

FARGO CITY COMMISSION AGENDA  
Monday, July 1, 2019 - 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, June 17, 2019).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. Receive and file the following Ordinances:
  - a. Relating to Waterworks System.
  - b. Relating to Plumbing Code.
- 2. 2nd reading and final adoption of the an Ordinance Amending Section 25-1506 of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Restrictions on Sale, Service or Dispensing of Alcoholic Beverages.
- 3. Applications for property tax exemptions for improvements made to buildings:
  - a. Reid Middaugh, 419 7th Avenue South (5 year).
  - b. Grant Syverson and Melissa H. Burkland, 415 8th Street South (5 year).
  - c. Matthew and Jescia Hopper, 1103 9th Avenue South (5 year).
- 4. Applications for Games of Chance:
  - a. Fargo North High School for a 50/50 raffle from 8/5/19 to 5/29/20.
  - b. Fargo North High School for a 50/50 raffle from 8/5/19 to 5/29/20.
  - c. Knights of Columbus 4th Degree Assembly 788 for a calendar raffle from 1/1/20 to 1/20/20.
  - d. St. Anthony of Padua Parish Fall Bazaar for bingo and a raffle on 9/29/19.
  - e. Villa Nazareth DbA CHI Friendship for a raffle from 9/1/19 to 10/11/19.
- 5. Purchase Agreement with Thomas N. and Audrey Renae Erdmann for property located at 767 Royal Oaks Drive North (Project No. FM-19-B).
- 6. Negative Final Balancing Change Order No. 2 in the amount of -\$3,675.00 for Project No. EP-17-A1.
- 7. Bid award for Project No. FM-15-J2.
- 8.
  - a. Bid awards for the bathroom-remodeling project at the FARGODOME.
  - b. Sole Source Procurement with Gopher Stage Lighting for updates to the existing lighting control system at the FARGODOME.

Receive and file Comprehensive Annual Financial Report (CAFR) and Independent Auditor's Report for the year ending December 31, 2018.

10. Resolution Authorizing the Execution and Delivery of the Intergovernmental Agreement (Series 2019); Authorizing First Amendment to Loan Agreement from Wells Fargo Bank, N.A., to the City of Fargo; and Consenting to First Amendment to Loan Agreement between Wells Fargo Bank, N.A. and Cass County.
11. Resolution Authorizing the Issuance of Not to Exceed \$42,000,000.00 City of Fargo Refunding Improvement Bonds, Series 2019A, Prescribing the Terms and Covenants Thereof, and Creating a Fund for the Payment Thereof.
12. Notice of Grant Award with the ND Department of Health for Public Health Emergency Preparedness PHEP – All Hazards Allocation (CFDA #93.069).
13. Notice of Grant Award with the ND Department of Health for Enhancing Harm Reduction (CFDA #93.354).
14. Notice of Grant Award with the ND Department of Health for Public Health Emergency Preparedness PHEP – Statewide Management Team (CFDA #93.069).
15. Notice of Grant Award with the ND Department of Health for State aid to local public health units.
16. Notice of Grant Award with the ND Department of Health for the PHEP – City Readiness Initiative (CFDA #93.069).
17. Notice of Grant Award with the ND Department of Health for Regional Environmental Health Services – State Aid.
18. Purchase of Service Agreement with the ND Department of Health for Women's Way Program (CFDA #93.898).
19. Notice of Grant Award Amendment with the ND Department of Health for the WIC Program (CFDA #10.557).
20. Administrative Services Agreements with Discovery Benefits, LLC.
21. 2019 Mosquito Control Agreement with Cass County Government.
22. Sole Source Procurement with NCFI Polyurethanes for geotechnical polyurethane lifting foam (QF19094).
23. Request for Proposal for the Core Neighborhoods Plan.
24. Sole Source Procurement with Reach Partners, Inc. for assistance in the Planning Department.
25. State Historical Society Certified Local Government Agreement for National Park Service's Historical Preservation Grant Funds 2019.
26. 3-year extension to the Recycling Agreement with Minnkota Enviroservices, Inc.

- Page 23. Draft Lease Agreement with North Central Bus & Equipment, Inc. for TapRide service to the Fargo Industrial Park.
28. Amendment to ND Department of Transportation Contract No. 38171124A.
  29. Contracts and bonds for Project Nos. FM-14-13 and PR-19-C1.
  30. Bills.
  31. Relocation and re-coating of pipeline in the amount of \$482,990.00 for Improvement District No. PN-18-B1.
  32. Change Order No. 1 for an increase of \$22,000.00 for Improvement District No. BR-18-G2.
  33. Change Order No. 2 for an increase of \$19,087.50 and a 30-day time extension for Improvement District No. NN-18-A1.
  34. Final Balancing Change Order No. 3 for an increase of \$71,680.05 for Improvement District No. BR-16-F1.
  35. Final Balancing Change Order No. 3 for an increase of \$7,961.26 for Improvement District No. TN-16-F1.
  36. Contract Amendment No. 1 with Stantec Consulting Services Inc. in the amount of \$23,008.00 (Improvement District No. TR-18-B0).
  37. Contract Amendment No. 2 with SRF in the amount of \$104,663.12 (Improvement District No. BR-18-A2).
  38. Bid award for Improvement District No. AN-19-G1.
  39. Create Improvement District No. NR-19-A.
  40. Contracts and bonds for Improvement District Nos. BN-19-C1, BN-19-J1, SL-19-B1 and UR-19-A1.

**REGULAR AGENDA:**

41. Fargo Youth Initiative (FYI) 2019 report.
42. Commissioner Gehrig would like to have a discussion regarding Server Training.
43. Public Hearings - 5:15 pm:
  - a. WITHDRAWN - Zoning change to repeal and re-establish a C-O, Conditional Overlay, Timber Parkway Third Addition; denial recommended by the Planning Commission on 5/7/19; continued from the 6/3/19 and 6/17/19 Regular Meetings.
  - b. Zoning Change from LC, Limited Commercial to GC, General Commercial, BLU Water Creek 4th Addition (4609 33rd Avenue South); approval recommended by the Planning Commission on 6/4/19:
    1. 1st reading of rezoning Ordinance.
  - c. CONTINUE to 7/15/19 - Renaissance Zone Project for Clark Equipment Company for a commercial lease project located at 118 Broadway North.

- d. CONTINUE to 7/29/19 - Transfer of a Class "A" Alcoholic Beverage License from Firebox, LLC d/b/a Firebox to International African Restaurant and Nightclub, LLC d/b/a International African Restaurant and Nightclub at 4554 7th Avenue South; denial recommended by the Liquor Control Board.
  - e. Application filed by Hoffberger Escape, LLC d/b/a Rough Cut Social for a Class "C-W" Alcoholic Beverage License to be located at 1100 NP Avenue, Suite 102.
  - f. Application filed by Drumconrath Brewing Company, LLC d/b/a Drumconrath Brewing Company for a Class "Y" Alcoholic Beverage License to be located at 630 1st Avenue North, #6.
44. State Water Commission requests for Cost Reimbursement for FM Diversion Flood Project Costs:
- a. Costs totaling \$973,992.33.
  - b. Costs totaling \$88,136.44.
  - c. Costs totaling \$1,294,793.15.
45. Recommendations for appointments and reappointments to the following Boards and Commissions:
- a. Library Board.
  - b. Civil Service Commission.
  - c. Special Assessment Commission.
  - d. Fargo Youth Initiative.
  - e. Board of Adjustment.
46. Discussion regarding the FM Diversion.

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

Minutes are available on the City of Fargo website at [www.FargoND.gov/citycommission](http://www.FargoND.gov/citycommission).





June 25, 2019

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

RE: Receive and File Ordinance Amending Section 16-0105 of Article 16-01 of Chapter 16 of the Fargo Municipal Code Relating to Water Service Construction and Maintenance.

Commissioners:

On April 8, 2019, City Commission directed the City Attorney's office to work with Public Works staff to review and update Section 16-0105 of the Fargo Municipal Code.

Previously, contradiction existed between sections 16-0105 and section 22-0301 in the area of maintenance responsibility pertaining to water service connections. In the amended, we have replicated the wording between the two sections, eliminating any possible confusion.

At this time, we are asking the City Commission to receive and file the amendments, as shown, to section 16-0105 of the Fargo Municipal Code.

Respectfully submitted,

Ben Dow  
Fargo Public Works  
Director of Operations

AN ORDINANCE AMENDING SECTION 16-0105 OF ARTICLE 16-01  
OF CHAPTER 16 OF THE FARGO MUNICIPAL CODE RELATING  
TO WATERWORKS SYSTEM

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 16-0105 of Article 16-01 of Chapter 16 of the Fargo Municipal Code is hereby amended to read as follows:

All new services or larger replacement services, including the necessary pavement and sidewalk cuts and replacement thereof, shall be constructed by licensed plumbers engaged by the owner and at the owner's expense. The city water department repairs and maintenance maintains of such existing services between the corporation and the curb cock only up to the property line shall be performed by the water department. Any repairs or maintenance from the curb cock to the structure, inside the property line shall be the sole responsibility of the owner of the premises.

Section 2. Effective Date

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

(SEAL)

Attest:

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

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

First Reading:  
Second Reading:  
Final Passage:

June 25, 2019

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

RE: Receive and File Ordinance Amending Section 22-0301 of Article 22-03 of Chapter 22 of the Fargo Municipal Code Relating to Water Supply and Distribution

Commissioners:

On April 8, 2019, City Commission directed the City Attorney's office to work with Public Works staff to review and update Section 22-0301 of the Fargo Municipal Code.

Previously, contradiction existed between sections 22-0301 and section 16-0105 in the area of maintenance responsibility pertaining to water service connections. In the amended, we have replicated the wording between the two sections, eliminating any possible confusion.

Also updated are the material specifications, to allow for Cross-linked Polyethylene PEXa tubing to be used as standard product as part of underground water services.

At this time, we are asking the City Commission to receive and file the amendments, as shown, to Section 22-0301 of the Fargo Municipal Code.

Respectfully submitted,



Ben Dow  
Fargo Public Works  
Director of Operations

AN ORDINANCE AMENDING SECTION 22-0301 OF ARTICLE 22-03  
OF CHAPTER 22 OF THE FARGO MUNICIPAL CODE RELATING  
TO PLUMBING CODE

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

Section 22-0301 of Article 22-03 of Chapter 22 of the Fargo Municipal Code is hereby amended to read as follows:

Water services shall consist of standard ~~cast iron pipe or~~ copper pipe which shall conform to the latest revision ASTM Specification B88-33 for underground services known as type "K" or type "L" soft tubing, or ASTM Specification F876 for underground services known as Cross-linked Polyethylene PEXa tubing for services two inches in diameter or less. An approved tracer wire must be installed with PEXa tubing to the curb box, following city specifications, to facilitate locating the water line. No service shall be constructed from a main for any purpose of greater capacity than 50% than that of the main and in no case larger than eight inches in diameter. ~~Services one and one-half inches in diameter or less shall be of copper pipe. Taps in mains may be up to one and one-half inches two inches in except on mains six inches in size or less when taps larger than one inch will not be permitted.~~

Services two inches in diameter or less ~~one and one-quarter inches and one and one-half~~

~~inches shall be connected to the main by using an approved saddle. On services larger than two inches, a four-inch gate valve shall be used as the shutoff.~~

Services larger than two inches shall be of standard ~~cast iron or copper pipe~~ C900 PVC SDR 18 connected to the main by a "Smith tapping sleeve and valve" or equal or a tee. Gate valves smaller than four inches shall not be used and any service less than four inches in size shall have a four-inch gate valve with proper reducers to meet service size.

In renewing or constructing a larger service to any premises, a permit for such work will not be issued unless the abandoned service ~~be~~ is closed at the corporation.

All services shall have minimum depth of seven feet below finished grade and shall have a stop or curb cock fitted with a box, set between the sidewalk and curb and the top of such box to the grade of the sidewalk.

The city water department maintains and repairs all existing services between the corporation and the curb cock only. On services larger than four inches, the gate valve that is tapped of the water main will be considered the curb cock for that service.

The city shall have the right to enter any premises at reasonable times and as necessary to inspect, maintain, repair or terminate the plumbing system when located on private property.

Services shall be fitted with a standard ~~compression stop and waste cock~~ Ball valve adjacent to and on the street side of the meter. An additional valve shall be provided on the house side of the meter when larger than five-eighths inch in size.

For meters one and one-half inches in size, or over, a bypass shall be required with a suitable valve on each side of the meter and a valve in the bypass and also a valve on the service as it enters the building.

Upon completion of a plumbing installation and test, where no service meter exists, the plumber shall close the water service at the curb cock and it shall remain closed until application for a meter shall have been made by the general contractor or the owner and the meter installed by the water department.

A separate and independent water connection shall be provided from the main for each building or subdivision thereof when such subdivisions are under separate ownership.

For duplex dwellings or subdivisions of buildings under single ownership, a shutoff shall be



provided for each subdivision at a point between the public sidewalk and the curb, which may be done by branching from a single service at the curb. When existing services to buildings of the latter classification do not conform to these regulations, the owner of such building shall be held responsible for the payment of water charges.

Section 2. Effective Date

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

(SEAL)

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

Attest:

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

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

2

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

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

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

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

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

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

NOW, THEREFORE,

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

Section 1. Amendment.

