-7740-01600-000	01-8554-00080-000	01-8489-00430-000	
Sale Price:		500,600	647,200	600,200	
Property Type	Single Family	Single Family	Single Family	Single Family	
Story Height:	2 Story	2 Story	2 Story	2 Story	
Homo Area:	V Good Low	V Good Low	V Good Low	V Good Low	
Year Built:	2012	2010	2015	2017	-30,000
Grade	Very Good	Very Good	Very Good	Very Good	
Total Area	3028	2935	3235	2800	6,800
Condition:	Very Good	Good	New	New	-90,000
Basement Area:	Full	Full	Full	Full	
# Stalls:	Three (or Two w/	Three (or Two w/	Three (or Two w/	Three (or Two w/	
# Baths:	3 or 3½	3 or 3½	3 or 3½	3 or 3½	
Basement Finish:	75 %	Full	Full	75 %	
Land Value:	70,900	96,500	77,200	79,200	-8,300
# Fireplaces:	Fireplace	None	Fireplace	Fireplace	
Air Conditioning:	Central	Central	Central	Central	
Built Ins:	Average	Average	Average	Average	
Deck:	Patio	Open Porch/Patio	Combination	Combination	-1,500
Extras:	None	None	None	None	
Sale Date:		03/27/2016	05/25/2016	05/19/2017	14,500
Recap					
Sale Price:		500,600	647,200	600,200	
Net Sum of Adj:		55,000	-80,000	-108,500	
Adjusted Sale Price:		555,600	567,200	491,700	
Absolute Sum of Adj:		117,200	150,000	151,100	
Number of Adj:		7	6	6	
Pct of Adj:		23%	23%	25%	
Weight Factor:		39.10	30.60	30.30	
Price Per Sq Ft:		171	200	214	
Current Value	616,400	204 / Sq Ft			
Indicated Market Value as of 05/01/2018 is 539,800 - 178 / Sq Ft					
Land	70,900				
Improvement	468,900				
Total	539,800				

**INDIVIDUAL MARKET APPRAISAL (5/1/2018)
AS A RESULT OF HOMEOWNER REQUEST FOR VALUE REVIEW**

Application For Abatement Or Refund Of Taxes
North Dakota Century Code § 57-23-04

RECEIVED

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. 01-7020-02430-000
Name Mike & Linda Bergh Telephone No. 701-200-9329
Address 6568 Christianson Parkway S

OCT 30 2018 PM 12:55

Legal description of the property involved in this application:
Lot: 11 Block: 15 Osgood 1st LT Blk 15

RECEIVED
OCT 31 2018

FARGO ASSESSOR

Table with 2 columns: Description, Value. Land \$70,900, Improvements \$468,900, Total \$539,800.

Table with 2 columns: Description, Value. Land \$69,000, Improvements \$456,576, Total \$525,576.

The difference of \$ 14,224 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 (N.D.C.C. § 57-02-08.1) or Disabled Veterans Credit (N.D.C.C. § 57-02-08.8). Attach a copy of the application.
10. Other (explain) House purchased 1/3/18 for \$513,000. Unpaid Specials are \$17,966

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: \$ 513,000 Date of purchase: January 3, 2018
Terms: Cash [checked] Contract Trade Other (explain)
Was there personal property involved in the purchase price? No Estimated value: \$
2. Has the property been offered for sale on the open market? Yes If yes, how long? 9.5 Months
Asking price: \$ 535,000 Terms of sale:
3. The property was independently appraised: No Purpose of appraisal: Note: Jason Wark, Fgo City Assessor
did walkthru on 4/26/2018 Market value estimate: \$
Appraisal was made by whom?
4. The applicant's estimate of market value of the property involved in this application is \$ 513,000
5. The estimated agricultural productive value of this property is excessive because of the following condition(s):

Applicant asks that Assessed value be adjusted to reflect actual sales value of \$513,000 plus no more than 70% of remaining specials as City of Fgo has acknowledged overcharging homeowners on Special Assmts in past few years. Also, this home was on the market for 9.5 months, so not a distressed sale.

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 Mike Bergh 10/24/18 Date

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

**Application For Abatement
 Or Refund Of Taxes**

Name of Applicant Mike & Linda Bergh

County Auditor's File No. 4478

Date Application Was Filed With The County Auditor 10/30/18

Date County Auditor Mailed Application to Township Clerk or City Auditor 10/30/18
(mark the month the business day of filing date)

24a

City of Fargo Staff Report			
Title:	Egbert, O'Neil, and Haggart's Subdivision	Date:	November 28, 2018
		Update:	December 19, 2018
Location:	404 25 th Street South	Staff Contact:	Maegin Elshaug
Legal Description:	Lots 5A, 5B, 6A, 6B, 8A, 8B, part of 7B, and half of the vacated alley adjacent to Lot 5A, Block 16, all of Lots 1, 2A, 2B, 3A, 3B, 6, and part of Lot 4, Block 21, and the vacated alley adjacent to Block 16 and Block 21		
Owner(s)/Applicant:	Ken Schwanke (Quality Auto Body)	Engineer:	N/A
Entitlements Requested:	Zoning Change (from SR-4, Single-Dwelling Residential and GC, General Commercial to GC, General Commercial)		
Status:	City Commission Public Hearing: January 2, 2019		

Existing	Proposed
Land Use: Vehicle Repair (Automobile Repair Shop)	Land Use: No Change
Zoning: SR-4, Single-Dwelling Residential and GC, General Commercial, with a C-O, Conditional Overlay	Zoning: GC, General Commercial
Uses Allowed: Detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, schools, basic utilities, colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-storage, vehicle repair, limited vehicle service, aviation, surface transportation, and major entertainment events.	Uses Allowed: Colleges, community service, daycare centers of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, adult entertainment centers, offices, off-premise advertising, commercial parking, outdoor recreation and entertainment, retail sales and service, self-storage, vehicle repair, limited vehicle service, aviation, surface transportation, and major entertainment events.
Maximum Density Allowed (Residential): SR-4 allows a maximum 12.1 units per acre	Maximum Density Allowed (Residential): N/A
Maximum Lot Coverage Allowed (Commercial): GC allows a maximum 85% building coverage	Maximum Lot Coverage Allowed (Commercial): GC allows a maximum 85% building coverage

Proposal:

The applicant is proposing a zoning change from GC, General Commercial and SR-4, Single-Dwelling Residential to GC, General Commercial for the property located at 404 25th Street South. The applicant recently acquired two adjacent properties zoned SR-4 and combined them with the property of the existing Quality Auto Body shop. The residential buildings were demolished in November 2017. The applicant intends to make improvements to the site by adding paved parking. The property has an existing C-O, Conditional Overlay, which requires an aesthetic buffer on the east side of the property (adjacent to 24th Street South). This requirement will be reviewed for compliance at the time of permitting.

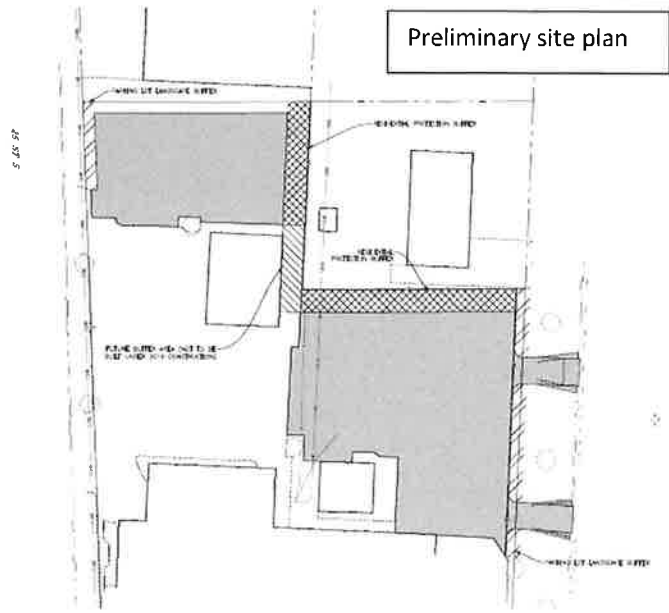
Continued on page 2

A preliminary site plan is to the right. Note that the Planning and City Commission do not review site plans and that the plan is shown for illustrative purposes and may change. The project will be reviewed administratively at the time of a permit application and will be reviewed for compliance with requirements of the LDC and other applicable requirements.

This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.

Surrounding Land Uses and Zoning Districts:

- North: GC with retail and offices, and SR-4 with a detached home;
- East: SR-4 with detached homes;
- South: GC and MR-2, Multi-Dwelling Residential with multi-dwelling housing;
- West: Across 25th Street South is LI, Limited Industrial with uses of warehouse, office and vehicle repair.



Area Plans:

The property is part of the Jefferson neighborhood and the Jefferson/Carl Ben neighborhood plan. There is no future land use as part of this plan.

Context:

Schools: The subject property is located within the Fargo School District and is served by Jefferson Elementary, Ben Franklin Middle, and North High schools.

Parks: The property is located within a quarter-mile of the Jefferson West Park (1904 4th Avenue South), which provides amenities of sports fields, and courts, trails, playground and shelters.

Pedestrian / Bicycle: A shared use path is located adjacent to the property on 25th Street South, which is a component of the metro area trail system.

Neighborhood: Jefferson

Staff Analysis:

Zoning

Section 20-906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

- 1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?**

Staff is unaware of any zoning map error in regard to the subject property. The request is justified as there has been a change in conditions. The property was recently acquired and will be used to expand improvements for the business. The requested zoning change is for the property to have one zoning district, GC, General Commercial. **(Criteria Satisfied)**

2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?

The development is served with city services (water, sewer, streets, police/fire protection, etc.) as well as other needed utility services as needed. The City Engineer and other applicable review agencies have reviewed this proposal. No deficiencies to provide the necessary public services, facilities and programs to this development have been identified. **(Criteria Satisfied)**

3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?

Staff has no documentation or evidence that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. In addition, written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, staff has not received any verbal concerns or written comments regarding the proposed overlay zoning change. Staff finds that the approval will not adversely affect the condition or value of the property in the vicinity. **(Criteria Satisfied)**

4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?

The purpose of the LDC is to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. Staff finds that the proposal is consistent with the purposes of the LDC, and other adopted policies of the City. **(Criteria Satisfied)**

Staff Recommendation:

Suggested Motion: "To accept the findings and recommendations of the Planning Commission staff and hereby waive the requirement to receive the Ordinance one week prior to the first reading and place the rezoning Ordinance on the first reading, and move to approve the proposed zoning change from GC, General Commercial and SR-4, Single-Dwelling Residential to GC, General Commercial, on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC."

Planning Commission Recommendation: December 4, 2018

On December 4, with a 10-0 vote, the Planning Commission accepted the findings and recommendations of staff and recommend approval to the City Commission of the proposed zoning change from GC, General Commercial and SR-4, Single-Dwelling Residential to GC, General Commercial, on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.