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

\* \* \*

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

1. A Class "FA-GOLF" licensee may sell alcoholic beverages as the food and beverage concessionaire at a golf course which also holds a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code and which derives a percentage (hereinafter stated) of its gross receipts from the sale of prepared meals and not alcoholic beverages. A recipient of "FA-GOLF" license must derive at least 25% of its gross

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

receipts from the sale of prepared meals and food products and not alcoholic beverages during the months from April through October of each year. During the remaining months of the year, said recipient must derive 50% or more of its gross receipts from the sale of prepared meals and not alcoholic beverages. It is the intention of this restriction that the purpose of a "FA-GOLF" license is to allow the sale of alcoholic beverages as an adjunct to the operation of the golf course and restaurant and not that of operating a full-time liquor establishment. Further, such licensee must be located at and serve a golf course of at least nine (9) or more holes. Said golf course must be USGA approved.

- 2. The Class "FA-GOLF" license shall authorize licensee to sell "on-sale" only and no licensee hereunder may conduct any "off-sale" liquor sales.
- 3. A licensee hereunder, which must also operate a restaurant under the provisions of this title, shall provide adequate off-street parking within the discretion of and subject to the approval of the commission.
- 4. A recipient of a license hereunder shall not be authorized to receive or be issued a live entertainment license as provided in section 25-1510. ~~Further, there shall be no charitable gambling or gaming of any kind.~~

\* \* \* \*

Section 2. Effective Date

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

Section 3. Penalty.

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

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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(SEAL)

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

Attest:

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

First Reading:  
Second Reading:  
Final Passage:  
Publication:



3a

June 12, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 419 7 Ave. S as submitted by Reid Middaugh. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$130 with the City of Fargo's share being \$20.

Sincerely,

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

Ben Hushka  
City Assessor

hah  
attachment

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

N.D.C.C. ch. 57-02.2

(File with the city assessor or county director of tax equalization)

Property Identification

1. Legal description of the property for which exemption is claimed Lot: 7 Block: 1 ISLAND PARK W 37 1/2 LOT 7 BLK 1  
2. Address of Property 419 7th Ave S, Fargo, ND 58103  
3. Parcel Number 01-1440-00120-000  
4. Name of Property Owner Reid Middaugh Phone No. 701-205-9075  
5. Mailing Address of Property Owner 2791 Umber Ct S, Fargo, ND 58104

Description Of Improvements For Exemption

6. Describe type of renovating, remodeling, alteration or addition made to the building for which exemption is claimed (attach additional sheets if necessary). Repainted all interior walls, doors, trim, & radiators, sanded and refinished all hardwood floors, replaced all carpeting, replaced all baseboard heat covers.  
7. Building permit No. n/a 8. Year built (residential property) 1897  
9. Date of commencement of making the improvements 03/18/2019  
10. Estimated market value of property before the improvements \$ 165,000.00  
11. Cost of making the improvement (all labor, material and overhead) \$ 10,000.00  
12. Estimated market value of property after the improvements \$ 180,000.00

Applicant's Certification And Signature

13. I certify that the information contained in this application is correct to the best of my knowledge.  
Applicant Reid Middaugh Date 06/07/2019

Assessor's Determination And Signature

14. The assessor/county director of tax equalization finds that the improvements described in this application  do not  meet the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK  
Assessor/Director of Tax Equalization [Signature] Date 6/10/19

Action Of Governing Body

15. Action taken on this application by the governing board of the county or city: Approved  Denied   
Approval is subject to the following conditions: \_\_\_\_\_  
Exemption is allowed for years 20 \_\_, 20 \_\_, 20 \_\_, 20 \_\_, 20 \_\_.  
Chairperson \_\_\_\_\_ Date \_\_\_\_\_



CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT

36

June 12, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 415 8 St. S as submitted by Grant Syverson & Melissa H. Burkland. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$570 with the City of Fargo's share being \$95.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment

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

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

**Property Identification**

1. Name of Property Owner Grant Syverson & Melissa Burkland Phone No. (414) 530-7911

2. Address of Property 415 8 St S

City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed. Lt N 1/2 of 10, 11, 12  
Block 36, Northern Pacific

4. Parcel Number 01-2140-00160-000 Residential  Commercial  Central Business District

5. Mailing Address of Property Owner Same

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**Description Of Improvements For Exemption**

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

7. Building Permit No. \_\_\_\_\_ 8. Year Built 1898

9. Date of Commencement of making the improvement November 2018

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

11. Cost of making the improvement (all labor, material and overhead) \$ 50,000

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

**Applicant's Certification and Signature**

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

Applicant's Signature [Signature] Date 5-29-19

**Assessor's Determination**

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

Assessor's Signature [Signature] Date 6/10/19

**Action of Governing Body**

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

Approval subject to the following conditions: \_\_\_\_\_

Chairman of Governing Body \_\_\_\_\_ Date \_\_\_\_\_

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT

30

June 12, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1103 9 Ave. S as submitted by Matthew & Jescia Hopper. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$60 with the City of Fargo's share being \$10.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment

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

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

ATTN: TERESA

**Property Identification**

1. Name of Property Owner Matthew & Jescia Hopper Phone No. (320) 808-6289

2. Address of Property 1103 9 Ave S  
 City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed. Pt of Lt 6, Blk P,  
Chas A Roberts

4. Parcel Number 01-2400-02100-000 Residential  Commercial  Central Business District

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

**Description Of Improvements For Exemption**

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Full Bath remodel (2018);  
plumbing upgrade (2019)

7. Building Permit No. \_\_\_\_\_ 8. Year Built 1903

9. Date of Commencement of making the improvement July 2018, March 2019

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

11. Cost of making the improvement (all labor, material and overhead) \$ 4,500

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

**Applicant's Certification and Signature**

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

Applicant's Signature [Signature] Date 6/7/19

**Assessor's Determination**

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

Assessor's Signature [Signature] Date 6/10/19

**Action of Governing Body**

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

Approval subject to the following conditions: \_\_\_\_\_

Chairman of Governing Body \_\_\_\_\_ Date \_\_\_\_\_











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

25.00  
 cash  
 6/26/19

(AU)

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

|  |  |  |                          |  |                          |
|--|--|--|--------------------------|--|--------------------------|
| Name of Non-profit Organization<br><i>Knights of Columbus 4th Deg. Assembly 788</i>  |  | Date(s) of Activity<br><i>01-01-20 to 01-31-20</i> |                          | For a raffle, provide drawing date(s):<br><i>1-20-2020</i> |                          |
| Person Responsible for the Gaming Operation and Disbursement of Net Income<br><i>John A. Herlick</i>   |  | Title<br><i>Raffle Chairman</i>                    |                          | Business Phone Number<br><i>701 412 6776</i>               |                          |
| Business Address<br><i>104 Meadowlark Ln, N.E.</i>   |  | City<br><i>Fargo</i>                               |                          | State<br><i>ND</i>   | Zip Code<br><i>58102</i> |
| Mailing Address (if different)   |  | City   |                          | State  | Zip Code                 |
| Name of Site Where Game(s) will be Conducted<br><i>St Mary's Cathedral Social Hall</i>   |  | Site Address<br><i>619 - 7th St. N.</i>            |                          |  |                          |
| City<br><i>Fargo</i>   |  | State<br><i>ND</i>                                 | Zip Code<br><i>58102</i> | County<br><i>Cass</i>                                      |                          |
| Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.  |  |  |                          |  |                          |
| <input type="checkbox"/> Bingo <input type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input checked="" type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels * |  |  |                          |  |                          |

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

| Game Type              | Description of Prize | Retail Value of Prize | Game Type | Description of Prize | Retail Value of Prize                          |
|------------------------|----------------------|-----------------------|-----------|----------------------|--|
| <i>Calendar Raffle</i> | <i>Cash</i>          | <i>\$1,390.00</i>     |           |                      |  |
|                        |                      |                       |           |                      |  |
|                        |                      |                       |           |                      |  |
|                        |                      |                       |           |                      |  |
|                        |                      |                       |           |                      |  |
|                        |                      |                       |           |                      |  |
|                        |                      |                       |           |                      |  |
|                        |                      |                       |           |                      |  |
|                        |                      |                       |           |                      |  |
|                        |                      |                       |           |                      |  |
| Total:                 |                      |                       |           |                      | (Limit \$12,000 per year)<br><i>\$ 1390.00</i> |

Intended uses of gaming proceeds: *Charity & Scholarships*

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

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

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

|  |                          |                                 |  |
|--|--------------------------|---------------------------------|--|
| Signature of Organization's Top Executive Official<br><i>John A. Herlick</i> | Date<br><i>6-26-2019</i> | Title<br><i>Raffle Chairman</i> | Business Phone Number<br><i>701 412 6776</i> |
|--|--------------------------|---------------------------------|--|



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

✓ 2941  
 25.00  
 6/26/19

40

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

|  |  |   |                   |  |                        |
|--|--|---|-------------------|--|------------------------|
| Name of Non-profit Organization<br>St Anthony of Padua Parish Fall Bazaar  |  | Date(s) of Activity<br>9/29/2019 to 9/29/2019 |                   | For a raffle, provide drawing date(s):<br>9/29/2019X |                        |
| Person Responsible for the Gaming Operation and Disbursement of Net Income<br>Bonnie Kroetsch  |  | Title<br>Raffle Chrman                        |                   | Business Phone Number<br>701-237-6063                |                        |
| Business Address<br>710 10th St S  |  | City<br>Fargo                                 |                   | State<br>ND  | Zip Code<br>58103      |
| Mailing Address (if different)<br>1419 7th Ave S   |  | City<br>Fargo                                 |                   | State<br>ND  | Zip Code<br>58103-2525 |
| Name of Site Where Game(s) will be Conducted<br>St Anthony of Padua Catholic Church  |  | Site Address<br>710 10th St S                 |                   |  |                        |
| City<br>Fargo  |  | State<br>ND                                   | Zip Code<br>58103 | County<br>Cass                                       |                        |
| Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.<br><input checked="" type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels * |  |   |                   |  |                        |

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

| Game Type     | Description of Prize | Retail Value of Prize | Game Type | Description of Prize | Retail Value of Prize                   |
|---------------|----------------------|-----------------------|-----------|----------------------|---|
| Raffle        | \$500.00 Cash        | \$500.00              | Bingo     | Cash                 | \$100.00                                |
| Raffle        | 50" Smart TV         | \$350.00              | Bingo     | Various Prizes       | \$100.00                                |
| Raffle        | \$250.00 Cash        | \$250.00              |           |                      |   |
| Raffle        | Diamondback Bike     | \$150.00              |           |                      |   |
| Raffle        | Outdoor Statue       | \$100.00              |           |                      |   |
| Raffle        | Nativity Set         | \$100.00              |           |                      |   |
| Raffle        | \$100.00 Cash        | \$100.00              |           |                      |   |
| Raffle        | \$100.00 Cash        | \$100.00              |           |                      |   |
| Raffle        | \$50.00 Gift Cert    | \$50.00               |           |                      |   |
| <b>Total:</b> |                      |                       |           |                      | (Limit \$12,000 per year)<br>\$ 1900.00 |

Intended uses of gaming proceeds: Church Renovations.

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

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

Has the organization received a local permit from this or another city or county for the fiscal year July 1 through June 30?  No  Yes - If "Yes," indicate the total value of all prizes previously awarded: \$ 1800 . This amount is part of the total prize limit of \$12,000 per year.

|  |                        |                                 |  |
|--|------------------------|---------------------------------|--|
| Signature of Organization's Top Executive Official<br><i>Bonnie Kroetsch</i> | Date<br><i>6-26-19</i> | Title<br><i>Raffle Chairman</i> | Business Phone Number<br><i>701 356-7925</i> |
|--|------------------------|---------------------------------|--|



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

*AO*

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

|   |  |   |                               |  |                               |
|---|--|---|-------------------------------|--|-------------------------------|
| Name of Non-profit Organization<br><b>Villa Nazareth DbA CHI Friendship</b>   |  | Date(s) of Activity<br>9/1/2019 to 10/11/2019 |                               | For a raffle, provide drawing date(s):<br>10/11/2019 |                               |
| Person Responsible for the Gaming Operation and Disbursement of Net Income<br><b>Dori Leslie</b>  |  | Title<br><b>President</b>                     |                               | Business Phone Number<br><b>(701) 235-8217</b>       |                               |
| Business Address<br><b>801 Page Drive</b>   |  | City<br><b>Fargo</b>                          |                               | State<br><b>ND</b>                                   | Zip Code<br><b>58103-2315</b> |
| Mailing Address (if different)  |  | City  |                               | State  | Zip Code                      |
| Name of Site Where Game(s) will be Conducted<br><b>CHI Friendship</b>   |  | Site Address<br><b>801 Page Drive</b>         |                               |  |                               |
| City<br><b>Fargo</b>  |  | State<br><b>ND</b>                            | Zip Code<br><b>58103-2315</b> | County<br><b>Cass</b>                                |                               |
| Check the Game(s) to be Conducted: * Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.<br><input type="checkbox"/> Bingo <input checked="" type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels * |  |   |                               |  |                               |

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

| Game Type | Description of Prize | Retail Value of Prize | Game Type | Description of Prize | Retail Value of Prize                    |
|-----------|----------------------|-----------------------|-----------|----------------------|--|
| Raffle    | Smart TV             | \$300.00              | Raffle    | Visa Gift Card       | \$50.00                                  |
| Raffle    | Meat Bundle          | \$200.00              |           |                      |  |
| Raffle    | Visa Gift Card       | \$100.00              |           |                      |  |
| Raffle    | Visa Gift Card       | \$100.00              |           |                      |  |
| Raffle    | Visa Gift Card       | \$50.00               |           |                      |  |
| Raffle    | Visa Gift Card       | \$50.00               |           |                      |  |
| Raffle    | Visa Gift Card       | \$50.00               |           |                      |  |
| Raffle    | Visa Gift Card       | \$50.00               |           |                      |  |
| Raffle    | Visa Gift Card       | \$50.00               |           |                      |  |
| Total:    |                      |                       |           |                      | (Limit \$12,000 per year)<br>\$ 1,000.00 |

**Intended uses of gaming proceeds:** Provide Christmas gifts for the people we support (people with developmental disabilities)

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

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

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

|  |                        |                            |  |
|--|------------------------|----------------------------|--|
| Signature of Organization's Top Executive Official<br><i>[Signature]</i> | Date<br><b>6-19-19</b> | Title<br><b>Controller</b> | Business Phone Number<br><b>(701) 235-8217</b> |
|--|------------------------|----------------------------|--|

5

June 26, 2019

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

**Re: Thomas N. & Audrey Renae Erdmann – Purchase Agreement  
Project #FM-19-B**

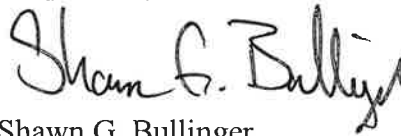
Dear Commissioners:

Enclosed and delivered to the City Commission office for review and approval please find an original Purchase Agreement signed by **Thomas N. & Audrey Renae Erdmann**. Final purchase price has been reached and at this time we are requesting authorization from the Commission to proceed with the purchase. All land acquisition procedures have been followed and the City Engineer's office recommends purchase.