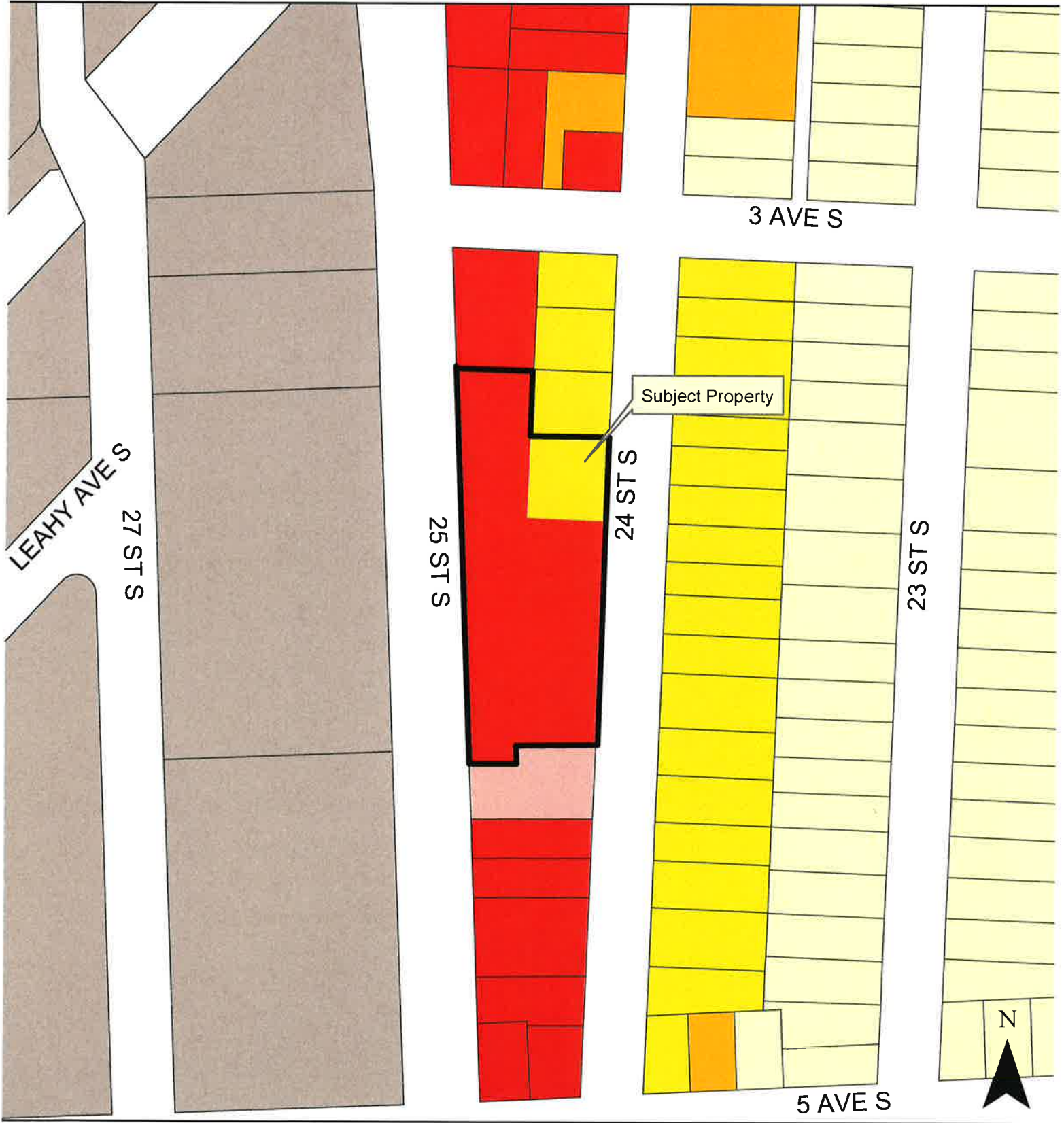
Attachments:

1. Zoning Map
2. Location Map

Zone Change (SR-4 and GC to GC)

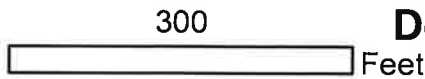
Egbert, O'Neil & Haggarts Addition

404 25th Street South



Legend

AG	LC	MHP	SR-1
DD	ML	NO	SR-2
GC	MR-1	PA	SR-3
GO	MR-2	UML	SR-4
	MR-3		SR-5
			City Limits



Fargo Planning Commission

December 4, 2018

Zone Change (SR-4 and GC to GC)

Egbert, O'Neil & Haggarts Addition

404 25th Street South



24a1

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PARCELS OF LAND
LYING IN EGBERT, O'NEIL AND HAGGART'S ADDITION
TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in Egbert, O'Neil and Haggart's Addition to the City of Fargo, Cass County, North Dakota; and,

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on December 4, 2018; and,

WHEREAS, the rezoning changes were approved by the City Commission on January 2, 2019,

NOW, THEREFORE,

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

Section 1. The following described property:

Lots 5A, 5B, 6A, 6B, 8A, 8B and the South 13-1/2 feet of Lot 7B and the south-half of the vacated alley adjacent to Lot 5A and the north half of the vacated alley adjacent to said Lots 6B and 8B; Block 16; and Lots 1, 2A, 2B, 3A, 3B, 6 and Lot 4, except the South 70 feet thereof, and the south half of the vacated alley adjacent to said Lots 1 and 2A; Block 21 all in the Plat of the South Half of Egbert, O'Neil and Haggart's Addition to the City of Fargo, Cass County, North Dakota

is hereby rezoned from "SR-4", Single-Dwelling Residential, District and "GC", General Commercial, District with a "C-O", Conditional Overlay, District established by Ordinance No. 4033 to a "GC", General Commercial, District leaving said "C-O", Conditional Overlay in place;

OFFICE OF THE CITY ATTORNEY
FARGO, NORTH DAKOTA

ORDINANCE NO. _____

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

(SEAL)

Attest:

Steven Sprague, City Auditor

Timothy J. Mahoney, M.D., Mayor

First Reading:
Second Reading:
Final Passage:



Fargo Inspections

City of Fargo
225 Fourth Street North
701-241-1561
fax 701-241-1526

24/b

Memorandum

DATE: December 27, 2018
TO: Mayor Mahoney and Board of City Commissioners
FROM: Bruce Taralson, Inspections Administrator
SUBJECT: Dangerous Building Hearing for 703 10 Avenue N., Fargo, ND

The property owner of 703 10 Avenue N., Fargo, ND, the property that is subject of the attached packet, has failed to comply with my order to remove the heavily damaged structure at that location within the time allowed for that removal. A Dangerous Building Hearing was scheduled for Monday, December 3, 2018 and has been continued to January 2, 2019.

The recommendation is to **make a motion determining this to be a dangerous building, approve the attached Findings of Fact and Order, and direct staff and City Attorney to take action, order its removal, and direct appropriate staff to secure the removal of this building at that time, should the owner fail to do so.**



DANGEROUS BUILDING ORDER TO COMMISSION- Detail and Timeline for 703 10 Avenue North, Fargo, ND 58102.

The DANGEROUS BUILDING hearing is required under Article 21-0405 for the purpose of allowing any interested parties the opportunity to comment, and to allow the Owner of the property the opportunity to appear and show cause why the City of Fargo should not cause the removal of this building.

The Inspections Department has taken this action due to the amount of damage to the building. This building meets 8 of the 10 criteria which only one might be required. Our report on ordinance requirements-

1. Inspections Department received complaint on property.
2. Inspections Department inspected the property.
3. Inspections placed notice on the building and notified Owner.
4. Inspections secured assessors report.
5. Inspections provided notice to Owner giving 30 days.
6. Inspections report of noncompliance to City Commission.
7. Inspections appeared at the hearing on December 3, 2018 to testify as to the condition of the Dangerous Building. The hearing was continued to January 2, 2018, and Inspections will appear for the continued hearing.
8. Inspections notice contained specific wording as required in Article 21-0404, Section H.

In your packets, you will find my dangerous building notice. Article 21-0404 requires the Inspections Department give a 30-day notice to the Owner of the property prior to any action by the City Commission or staff. Our time line will show a notice went out on August 16, 2018 and there was no action taken by the Owner within 30 day deadline. An extension was given to October 1, 2018, in which no action was taken by the owner.

Also, in your packets you will find copies of the photos we have taken of the property as well as a copy of the letter of determination of value from Assessors office. Article 21-0401 stipulates that if this building meets the definition of a dangerous building, it must be demolished or repaired. The assessor's letter states that repairs will exceed or are in excess of 50% of the current value. Article 21-0402 stipulates that if costs to repair the building exceed 50% or more of the current value, the building can be ordered demolished or repaired. We have taken the path of demolition due to the amount of repair required.

6/28/2018 – Inspector had phone conversation with Mr. Tegtmeier and requested access for interior structural evaluation. Mr. Tegtmeier declined and stated his attorney must handle this matter.

7/25/2018 – Inspector notified Mr. Tegtmeier that search warrant would be executed on 7/25/2018. See enclosed warrant.

7/25/2018 – Interior inspection. Extensive damage as listed above under “description of damage”. Pictures enclosed.

7/26/2018 – Inspections Department received letter from Assessor’s office stating repair would exceed 50% of building value. See enclosed.

7/30/2018 – Inspections Department received letter from Terry Tegtmeier. See enclosed.

8/16/2018 – Dangerous Building Notice posted on building and mailed certified mail. New graffiti noted on North side of building. Inspections Department received receipt that Mr. Grotenhuis received notice via certified mail. Mr. Tegtmeier’s letter was returned as “unclaimed – unable to forward”.

8/28/2018 – Inspections Department received letter from attorney, David Garaas. See enclosed.

9/4/2018 – City Attorney’s office responded to letter from Mr. Garaas on behalf of the Inspections Department. See enclosed.

9/11/2018 – Mr. Grotenhuis and Mr. Tegtmeier entered the Inspections Department to obtain a permit to make a few minor repairs to 703 10 AVE N. – Fargo, ND. The permit was denied due to the Dangerous Building order and requirements listed on that order not met.

9/14/2018 – A meeting with Mr. Grotenhuis and Mr. Tegtmeier was held in the Inspections Department. See enclosed minutes.

9/17/2018 – Letter sent certified mail to Mr. Grotenhuis and Mr. Tegtmeier regarding the meeting on 9/14/2018. Inspections administrator, Bruce Taralson, gave two-week extension on deadline to 10/1/2018 to obtain a permit to repair. Both letters were returned to Inspections Department as “unclaimed – unable to forward”. See enclosed.

10/18/2018 – Inspections Department requested Commission set a Dangerous Building Hearing date for 12/3/2018.

10/24/2018 – Inspections Department received letter from Mr. Grotenhuis stating that the Inspections Department can inspect any of his rental properties as long as a court order is obtained stating the probable cause and detailing what the search entails. See enclosed.

Description: Multi-story, Wood-framed structure.

Description of damage: Large hole in roof leading to extensive water damage of kitchen and bathroom on main floor, signs of extensive water damage on second floor leading to the wood floor buckling and multiple areas with sagging plaster. Wall on Southeast corner wall has deteriorated to the point where the outside is visible. Unpermitted work with floor removed in Northwest corner by rear entry leading to unsupported floor joists. Multiple broken windows. Foundation has been compromised on West side with noticeable buckling and large cracks. Broken water pipe in basement. Signs of squirrel infestation.

Timeline of events-

9/3/2002 – As per City of Fargo Utility Department on 11/27/2018, water has been shut off since 9/3/2002.

3/2008 – As per Xcel Energy on 11/27/2018, gas has been shut off since March of 2008.

4/2008 – As per Xcel Energy on 11/27/2018, electricity has been shut off since April of 2008.

10/3/2017 – Inspections Department received complaint via the FargoOne online complaint portal. Complaint stated that house appears vacant and unsecured, appears that birds are living in attic, missing window, and two large holes in chimney. Pictures enclosed.

10/11/2017 – Violation letter sent to Mr. Grotenhuis regarding exterior inspection on 10/3/2017 and order for corrections. See enclosed.

11/24/2017 – Inspector verified that house was secured and backhoe was removed.

3/20/2018 – Inspections received complaint of vacant, abandoned building. No improvement since last complaint. Three trailers in rear yard. Exterior in poor condition. Several windows boarded shut, one broken. Large hole in roof has temporary cover. Rear storm door is stuck open. Pictures enclosed.

4/23/2018 – Inspector placed placard on front and rear door. Rear entry door is unsecure and has broken window. Substandard building letter mailed certified mail to Mr. Grotenhuis. See enclosed. Letter returned to Inspections Department as “unclaimed – unable to forward”. Pictures enclosed.

4/24/2018 – Inspector noted front entry placard was removed without prior approval from the Building Official.

4/25/2018 – Inspector re-posted placard on front entry door along with “Re-inspection of Substandard Building Notice – Placard Tampering Fee”. See Enclosed. Notice was also mailed certified mail to Mr. Grotenhuis and Mr. Tegtmeier. Both letters were returned as “unclaimed – unable to forward”.

5/22/2018 – Inspector verified placards were still in place.

10/25/2018 – Notice of Dangerous Building Hearing was posted on building and mailed certified mail to Mr. Grotenhuis and Mr. Tegtmeier. Inspections received receipt that Mr. Grotenhuis received the notice via certified mail. Mr. Tegtmeier's letter was returned as "unclaimed – unable to forward".

12/03/2018 – Dangerous Building Hearing – Continued to 01/02/2019 as per City Commissioners.

12/21/2018 – Notice of Dangerous Building Hearing Continuance was posted on building and mailed certified and regular mail to Mr. Grotenhuis and Mr. Tegtmeier.

1/2/2019 – Dangerous Building Hearing – Continued from 12/3/2018.

Upon your finding for Owner to comply with this demolition order, you are required by Article 21-04, to notify Owner of your determination, and that if an Owner fails to comply with that order for demolition within 10 days, The City Commission can order city staff to take action on demolition and assess costs back to the property.

I suggest you agree with my notice and find this to be a dangerous building, and approve the enclosed findings of fact and order. I also ask that you direct staff to proceed with all necessary measures to secure removal of this building should the Owner fail to do so. Commission action requires a 10 day allowance for action per Article 21-0405.E. Article 21-0406 also allows court action if that is the course the commission chooses to take. Article 21-0412 is allowance for Owner appeal to City Commission action.