RECOMMENDED MOTION: I/we hereby move to approve and authorize purchase of the property located at 767 Royal Oaks Drive North from **Thomas N. & Audrey Renae Erdmann** in association with Project #FM-19-B and that the Mayor and City Auditor be instructed to execute the Purchase Agreement on behalf of the City of Fargo.

Please return a copy of the signed original.

Respectfully submitted,



Shawn G. Bullinger  
Land Acquisition Specialist

C: Jody Bertrand  
Nancy J. Morris



**PURCHASE AGREEMENT**

**THIS AGREEMENT**, made and entered into by and between THOMAS N. AND AUDREY RENAE ERDMANN, the identified owner of the property located at 767 Royal Oaks Drive North in Fargo, North Dakota hereinafter "Seller", whether one or more, and the **CITY OF FARGO**, a North Dakota municipal corporation, hereinafter "City" or "Buyer",

**WITNESSETH:**

**WHEREAS**, Seller is the owner of real estate situated in the County of Cass and State of North Dakota described as follows:

Lot Nine (9), Block One (1) of Broadway North First Addition to the City of Fargo, situate in the County of Cass and the State of North Dakota.

Property Address: 767 Royal Oaks Drive North, Fargo, ND.

**WHEREAS**, the City of Fargo is currently engaged in acquiring properties to mitigate future flood damages; and,

**WHEREAS**, Seller accepted Buyer's offer to purchase in accordance with the terms herein;

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

1. Subject Matter. The subject matter of this agreement is the real estate described, other buildings located thereon, and all items affixed to the property.
2. Purchase Price. The purchase price for the Property is Three Hundred and Five Thousand Dollars (\$305,000), which sum includes relocation and moving expenses.
3. Payment of Purchase Price. The mortgage, if any, as well as any liens or encumbrances, will be paid and Seller shall receive the balance of the purchase price, less any escrow amounts, in cash on the date of closing.
4. Abstract. Seller shall furnish Buyer an abstract of title to the subject property and Buyer shall pay for the cost of continuation of said abstract to a recent date. Said abstract must show good and marketable title in Seller free and clear of all liens and encumbrances (other than those that will be handled at closing).
5. Taxes and Utilities. Taxes and installments of special assessments for the year of closing shall be prorated between the parties to the date of closing based upon current total true value as calculated by the County of Cass, ND, as of the date of closing. Prior year taxes and assessments must be paid by Seller in advance of closing.
6. Deeds. Seller shall sign warranty deeds prepared by Buyer. Buyer will take title as follows: City of Fargo, North Dakota, a municipal corporation.

8. Closing Date and Transfer of Possession. Closing shall take place at a time and date to be agreed by the parties, but not later than September 30, 2019. The City shall take possession of the real estate no later than the last day of the month of closing, unless other arrangements have been made. If City does not take possession on the date of closing, \$1,000 will be required of Seller at closing and retained until such time as the possession of the property is secured by the City in satisfactory condition. Seller agrees the \$1,000 deposit may be forfeited if the property is not delivered in satisfactory condition.

A separate Occupancy Agreement may be entered into between the parties should Seller desire to continue to reside in the dwelling longer than the end of the month of closing. If Seller elects to occupy the premises beyond the end of the month of closing, rent shall be paid to the City in the amount of \$1,000/month beginning on the 1<sup>st</sup> day of the month following closing. 2% of the purchase price shall be retained until such time Seller vacates the premises and remits the garage door openers and keys to the City.

If Seller vacates the property prior to closing, the end of the month of closing, or prior to the expiration of the time period contained in an Occupancy Agreement, Seller shall immediately notify Buyer so that appropriate measures can be taken to secure the premises.

9. Warranty. Seller provides no express warranties on the subject property. Buyer understands and agrees that the property is a used home and is being purchased "AS IS". Buyer shall make any inspection it deems necessary concerning the condition of said used home.

10. Inspection and Photographs. Seller agrees to allow City to enter the Premises for purposes of inspection, including but not limited to asbestos testing and mitigation.

DATED this 25 day of June, 2019.

(Signatures on following page.)

SELLER:

Thomas N. Erdmann  
Thomas N. Erdmann

Audrey Renae Erdmann  
Audrey Renae Erdmann



DATED this \_\_\_\_ day of \_\_\_\_\_, 2018.

BUYER:  
City of Fargo, a North Dakota  
municipal corporation

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

ATTEST:

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

REPORT OF ACTION



PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Project No. EP-17-A1 Type: Negative Final Balancing Change Order #2

Location: 52<sup>nd</sup> Ave on Rose Coulee/ Drain 53 & Rose Creek Parkway Date of Hearing: 6/24/2019

|                 |                    |
|-----------------|--------------------|
| <u>Routing</u>  | <u>Date</u>        |
| City Commission | <u>7/1/2019</u>    |
| PWPEC File      | <u>X</u>           |
| Project File    | <u>Roger Kluck</u> |

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, for Negative Final Balancing Change Order #2 in the amount of \$-3,675.00, bringing the total contract amount to \$27,080.00.

Staff is recommending approval of Negative Final Balancing Change Order #2, in the amount of \$-3,675.00.

On a motion by Steve Sprague, seconded by Kent Costin, the Committee voted to recommend approval of Negative Final Balancing Change Order #2.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Negative Final Balancing Change Order #2 in the amount of \$-3,675.00, bringing the total contract amount to \$27,080.00 to On the Level Construction.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Storm Water Utility Funds


|  |            |            |
|--|------------|------------|
|  | <u>Yes</u> | <u>No</u>  |
| Developer meets City policy for payment of delinquent specials | <u>N/A</u> | <u>N/A</u> |
| Agreement for payment of specials required of developer        | <u>N/A</u> | <u>N/A</u> |
| Letter of Credit required (per policy approved 5-28-13)        | <u>N/A</u> | <u>N/A</u> |

COMMITTEE

|  | <u>Present</u>                      | <u>Yes</u>                          | <u>No</u>                | <u>Unanimous</u>                    |
|--|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Tim Mahoney, Mayor                       | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Nicole Crutchfield, Director of Planning | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Steve Dirksen, Fire Chief                | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ryan Erickson                       |
| Bruce Grubb, City Administrator          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Ben Dow, Director of Operations          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Steve Sprague, City Auditor              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Brenda Derrig, City Engineer             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Kent Costin, Finance Director            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |

ATTEST:

C: Kristi Olson

  
Tom Knakmuhs  
Assistant City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Roger E. Kluck, PE, CFM, Civil Engineer II  
**Date:** June 20, 2019  
**Re:** Project No. EP-17-A1 – Final Balancing Change Order #2  
Erosion Control and Seeding Repair of Existing Levee

---

**Background:**

Attached is Final Balancing Change Order #2 for \$-3,675.00 for Project No. EP-17-A1 Erosion Control and Seeding of existing levee. Please refer to the attached Final Balancing Change Order (FBCO) #2, which reconciles the estimated quantities used in the contract with the final quantities measured in the field.

|                    |           |                  |
|--------------------|-----------|------------------|
| Original Contract: | \$        | 26,250.00        |
| Change Order #1:   | \$        | 4,505.00         |
| <u>FBCO #2:</u>    | <u>\$</u> | <u>-3,675.00</u> |
| Total Contract:    | \$        | 27,080.00        |

**Recommended Motion:**

Approve Final Balancing Change Order #2 in the amount of \$-3,675.00 to On The Level Construction, Inc.

REK/jmg  
Attachment

C: Brenda Derrig, City Engineer  
Jody Bertrand, Storm Sewer Division Engineer  
Dan Eberhardt, Special Assessments Coordinator

**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

Project No EP-17-A1 Change Order No 2  
 Project Name Erosion Protection & Incidentals  
 Date Entered 6/20/2019 For On The Level Construction, Inc.

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

**EXPLANATION OF CHANGE:** Final Balancing Change Order

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

| Section                                 | Line No | Item Description                  | Unit | Orig Cont Qty | Prev C/O Qty | Prev Cont Qty | Curr C/O Qty | Tot Cont Qty | Unit Price (\$) | C/O Ext Price (\$) |
|---|---------|-----------------------------------|------|---------------|--------------|---------------|--------------|--------------|-----------------|--------------------|
| Miscellaneous                           | 3       | Temp Construction Entrance        | EA   | 1.00          | 0.00         | 1.00          | -1.00        | 0.00         | 200.00          | -200.00            |
|   | 4       | Topsoil - Import                  | CY   | 250.00        | 0.00         | 250.00        | -250.00      | 0.00         | 12.50           | -3,125.00          |
|   | 5       | Inlet Protection - Existing Inlet | EA   | 7.00          | 0.00         | 7.00          | -7.00        | 0.00         | 50.00           | -350.00            |
| <b>Miscellaneous Sub Total (\$)</b>     |         |                                   |      |               |              |               |              |              |                 | <b>-3,675.00</b>   |
| <b>Original Contract Amount (\$)</b>    |         |                                   |      |               |              |               |              |              |                 | <b>4,505.00</b>    |
| <b>Net Amount Change Order # 2 (\$)</b> |         |                                   |      |               |              |               |              |              |                 | <b>-3,675.00</b>   |
| <b>Previous Change Orders (\$)</b>      |         |                                   |      |               |              |               |              |              |                 | <b>4,505.00</b>    |
| <b>Total Contract Amount (\$)</b>       |         |                                   |      |               |              |               |              |              |                 | <b>26,250.00</b>   |
| <b>Original Contract Amount (\$)</b>    |         |                                   |      |               |              |               |              |              |                 | <b>27,080.00</b>   |

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

**CONTRACT TIME**

| Current Substantial Completion Date | Current Final Completion Date | Additional Days Substantial Completion | Additional Days Final Completion | New Substantial Completion Date | New Final Completion Date |
|-------------------------------------|-------------------------------|--|----------------------------------|---------------------------------|---------------------------|
| 10/30/2017                          |                               | 0.00                                   | 0.00                             | 10/30/2017                      |                           |

**Description**



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

APPROVED

*Rhonda Swibe*  
For Contractor *on the final construction*  
Title *Offices Manager*

APPROVED DATE

Department Head

*T. Cole*  
Mayor *6/24/19*

Attest

⑦

June 26, 2019

Honorable Board of City  
Commissioners  
City of Fargo  
Fargo, ND

Re: Project No. FM-15-J2

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, June 26, 2019, for Belmont Flood Risk Management Project Phase 2, Project No. FM-15-J2, located at Lindenwood Drive South.

The bids were as follows:

|                          |                |
|--------------------------|----------------|
| Industrial Builder, Inc. | \$2,306,969.18 |
| Ames Construction        | \$2,531,963.37 |
| Engineer's Estimate      | \$1,653,336.68 |

The special assessment escrow is not required.

The Engineer's Estimate of \$1,653,336.68 reflects the estimated project cost at the time the project was created. Addendum #1 added additional features, and therefore costs, that were not reflected in the initial project cost estimate. The revised cost including Addendum # 1 is \$1,756,504.68. This office recommends award of the contract to Industrial Builders, Inc. in the amount of \$2,306,969.18 as the lowest and best bid.