Thank you,

Respectfully submitted,

Dated this 27th day of December, 2018.

A handwritten signature in black ink, appearing to read "Bruce Taralson", with a long horizontal line extending to the right.

Bruce Taralson

Inspections Administrator

FINDINGS OF FACT AND ORDER
of the
BOARD OF CITY COMMISSIONERS
OF THE CITY OF FARGO

Property Address: 703 10th Avenue North, Fargo, North Dakota

Owners: Philip H. and Martha A. Grotenhuis, trustees of the Philip H. Grotenhuis Revocable Living Trust, Terry L. and Linda S. Tegtmeier as contract for deed vendees

A hearing was held before the Board of City Commissioners of the City of Fargo on the 3rd day of December, 2018 regarding property located at 703 10th Avenue North, Fargo, North Dakota. Bruce Taralson, Building Official, appeared on behalf of the city of Fargo Inspections Department and provided testimony as to the condition of the property. Philip Grotenhuis, trustee for property owner Philip H. Grotenhuis Revocable Living Trust, appeared and provided testimony. Terry Tegtmeier, contract for deed vendee and owner, additionally appeared and provided testimony.

The matter was continued and came on for further proceedings before the Board of City Commissioners at the Board's regular meeting of January 2, 2019 at which meeting the Board allowed additional testimony to be presented. _____, _____, _____, and _____, appeared and provided additional testimony.

The Board, having heard the testimony, considered the reports, evidence and other information presented, and hereby makes the following Findings of Fact:

FINDINGS OF FACT

1. That Philip H. and Martha A. Grotenhuis, as trustees of the Philip H. Grotenhuis Revocable Living Trust, are the owners of the subject property, subject to a contract for deed with Terry L. and Linda S. Tegtmeier and, as such, are all "owners" of the subject property as defined by the Fargo Municipal Code, in the following described real property located in the City of Fargo, County of Cass and State of North Dakota:

Lot 12, Block 16, Wilson Subdivision in Chapins Addition to the city of Fargo

The street address for which is: 703 10th Avenue North, Fargo, North Dakota, 58102.

2. That the subject property is vacant.

3. That on July 25, 2018, Bill Thompson, Building and Rental Housing Inspector to the city of Fargo, inspected the property and found the building, consisting of a multistory, wood-framed structure to be a dangerous building within the standards set forth in Article 21-04 of the Fargo Municipal Code and Section 108 of the International Property Maintenance Code concerning dangerous structures. Additionally, Bill Thompson observed and reported that numerous code violations exist and the deterioration of the property is extensive.

4. That on July 25, 2018, Robert E. Harshberger, Deputy Assessor of the city of Fargo, performed an inspection on the property and determined that the estimated cost to repair the property would exceed fifty percent (50%) of the building value as established by the Fargo Assessment Department.

5. That the building is unsafe and is a dangerous building in the following respects: the building is structurally unsound; there are many and various code violations; that work has been completed without necessary permits; and that there is substandard workmanship.

6. Further, the City Commission finds that the following conditions exist with respect to the subject property:

- a. The structure has been damaged or deteriorated for more than fifty percent (50%) of its original value;
- b. The building is unsafe, fails to provide the amenities essential to decent living, and is unfit for human habitation; and
- c. The building it is unsafe or dangerous to the health, moral safety or general welfare of the people of the City of Fargo.

7. That the information in the files of the Inspection Department and the City Assessor's Office stemming from various inspections of the property on or before July 25, 2018, with respect to the subject property is hereby accepted as true and correct.

8. That the building located at 703 10th Avenue North, Fargo, North Dakota 58102, is hereby found to be a “dangerous building.”

9. Notice of Dangerous Building was posted on the property on or about August 16, 2018, in accordance with Municipal Code § 21-0404. The Notice of Dangerous Building informed the owners and all occupants, if any, that the “dangerous building” must be vacated and the building demolished within 30 days from the date of the notice.

10. The owners were properly served by certified mail with the Notice of Dangerous Building, dated Thursday, August 16, 2018.

11. Despite being ordered that the building on the subject property should be demolished or necessary permits be obtained within 30 days of the notice, the owners have failed to do so, notwithstanding the numerous extensions granted by the Inspections Department.

12. The hearing before the Board on December 3, 2018 was continued to January 2, 2019 to give owners additional time to complete a third-party structural analysis on the property and work with the Inspections Department to obtain any necessary permits. The owners have failed to do so.

13. The owners have not sufficiently presented cause why the “dangerous building” should not be demolished.

14. Any cost of demolition shall be assessed against the subject property in accordance with Fargo Municipal Code §21-0405(E).

ORDER

Based on the foregoing Findings of Fact, it is hereby ORDERED that Philip H. and Martha A. Grotenhuis, trustees of the Philip H. Grotenhuis Revocable Living Trust, Terry L. and Linda S. Tegtmeier as contract for deed vendees, or anyone else claiming an ownership interest shall demolish the “dangerous building” located at 703 10th Avenue North, Fargo, North Dakota.

It is further ordered that Philip H. and Martha A. Grotenhuis, trustees of the Philip H. Grotenhuis Revocable Living Trust, Terry L. and Linda S. Tegtmeier as contract for deed vendees, or anyone else claiming an ownership interest in the building shall have 30 days from the date of service of this Order within which to demolish the “dangerous building” located at 703 10th Avenue North, Fargo, North Dakota.

It is further ordered that if the owners fail to demolish said “dangerous building,” the City Auditor, Building Inspector and City Attorney are directed to act on behalf of the city of Fargo to cause the “dangerous building” to be demolished, and the cost of said demolition to be assessed against the subject property as provided in Section 21-0405 of the Fargo Municipal Code.

DATED this _____ day of January, 2019.

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

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

ATTEST:

Steven Sprague, City Auditor

NOTICE OF ENTRY OF ORDER

TO: PHILIP H. AND MARTHA A. GROTENHUIS, TRUSTEES OF THE PHILIP H. GROTENHUIS REVOCABLE LIVING TRUST, TERRY L. AND LINDA S. TEGTMEIER, AS CONTRACT FOR DEED VENDEES, AND ALL OTHER PERSONS HAVING AN INTEREST IN THIS PROPERTY

RE: PROPERTY AT 703 10TH AVENUE NORTH, FARGO, NORTH DAKOTA 58102

YOU ARE HEREBY GIVEN NOTICE that you shall have 30 days from the date of service of Findings of Fact and Order of the Board of City Commissioners of the City of Fargo (“Order”) upon you in which to appeal the Order to the District Court of Cass County, North Dakota, or to take such other legal action to enjoin the enforcement of this Order as you deem proper, all in accordance with the appeal procedure set forth in Fargo Municipal Code § 21-0412. You are further given notice that the “dangerous building” on the subject property may be demolished by the city of Fargo at any time on or after 30 days from the date of service hereof.

DATED this _____ day of January, 2019.

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

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

ATTEST:

Steven Sprague, City Auditor

Fargo Inspections
City of Fargo
225 Fourth Street North
Fargo, North Dakota 58102
Phone: 701-241-1561
Fax: 701-476-6779



**Notice of Dangerous Building Hearing Continuance
Order to Show Cause**

Date: December 21, 2018

Location: 703 10 Avenue N., Fargo, ND 58102

Property Owner: Philip H and Martha A Grotenhuis
Address of Property Owner: 1502 16th St S, Fargo ND 58103
C/D Terry L and Linda S Tegtmeier
16756 53rd St SE, Kindred ND 58051-9605

Inspector: Bill Thompson
Date of Posting: December 21, 2018

Ordinance 21-0405 of the Fargo Municipal Code states:

The board of city commissioners shall:

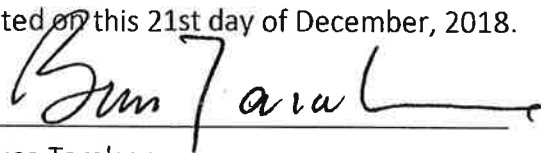
A. Upon receipt of a report of the building inspector as provided for in § 21-0404, subsection (F), give written notice to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the register of deeds of the county of Cass to appear before it on the date specified in the notice to show cause why the building or structure reported to be a "dangerous building" should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the building inspector(s) notice provided for herein in § 21-0404, subsection (E).

B. Hold a hearing and hear such testimony as the building inspector or the owner, occupant, mortgagee, lessee or any other person having an interest in said building as shown by the records of the register of deeds of the county of Cass shall offer relative to the "dangerous building."

A hearing regarding the dangerous building located at 703 10 Avenue N., Fargo, ND, was held on Monday, December 3, 2018 at 5:15PM. The hearing was continued and scheduled for Wednesday, January 2, 2019 per City Commission Meeting Minutes from December 3, 2018. The meeting will take place in the City Commission Chambers, located at 200 3RD Street N., Fargo, ND 58102 at 5:15PM.

Any interested person or party is encouraged to attend.

Dated on this 21st day of December, 2018.

A handwritten signature in black ink, appearing to read "Bruce Taralson", written over a horizontal line.

Bruce Taralson

Inspections Administrator



703 10 Ave. N., Fargo, ND 58102—Dangerous Building Hearing Continuance Notice—Posted 12/21/18

Fargo Inspections
City of Fargo
225 Fourth Street North
Fargo, North Dakota 58102
Phone: 701-241-1561
Fax: 701-476-6779



Notice of Dangerous Building Hearing – Order to Show Cause

Date: October 25, 2018

Location: 703 10 Avenue North, Fargo, ND 58102

Property Owner: Philip H and Martha Grotenhuis

Address of Property Owner: 1502 16 Street S., Fargo, ND 58103

C/D Terry L and Linda S Tegtmeier
16756 53 Street SE
Kindred, ND 58051-9605

Inspector: Bill Thompson

Date of Posting: October 25, 2018

Ordinance 21-0405 of the Fargo Municipal Code states:

The board of city commissioners shall:

A. Upon receipt of a report of the building inspector as provided for in § 21-0404, subsection (F), give written notice to the owner, occupant, mortgagee, lessee and all other persons having an interest in said building as shown by the records of the register of deeds of the county of Cass to appear before it on the date specified in the notice to show cause why the building or structure reported to be a "dangerous building" should not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the building inspector(s) notice provided for herein in § 21-0404, subsection (E).

B. Hold a hearing and hear such testimony as the building inspector or the owner, occupant, mortgagee, lessee or any other person having an interest in said building as shown by the records of the register of deeds of the county of Cass shall offer relative to the "dangerous building."

A hearing regarding the dangerous building located at 703 10 Avenue N., Fargo, ND 58102, has been scheduled for Monday, December 3, 2018 at 5:15PM. The hearing will take place in the City Commission Chambers, located at 200 3RD Street N., Fargo, ND 58102.

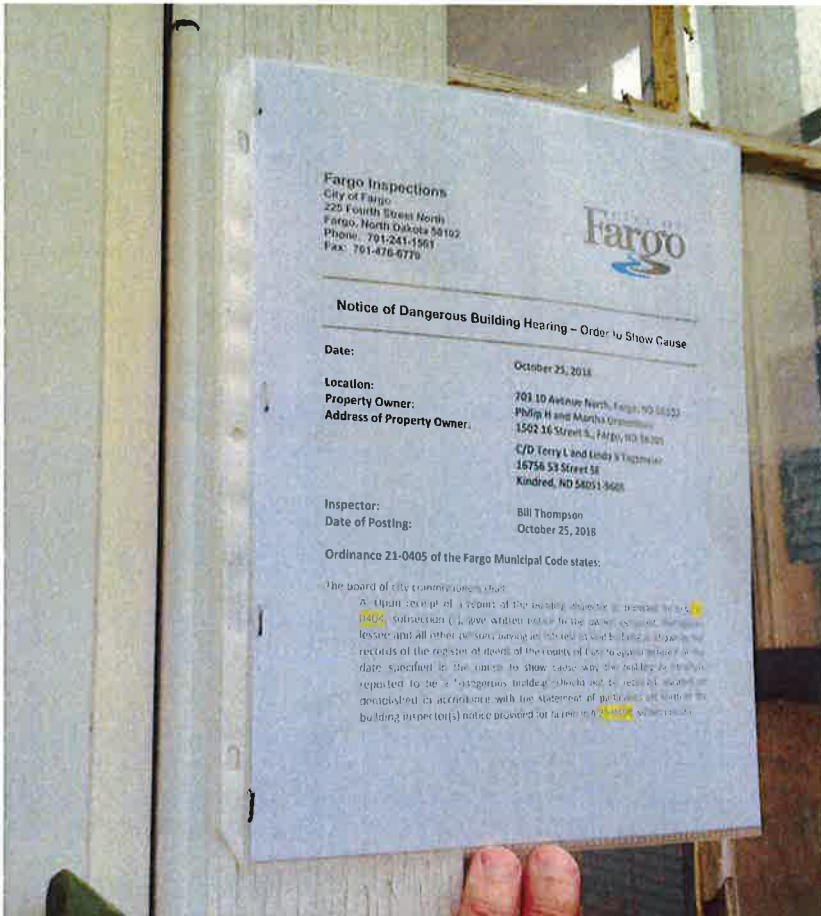
Any interested person or party is encouraged to attend.

Dated on this 25th day of October, 2018.

A handwritten signature in cursive script, appearing to read "Christine Rose", is written over a horizontal line.

Christine Rose

Deputy Inspections Administrator



703 10 Ave. N., Fargo, ND 58102—Dangerous Building Hearing Notice—Posted 10/25/18

10-24-2018

To: Bill Thompson, Fargo Inspections.

Regarding our phone conversation of Oct 21,
2018, you ^{again} respect any of my rental prop-
erties as long as you have a court order
stating probable cause & detailing what
you want to search for.

Sincerely,
Phil Grotenhuis
Phil Grotenhuis



Fargo Inspections

City of Fargo
224 Fourth Street North
701-241-1561
fax 701-241-1526

Memorandum

DATE: October 18, 2018
TO: Mayor Mahoney and Board of City Commissioners
FROM: Bruce Taralson, Inspections Administrator
SUBJECT: Dangerous Building Notice and Order at 703 10 Avenue N., Fargo, ND 58102

This is to notify you that the property owner of 703 10 Avenue N., Fargo, ND 58102, the property that is subject of the attached Notice, has failed to comply with my order to either obtain a permit to repair or remove the heavily damaged structure at that location within the time allowed for that removal. In accordance with Fargo Municipal Code Article 21-0405, it will now be necessary for you to set a date for a hearing of this order at which time the property owner will be able to appear and show cause why the building should not be removed and the costs of that removal assessed against this property.

The recommendation is **to make a motion, in accordance with FMC Article 21-0405, to set December 3, 2018 as the time and date for the hearing regarding the dangerous building order for the structure at 703 10 Avenue N., Fargo, ND 58102.**



INSPECTIONS

200 3RD STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: 701-241-1561
FAX: 701-476-6779

September 17, 2018

RE: Dangerous Building Meeting - 703 10 Avenue N., Fargo, ND 58102

Dear Mr. Grotenhuis and Mr. Tegtmeier,

I regret that our meeting on September 14, 2018 regarding 703 10 Avenue N., Fargo, ND, ending the way that it did. For that reason, I want you to know that I still want you to get a permit. To show good faith and to facilitate that, I am willing to offer the following-

1. I will extend the deadline another two weeks. That makes the deadline October 1, 2018.
2. In lieu of required engineering for the mechanical, plumbing and electrical trades, you can use licensed contractors. The licensed contractors must provide statements that they will do two things: 1. That they have reviewed the house and what they will do to bring it up to current codes; 2. They will take out a permit by the deadline to do the work.

Remember that you are dealing with an existing house. Even if an engineer or licensed contractor gives us information, the building is still required to comply with all codes. If something is missed during the investigation, it will still be required to comply due to unknowns or unforeseen. The City of Fargo will work with you and hopes this will help you acquire the permit you want.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Taralson".

Bruce Taralson
Inspections Administrator



INSPECTIONS

200 3RD STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: 701-241-1561
FAX: 701-476-6779

September 14, 2018

RE: Meeting regarding 703 10 Avenue N., Fargo, ND

Individuals Present: Philip Grotenhuis, Terry Tegtmeier, Bruce Taralson, Bill Thompson, and Gretchen Morlan

The meeting regarding the placarded, Dangerous Building, located at 703 10 Avenue North, Fargo, ND, began at approximately 9:00AM on Friday, September 14, 2018.

Mr. Taralson inquired if everyone understood what needs to be done to obtain a permit at 703 10 Ave N., Fargo, ND. Mr. Tegtmeier stated that he understood what needs to be done, but what is being required is not possible to obtain within 30 days. Mr. Taralson stated that the 30-day deadline is approaching and inquired as to the reason for not working toward a permit from the start of the notice. Mr. Tegtmeier asked what degrees are required of the Inspectors at the City of Fargo. Mr. Taralson stated some inspectors are working toward certification, some are certified, and some have degrees. Mr. Tegtmeier stated that he was an engineer and could tell Mr. Taralson what needs to be done. He futhered that he has a degree and then had to work under engineers for years. Mr. Tegtmeier stated that it didn't sound like the City of Fargo would be reasonable and opted to obtain legal advice. Mr. Taralson stated that the Inspections Department would accept engineering plans that are stamped by a third-party engineer. Mr. Tegtmeier stated that he is very familiar with the process and inquired if Mr. Bill Thompson had informed Mr. Taralson of what has been going on with his property. Mr. Taralson stated that Mr. Thompson has kept him informed of everything including that the building has sat vacant for years. Mr. Tegtmeier stated that he felt that Mr. Taralson just wanted to reiterate the contents of the Dangerous Building notice. Mr. Taralson stated that he wanted to stay on track and discuss what is required to obtain a permit. Mr. Taralson asked Mr. Grotenhuis and Mr. Tegtmeier if they wanted to obtain a permit. Mr. Tegtmeier stated that they did want to obtain a permit. Mr. Taralson asked why they aren't doing what they need to do to obtain a permit. Mr. Tegtmeier stated that they would do what needs to be done stated that this meeting was over before it started and that Mr. Taralson had not heard the last of him. Mr. Grotenhuis and Mr. Tegtmeier ended the meeting at 9:06AM and exited the department.

Sincerely,

A handwritten signature in cursive script that reads "Gretchen Morlan".

Gretchen Morlan
Office Associate III



Office of the City Attorney

City Attorney
Erik R. Johnson

Assistant City Attorney
Nancy J. Morris

September 4, 2018

Mr. David Garaas
Garaas Law Firm
Demores Office Park
1314 23rd Street South
Fargo, North Dakota 58103

RE: Dangerous Building - 703 10th Avenue North, Fargo, North Dakota 58102

Dear Mr. Garaas:

Thank you for your letter concerning the above-referenced property. Per your request, I have enclosed various documents detailing the history and deterioration of the property.

While I can appreciate your clients' position as contract for deed vendors, the Grotenhuis Trust is, by law, the legal owner responsible for the condition of the property. And as such, the City of Fargo has rightfully pursued the proper entity in its dangerous building procedures.

Your clients still have time to obtain a permit to repair the property as the deadline for compliance is thirty (30) days from August 16, 2018, viz. September 15, 2018. Given the deadline falls on a Saturday, the City of Fargo Inspections Department is agreeable to extend the deadline to Monday, September 17, 2018. At this time, the city intends to proceed with the dangerous building process outlined in Article 21-04 of Fargo Municipal Code.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alissa R. Farol".

Alissa R. Farol
Assistant City Attorney

Enc:

Inspection Field Reporting as of 08/30/2018
Notice of Dangerous Building, dated 08/16/2018
Letter from Robert E. Harshberger, Deputy Assessor, dated 07/26/2018
Administrative Search Warrant, dated 07/25/2018
Re-Inspection of Substandard Building Letter, dated 04/25/2018
Finding and Determination of Substandard Building Order and Notice, dated 04/23/2018
Referral to City Attorney for Code Violation, dated 11/04/2009



Referral to City Attorney for Code Violation, dated 07/12/2000
Finding and Determination of Substandard Building Order and Notice, dated 05/18/2000
Finding and Determination of Substandard Building Order and Notice, dated 02/10/2000

cc: Bruce Taralson, City of Fargo Inspections Department

GARAAS LAW FIRM

ATTORNEYS AT LAW
DeMores Office Park
1314 23rd Street South
Fargo, North Dakota 58103

Jonathan T. Garaas
David Garaas

August 27, 2018

Telephone
Area Code 701
293-7211

Mr. Bruce Taralson
Inspections Administrator
City of Fargo
200 Third Street North
Fargo, North Dakota 58102

recd 8/28/18-BT

**RE: 703 10th Avenue North
Lot 12, Wilson's Subdivision
Of Block 16 of Chapin's Addition**

Dear Mr. Taralson:

I am writing this as the attorney for Mr. And Mrs. Philip H. Grotenhuis who are contract for deed vendors of property located at 703 10th Avenue North in Fargo, North Dakota, and briefly described above. As contract for deed vendors, my clients do not have the right to the physical possession of the real property. My clients, have not had such right to physical possession of the property since June 30, 1999 – the date of the contract for deed.

You have recently sent my clients a Notice of Dangerous Building in which you conclude it is a dangerous building because “the building has been damaged or deteriorated to the extent of more than (50) percent of its original value prior to the damage or deterioration.” It appears to me, and my clients, you are misinterpreting your municipal ordinances and state law. To be considered a dangerous building under Fargo’s municipal ordinances, the structure must have one of the defects listed in Fargo Municipal Code section 21-0401. The damage, decay deterioration of 50% of its original value is not a listed “defect” within section 21-0401 to make a building or structure a “dangerous building.” Damage, decay, or deterioration of building of 50% from its original value is only a factor, under Fargo Municipal Ordinances, as to whether the building should be repaired or demolished.

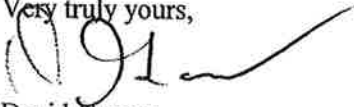
Under N.D.C.C. § 40-05-02(23), cities authority over substandard buildings extends to three (3) circumstances and none of the circumstances are mentioned in your Notice of Dangerous Building of August 16, 2018. Said authorizing statute only allows for the demolition, repair, or removal of buildings or structures which (1) “creates a fire hazard”, (2) “is dangerous to the safety of the occupants or persons frequenting such premises”, or (3) “is permitted by the owner to remain in a dilapidated condition.”

It is my clients’ understanding that one of the contract for deed vendees is a North Dakota

contractor who intended, after securing financing, to make certain repairs upon the property that would satisfy all of the City of Fargo's present objections to the condition of the building. My clients do not know why the City of Fargo is not working with the contract for deed vendees to adequately identify the City of Fargo's objection(s) to the buildings structure so that an appropriate plan of repair can be undertaken by them.

My clients would like a list of all of the city of Fargo's objections to the building, including the appropriate information as to what makes it a dangerous building under municipal ordinance and state law. After being provided such information, if my client's vendees do not undertake to make necessary repairs to the building, my clients would desire the City of Fargo work with them to see if repairs are economically feasible. At this time my clients believe that the buildings has not diminished in value by 50% of its original value, is repairable, and it would make more economic sense to repair the building rather than demolish it.

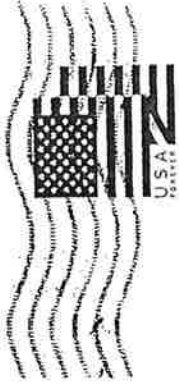
May we hear from you please as to what the City of Fargo believes is necessary to repair the building and whether the City of Fargo is willing to work with my clients in reference to repairing the building.