Sincerely,



Tom Knakmuhs  
Assistant City Engineer

TAK/klb



**ENGINEER'S STATEMENT OF ESTIMATED COST****PROJECT # FM-15-J2****Belmont Flood Risk Management Project Phase 2**

Lindenwood Dr S

WHEREAS, bids have been opened and filed for the above described Project for City of Fargo, North Dakota; and WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

That I am the Assistant City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

Belmont Flood Risk Management Project Phase 2 Project # FM-15-J2 of the City of Fargo, North Dakota.

| Line Description                                 | Unit | Quantity  | Unit Price (\$)          | Amount (\$)       |
|--|------|-----------|--------------------------|-------------------|
| <b>Removals</b>                                  |      |           |                          |                   |
| 1 Remove Pavement All Thicknesses All Types      | SY   | 2,081.00  | 15.00                    | 31,215.00         |
| 2 Remove Inlet                                   | EA   | 4.00      | 600.00                   | 2,400.00          |
| 3 Remove Manhole                                 | EA   | 1.00      | 800.00                   | 800.00            |
| 4 Remove Outfall                                 | EA   | 1.00      | 3,700.00                 | 3,700.00          |
| 5 Remove Tree                                    | EA   | 16.00     | 600.00                   | 9,600.00          |
| 6 Clear & Grub                                   | LS   | 1.00      | 5,000.00                 | 5,000.00          |
| 7 Remove Landscaping                             | LS   | 1.00      | 3,000.00                 | 3,000.00          |
| 8 Remove Pipe All Sizes All Types                | LF   | 443.00    | 25.00                    | 11,075.00         |
| 9 Remove Driveway All Thicknesses All Types      | SY   | 13.00     | 35.00                    | 455.00            |
| 10 Remove Curb & Gutter                          | LF   | 342.00    | 8.00                     | 2,736.00          |
| 11 Remove Sidewalk All Thicknesses All Types     | SY   | 4.00      | 120.00                   | 480.00            |
| 12 Remove Sign Assembly                          | EA   | 2.00      | 20.00                    | 40.00             |
| 13 Abandon Gatewell                              | EA   | 1.00      | 5,000.00                 | 5,000.00          |
| 14 Salvage Gate                                  | LS   | 1.00      | 1,000.00                 | 1,000.00          |
| 15 Inspection Trench                             | CY   | 1,168.00  | 10.00                    | 11,680.00         |
| 16 F&I Retaining Wall                            | SF   | 549.00    | 90.00                    | 49,410.00         |
|  |      |           | <b>Removals Total</b>    | <b>137,591.00</b> |
| <b>Storm Sewer</b>                               |      |           |                          |                   |
| 17 F&I Pipe 12" Dia PVC                          | LF   | 720.00    | 38.00                    | 27,360.00         |
| 18 F&I Pipe 15" Dia Reinf Conc                   | LF   | 43.00     | 53.00                    | 2,279.00          |
| 19 F&I Pipe 18" Dia Reinf Conc                   | LF   | 86.00     | 72.00                    | 6,192.00          |
| 20 F&I Pipe w/GB SDR 35 - 12" Dia PVC            | LF   | 53.00     | 53.00                    | 2,809.00          |
| 21 F&I 1-1/4" Trench Found Rock 4" thru 12" Dia  | LF   | 200.00    | 11.00                    | 2,200.00          |
| 22 Connect Pipe to Exist Pipe                    | EA   | 1.00      | 700.00                   | 700.00            |
| 23 Connect Pipe to Exist Structure               | EA   | 3.00      | 900.00                   | 2,700.00          |
| 24 F&I Manhole 4' Dia Reinf Conc                 | EA   | 5.00      | 3,150.00                 | 15,750.00         |
| 25 F&I Inlet - Round (RDI) Reinf Conc            | EA   | 3.00      | 2,100.00                 | 6,300.00          |
| 26 F&I Inlet - Single Box (SBI) Reinf Conc       | EA   | 3.00      | 2,520.00                 | 7,560.00          |
| 27 F&I Flared End Section 18" Dia Reinf Conc     | EA   | 1.00      | 2,625.00                 | 2,625.00          |
| 28 F&I Gatewell                                  | EA   | 1.00      | 180,000.00               | 180,000.00        |
| 29 F&I Controlled Density Fill                   | CY   | 3.00      | 400.00                   | 1,200.00          |
| 30 F&I Rip Rap Precast Conc                      | SY   | 60.00     | 100.00                   | 6,000.00          |
| 31 F&I Manhole 5' Dia Reinf Conc                 | EA   | 1.00      | 4,800.00                 | 4,800.00          |
|  |      |           | <b>Storm Sewer Total</b> | <b>268,475.00</b> |
| <b>Flood Mitigation</b>                          |      |           |                          |                   |
| 32 F&I Floodwall Reinf Bars - Epoxy Coated Steel | LB   | 37,172.00 | 2.20                     | 81,778.40         |
| 33 F&I Floodwall Reinf Bars - Steel              | LB   | 51,087.00 | 1.80                     | 91,956.60         |
| 34 F&I Floodwall - Structural Conc               | CY   | 368.00    | 500.00                   | 184,000.00        |
| 35 F&I Floodwall - Self Consolidating Conc       | CY   | 243.00    | 1,872.00                 | 454,896.00        |
| 36 Fill - Impervious                             | CY   | 15,192.21 | 17.00                    | 258,267.57        |

**ENGINEER'S STATEMENT OF ESTIMATED COST**

PROJECT # FM-15-J2

**Belmont Flood Risk Management Project Phase 2**

|   |     |           |   |                     |
|---|-----|-----------|---|---------------------|
| 37 Embankment                             | CY  | 8,687.74  | 8.00                                      | 69,501.92           |
| 38 Excavation                             | CY  | 23,600.00 | 9.50                                      | 224,200.00          |
| 39 F&I Sheet Piling - Steel               | SF  | 167.00    | 72.00                                     | 12,024.00           |
| 40 Topsoil - Spread                       | CY  | 1,365.24  | 10.00                                     | 13,652.40           |
| 41 Topsoil - Strip                        | CY  | 2,925.66  | 5.50                                      | 16,091.13           |
| 42 Topsoil - Import                       | CY  | 200.00    | 24.00                                     | 4,800.00            |
|   |     |           | <b>Flood Mitigation Total</b>             | <b>1,411,168.02</b> |
| <b>Erosion And Sediment Control</b>       |     |           |   |                     |
| 43 Sediment Control Log 6" to 8" Dia      | LF  | 882.00    | 2.10                                      | 1,852.20            |
| 44 Inlet Protection - Existing Inlet      | EA  | 6.00      | 160.00                                    | 960.00              |
| 45 Inlet Protection - New Inlet           | EA  | 12.00     | 160.00                                    | 1,920.00            |
| 46 Stormwater Management                  | LS  | 1.00      | 3,000.00                                  | 3,000.00            |
| 47 Temp Construction Entrance             | EA  | 3.00      | 3,200.00                                  | 9,600.00            |
| 48 Concrete Washout Area                  | EA  | 1.00      | 2,500.00                                  | 2,500.00            |
| 49 Silt Fence - Heavy Duty                | LF  | 2,239.00  | 2.10                                      | 4,701.90            |
| 50 F&I Erosion Control Blanket Type 3     | SY  | 8,245.00  | 1.05                                      | 8,657.25            |
|   |     |           | <b>Erosion And Sediment Control Total</b> | <b>33,191.35</b>    |
| <b>Paving</b>                             |     |           |   |                     |
| 51 Subgrade Preparation                   | SY  | 6,212.00  | 2.00                                      | 12,424.00           |
| 52 Subcut                                 | CY  | 375.00    | 16.00                                     | 6,000.00            |
| 53 F&I Woven Geotextile                   | SY  | 6,212.00  | 2.00                                      | 12,424.00           |
| 54 F&I Aggregate for Asph Pavement FAA 43 | TON | 954.00    | 61.00                                     | 58,194.00           |
| 55 F&I Asphalt Cement PG 58-34            | GAL | 13,661.00 | 3.00                                      | 40,983.00           |
| 56 F&I Pavement 8" Thick Reinf Conc       | SY  | 311.00    | 100.00                                    | 31,100.00           |
| 57 F&I Curb & Gutter Standard (Type II)   | LF  | 1,128.00  | 26.25                                     | 29,610.00           |
| 58 F&I Edge Drain 4" Dia PVC              | LF  | 235.00    | 12.00                                     | 2,820.00            |
| 59 F&I Sidewalk 4" Thick Reinf Conc       | SY  | 6.00      | 126.00                                    | 756.00              |
| 60 F&I Driveway 7" Thick Reinf Conc       | SY  | 15.00     | 130.00                                    | 1,950.00            |
| 61 F&I Class 5 Agg - 8" Thick             | SY  | 6,212.00  | 10.00                                     | 62,120.00           |
|   |     |           | <b>Paving Total</b>                       | <b>258,381.00</b>   |
| <b>Site Restoration</b>                   |     |           |   |                     |
| 62 F&I Decid Tree 2" Dia                  | EA  | 32.00     | 420.00                                    | 13,440.00           |
| 63 Mulching Type 1 - Hydro                | SY  | 17,963.00 | 0.32                                      | 5,748.16            |
| 64 Seeding Type B                         | SY  | 17,963.00 | 0.17                                      | 3,053.71            |
| 65 Overseeding                            | SY  | 17,963.00 | 0.11                                      | 1,975.93            |
| 66 Weed Control Type B                    | SY  | 17,963.00 | 0.02                                      | 359.26              |
|   |     |           | <b>Site Restoration Total</b>             | <b>24,577.06</b>    |
| <b>Miscellaneous</b>                      |     |           |   |                     |
| 67 Mobilization                           | LS  | 1.00      | 150,000.00                                | 150,000.00          |
| 68 Temp Pumping                           | LS  | 1.00      | 14,931.00                                 | 14,931.00           |
| 69 Traffic Control - Type 2               | LS  | 1.00      | 2,200.00                                  | 2,200.00            |
| 70 F&I Gate                               | EA  | 1.00      | 3,500.00                                  | 3,500.00            |
| 71 Temp Fence - Safety                    | LF  | 530.00    | 3.00                                      | 1,590.00            |
|   |     |           | <b>Miscellaneous Total</b>                | <b>172,221.00</b>   |
| <b>Signing</b>                            |     |           |   |                     |
| 72 F&I Sign Assembly & Anchor             | EA  | 7.00      | 116.00                                    | 812.00              |
| 73 F&I Diamond Grade Cubed                | SF  | 21.50     | 21.00                                     | 451.50              |
| 74 F&I Engineering Grade                  | SF  | 6.75      | 15.00                                     | 101.25              |
|   |     |           | <b>Signing Total</b>                      | <b>1,364.75</b>     |
|   |     |           | <b>Total Construction in \$</b>           | <b>2,306,969.18</b> |
|   |     |           | Engineering                               | 4.00 % 92,278.77    |
|   |     |           | Legal & Misc                              | 3.00 % 69,209.08    |

ENGINEER'S STATEMENT OF ESTIMATED COST

PROJECT # FM-15-J2

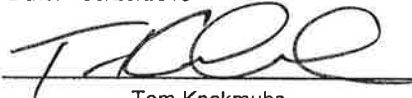
Belmont Flood Risk Management Project Phase 2

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|                                       |         |                     |
|---------------------------------------|---------|---------------------|
| Contingencies                         | 10.00 % | 230,696.92          |
| Interest                              | 4.00 %  | 92,278.77           |
| Outside Engineering                   | 12.56 % | 289,755.33          |
| <b>Total Estimated Costs</b>          |         | <b>3,081,188.04</b> |
| Sales Tax Funds - Flood Control - 460 |         | 2,202,936.12        |
| State Funds - NDSWC                   |         | 878,252.00          |
| <b>Unfunded Costs</b>                 |         | <b>-0.08</b>        |

IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 06/26/2019



Tom Knakmuhs

Assistant City Engineer





ga

June 25, 2019

Fargo City Commission  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

Commissioners:

The Fargo Dome Authority requests your approval of their selection of the low bidders, including discussed and approved alternates, for the remodeling of existing mezzanine bathroom space for construction of family restrooms and mother's rooms on the mezzanine level here at FARGODOME. The Fargo Dome Authority worked with RL Engebretson to evaluate the existing mezzanine bathroom space, and to design, bid and construct various upgrades for the creation of three (3) family restrooms and three (3) mother's rooms, along with the remodeling of the existing women's restroom on the mezzanine level that was constructed in 1992 with the original building of FARGODOME.

Through a competitive bid process, and upon review of all bid submissions for each contract, at their meeting on Tuesday, June 25, 2019, the Fargo Dome Authority voted to award both the base bid and alternate bid for the remodel of the women's restroom for this project to the following companies:

|                        |                        |               |
|------------------------|------------------------|---------------|
| General Contractor:    | Naseth Construction    | \$ 194,000.00 |
| Electrical Contractor: | Moorhead Electric      | \$ 43,615.00  |
| Mechanical Contractor: | Reiland Bros. Plumbing | \$ 74,040.00  |

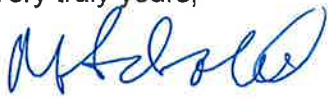
The bid response forms have been attached for reference. With respect to the bid submittals for the Electrical construction portion of the project, after consultation with the City of Fargo Attorney's office, the apparent low bidder's bid was disqualified due to their failure to acknowledge both bid document addendums as required by the bid documents.

At their meeting held on June 25, 2019, the Fargo Dome Authority voted to approve the overall budget for this project at \$415,000 to fund all aspects of the project including the above contractor bids (\$311,655), as well as costs of the project architect/engineering fees (Not To Exceed \$60,000), project furniture and signage (\$10,000) and a project contingency (\$33,345), and to request the project budget of \$415,000 be allocated from the FARGODOME Surplus fund.

Requested Motion: To approve the bids, and overall project budget, as accepted by the Fargo Dome Authority, and their sub-committees, at their June 2019 meetings and to agree to fund the project budget of \$415,000 out of the FARGODOME surplus fund.

This project would start in July, 2019 and be scheduled to have substantial completion achieved by October of 2019, with final completion in November of 2019.

Very truly yours,



Rob Sobolik  
General Manager, FARGODOME

Attachment

**FARGODOME Family Restrooms**

**FARGODOME**

**Fargo, North Dakota**

**BID TABULATION - June 13, 2019 - 2:00 PM**

\* 48-01.2-06 A governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest responsible multiple bids for the project.

**FARGODOME**

**R.L.Engebretson**  
ARCHITECTURE  
INTERIORS & CONSTRUCTION



| General Construction                       | CONTRACTOR | Bid Bond | Contractor's License | ADDENDA |   | BASE BID      | COMBINED BASE BID* | Alt. G-1<br>Women's Restroom | Alt. H-1<br>Women's Restroom | Alt. E-1<br>Women's Restroom | Remarks                                  |
|--|------------|----------|----------------------|---------|---|---------------|--------------------|------------------------------|------------------------------|------------------------------|--|
|  |            |          |                      | 1, 2    |   |               |                    |                              |                              |                              |  |
| Gast Construction<br>Fargo, ND             |            |          |                      | X       | X | \$ 166,900.00 |                    | \$ 49,000.00                 |                              |                              |  |
| H2 Design Build<br>Fargo, ND               |            |          |                      | X       | X | \$ 188,500.00 |                    | \$ 33,300.00                 |                              |                              |  |
| Naseth Construction, Inc<br>West Fargo, ND |            |          |                      | X       | X | \$ 154,000.00 |                    | \$ 40,000.00                 |                              |                              | Low bid accepted with Alt G-1 of 194,000 |



FARGODOME Family Restrooms

FARGODOME

Fargo, North Dakota

BID TABULATION - June 13, 2019 - 2:00 PM

\* 48-01.2-06 A governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest responsible multiple bids for the project.



R.L.Engelbreitson  
ARCHITECTURE  
INTERIORS & CONSTRUCTION



CONTRACTOR Bid Bond Contractor's License APPEND A 1, 2 BASE BID COMBINED BASE BID Alt. G-1 Women's Restroom Alt. M-1 Women's Restroom Alt. E-1 Women's Restroom Remarks

| CONTRACTOR                      | Bid Bond | Contractor's License | APPEND A 1, 2 | BASE BID    | COMBINED BASE BID | Alt. G-1 Women's Restroom | Alt. M-1 Women's Restroom | Alt. E-1 Women's Restroom | Remarks   |
|---------------------------------|----------|----------------------|---------------|-------------|-------------------|---------------------------|---------------------------|---------------------------|---|
| JDP Electric                    | 5%       | X                    | X             | \$37,400.00 |                   |                           |                           | \$ 11,500.00              |   |
| Moorhead Electric               | 5%       | X                    | X             | \$33,650.00 |                   |                           |                           | \$ 9,965.00               | Low bid accepted along with Alt E-1 \$43,615                |
| Red River Electric Moorhead, MN | 5%       | X                    | 1 only        | \$99,940.00 |                   |                           |                           | \$ 107,700.00             | Bid not allowed due to not acknowledging both alternatives. |
| Superior Electric Fargo, ND     | 5%       | X                    | X             | \$33,186.23 |                   |                           |                           | \$ 11,070.00              |   |

**FARGODOME Family Restrooms**

**FARGODOME**  
**Fargo, North Dakota**

**BID TABULATION - June 13, 2019 - 2:00 PM**

\* 48-01.2-06 A governing body may not accept the single prime bid unless that bid is lower than the combined total of the lowest responsible multiple bids for the project.

**FARGODOME**

**R.L.Engelbretson**  
 ARCHITECTURE  
 INTERIORS & CONSTRUCTION



| CONTRACTOR                               | Bid Bond | Contractor's License | ADDENDA |  | BASE BID                            | COMBINED BASE BID*           |                              |                              | Remarks |  |  |   |
|--|----------|----------------------|---------|--|-------------------------------------|------------------------------|------------------------------|------------------------------|---------|--|--|---|
|  |          |                      | 1, 2    |  |                                     | Alt. G-1<br>Women's Restroom | Alt. M-1<br>Women's Restroom | Alt. E-1<br>Women's Restroom |         |  |  |   |
| Grants Mechanical                        | 5%       | X                    | X       |  | \$ 58,036.00                        |                              |                              |                              |         |  |  |   |
| Laney's Inc<br>Fargo, ND                 | 5%       | X                    | 1 only  |  | \$ 56,446.00                        |                              |                              | \$ 28,940.00                 |         |  |  | Bid was allowed due to not awarding both addendums                            |
| Manning Mechanical<br>Fargo, ND          | 5%       | X                    | 1 only  |  | \$ 55,700.00<br><del>1,000.00</del> |                              |                              | \$ 26,900.00                 |         |  |  | Add \$1,000 written on outside of envelope due to not awarding both addendums |
| Peterson Mechanical<br>Fargo, ND         | 5%       | X                    | X       |  | \$ 64,700.00                        |                              |                              | \$ 24,100.00                 |         |  |  |   |
| Reiland Bros, Plumbing LLC<br>Cottax, ND | 5%       | X                    | X       |  | \$ 46,570.00                        |                              |                              | \$ 21,470.00                 |         |  |  | Low bid accepted with Alt M-1 # 74,040  |

**OFFICE SIGN  
C O M P A N Y**

310 NP Avenue  
 Fargo, ND 58102  
 P: 701-526-3835  
 F: 701-356-3836  
 E: service@officesigncompany.com  
 URL: www.officesigncompany.com

**Quote**

|           |            |
|-----------|------------|
| Date      | 06/17/19   |
| Expires   | 07/18/19   |
| Quote #   | 00886522-5 |
| Account # |            |
| PO #      |            |

|                 |
|-----------------|
| <b>CUSTOMER</b> |
| Sarah Hoekstra  |

|                |
|----------------|
| <b>SHIP TO</b> |
| Sarah Hoekstra |

|                         |            |
|-------------------------|------------|
| <b>SHIPPING DETAILS</b> |            |
| Freight Type            | UPS Ground |
| Est. Ship Date          | N/A        |
| Est. Gross Weight       | N/A        |

Fargodome Project

Fargodome Project

| PART # | DESCRIPTION  | QTY | UNIT PRICE | LINE TOTAL |
|--------|--|-----|------------|------------|
|        | "Diaper Disposal" Signage • Material: Clear Acrylic with 2nd surface print • Size: 10"W x 2"H • Mounting: foam tape  | 6   | \$32.00    | \$192.00   |
|        | Companion Care Room Signage with changing table // ADA Braille Sign • Material: Rowmark - 3X2-301 – Matte/Charcoal Grey • Size: TBD • Mounting: foam tape  | 2   | \$120.00   | \$240.00   |
|        | Companion Care Room Signage without changing table // ADA Braille Sign • Material: Rowmark - 3X2-301 – Matte/Charcoal Grey • Size: 6"W x 9"H • Mounting: foam tape   | 1   | \$69.00    | \$69.00    |
|        | Room Signage // ADA Braille Sign • Material: Rowmark - 3X2-301 – Matte/Charcoal Grey • Size: 6"W x 9"H • Mounting: foam tape   | 3   | \$69.00    | \$207.00   |
|        | Large MOTHERS + FAMILY Wayfinding Signage • Material: 1/4" Clear Acrylic with 2nd Surface UV Print and clamp mounting (\$200.00) • Size: 16"W x 96"H • Mounting: Rowmark – Clamper – 15.75" wide Silver Matte – FCL400 (\$100 per clamp) | 2   | \$400.00   | \$800.00   |
|        | Installation - 2 guys at 2.5 hours (\$390.00)  | 1   | \$390.00   | \$390.00   |

|   |
|---|
| <b>TERMS AND CONDITIONS</b>   |
| Price quotes are only valid for 30 days.  |
| <b>Quote</b> includes standard production timeframe* (5-6 business days) upon order placement and standard shipping via UPS Ground (3-5 business days, within the contiguous US). |
| *Please note that additional lead time may be required if any materials need to be special ordered.   |

|                  |                   |
|------------------|-------------------|
| Subtotal         | \$1,898.00        |
| Tax Rate         | 0.00%             |
| Tax              | \$0.00            |
| Discount         | \$0.00            |
| Insurance        | \$0.00            |
| Shipping         | \$0.00            |
| Handling         | \$0.00            |
| Rush Fee         | \$0.00            |
| Inspection/Cert. | \$0.00            |
| Other (Specify)  | \$0.00            |
| <b>TOTAL</b>     | <b>\$1,898.00</b> |
| Currency         | USD               |

MP Updated 6/19/14

InterOffice - Fargo  
1630 1st Ave N, Suite A  
Fargo, ND 58102

Interoffice - Bismarck  
920 E. Front Ave. Suite B  
Bismarck, ND 58504  
Phone: (701) 751-2998  
Fax: (701) 751-1519



# CUSTOMER QUOTE

# 3108-27061

Expires: 7/18/2019

Phone: (701) 232-3013  
Fax: (701) 476-0911  
http://www.interofficend.com

### Bill To

Fargodome  
Attn: Susan Thompson, 1800 North University Drive  
Fargo, ND 58102

### Ship To

InterOffice - Warehouse  
1620 1st Ave N  
Fargo, ND 58102

### Install To

Fargodome  
Attn: Susan Thompson, 1800 North University  
Drive  
Fargo, ND 58102

|           |               |   |                         |            |
|-----------|---------------|---|-------------------------|------------|
| project # | salesperson   | quote name                                      | payment terms           | print date |
| 3108      | Melissa LaBay | Fargodome Family Restroom - gliders and benches | 50% Deposit/Net 30 Days | 6/18/2019  |

### / Mother's Rooms

| LINE # | QTY  | UNIT | DESCRIPTION   | PRICE EA   | EXT PRICE  |
|--------|------|------|---|------------|------------|
| 1      | 3.00 | EA   | Perth Glider, closed arm, non-contrast, fabric grade F: Pallas/Deja Vu/Cardician, armcaps: black poly, Wood: Natrual on Beech, moisture barrier | \$1,413.00 | \$4,239.00 |

### / Changing Rooms

| LINE # | QTY  | UNIT | DESCRIPTION  | PRICE EA   | EXT PRICE  |
|--------|------|------|--|------------|------------|
| 2      | 2.00 | EA   | BeSpace 74" Open Side Bench with single arm, grade C fabric: Momentum Beeline Portobello, Wood: Clear on Oak, Metal: Soft Nickel, ***modified with moisture barrier for seat | \$1,713.07 | \$3,426.14 |

| LINE # | QTY  | UNIT | DESCRIPTION               | PRICE EA | EXT PRICE |
|--------|------|------|---------------------------|----------|-----------|
| 3      | 1.00 | EA   | Delivery and Installation | \$425.00 | \$425.00  |

Customer Sign-Off

(Option Total)

|              |                   |
|--------------|-------------------|
| subtotal     | \$8,090.14        |
| sales tax    | \$0.00            |
| <b>total</b> | <b>\$8,090.14</b> |

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Accepted Date

\_\_\_\_\_  
Print Name

InterOffice - Fargo  
1630 1st Ave N, Suite A  
Fargo, ND 58102

Interoffice - Bismarck  
920 E. Front Ave. Suite B  
Bismarck, ND 58504



# CUSTOMER QUOTE

# 3108-27061

Phone: (701) 232-3013  
Fax: (701) 476-0911

Phone: (701) 751-2998  
Fax: (701) 751-1519

Expires: 7/18/2019

http://www.interofficend.com http://www.interofficend.com

## TERMS AND CONDITIONS OF SALE

### 1. PROPOSALS AND ORDERS

- a. **TERM:** All prices quoted by InterOffice are valid for thirty (30) days from date of proposal, unless otherwise noted.
- b. **ACCEPTANCE:** All orders require either a hard copy purchase order issued by Buyer or a proposal prepared by Seller which has been approved by an authorized signatory of Buyer.
- c. **MODIFICATIONS/CHANGES/CANCELLATIONS:** Any requested modification to an order is subject to the approval of Seller and the manufacturer or supplier of the goods ordered. Buyer will pay all additional charges resulting from order modifications, cancellations and changes. Express ship orders cannot be changed or cancelled. All product is custom manufactured to customer specifications and therefore cannot be returned. Changes must be made via a revised purchase order or signed and dated revised proposal.
- d. **DEPOSITS:** A deposit of 50% is required on all orders. All required deposits must be received by Seller prior to the entering of any orders. No interest shall accrue against any such deposit.

### 2. INVOICING

- a. **TIMING:** Product purchased under this Agreement and any related installation, or other services, will be invoiced upon delivery of the product. Any product being held at Buyer's request or due to construction delays will be invoiced in full upon Seller's receipt of same and a holding/storage fee will be assessed to the Buyer.
- b. **TAXES:** Buyer agrees to pay any and all applicable taxes. If Buyer possesses tax-exempt status, a certificate of resale or tax exemption is to be provided prior to order placement.
- e. **DELAYS:** If Buyer is unable or unwilling to receive product at the prescribed shipping site on the mutually agreed upon delivery date, product will be deemed delivered and will be invoiced as if delivered.
- d. **PAYMENT:** Client agrees to pay transaction fee (3%) of the sale price shown on the proposal (including sales tax) when the method of payment is by accepted credit card, (VISA, MC, AMEX, Discover)

### 3. DELIVERY AND INSTALLATION

- a. **DELIVERY AND INSTALLATION:** If included in the scope of services and specifically itemized on this proposal. Delivery and installation will be during Seller's normal business hours of 8am to 5 pm Monday thru Friday. Overtime delivery or installation performed at the Buyer's request will be subject to labor rates reflecting time and one-half for weekdays and double time for weekends.
- b. **BUYER'S ACCEPTANCE:** Buyer agrees to have an agent on the premises at the agreed upon delivery time to accept product deliveries and completed work. All merchandise shall be considered accepted after Buyer or agent has signed the delivery document. All claims or exceptions must be made in writing on the delivery ticket or bill of lading on the date of work completion.
- c. **DROP SHIPMENTS:** In case of drop shipments where product is delivered without installation, Buyer will receive, inspect and install ordered goods.
- d. **CONDITION OF JOB SITE:** Buyer's job site shall be clean, clear of all obstructions, and free of debris prior to installation. Additional charges will be assessed to the Buyer for excessive handling, storage and transportation incurred because of site conditions, activity of other trades, or other reasons not specifically identified in the price quotation at a standard hourly rate or at actual charges, if labor is preformed by a third party.
- e. **ELECTRICAL INSTALLATION:** A licensed electrician may be required to install electrical product including outlets, tasklights, and hook-ups to base building power. If Seller determines that an electrician is required, the Buyer will be responsible for contracting and paying the electrician.