Very truly yours,

David Garaas

DG:pd
Mr. and Mrs. Grotenhuis
Mr. and Mrs. Tegtmeier

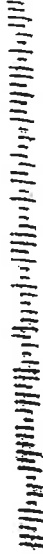
GARAAS LAW FIRM
ATTORNEYS AT LAW
DeMores Office Park
1314 23rd Street South
FARGO, NORTH DAKOTA 58103

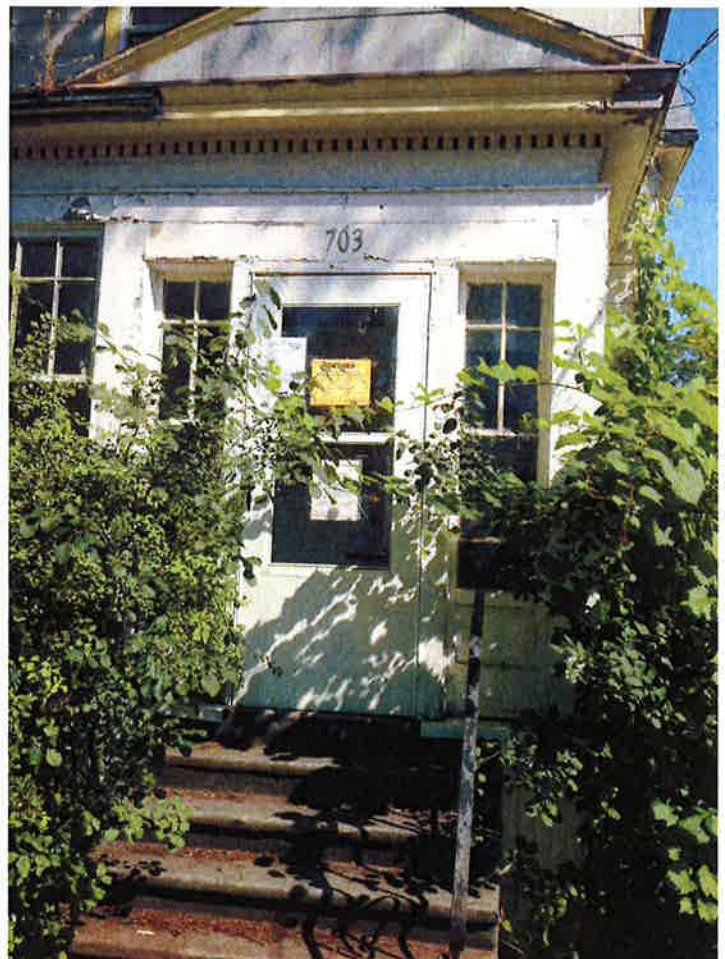
FARGO ND 581
27 AUG 2018 PM 2 T



Mr. Bruce Taralson
Inspections Administrator
City of Fargo
200 Third Street North
Fargo, North Dakota 58102

5610234809





703 10 Ave. N., Fargo, ND 58102—Dangerous Building Notice and Graffiti 8/16/18

Fargo Inspections

City of Fargo
200 Third Street North
701-241-1561
701-476-6779 fax



NOTICE OF DANGEROUS BUILDING

TO: Philip H and Martha A Grotenhuis, 1502 16th St S, Fargo ND 58103 C/D Terry L and Linda S Tegtmeier, 16756 53rd St SE, Kindred ND 58051-9605

YOU ARE HEREBY Given Notice of the following:

1. That this Notice is being given to you pursuant to Fargo Municipal Code, Article 21-04 concerning Dangerous Buildings.
2. That the building with which this Notice is concerned is commonly known as 703 10th Ave N, Fargo, North Dakota, and is located on that tract of land in the city of Fargo, more particularly described as follows:

Lot 12, Block 16, Chapins Addition, Additional legal description Wilsons SubD

(here in after referred to as "the building")

3. That an inspection was made of the building on 7/25/2018 by Bill Thompson, Building Inspector and Rental Housing Inspector, and on 7/25/2018 by Robert Harshberger, Deputy Assessor, of the City of Fargo.
4. That the building inspector for the City of Fargo has found the building, consisting of a multi-story, wood framed structure to be a Dangerous Building within the standards set forth in the Fargo Municipal Code, Article 21-04, Dangerous Buildings and IPMC Code 108.1.5 concerning Dangerous Structures.
5. This building has been found to be a Dangerous Building by the building inspector. This notice is to remain on this building until it is repaired, vacated, or demolished in accordance with the notice which has been given the owner, occupant, lessee, or mortgagee of this building and all other persons having an interest in said building as shown by the records of the register of deeds of the county of Cass. It is unlawful to remove this notice until such notice is complied with. Source: 1952 Rev. Ord. 21-0404.
6. That the owner of the building must demolish the building within 30 (thirty) days from the date of this notice or obtain a permit to repair. To obtain a permit, see 'Conditions Found Statement' below.

7. That the building is unsafe and is a dangerous building in the following respects: See 'Conditions Found Statement' below.

A. Robert Harshberger Deputy Assessor, of the City of Fargo has deemed that the building has been damaged or deteriorated to the extent of more than fifty (50) percent of its original value prior to the damage or deterioration. Source: Fargo Municipal Code, Article 21-0402 concerning Dangerous Buildings.

8. The building is unsafe and constitutes a public nuisance pursuant to Fargo Municipal Code, Article 21-04 concerning Dangerous Buildings and Section 116 of the International Building Code as adopted by Article 21-0101 of the Fargo Municipal Code.

9. You are further given Notice that unless the building is demolished within the time period set forth herein, the City of Fargo will take such steps as are necessary to cause said building to be demolished pursuant to Fargo Municipal Code, Article 21-04 concerning Dangerous Buildings and the International Building Code and the owner will be assessed such costs as are provided for therein.

10. Order for vacation of building. The undersigned building official has determined that the building or structure must be vacated as required by Section 108.2 of the International Property Maintenance Code, 2015 edition. Therefore, it is hereby ordered that the building or structure shall be vacated immediately, and remain vacated, on this 16th day of August 2018.

11. Order to secure building. The undersigned building official has determined that the building must remain secured. Therefore, it is hereby ordered that all means of entering the building remain secured to prevent unauthorized entrance. **An inspector will continue to verify compliance.** Failure to keep the building secured will result in the City of Fargo hiring an independent contractor to secure the building. All expenses for securing the building will be assessed against the property.

12. This Dangerous Building Notice takes precedence over previous notices regarding this building.

Dated this 16th day of August 2018.



Bruce Taralson
Inspections Administrator

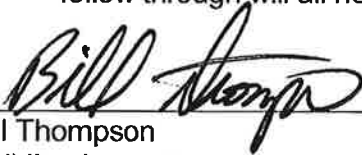
Conditions Found Statement

On 7/25/2018, Inspector, Bill Thompson, was present at 703 10th Ave N for a complaint inspection. The following violations were found:

- Building is structurally unsound.
- Many and various code violations.
- Work completed without necessary permits.
- Substandard workmanship.

To obtain a permit to repair, the following actions must be taken:

- Provide engineering on entire structure, mechanical, plumbing and electrical systems.
- Provide structural plans.
- Provide list of licensed trades with plans.
- Obtain a permit by the deadline given: 30 days from the date of this notice, and follow through with all necessary inspections.



Bill Thompson
Building Inspector
City of Fargo, ND

8-16-18

Date Signed

REC'D BT
8/7/18

July 30, 2018

City of Fargo Building Inspections Dept
200 3rd St. N.
Fargo, ND. 58102

Gentlemen,

It has been brought to my attention that my property located at 703 10th Ave. N. in Fargo was unlawfully searched this past Wednesday, July 25th 2018. According to attorney Jonathon Garaas; I, as the owner of this property under a contract for deed sale since 1999, am the person in possession of the property and as such was legally required to have been served with a notice at least 24 hours prior to any search of my property. No such notice was served or attempted. Instead of following the legal requirements for such a search, Bill Thompson of the City of Fargo Building Inspections Dept. took it upon himself to only serve notice to the person with whom I had purchased the property under contract for deed and thus bypass my right of being served a notice of this impending search.

According to Mr. Thompson there was a complaint filed against the property, a complaint of which I have not been able to review, thus violating my rights to know what the complaint was about or even who the accuser was. Mr. Thompson went on to state that I was not the true owner of the property since it was a contract for deed sale and therefore had no right to this information.

Before this unlawful search occurred, Mr. Thompson decided to have the building placarded this past June 23rd with a bright orange sign stating that it unlawful to enter the building. These placards serve as an invitation to every vagrant in town that nobody is residing in the building and they can vandalize the property and take anything and do anything they want. This same event happened to the building next door at 705 10th Ave N. Shortly after the orange placard was placed, that building was vandalized and my property also suffered from these same vandals causing damage to my building.

The placarding of my building happened even though we had complied with his earlier notice this past April 23rd to make the repairs he required to be done to the exterior of my building as stated in his "Finding and Determination of Substandard Building Order to Make Repairs and Notice of Right to Appeal". (see enclosure) Many of the

repairs that were called for were a direct result of vandals that had ravaged the house next door at 705 10th Ave. N.

Once again, I had not been given this particular notice of the "Finding and Determination of Substandard Building Order to Make Repairs and Notice of Right to Appeal", (see enclosure) instead the notice had been sent to the person who had sold me the property. I ended up having to call the City of Fargo Building Inspections Dept and request that they send me a copy of this notice so that I would be able to make the requested repairs.

Since the Fargo Building Inspections Dept does not send out any type of notice that the repairs they required had been completed to their satisfaction, I spoke with Mr. Thompson who informed me that he had re-inspected the building and that all the required repairs had been completed. It was at this time that I explained to Mr. Thompson my plans for the building, that I was in the process of seeking a City of Fargo Home Improvement Loan, in part sponsored by the Roosevelt Neighborhood Assoc. and a local bank. The Roosevelt Neighborhood Assoc. aids in helping to convert older building that will be converted from an apartment back to single family residence, which was my intention. I informed Mr. Thompson that the building would be brought up to current electrical and plumbing standards; furthermore, I intended to set the building on a new poured basement, reside it, re-insulate and re-roof the structure; however, all of my plans apparently fell on deaf ears as Mr. Thompson's went ahead with his plan to gain entrance to the property in an effort to accomplish some hidden agenda that he has.

None of these actions make any sense and are a waste of taxpayer money, of which I pay nearly two thousand dollars per year in taxes to the city for this property. This leads me to believe that some other forces are at work here. Since prior to Mr. Thompson's campaign against this property, I received a call from local realtor Brandon Raboin, he told me that he was interested in buying the property. He went on to explain that he had spoken to Bill Thompson of the City of Fargo Building Inspections Dept. and that Mr. Thompson had told him that all he needed was someone to sign a complaint against the property and that he could go ahead and begin the process of having the property condemned and put up for sale. It was not long after Mr. Thompson had put up one of his

orange placards warning against entrance into the building (the next day in fact) that I received another call from another realtor also inquiring about buying the building.

I am not sure of what is going on here, but the old saying of "Where there is smoke there is usually fire" might be applied here and it would seem to me that some of Mr. Thompson's actions should be, at the very least, looked into by supervisory city officials for possible corruption of a city building inspection official.

In the mean time I will continue to try to advance the rehabilitation of this 100-year-old home so that it doesn't become yet another casualty in the war against historic homes in this city.

Thank-you for your time and consideration in this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Terry L. Tegtmeier". The signature is fluid and cursive, with the first name being the most prominent.

Terry L. Tegtmeier

701-280-0081

cc: Mr. Tony Gehrig

Mr. Dave Piepkorn

Mr. Jonathon Gaaras

Enc.

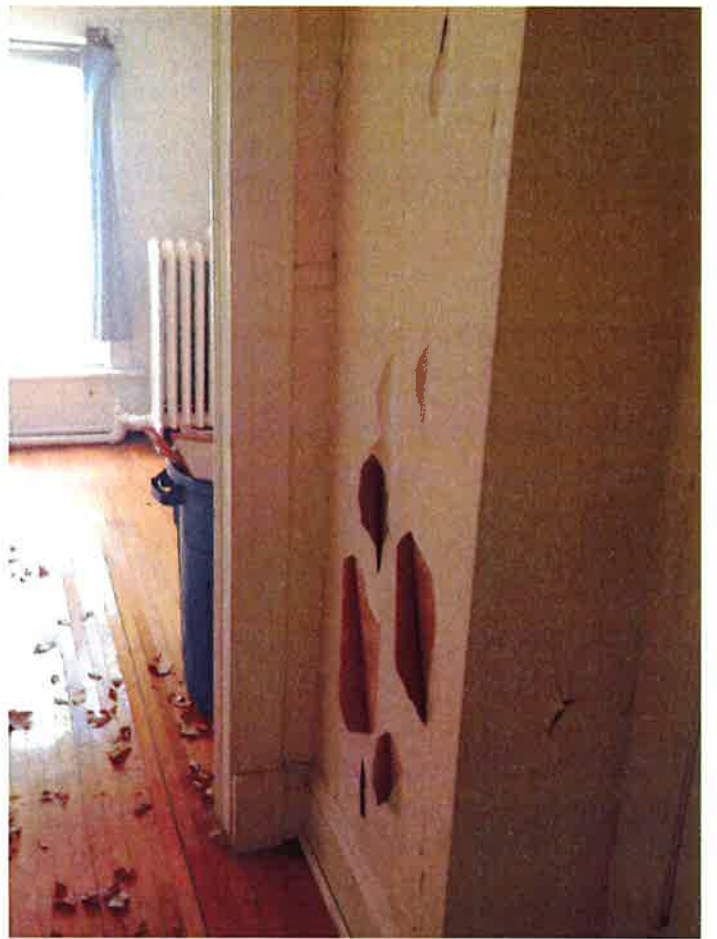
DATE: July 26, 2018
TO: Bill Thompson, Inspections
FROM: Robert E Harshberger, Deputy Assessor
SUBJECT: 01-0440-03210-000
703 10 Ave N
C/D Tegtmeier, Terry L & Linda S
W/D Philip H & Martha A Grotenhuis RLT

On July 25, 2018 I inspected the subject residential building to determine if the deterioration of the above structure would qualify it as a dangerous building as defined in city ordinance. One requirement of that classification is that the cost to repair would exceed fifty percent (50%) of the building value as established by the Fargo Assessment Department.