### 4. ADDITIONAL TERMS

- a. **WARRANTIES:** Seller will identify all manufacturers' warranties and will provide to the Buyer reasonable assistance to permit the Buyer to assert claims based upon such warranties directly to the manufacturer at Buyer's expense.
- b. **ACTS BEYOND REASONABLE CONTROL:** Seller shall not be liable for any delay or failure to deliver any or all of the product caused by labor disputes, strikes, act of God, or other delay beyond the reasonable control of the Seller.





June 25, 2019

Fargo City Commission  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

Commissioners:

The Fargo Dome Authority requests your approval of the sole-source procurement for the agreement between FARGODOME and Gopher Stage Lighting to perform programming changes, along with installation of updated hardware, to the existing lighting control system at FARGODOME to allow for better user control, monitoring, troubleshooting and an update to the latest version of the lighting control software.

The existing lighting control system was installed by Gopher Stage Lighting in 2010 and they have been the entity to troubleshoot and service the system since its installation. They were the company to investigate, and diagnose, the lighting issues that occurred in the past and these updates to hardware and programming are a result of those investigations and research.

The expense for this work is currently budgeted within the 2019 FARGODOME Capital Budget.


At their June, 2019 meetings, the Fargo Dome Authority and their Finance/Building Committees approved the motion to approve the Sole Source Provider procurement method for this project. The City of Fargo Finance Committee also approved this request at their meeting on June 24, 2019.

**Requested Motion:** To approve the Sole Source Procurement request from the Fargo Dome Authority for the agreement between FARGODOME and Gopher Stage Lighting for the updates to programming and certain hardware for the existing lighting control system at FARGODOME.

Thank you for your consideration of this matter.

Very truly yours,

Rob Sobolik  
General Manager, FARGODOME

|   |   |
|---|---|
|  | <h1>Sole Source and Piggyback Procurement Form</h1> |
|---|---|

**Sole Source and Piggyback Justification for Procurement**

The following information is offered for the sole source acquisition of goods or services described below. The purchase has been thoroughly researched and it has been determined that the vendor/brand is the only acceptable vendor/brand for the product or services that will fit the particular need.

Vendor Name:

Gopher Stage Lighting

Estimated Dollar Amount of Purchase:

\$56,500

The project/service is required to:

Adding hardware to existing lighting system to allow for remote monitoring and notification, and to allow for easier troubleshooting.

Change the backup system to provide redundant control from the main processor, a different networked device, or the console software running on a networked PC

Replaces all of the systems touchscreens, located throughout the building, with updated touchscreens that will work with the current Software version.

Page 48 Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

Gopher Stage Lighting is the vendor that programmed and installed the existing lighting system software and hardware. They have been the vendor to work on all lighting programming systems in the building

**Provide a brief description of how your investigation was conducted.** (Internet, publications, consultations) List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements (Must be exhaustive of all sources for the commodity being purchased. \*\*)

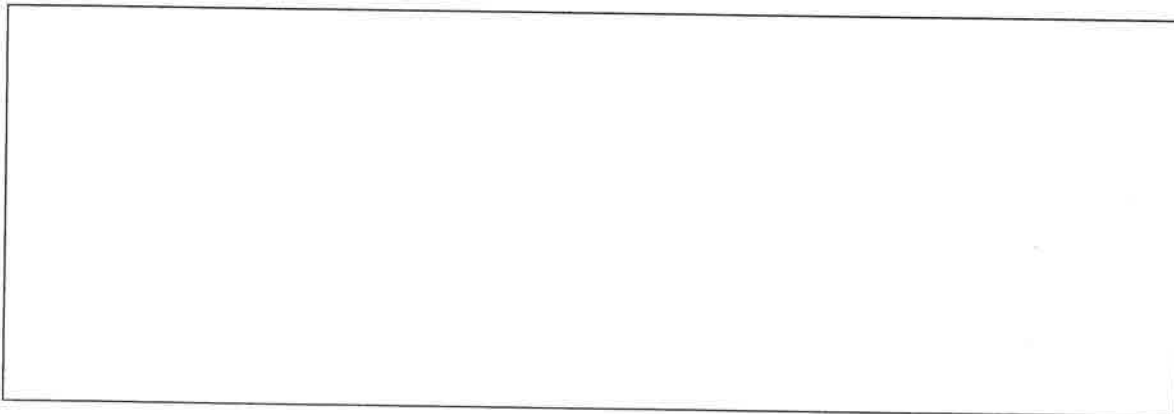
Gopher Stage Lighting installed and programmed the existing lighting system

**\*\*If all sources are not investigated a competitive solicitation must be issued.**

Page 49 Provide a side-by-side comparison of the features/service of all other vendors/brands considered. (List the features or capabilities required for your project and how each vendor investigated does or does not meet those requirements. A table format is recommended)

there was no side by side comparison conducted as Gopher Stage Lighting was the original installer and programmer of the existing system.

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.



Signature:   
(Requestor)

Printed Name: Rob Sobolik

Department: Fargodome

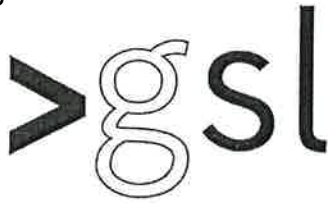
Title: General Manager

Date: June 17, 2019

I, hereby, certify that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.

 (Requestor initials)





Gopher Stage Lighting  
 4141 Cedar Ave S  
 Minneapolis MN 55407  
 United States

# QUOTE

#Q002417

4/12/2019

### Bill To

Matt Costello  
 Fargodome  
 1800 N University Dr  
 Fargo ND 58102  
 United States

### Ship To

Matt Costello  
 Fargodome  
 1800 N University Dr  
 Fargo ND 58102  
 United States

Re: Control System Upgrades

| Expires   | Sales Rep       | Project | Acct. Terms | Quote Terms |
|-----------|-----------------|---------|-------------|-------------|
| 5/12/2019 | David R Johnson |         | Net 30      | Net 30      |

| Quantity | Item  | Options | Rate | Amount     |
|----------|---|---------|------|------------|
| 1        | <p><b>Job Detail</b></p> <p>Add Central Control Server to existing Paradigm System to include:<br/>                     Adding ETC hardware to existing control system to allow for remote monitoring and notification. This also provides logging on 2 devices of all of the system communications, making troubleshooting easier in the future.</p> <p>This will work with the current software version. This will mount in the equipment rack in the operations office and will need a firewalled connection to the internet (2 ports).</p> <p>This pricing includes the services of a Gopher Stage Lighting technician on site to configure the system. We will want Matt and the city IT department available during those 2 days.</p> |         |      | \$9,265.00 |



Q002417



Gopher Stage Lighting  
 4141 Cedar Ave S  
 Minneapolis MN 55407  
 United States

# QUOTE

#Q002417

4/12/2019

| Quantity | Item              | Options | Rate | Amount      |
|----------|-------------------|---------|------|-------------|
| 1        | <b>Job Detail</b> |         |      | \$36,995.00 |

Replace system touchscreens to be able to bring entire system up to current software version. The existing touchscreens are limited to software version 2.12 due to the memory size in that version of hardware. This proposal would provide new touchscreen hardware for all of the touchscreens in the system, and provide two spares. None of the current touch screens will function with version 4.XX firmware, so they will not be appropriate as spares.

This proposal includes the services of a Gopher Stage Lighting technician to install and confirm the programming of all of the touch screens on site.

This upgrade will change the touchscreen in the press box to a network touch screen. That change will allow us to move the bowl processor to a different location. That would allow for faster response in the case of a processor failure. That processor could move to either the operations office area or to the Field Processor rack. That move requires changing the wiring to the remote jack in the pressbox to Cat5e or better wire.



Q002417



Gopher Stage Lighting  
 4141 Cedar Ave S  
 Minneapolis MN 55407  
 United States

# QUOTE

#Q002417

4/12/2019

| Quantity | Item  | Options | Rate | Amount      |
|----------|---|---------|------|-------------|
| 1        | <p><b>Job Detail</b></p> <p>Change backup system to dual gateway system. When the system was installed, DMX "Snapshot" devices were installed to provide a "hold up" of the DMX levels in the case of loss of DMX. The loss of DMX levels could be caused by a network failure or a processor failure. We had not planned for a failure of power in the control rack as there was a UPS installed in the rack. When the UPS failed, we learned that the DMX "Snapshot" controllers will send out a very short string of 0 levels on bootup. We believe this is what caused the lights to black out during the game on Sept. 1. This proposal item is to change the backup system to a dual gateway backup with a DMX Merger. When a processor fails, the gateways are holding the last DMX Levels they were transmitting, and will hold that level until there is another network command sent to that gateway to change levels, or until the gateway is re-booted.</p> <p>The scope of this proposal is to:</p> <ul style="list-style-type: none"> <li>1 - Replace the heat stressed gateway in the press box control rack</li> <li>2 - Add Backup gateway to press box control rack</li> <li>3 - Provide and install merger on DMX line, so both gateways can be on line.</li> <li>4 - Provide and install network based "Snapshot" device</li> </ul> <p>This will provide redundant control from either the Bowl processor, the network snapshot device, or a control console software running on a system PC This will provide you with control as long as the network is operational and communicating with all devices.</p> <p>This option includes a Gopher Stage technician on site to implement the changes and train personnel.</p> |         |      | \$10,152.00 |

*Unless otherwise noted, all shipments are EXW Incoterms 2010, GSL's premises. Tax and shipping not included unless noted.*

**NOTES:** Revised 4-12-2019  
 New pricing from factory

|                  |             |
|------------------|-------------|
| <b>Subtotal</b>  | \$56,412.00 |
| <b>Tax Total</b> | \$0.00      |
| <b>Shipping</b>  | \$0.00      |
| <b>Total</b>     | \$56,412.00 |



Q002417



Gopher Stage Lighting  
4141 Cedar Ave S  
Minneapolis MN 55407  
United States

# QUOTE

#Q002417

4/12/2019

**THIS PROPOSAL IS VAILD FOR 30 CALENDAR DAYS FROM THE DATE WRITTEN ON THE FIRST PAGE OF THIS PROPOSAL.** Customer must accept this Proposal within that time period. Customer's acceptance of this proposal constitutes an offer to enter into a contract on the terms stated herein. Orders are effective, and a Contract will be formed, only (a) when Customer's acceptance is accepted and acknowledged by GSL, and (b) if down payment or prepayment is required, upon GSL's receipt of the required down payment or prepayment. Minimum order is \$25.00 net, exclusive of freight. Quotations for custom products are valid for thirty (30) days and, unless different payment terms are identified below, require a 50% down payment. Custom products such as drapes, backdrops, gobos, etc. are non-returnable/non-refundable. Except as specifically noted in the Proposal, prices, models and specifications are subject to change without notice. All compensation quoted is an estimate unless specifically noted otherwise. Customer agrees to pay actual costs and charges based upon the completed shipment.

The payment terms noted above are subject to a satisfactory credit investigation. Quoted price is based on payment by cash, check, direct deposit, or wire transfer. Except where prohibited or limited by law, payments by credit card on orders over \$3,000 will be subject to a 3.5% surcharge. Unless specifically prohibited, partial shipments will be made. Unless different payment terms are identified above, all orders not subject to prepayment will be invoiced. Federal, state and/or local taxes, duties and other charges are the responsibility of the Customer. All prices are in US Dollars unless otherwise noted on applicable invoices. If Payments are not made within thirty (30) days after the due date, a **SERVICE CHARGE OF ONE AND ONE HALF (1.5) PERCENT PER MONTH (18% PER ANNUM)** or the maximum rate permitted by law, whichever is less, will be charged on any unpaid balance. Service charges may be compounded. See GSL's Terms and Conditions of Contract for further payment terms, including definition of the terms "Net 30," "down," "due upon delivery," and "Pre-Pay".

Notwithstanding the foregoing, if you instruct us to begin, or allow us to continue, performing or providing goods and/or services prior to returning a signed Proposal it will be understood that all terms of this Proposal, and GSL's Terms and Conditions of Contract are acceptable and all parties will be bound by the terms of this Proposal. GSL's Terms and Conditions of Contract are incorporated by reference into this Proposal, and into any subsequent transaction between GSL and Customer.

The following party accepts the scope, terms and conditions outlined in this Proposal; and instructs Gopher Stage Lighting to proceed with the work as outlined:

### *Accepted By*

Signed: .....

Name: .....

Date: .....



Q002417

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**TO: BOARD OF CITY COMMISSIONERS**

**FROM: KENT COSTIN, DIRECTOR OF FINANCE** *KC*

**RE: COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) AND  
INDEPENDENT AUDITOR'S REPORTS**

**DATE: JUNE 26, 2019**

The Finance Division has completed the Comprehensive Annual Financial Report (CAFR) for the year ending December 31, 2018 that includes the Independent Auditor reports on our general purpose financial statements as well as all reports required by Title 2 U.S. *Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) for federal grant programs. The independent auditing firm of Eide Bailly LLP, Fargo North Dakota, completed the audit. A "clean" unmodified opinion was provided reflecting adherence to financial requirements and standards which means that the City is following generally accepted accounting principles and has an appropriate level of internal controls in place to safeguard municipal assets.

Commissioners met with the audit partner on June 25, 2019 to discuss the audit process, audit results and current financial trends.

I would like to express my appreciation to all Department Heads, Division Managers and employees that work with our financial systems throughout the year with a high degree of attention to detail and adherence to accounting policies and procedures. There were no audit findings or management improvement comments recommended by the auditors.

Upon approval, this report will be submitted to the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting program for review and grading under this voluntary quality control program. We have achieved this award for the past twenty one years.

The entire Comprehensive Annual Report is posted on the City of Fargo website for citizens and other interested parties to review. This includes the CAFR, the Executive Summary and the schedule of federal awards.

**Suggested Motion:**

Approve the Independent Auditor's report and the City Comprehensive Annual Financial Report for the year ending December 31, 2018.