Based on observed component damage and assumptions relative to the condition of other building elements, I have estimated a cost to repair that exceeds the minimum fifty-percent.



703 10 Ave. N., Fargo, ND 58102—Interior Pictures 7/25/18



703 10 Ave. N., Fargo, ND 58102—Interior Pictures 7/25/18



703 10 Ave. N., Fargo, ND 58102—Interior Pictures 7/25/18



703 10 Ave. N., Fargo, ND 58102—Interior & Exterior Pictures 7/25/18

turned off in April of 2008, therefore, it is presumed that this building has been vacant since at least that time.

5. On November 24, 2017, I re-inspected the Subject Property and found that the back hoe was gone, the windows were boarded up, and the roof had a temporary repair.
6. On March 20, 2018, your affiant responded to another complaint regarding the Subject Property. I found that there were 3 trailers in the rear yard, with no improvement to the exterior, a broken window on the north side of the Subject Property, and a storm window was stuck open.
7. Article 21-04 addresses dangerous buildings. Specifically, Fargo Municipal Code § 21-0401 provides the types of defects that, if found to exist, shall deem a structure a "dangerous building." Based upon the foregoing investigation of the Subject Property, I have reasonable grounds to believe that one or more of the defects identified in Section 21-0401 exists.
8. On April 23, 2018, your affiant posted a dangerous building placard on the front and rear door of the Subject Property. The rear entry was unsecured. I took photographs of the Subject Property.
9. On April 25, 2018, I noticed that someone had removed the dangerous building placard. I reposted the placard on the Subject Property.
10. Despite multiple requests to gain entry to the interior of the structure, I have not been granted access to inspect the Subject Property.
11. The following are individuals and/or departments which will participate in the search, along with the scope of their search:
 - (A.) Bill Thompson and Joseph Girdner, will inspect and photograph the structure.
 - (B.) An Assessor from the City of Fargo Assessor's office, to establish an estimate of the value of the structure and value of the existing damage (also as referenced in FMC § 21-0402C).
 - (C.) Fargo Police Department members will run a safety sweep of the inside of the structure before members of the inspections and assessors department enter the building, and for the purpose of making a written report as required by FMC § 21-0410.
 - (D.) A Locksmith to provide access to interior of the Subject Property.

WHEREFORE, YOUR AFFIANT REQUESTS that the Court issue a search warrant directing a search and seizure as herein described.



Bill Thompson

Subscribed and sworn to before me this 25th day of July, 2018.



Judge of District Court
Cass County, North Dakota

ADMINISTRATIVE SEARCH WARRANT


Upon application and affidavit of the Inspections Division of the Planning Department of the City of Fargo dated the 25 day of July, 2018, for search and inspection of certain property being owned by Philip H. Grotenhuis and Martha A. Grotenhuis, trustees of the Philip H. Grotenhuis and Martha A. Grotenhuis Revocable Living Trust, subject to contract for deed in favor of Terry L. Tegtmeier and Linda S. Tegtmeier, at the address of 703 10th Avenue North, Fargo, North Dakota, and said affidavit sufficiently establishes that the Building Official, or members of the Inspections Division of the City of Fargo and other City of Fargo personnel as identified in the above application, are authorized to search, inspect and photograph the above-described property and that there is probable cause for believing there is a condition, object, activity, or circumstance which legally justifies such a search or inspection of said properties, the City of Fargo Building Inspections Division has probable cause to believe that the building at 703 10th Avenue North, Fargo, North Dakota is a dangerous building.

NOW, THEREFORE, pursuant to the authority vested in the undersigned Magistrate, the Municipal Court Judge for the City of Fargo, pursuant to the provisions of the North Dakota Century Code Chapter 29-29.1, the Fargo Building Official and/or his designated representatives, officers, or agents, along with those city officials identified in the application are hereby authorized to conduct a search or inspection of the interior and exterior of the premises located at 703 10th Avenue North, Fargo, North Dakota, owned by Philip H. and Martha A. Grotenhuis, trustees of the Philip H. Grotenhuis and Martha A. Grotenhuis Revocable Living Trust, (1502 16th St. S., Fargo, North Dakota 58103), subject to contract for deed in favor of Terry L. Tegtmeier and Linda S. Tegtmeier (16756 53rd St. SE Kindred ND 58051-9605); and that said inspection and/or search may occur either with or without the consent of said owner, which search or inspection authority is granted for purposes of inspection of the premises to determine the existence of a dangerous building and the extent of the damage and deterioration of the building for the purposes of repair or demolition.

This warrant is valid for 24 hours after its issuance, and must be personally served upon an owner or possessor of the above-described properties, or upon any person present on the premises if an owner or possessor cannot reasonably be found within the hours of 8:00 a.m. and 8:00 p.m., and this warrant must be returned within 48 hours of its issuance.

This Administrative Search Warrant is hereby issued this 25th day of July, 2018, at 8:16 AM o'clock AM/PM.

BY THE COURT:



Judge of District Court
Cass County, North Dakota

RECEIPT, INVENTORY AND RETURN

The Undersigned received the attached search warrant issued by the Municipal Court on July 25, 2018, and have executed the warrant as follows:

Pursuant to the warrant, the Undersigned entered the premises described by the warrant at 1 pm o'clock on July 25, 2018. A true and correct copy of the warrant was left with philip Grotenhuis

The Undersigned took custody of property named in the warrant and listed below:

- 1. Photographic images of 703 10th Ave N
2.

OR

NONE OF THE SPECIFIC ITEMS NOTED IN THE SEARCH WARRANT WERE

FOUND.

I will retain or deliver custody of said property as directed by this Court's Order.

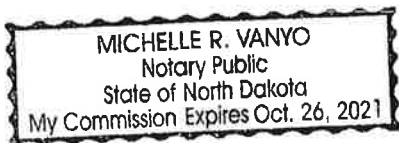
The Undersigned, being first duly sworn, upon oath, deposes and says that the Undersigned has read this Return and the matters stated are true and correct, except as to such matters stated herein on information and belief, and as to those, the Undersigned believes them to be true. Further, the original search warrant executed by this Court is attached.

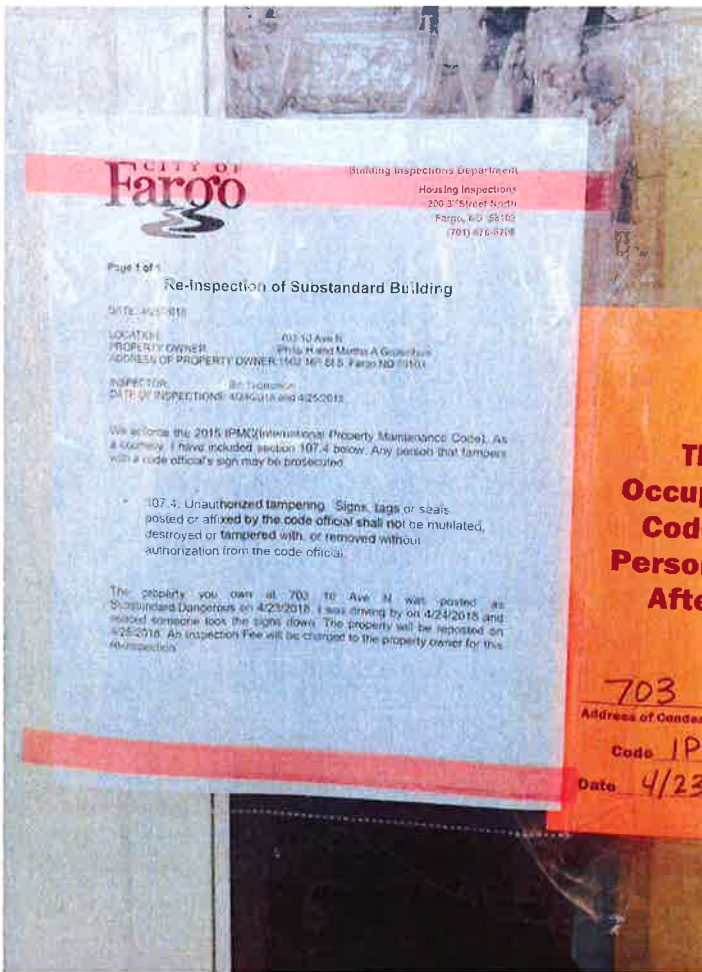
Bill Thompson, Housing Inspector, Building Inspections Division, City of Fargo.

Subscribed and sworn to me this 26 day of July, 2018.

Michelle Vanyo
Notary Public
Cass County, North Dakota
My Commission Expires:

(SEAL)





703 10 Ave. N., Fargo, ND 58102—Reposting of Placard Pictures 4/25/18 & Substandard Building Notice



Building Inspections Department

Housing Inspections

200 3rd Street North

Fargo, ND 58102

(701) 476-6708

Page 1 of 1

Re-Inspection of Substandard Building

DATE: 4/25/2018

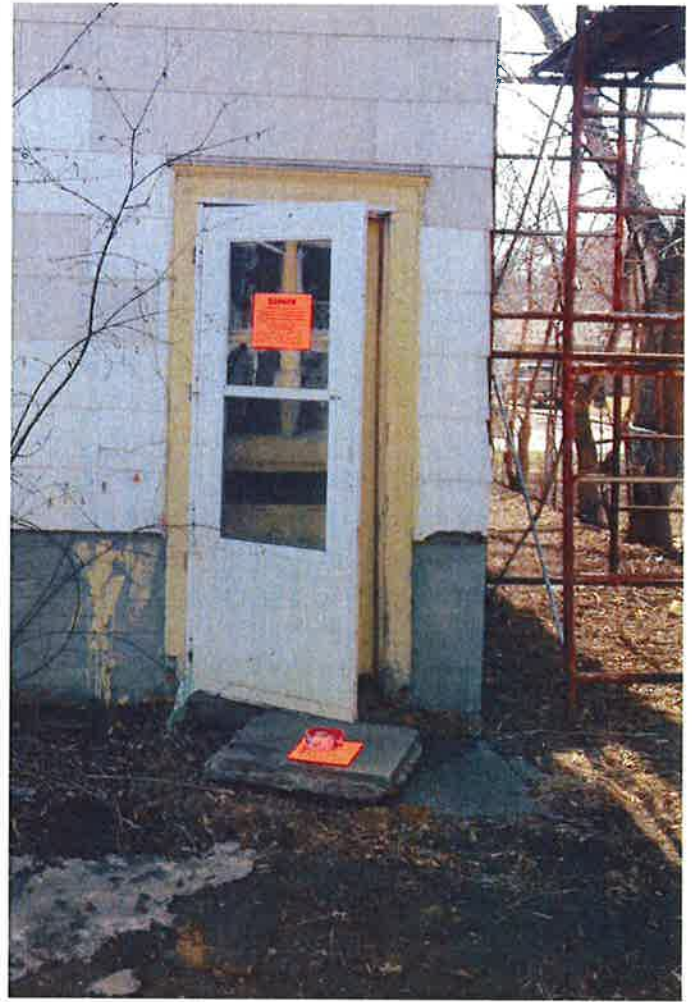
LOCATION: 703 10 Ave N
PROPERTY OWNER: Philip H and Martha A Grotenhuis
ADDRESS OF PROPERTY OWNER: 1502 16th St S, Fargo ND 58103

INSPECTOR: Bill Thompson
DATE OF INSPECTIONS: 4/24/2018 and 4/25/2018

We enforce the 2015 IPMC (International Property Maintenance Code). As a courtesy, I have included section 107.4 below. Any person that tampers with a code official's sign may be prosecuted.

- **107.4. Unauthorized tampering. Signs, tags or seals posted or affixed by the code official shall not be mutilated, destroyed or tampered with, or removed without authorization from the code official.**

The property you own at 703 10 Ave N was posted as Substandard/Dangerous on 4/23/2018. I was driving by on 4/24/2018 and noticed someone took the signs down. The property will be reposted on 4/25/2018. An Inspection Fee will be charged to the property owner for this re-inspection.



703 10 Ave. N., Fargo, ND 58102—Placard Pictures 4/23/18



703 10 Ave. N., Fargo, ND 58102—Placard Pictures 4/23/18



INSPECTIONS

200 3RD STREET NORTH
FARGO, NORTH DAKOTA 58102
PHONE: 701-241-1561
FAX: 701-241-1561

FINDING AND DETERMINATION OF SUBSTANDARD BUILDING ORDER TO MAKE REPAIRS AND NOTICE OF RIGHT TO APPEAL

DATE: 4-23-18

ADDRESS AND/OR LEGAL
DESCRIPTION OF SUBJECT

PROPERTY: 703 10 Ave N

NAME OF PROPERTY OWNER: Philip H and Martha A Grotenhuis

ADDRESS OF PROPERTY OWNER: 1502 16 St S, Fargo ND 58103

NAMES AND ADDRESSES OF
MORTGAGE HOLDERS, LIENHOLDERS
ET CETERA AND LESSEES OF RECORD:

NAME OF INSPECTOR: Bill Thompson

Finding of substandard building. The undersigned building official has determined the above-described subject property to be a substandard building, as is defined by the International Property Maintenance Code 2015 edition, as adopted by reference in the Fargo Municipal Code at section 31-0101. Specifically, the violations of said housing code have been identified and are described more fully in the conditions found statement of the Inspection Division, a copy of which is attached hereto and incorporated herein as if fully set forth.

Order for repair. The undersigned building official has determined that the building must be repaired. Therefore, it is hereby ordered that all required permits be secured for the appropriate repair of the building or structure and the work physically commenced within 14 days of the date of this order and such work completed within 30 days; which is a period of time for completion determined by the undersigned building official to be reasonable under all of the circumstances.

NOTICE OF RIGHT TO APPEAL

PLEASE BE ADVISED that any person having any record, title, or legal interest in the building, described above, may appeal from this Notice and Order or any action of the undersigned building official to the Housing Advisory and Appeals Board, provided the appeal is made in writing as provided in the International Property Maintenance Code 2015 edition, and filed with the undersigned building official within 30 days from the date of service of this Notice and Order. Please be further advised that failure to appeal this Notice and Order will constitute a waiver of all right to an administrative hearing and determination of the matter.

The foregoing constitutes the order of the undersigned building official under the authority set forth by the provisions of the Fargo Municipal Code and the International Property Maintenance Code 2015 edition, and the required notice of right to appeal.

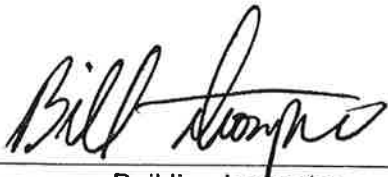
Dated this 23rd day of April 2018



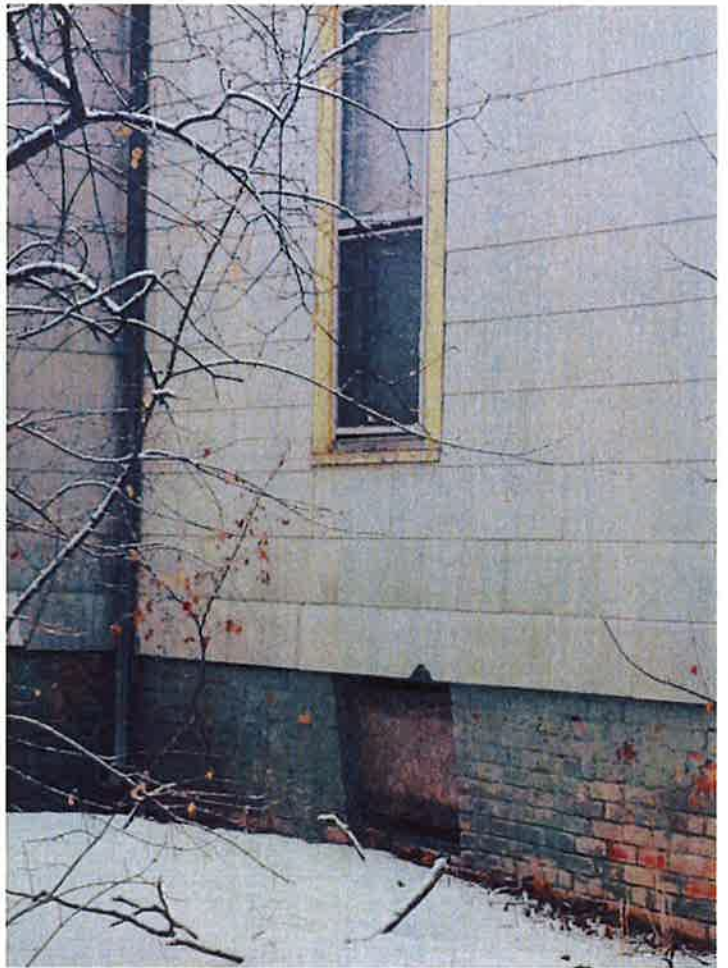
Bruce Taralson
Head of Inspections
City of Fargo
200 Third Street North
Fargo, ND 58102

STATEMENT OF CONDITIONS FOUND

Large hole in roof on east side and broken window on north side. Shingles in need of repair and chimney is losing bricks. Siding has holes and exterior paint is peeling. Basement window is unsecure and soffit is missing in areas, other misc dilapidated exterior items. No water or electricity are currently provided. Exterior inspection only



Bill Thompson, Building Inspector



703 10 Ave. N., Fargo, ND 58102—Complaint Pictures 3/20/2018



703 10 Ave. N., Fargo, ND 58102—Complaint Pictures 3/20/2018



Building Inspections Department

Housing Inspections

200 3rd Street North

Fargo, ND 58102

(701) 476-6708

10/11/2017

Notice and Order of the Building Official

GROTENHUIS, PHILIP H & MARTHA A
1502 16 ST S
FARGO, ND 58102

RE: 703 10 Ave N

Next Appointment: 3:30 PM, 11/2/2017

Dear GROTENHUIS, PHILIP H & MARTHA A:

This letter is to inform you that an initial housing inspection was performed on 10/3/2017 at the above property and that the following violations were found:

Location: 703 10 Ave N Back Hoe is parked behind house
Item Inspected: Yard, Storage or commercial or industrial equipment
Code: LDC 20-1203.E and table 20-0401 Industrial Service use, including accessory use, not allowed on Residential property.
Remedy: Remove equipment from property

Location: 703 10 Ave N Chimney is collapsing
Item Inspected: chimneys, not structurally sound
Code: IPMC 304.1.1 # 13
Remedy: repair or replace

Location: 703 10 Ave N House has a lot of overgrowth
Item Inspected: Yard, Hedges and Growth
Code: FMC 11-0701 - Plants must be trimmed or pruned so as to allow drivers clear view of streets, signals, and signs, as well as to avoid obstruction of public right-of-ways.
Remedy: Remove obstructing plants

Location: 703 10 Ave N House is unsecure with missing window and holes in roof
Item Inspected: Vacant Structures, blighted structures
Code: IPMC 301.3 Vacant land and Structures. All vacant structures and pemises therof ofr vacant land shall be maintained in a clean, sanitary, safe and secure condition as provided herein (IPMC) so as not to cause a blighting problem or adversely affect the public health or safety.
Remedy: secure and maintain property. Make all repairs to meet housing codes.

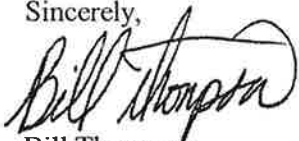
Please make repairs to correct all violations and to bring them into compliance with the applicable codes immediately, as per International Property Maintenance Code and Fargo Municipal Code (FMC) 31-0101.

Remember that all electrical, plumbing, and heating – including air conditioning, gas or fuel operated appliances, water heaters, and other than minor maintenance – must be done by properly licensed contractors obtaining required permits. We will return to this property at 3:30 PM, 11/2/2017 to perform a re-inspection. If there are any areas that require a key to access please have either your manager or building caretaker present at the above time. **There is no charge for this first inspection and no charge for the first re-inspection. However, subsequent inspections (3rd, 4th, etc.) each carry a fee of \$100.00 and are billed to the property owner.**

Any person having any record, title, or legal interest in the building described above has the right to appeal this notice and order within 20 days by filing an appeal form with the Housing Inspections office. This letter is a notice and order to the owner or persons responsible for the property. If you have any questions about this letter or the results of the inspection you may contact me at 701-476-6708.

Thank you for your prompt attention to this matter.

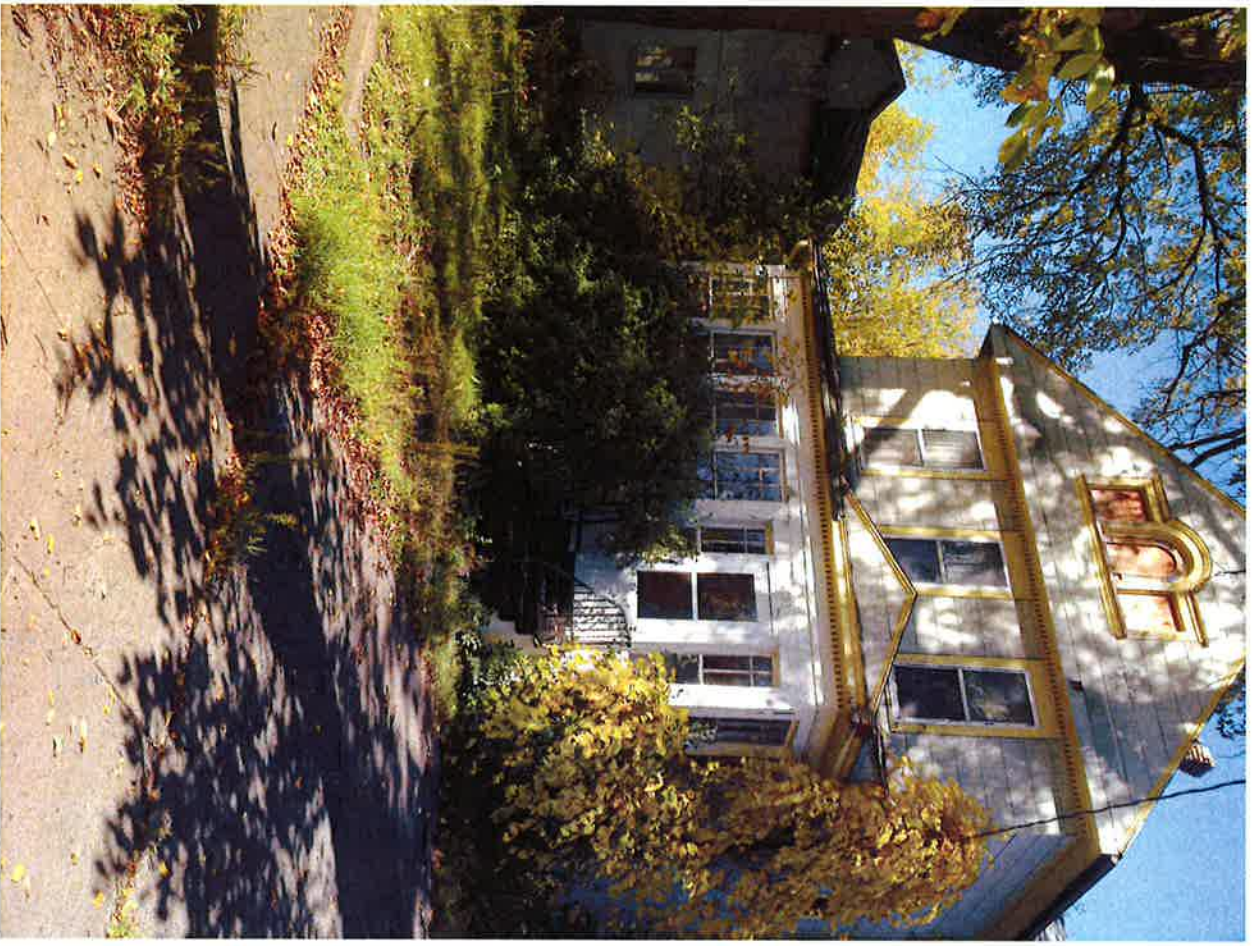
Sincerely,

A handwritten signature in black ink that reads "Bill Thompson". The signature is written in a cursive style with a large, sweeping initial "B".

Bill Thompson
Fargo Housing Inspections Department



703 10 Ave. N., Fargo, ND 58102—Complaint Pictures 10/3/2017



703 10 Ave. N., Fargo, ND 58102—Complaint Pictures 10/3/2017

24c

MEMORANDUM

TO: Board of City Commissioners
FROM: Steven Sprague, City Auditor
SUBJECT: Liquor License Application – Men's Hair World
DATE: December 12, 2018

The following application for a liquor license was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: C Beer, no food sales required, bar allowed - transfer
Business Name: Men's Hair World
Location: 1801 45th Street South Suite L1
Applicants: Heidi Marie Kroetch

There are significant credit history concerns with this application, Due to this factor the Liquor Control Board voted to DENY the transfer of the license. The complete application is available for review in the Auditor's Office.

Recommended Motion:

Move to DENY the transfer of a Class C alcoholic beverage license to Men's Hair World.