10

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: KENT COSTIN, DIRECTOR OF FINANCE** 

**RE: RESOLUTION AUTHORIZING THE FIRST AMENDMENT OF A LOAN WITH WELLS FARGO BANK, N.A, AMENDMENT OF THE LOAN AGREEMENT WITH WELLS FARGO BANK, N.A. EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT, AND CONSENTING TO THE FIRST AMENDMENT TO THE LOAN AGREEMENT BETWEEN WELLS FARGO BANK, N.A. AND CASS COUNTY NORTH DAKOTA**

**DATE: JUNE 26, 2019**

The FM Diversion Authority is recommending approval of loan extensions with Wells Fargo Bank, N.A with the City of Fargo and Cass County for future funding needs of the FM Diversion project.

This City and the County have a combined loan authorization of \$200 million, split evenly between each entity. The term of the loans will be extended to July 31, 2021. The terms and conditions are similar in structure to the existing loan with slightly better conditions.

An intergovernmental agreement is also in place between the City of Fargo and Cass County that requires updating. The City is required to consent to the borrowing amendments by Cass County.

**Suggested Motion:**

Approve a resolution authorizing a loan amendment, loan agreements, intergovernmental agreement, and consent for Cass County's loan amendment as recommended by the FM Diversion Authority.



Commissioner \_\_\_\_\_ introduced the following resolution and moved its adoption:

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF THE INTERGOVERNMENTAL AGREEMENT (SERIES 2019); AUTHORIZING FIRST AMENDMENT TO LOAN AGREEMENT FROM WELLS FARGO BANK, N.A., TO THE CITY OF FARGO, NORTH DAKOTA; AND CONSENTING TO FIRST AMENDMENT TO LOAN AGREEMENT BETWEEN WELLS FARGO BANK, N.A., AND CASS COUNTY, NORTH DAKOTA**

**WHEREAS**, the City of Fargo, North Dakota (the “City”) and Cass County, North Dakota (the “County”) are Member Entities to the Metro Flood Diversion Authority (the “Diversion Authority”) and are authorized by Article XI of the Joint Powers Agreement<sup>1</sup> (“JPA”) to cooperate in the issuance of Debt Obligations<sup>2</sup> for the LPP Flood Risk Management Features and the Recreation Features as generally described in the Final Feasibility Report and Environmental Impact Statement, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated July 2011 and approved by the Chief of Engineers on December 19, 2011, as amended by the Supplemental Environmental Assessment, Fargo-Moorhead Metropolitan Area Flood Risk Management Project, dated September 2013 and approved by the District Engineer, St. Paul District on September 19, 2013, and as amended by the Second Supplemental Environmental Assessment dated August 27, 2018 (2018 SEA), and the Engineering Documentation Report, ND and MN, Modifications Through February 2019 (the “Project”); and

**WHEREAS**, the City and the County previously determined it necessary to cooperate with each other with respect to obtaining interim financing (the “Original Interim Financing”) which was replaced with other interim financing (the “Series C Interim Debt Obligation”)<sup>3</sup> for planning, design and the construction of the Project; and

**WHEREAS**, the City and the County entered into an Intergovernmental Agreement, dated as of July 1, 2014 (the “Original Intergovernmental Agreement”), a Supplemental Intergovernmental Agreement, dated as of May 1, 2015, (the “Supplemental Intergovernmental Agreement”) relating to the Original Interim Financing which was replaced with other interim financing, an Intergovernmental Agreement (Series 2016), dated as of September 1, 2016 (the “Intergovernmental Agreement Series 2016,” and an Intergovernmental Agreement (Series 2017), dated as of July 1, 2017 (together with the Original Intergovernmental Agreement and the Supplemental Intergovernmental Agreement, the “Intergovernmental Agreements”), relating to the Series C Interim Debt Obligation, which agreement related to the prior pledge by the County

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<sup>1</sup> The Agreement effective as of June 1, 2016, between the City of Moorhead, a political subdivision of the State of Minnesota; the City of Fargo, a political subdivision of the State of North Dakota; Clay County, a political subdivision of the State of Minnesota; Cass County, a political subdivision of the State of North Dakota; and Cass County Joint Water Resource District, a political subdivision of the State of North Dakota, to establish the duties, responsibilities and obligations of each party regarding the Project.

<sup>2</sup> Any loan, note, bond, or other security instrument issued by one or more of the Member Entities to provide either temporary or permanent financing of the Project.

<sup>3</sup> The County 2017 Loan and the City 2017 Loan are collectively referred to as the Series C Interim Debt Obligation.

of ninety-one percent (91%) of the proceeds generated by the one-half percent (1/2%) sales and use tax imposed by Ordinance No. 2010-2 of the County (the "County 2010-2 Sales Tax") to the repayment of the Original Interim Debt and the Series C Interim Debt Obligation, respectively, and the pledge of the City of one hundred percent (100%) of the proceeds generated by the one-half percent (1/2%) sales and use tax imposed by Article 3-21 of the Fargo Municipal Code (the "City 3-21 Sales Tax") to the repayment of the Series C Interim Debt Obligation, respectively; and

**WHEREAS**, in 2017, the Diversion Authority, the County, and the City requested proposals for tax-exempt direct funded loans or draw-down lines of credit from multiple institutions, including Wells Fargo Bank, National Association ("Wells Fargo"), to refund Original Interim Debt; and

**WHEREAS**, the Diversion Authority, the County, and the City determined that the proposal of Wells Fargo was the lowest cost alternative; and

**WHEREAS**, the County entered into a Loan Agreement, dated as of July 1, 2017, for a loan from Wells Fargo in the maximum principal amount of \$100,000,000 (the "County 2017 Loan") as part of the Series C Interim Debt Obligation; and

**WHEREAS**, the City also entered into a Loan Agreement, dated as of July 1, 2017, for a loan from Wells Fargo in the maximum principal amount of \$100,000,000 (the "City 2017 Loan") as part of the Series C Interim Debt Obligation; and

**WHEREAS**, the County and the City desire to amend the County 2017 Loan and the City 2017 Loan by extending the maturity date for the County 2017 Loan from July 31, 2019, to July 31, 2021 ("County 2019 Extension Loan") and by extending the maturity date for the City 2017 Loan from July 31, 2019, to July 31, 2021 ("City 2019 Extension Loan"); and

**WHEREAS**, the City desires to enter into a first amendment to the loan agreement with Wells Fargo for the City 2019 Extension Loan (the "City 2019 Extension Loan Agreement") and to reissue the outstanding 2017 promissory note (the "City 2019 Extension Note") to Wells Fargo, in the principal amount of \$100,000,000 and bearing interest at the rate and containing such other terms substantially as set forth in the forms thereof presented to the Board of Commissioners of the City at their meeting on the date hereof; and

**WHEREAS**, the City and County desire to terminate the prior Intergovernmental Agreements and enter into a new Intergovernmental Agreement (Series 2019) relating to the County 2019 Extension Loan and the City 2019 Extension Loan; and

**WHEREAS**, the City has performed all other acts required by the constitution and laws of the State of North Dakota and the City's home rule charter and ordinances prerequisite to entering into the City 2019 Extension Loan Agreement, and such other documents necessary to effect the loan for the purpose of providing temporary financing to pay the costs of the Project and extend the City 2017 Loan; and

**WHEREAS**, Section 11.03 of the JPA<sup>4</sup> requires the Metro Flood Diversion Authority to approve and consent to the terms of any Debt Obligation, and the Diversion Authority Board has given its approval and consent to the First Amendment to Loan Agreement with Wells Fargo Bank, N.A.; and

**WHEREAS**, the City has reviewed the Loan Agreement by and between Cass County, North Dakota and Wells Fargo Bank, N.A., dated as of July 1, 2017, as amended by First Amendment to Loan Agreement, dated as of July 11, 2019, for the County 2019 Extension Loan and approves of the terms and conditions contained within the County 2019 Extension Loan Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of the City:

Section 1. Ratification and Confirmation. All acts performed, resolutions, motions, or ordinances adopted or passed, and all publications incidental to the construction and financing of the Project, the Original Intergovernmental Agreement, the Supplemental Intergovernmental Agreement, the Intergovernmental Agreement (Series 2017), the Intergovernmental Agreement (Series 2019), the County 2017 Loan Agreement and documents relating thereto, the City 2017 Loan Agreement and documents relating thereto, the resolution of the County pledging the County 2010-2 Sales Tax and the resolution of the City pledging the City 3-21 Sales Tax, whether or not reflected in the official minutes and records of the City, are hereby ratified and confirmed, and all resolutions and other acts or proceedings of the City which are in any way inconsistent with this Resolution, are hereby amended to the extent necessary to give full force and effect to this Resolution.

Section 2. Authorization of Extension. It is hereby found and determined to be necessary for the City to extend the maturity date of the City 2017 Loan, subject to the terms and conditions set forth in the City 2019 Extension Loan Agreement, the City 2019 Extension Note, and the Intergovernmental Agreement (Series 2019). The City is hereby authorized to enter into the City 2019 Extension Loan Agreement, to issue the City 2019 Extension Note, and to pledge the City 3-21 Sales Tax to the payment of, and as security for, the City 2019 Extension Loan. The City is hereby authorized to pledge the City 3-21 Sales Tax on a subordinate basis and in accordance with the Intergovernmental Agreement (Series 2019) to the payment of the County 2019 Extension Loan for the purpose of providing financing for the costs of the Project. The City is further authorized to pledge the City 3-21 Sales Tax on a subordinate basis in accordance with the Intergovernmental Agreement (Series 2019) to the cross-reimbursement obligation of the City as set forth in Section 7.05, subsection (b) of the Intergovernmental Agreement (Series 2019). The pledge of the City 3-21 Sales Tax to the cross-reimbursement obligation of the City shall be subordinate to the pledge and subordinate pledge of City 3-21 Sales Tax for the City 2019 Extension Loan and the County 2019 Extension Loan.

Section 4. Approval and Consent of Wells Fargo Loan. The City hereby consents and approves of the County's extension of the County 2017 Loan in the form of the County 2019

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<sup>4</sup> JPA Section 11.03: PROCEDURE TO ISSUE DEBT OBLIGATIONS. The Member Entities agree and acknowledge that the precise terms and conditions of the Debt Obligations are unknown as of the Effective Date. The specific terms of the Debt Obligations will be set forth by written resolution adopted by the Metro Flood Diversion Authority and the Member Entity, and/or Member Entities, issuing the Debt Obligation.



Extension Loan, secured by and payable solely from ninety-one percent (91%) of the pledged County 2010-2 Sales Tax and one hundred percent (100%) of the City 3-21 Sales Tax, with interest payable at that variable rate set forth in the proposal of Wells Fargo and in the form of the County 2019 Extension Loan Agreement, respectively. The City hereby approves the County entering into the County 2019 Extension Loan Agreement with Wells Fargo and issuing the County 2019 Extension Note relating thereto substantially in the forms presented to the City Commission at this meeting, with such changes, additions, or deletions as may be approved by the officers of the City signing such document, the Mayor and the City Auditor.

Section 5. Approval of Intergovernmental Agreement (Series 2019). The Governing Body of the City has reviewed the terms and conditions of the Intergovernmental Agreement (Series 2019) and hereby accepts and approves the Intergovernmental Agreement (Series 2019).

Section 6. Acceptance of Wells Fargo Proposals. The governing body of the City has received proposals from Wells Fargo for the City 2019 Extension Loan Agreement and the County 2019 Extension Loan Agreement, which are hereby found and determined to be reasonable and advantageous and are hereby accepted by the City.

Section 7. Payment of Interest and Fees. The governing body of the City hereby authorizes the payment of any fees and interest associated with the City 2017 Loan and/or the City 2019 Extension Loan to be made from any funds on hand in the City 3-21 Sales Tax fund.

Section 8. Authorization of Documents. The execution and delivery of the City 2019 Extension Loan Agreement, the Intergovernmental Agreement (Series 2019), and the City 2019 Extension Note are hereby approved and authorized to be executed and delivered in substantially the same form presented to the City at this meeting on behalf of the City by its Mayor and City Auditor (the "Authorized Officers"), with such modification as may be approved by the Authorized Officers. The Authorized Officers are authorized and directed to execute the City 2019 Extension Loan Agreement, the Intergovernmental Agreement (Series 2019), and the City 2019 Extension Note and to deliver them to Wells Fargo, which execution and delivery will be conclusive evidence of the approval of any modifications with respect to the City 2019 Extension Loan Agreement, the Intergovernmental Agreement (Series 2019), and the City 2019 Extension Note.

The Mayor, City Auditor and other officers of the City are hereby authorized and directed to execute and deliver such other necessary or appropriate agreements, certifications, and other documents in connection with the City 2019 Extension Loan Agreement, the Intergovernmental Agreement (Series 2019), and the City 2019 Extension Note.

In the event of the absence or unavailability of the Mayor, the City Auditor, or other appropriate officer of the City, the documents authorized for execution and delivery pursuant to this section may be executed and delivered by the individual or individuals authorized generally by the City to act on behalf of the Mayor, the City Auditor, or other officer of the City in such circumstances, including, without limitation, the Deputy Mayor and the Deputy City Auditor, as the case may be.

In case any officer signing documents authorized to be executed and delivered by this Resolution shall cease to be such officer before or after the delivery of any such documents, such signature, nevertheless, shall be valid and remain sufficient for all purposes as if such officer had remained in office until such delivery or later applicable time.

Section 9. Payment of Principal and Interest. Interest will be payable on the first Business Day of every calendar month and in accordance with the City 2019 Extension Loan Agreement and the City 2019 Extension Note. Principal of the City 2019 Extension Loan will be payable in full no later than the Maturity Date (as defined in the City 2019 Extension Loan Agreement).