NOTICE OF HEARING

Application for Alcoholic Beverage License Transfer

Notice is hereby given that the Board of City Commissioners of the City of Fargo, North Dakota, will conduct a Public Hearing in the City Commission Room, City Hall, on Wednesday, January 2, 2019 at 5:15 o'clock p.m. to consider an application for transfer. A transfer requested of a Class "C" Alcoholic Beverage License, Men's Hair World LLC d/b/a Hair Salon to Men's Hair World LLC d/b/a Men's Hair World to be located at 1801 45 St S, Suite L1, due to ownership change.

Any interested person may appear and will be heard.

City Auditor's Office
(December 10, 2018)

Please return to
Auditor's office
by 12-12-18

MEMORANDUM

TO: Chief David Todd
FROM: Sergeant Matt Christensen
DATE: December 3rd, 2018

SUBJECT: Application for a transfer of a Class "C" Alcoholic Beverage License from Men's Hair World LLC d/b/a: Men's Hair World to Men's Hair World LLC d/b/a: Men's Hair World to be located at 1801 45th Street South Suite L1, DUE TO OWNERSHIP CHANGE.

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I questioned the applicant's criminal background, credit history, past residence history as well as any interaction they have had with law enforcement in any state.

The following information was discovered through this investigation:

Heidi Marie Kroetch – Owner/Manager

Criminal History-

In 2010 Kroetch was involved in a minor physical altercation with her husband. Kroetch was trying to grab a phone from her husband and his head bumped the car door of the car they were in. No injuries were reported and no charges were filed. The victim stated they did not believe there was any intent and it was more of an accident.

In 2016 a report for Child Neglect was done related to the condition of her home and the four children living in it. No charges were filed and Social Services worked with them to rectify the situation.

Credit History-

Kroetch has several accounts that are seriously past due and have been turned over to Collection Agencies:

- \$538 Portfolio Recovery Assoc. (Collection Agency)
- \$880 Midland Funding (Collection Agency)
- \$773 Midland Funding (Collection Agency)
- \$782 The Bureau Inc. (Collection Agency)

Kroetch also has several accounts that are closed and an unpaid balance was reported as a loss

- \$575 JC Penney
- \$1,486 Walmart
- \$879 Credit One Bank
- \$737 TJ Maxx
- \$801 Capital One

Investigation Notes

This is a transfer of an existing license to new ownership. The establishment will continue to operate as it has in the past providing haircuts and grooming services, while offering one free beer to waiting customers and the option to purchase a second beer. No more than three beers are provided to any customers during their time at the business. There have been no issues with alcohol consumption at this establishment to this point and future issues appear unlikely due to the nature of this business.

I spoke to Heidi regarding the financial issues discovered in her credit check. Heidi said she is currently working on rectifying those accounts that have been sent to collection agencies. Heidi stated she should have those accounts current within the next 3-6 months based on her financial plan. The current amount to bring the accounts current is \$2,793.00

Business Location

Men's Hair World is located at 1801 45th Street South, Suite L1, Fargo ND. Other businesses in the area with an alcoholic beverage license include: Happy Harry's Bottle Shop, Chipotle, Uncle Maddio's Pizza Joint, Best Western Kelly Inn & Suites, Samurai Japanese Cuisine, Wild Bill's Saloon, Fargo HuHot Mongolian Grill, Smashburger, Space Aliens Grill & Bar, Fargo Stopping Center and Holiday Inn Express I-94.

Conclusion

I believe I have discovered all information related to the listed applicant(s) and all information related to the issuance of the requested liquor license. I have provided this completed background investigation to Fargo Police Chief David Todd for his review and recommendation.

24d

MEMORANDUM

TO: Board of City Commissioners

FROM: Steven Sprague, City Auditor

SUBJECT: Liquor License Application – Touchmark

DATE: December 12, 2018

The following application for a liquor license was received by the Auditor's office and reviewed by the Liquor Control Board:

License Class: F Beer, wine, spirits, with food sales, no bar

Business Name: Touchmark at Harwood Groves

Location: 1200 Harwood Drive South

Applicants: Kari Johnson Dick
Marcus Breuer
Werner Nistler Jr.
Colleen Nistler

Being no significant concerns, the Liquor Control Board voted to approve the issuance of the license. The complete application is available for review in the Auditor's Office.

Recommended Motion:

Move to approve the issuance of a Class F alcoholic beverage license to Touchmark at Harwood Groves.

NOTICE OF HEARING

Application for Alcoholic Beverage License

Notice is hereby given that the Board of City Commissioners of the City of Fargo, North Dakota, will conduct a Public Hearing in the City Commission Room, City Hall, on Wednesday, January 2, 2019 at 5:15 o'clock p.m. to consider an application for a Class "F" Alcoholic Beverage License for Touchmark at Harwood Groves, LLC d/b/a: Touchmark to be located at 1200 Harwood Drive S, Fargo .

Any interested person may appear and will be heard.

City Auditor's Office
(December 10, 2018)

Please return to
Auditors office
by 12-12-18

MEMORANDUM

TO: Chief David Todd
FROM: Sergeant Matt Christensen
DATE: December 3rd, 2018

SUBJECT: Application for a Class "F" Alcoholic Beverage License for Touchmark at Harwood Groves, LLC d/b/a: Touchmark to be located at 1200 Harwood Drive South, Fargo, ND.

In accordance with Section 25-1505 of the Fargo Municipal Code, I have conducted an investigation into the character, reputation and fitness of the applicant(s) listed on the supplied application.

During this investigation I questioned the applicant's criminal background, credit history, past residence history as well as any interaction they have had with law enforcement in any state.

The following information was discovered through this investigation:

Kari Johnson-Dick – Owner/Manager

Criminal History- No areas of concern
Credit History- No areas of concern

Marcus Breuer - Owner

Criminal History- No areas of concern
Credit History- No areas of concern

Werner Nistler Jr. – Owner

Criminal History- No areas of concern
Credit History- No areas of concern

Colleen Nistler – Owner

Criminal History- No areas of concern
Credit History- No areas of concern

Investigation Notes

Touchmark Senior Living facility is seeking a liquor license to be able to serve beer and wine to their residents during social gatherings, as well as during dining hours. They plan to utilize a two drink maximum rule, and they also limit their social gathering times in which they would serve alcohol to two hours. The majority of drinks would be served to residents, but they would also serve guests who are in attendance for the events as well, but would still adhere to the two drink maximum rule. After conducting this investigation and reviewing their plan for the service of alcoholic beverages, I do not foresee any issues that would arise if this license were to be granted.

Business Location


Touchmark Senior Living is located at 1200 Harwood Drive South in Fargo, ND. Other businesses in the area with an alcoholic beverage license include: Fargo Cork, Royal Liquors and Woody's Bar.

Conclusion

I believe I have discovered all information related to the listed applicant(s) and all information related to the issuance of the requested liquor license. I have provided this completed background investigation to Fargo Police Chief David Todd for his review and recommendation.

25

MEMORANDUM

TO: BOARD OF CITY COMMISSIONERS
FROM: MAYOR TIMOTHY J. MAHONEY 
DATE: DECEMBER 20, 2018
SUBJECT: RENAISSANCE ZONE AUTHORITY APPOINTMENT

The term of Dean Bresciani on the Renaissance Zone Authority expires on January 1, 2019.

Mr. Bresciani is willing to continue serving on the Board and I am recommending his reappointment.

Your favorable consideration of this recommendation is greatly appreciated.

RECOMMENDED MOTION: To approve the reappointment of Dean Bresciani to the Renaissance Zone Authority for a three-year term ending January 1, 2022.

mmappt19rza

Shelly Byron

From: Kember Anderson
Sent: Thursday, December 20, 2018 2:50 PM
To: Shelly Byron; Dianna Baumann
Subject: RZA
Attachments: mmappt19za.doc

Hello Ladies,

Attached is a memo reappointing Dean Bresciani to the Renaissance Zone Authority. He is willing to continue his service. Will one of you please print the memo out on the Mayor's letterhead, have him initial it, make two copies and place it on the 1/2/19 City Commission agenda?

THANK YOU!

Kember Anderson

Executive Assistant to the Fargo City Commission

D 701-241-8572

F 701-476-4136

kanderson@FargoND.gov

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






Finance Office

P.O. Box 2083
200 3rd Street North
Fargo, North Dakota 58107-2083
Phone: 701-241-1333
Fax: 701-241-1526

26

TO: BOARD OF CITY COMMISSIONERS
FROM: KENT COSTIN, DIRECTOR OF FINANCE 
RE: STATE WATER COMMISSION COST REIMBURSEMENT APPROVAL
DATE: December 18, 2018

The existing legislation in place for State Water Commission funding related to the Fargo-Moorhead Metropolitan Area Flood Risk Management Project requires that the Fargo City Commission, Cass County Commission, and the Cass Water Resource Board approve all payment reimbursement requests prior to their submission and ultimate payment.

The attached reimbursement request has been prepared by Finance staff and is ready for processing. Your approval of the request for funds is hereby requested as required.

As requested previously by the City Commission, the costs related to the Oxbow Hickson Bakke levee are being presented separately from the rest of the Metro Flood Diversion expenses. This request includes only the OHB levee related costs for November 2018.

Suggested Motion:

Approve a State Water Commission request for cost reimbursement for Fargo-Moorhead Metropolitan Area Flood Risk Management Project costs totaling \$255,691.15.



Finance Office

P.O. Box 2083
200 3rd Street North
Fargo, North Dakota 58107-2083
Phone: 701-241-1333
Fax: 701-241-1526

December 18, 2018

Garland Erbele, P.E.
North Dakota State Water Commission
900 East Boulevard Avenue, Dept 770
Bismarck, ND 58505-0850

Dear Garland,

The Metro Flood Diversion Authority is submitting eligible costs for reimbursement request #79 pursuant to the terms and conditions of House Bill 1020 for costs incurred on the OHB Levee project from November 1, 2018 to November 30, 2018. These costs are summarized in the attached cost summaries and are supported by detailed disbursement records included within this submission.

The total amount of the claim for reimbursement is \$255,691.15.

State Funds Available	Amount Spent Previous Request	Amount Spent This Period	State Cost Share	Reimbursement Request This Period	Balance of State Funds
\$244,000,000	\$187,855,373.75	\$511,382.29	50%	\$255,691.15	\$55,888,935.11

Project Narrative, this request:

Project Number	Project Description
V03901	Pay Application #3 for WP 43E.2F – Riverbend Road Removals
V04401	Pay Application #9 for WP43CD – OHB Ring Levee Phases C and D

We certify that \$79,166,117 has been expended on the acquisition of homes and that these costs are eligible for the local matching share requirements of HB 1020. Records relating to these costs are on file with the City of Fargo in the Office of the City Auditor.

The City of Fargo, Cass County Commission, and the Cass County Joint Water Resource Board have approved our request for funds as required in HB 1020. Copies of their approval letters are included.

If you have any questions relating to our request, please contact me directly.

Sincerely,

Kent Costin
Director of Finance, City of Fargo
Metro Flood Diversion Authority

Required Local Approvals:

City of Fargo

Cass County Commission

Cass County Joint Water Resource Dist.

**FM Metropolitan Area Flood Risk Management Project
 Summary of Cash Disbursements Eligible for SWC Funding
 November 2018 - OHB Levee Related Costs**

Account Number	Check Date	Check Number	Vendor Name	Transaction Amount	Description 1	Project Number	Project Description
790-0000-206.10-00	11/21/2018	292480	LANDWEHR CONSTRUCTION INC	6,239.82	Retainage PO #193316	V03901	DEMO RIVERBEND ROAD
790-0000-206.10-00	11/29/2018	292661	MEYER CONTRACTING INC	(0.28)	OHB RING LEVEE	V04401	OHB RING LEVEE PHASES C&D
			Total Retainage	6,239.54			
790-7930-429.73-20	11/21/2018	292480	LANDWEHR CONSTRUCTION INC	11,000.00	PAYOJT LIQUIDATED DAMAGES	V03901	DEMO RIVERBEND ROAD
790-7930-429.73-20	11/21/2018	292480	LANDWEHR CONSTRUCTION INC	8,925.00	RIVERBEND ROAD DEMO	V03901	DEMO RIVERBEND ROAD
			Total LERRDS - North Dakota - Site Improvements	19,925.00			
790-7952-429.73-52	11/29/2018	292661	MEYER CONTRACTING INC	485,217.75	OHB RING LEVEE	V04401	OHB RING LEVEE PHASES C&D
			Total O/H/B Construction - Flood Control	485,217.75			
			Total Expense for Period	<u>511,382.29</u>			