Section 10. Use of Loan Proceeds. The proceeds of the City 2019 Extension Loan are irrevocably appropriated to pay expenses necessarily incurred in connection with the Project and to pay costs associated with the issuance of the City 2019 Extension Loan. Draws on the City 2019 Extension Loan will be submitted by the City to Wells Fargo from time to time in accordance with procedures established and set forth in the City 2019 Extension Loan Agreement.

Section 11. Deposit Account. The City will establish an account with Wells Fargo into which the proceeds of each Draw will be deposited for use in accordance with the Intergovernmental Agreement (Series 2019).

Section 12. Limited Obligation. The City 2019 Extension Loan Agreement, the City 2019 Extension Note, and the Intergovernmental Agreement (Series 2019), as amended, will not constitute a charge, lien, or encumbrance upon any property of the City, and the payment of principal and interest and other amounts due under the City 2019 Extension Loan Agreement, the City 2019 Extension Note, or the Intergovernmental Agreement (Series 2019) will not be a general obligation of the City, but are payable solely from the proceeds of the City 3-21 Sales Tax and the County 2010-2 Sales Tax as set forth in the Intergovernmental Agreement (Series 2019), as amended.

Section 13. Pledge of City 3-21 Sales Tax. The City hereby pledges, on a subordinate basis, the proceeds generated by the City 3-21 Sales Tax to the repayment of the County 2019 Extension Loan, including without limitation amounts due on the County 2019 Extension Note, in each case in accordance with the Intergovernmental Agreement (Series 2019), as amended. The pledge of the proceeds generated by the City 3-21 Sales Tax to the repayment of the County 2019 Extension Loan and the County 2019 Extension Note is subordinate to the pledge of proceeds generated by the City 3-21 Sales Tax to the repayment of the City 2019 Extension Loan Agreement and the City 2019 Extension Note, in each case in accordance with the Intergovernmental Agreement (Series 2019).

The pledges of the City 3-21 Sales Tax set forth in the “Resolution Authorizing the Execution and Delivery of an Intergovernmental Agreement with Cass County, North Dakota and Related Documents and Authorizing Action Related Thereto,” adopted by the Board of Commissioners of the City of July 21, 2014, and in the Intergovernmental Agreement (Series 2019), are hereby ratified and confirmed and remain in full force and effect until all amounts secured by such pledges have been paid in full. The subordinate pledge of the City 3-21

Sales Tax set forth in this Section will not constitute a charge, lien, or encumbrance upon the property of the City, and the payment of principal and interest and other amounts due pursuant to this subordinate pledge will not be a general obligation of the City, but are payable solely from the proceeds of the City 3-21 Sales Tax and the County 2010-2 Sales Tax as set forth in the Intergovernmental Agreement (2019), as amended.

Section 14. North Dakota Law Applies. This Resolution and any transactions contemplated herein will be controlled by the laws of the State of North Dakota.

Section 15. This Resolution shall take effect immediately upon adoption.

Adopted July 1, 2019.

**CITY OF FARGO, NORTH DAKOTA**

By: \_\_\_\_\_  
Timothy J. Mahoney, Mayor

ATTEST:

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

The motion for adoption of the foregoing resolution was duly seconded by Commissioner Strand, and upon roll call vote, the following voted in favor thereof: \_\_\_\_\_ . The following were absent and not voting: none. The following voted against the same: none. All of the Commissioners having voted aye, the resolution was declared duly passed and adopted.



(11)

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: KENT COSTIN, DIRECTOR OF FINANCE** *KAC*

**RE: RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$42,000,000 OF REFUNDING IMPROVEMENT BONDS SERIES 2019A, PRESCRIBING TERMS AND CONDITIONS THEREOF, AND CREATING A FUND FOR THE PAYMENT THEREOF**

**DATE: JUNE 26, 2019**

The City of Fargo will be issuing bonds in July for the repayment of our capital project fund for various infrastructure projects. You have previously select the bond underwriting team using a negotiated retail sales option.

Pursuant to this process, approval is requested of a resolution authorizing the issuance of the bonds so that we can proceed with the actual bond sale scheduled in July.

**Suggested Motion:**

Approve a resolution authorizing the issuance of not to exceed \$42 million of Refunding Improvement Bonds, Series 2019A, prescribing terms and conditions thereof, and creating a fund for the payment thereof.

RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED  
\$42,000,000 CITY OF FARGO, NORTH DAKOTA REFUNDING IMPROVEMENT BONDS,  
SERIES 2019A, PRESCRIBING THE TERMS AND COVENANTS THEREOF, AND  
CREATING A FUND FOR THE PAYMENT THEREOF

**WHEREAS**, the City Commission (the "Commission"), of the City of Fargo, Cass County, North Dakota (the "Issuer") has heretofore duly created the improvement districts as set forth in **Attachment A** hereto (the "Improvement Districts"), authorized the issuance of certain definitive warrants of the Issuer (the "Warrants") for each such Improvement District in the amounts set forth in **Attachment A** hereto for the construction of improvements in the related Improvement District (the "Improvements;" and established special funds for each Improvement District (the "Special Funds", each a "Special Fund");

WHEREAS, the Issuer desires to issue a series of its refunding improvement bonds (the "Bonds") to finance the Improvements;

WHEREAS, the Issuer is authorized by North Dakota Century Code Chapter 40-27 (the "Act") to issue such Bonds;

WHEREAS, the Issuer desires to provide for the payment of such refunding improvement bonds through a pledge of the Warrants;

WHEREAS, such Bonds shall be payable solely out of moneys in the Special Funds from which the Warrants are payable;

WHEREAS, pursuant to North Dakota Century Code Section 40-26-08, whenever all special assessments for an Improvement are insufficient to pay principal or interest then due on the Warrants, the Issuer shall levy a tax upon all of the taxable property in the Issuer for the payment of such deficiency; and

WHEREAS, in and by the resolution adopted by the Issuer on this date, entitled "RESOLUTION CREATING THE FUNDS OF IMPROVEMENT DISTRICTS, PROVIDING FOR AND APPROPRIATING SPECIAL ASSESSMENTS FOR THE SUPPORT AND MAINTENANCE OF SAID FUNDS, AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$42,000,000 IMPROVEMENT WARRANTS (SERIES 2019A) THEREON" the Issuer has authorized the issuance of the Warrants in the aggregate principal amount not to exceed \$42,000,000 payable from the Special Funds of the respective Improvement Districts, subject to the terms, provisions and covenants set forth in the resolution, which resolution is incorporated herein and made a part hereof;

BE IT RESOLVED by the Commission of the Issuer, as follows:

1. Findings. It is hereby found, determined, and declared that said Warrants were duly and legally authorized under authority of and in accordance with the provisions of Title 40 of the North Dakota Century Code, as amended; that there is not at the present time in the Special Funds sufficient money to pay the Warrants drawn thereon with interest, and by the exchange of said Warrants for the Bonds the interest rate and interest costs thereon will be substantially reduced,

and the general tax which the Issuer may become obligated to levy for any deficiencies in said funds can be reduced and equalized, and the burden on the taxpayers and property owners will be substantially reduced; that said Warrants are subject to exchange at the option of the Issuer for the purpose of issuing refunding improvement bonds or warrants of the Issuer in accordance with the provisions of Chapter 40-27, North Dakota Century, Code; that all acts, conditions, and things required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen, and to be performed precedent to the issuance of the Bonds hereinafter described have been done, do exist, have happened, and have been performed in due form, time and manner as so required; and that the issuance of the Bonds is necessary and expedient and for the best interest of the Issuer and its inhabitants, taxpayers, and the owners of property liable to be assessed for said Improvements.

2. Form of Bonds. The Bonds shall be in substantially the form attached as **Attachment C** hereto.

3. Authorization and Terms of Bonds. The Commission of the Issuer hereby authorizes Baker Tilly Municipal Advisors, LLC, St. Paul, Minnesota, to solicit bids for the purchase of the Bonds pursuant to the Official Terms of Offering attached hereto as **Attachment B**. The City Commission hereby authorizes the Issuer to accept bids to purchase the Bonds upon the terms and conditions set forth in this resolution. The Commission hereby delegates the power and authority to the Mayor, the City Auditor, and the City Finance Director of the Issuer to review bids received for the purchase of the Bonds and to accept a bid at a later date to finalize the actual principal amount of Bonds to be issued, the amortization schedule, the interest rates and underwriter's compensation, provided that the true interest cost proposed for the Bonds does not exceed 3.85% per annum.

4. Approval of Documents and Authorization for Execution and Delivery.

(a) Bond Purchase Agreement. The execution of a Bond Purchase Agreement setting forth such final terms by the Mayor and City Auditor of the Issuer is hereby approved and authorized and such execution shall be conclusive evidence of such agreement and shall be binding upon the Issuer. The provisions of the Bond Purchase Agreement as so executed, including all Exhibits and Appendices thereto, are incorporated herein by reference.

(b) Official Statement. The Bonds will be offered for sale by means of an Official Statement. The Mayor and City Auditor hereby ratify the distribution of the Preliminary Official Statement, prepared by Baker Tilly Municipal Advisors, LLC, as the Issuer's municipal advisor and Dorsey & Whitney LLP, as Bond Counsel, to prospective purchasers of the Bonds. The City Auditor is hereby authorized on behalf of the Issuer to deem the Preliminary Official Statement a "final" official statement as of its date, in accordance with Rule 15c2-12(b)(1) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934. The Mayor and the City Auditor are hereby authorized and directed to approve, and, if requested, to execute the final Official Statement to be prepared substantially in the form of the Preliminary Official Statement, including final pricing terms. The Issuer hereby ratifies and consents to the distribution of the Preliminary Official Statement and the Official Statement to prospective purchasers of the Bonds.

(c) Approval and Execution of Documents. Upon the determination of the terms of the Bonds (within the limits set forth herein), the Bond Purchase Agreement, and such other documents and certificates shall be executed in the name and on behalf of the Issuer by the Mayor and the City Auditor, but with such changes therein, not inconsistent with this Resolution, as may be approved by the officers executing the same, which approval shall be conclusively evidenced by the execution thereof.

5. Terms, Execution and Delivery.

(a) Maturities and Interest Rates. The Bonds shall be issued in the denomination of \$5,000 each, or any integral multiple thereof, shall mature on the dates and in the respective years and amounts, and shall bear interest from date of original issue until paid or duly called for redemption payable on the dates and at the respective annual rates as set forth in the Bond Purchase Agreement. The Bonds shall be issuable only in fully registered form. The interest thereon and, upon surrender of each Bond, the principal amount thereof shall be payable by check or draft issued by the Registrar described herein; provided that, so long as the Bonds are registered in the name of a securities depository, or a nominee thereof, in accordance with Section 9 hereof, principal and interest shall be payable in accordance with the operational arrangements of the securities depository.

(b) Dates and Interest Payment Dates. Each Bond shall bear a date of original issue as of the date on which the Bonds are delivered to the purchaser. Upon initial delivery of the Bonds pursuant to Section 9 and upon any subsequent transfer or exchange pursuant to Section 9, the date of authentication shall be noted on each Bond so delivered, exchanged or transferred. Interest on the Bonds shall be payable on each May 1 and November 1, commencing May 1, 2020, each such date being referred to herein as an Interest Payment Date, to the persons in whose names the Bonds are registered on the Bond Register, as hereinafter defined, at the Registrar's close of business on the fifteenth day of the calendar month next preceding such Interest Payment Date, whether or not such day is a business day.

(c) Redemption. The Bonds will be subject to redemption as set forth in Attachment B and the Bond Purchase Agreement. In the event any Bond is called for redemption prior to maturity, the Issuer will cause a notice of redemption to be sent to the Bond Registrar, Paying Agent and the registered owners of the Bonds called for redemption at least twenty (20) days before the date specified for redemption at the address shown on the registration books of the Bond Registrar. Within ten (10) days before the thirtieth (30th) day prior to any specified redemption date, if less than all Bonds of a single maturity are to be redeemed the Bond Registrar will select for redemption (by lot or in such manner as the Bond Registrar may determine) from all outstanding Bonds of the applicable maturity a principal amount of such Bonds equal to the aggregate principal amount of such Bonds to be redeemed, and will call such Bonds or portions thereof for redemption on such Redemption Date; provided that the portion of any Bond to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof and that in selecting Bonds for redemption, the Bond Registrar shall treat each Bond as representing that number of Bonds which is obtained by dividing the principal amount of such Bond by \$5,000. If less than all Bonds are to be optionally redeemed, the maturity or maturities of the Bonds to be redeemed shall be selected by the Issuer.



(e) Initial Registrar. Books for the registration and for the transfer of the Bonds as provided in this Resolution shall be kept by the City Auditor of the Issuer, which is hereby appointed the Bond Registrar, Transfer Agent and Paying Agent (the "Registrar").

6. Transfer and Exchange. The Bonds are transferable upon the books of the Issuer at the principal office of the Bond Registrar by the registered owner thereof in person or by his attorney duly authorized in writing upon surrender thereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or his attorney; and may also be surrendered in exchange for Bonds of the same series of other authorized denominations. Upon such transfer or exchange the Issuer will cause a new Bond or Bonds of the same series to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange. No transfer of Bonds shall be required to be made during the 15 days next preceding an interest payment date, nor during the 45 days next preceding the date fixed for redemption of such Bonds.

The Issuer and the Bond Registrar may deem and treat the person in whose name any Bond is registered as the absolute owner thereof, whether the Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Bond Registrar shall be affected by any notice to the contrary.

7. Bonds Mutilated, Destroyed, Lost, or Stolen. If any Bond shall become mutilated or be destroyed, lost, or stolen, the Issuer in its discretion may execute and upon its request, the Bond Registrar shall authenticate and deliver a new Bond of the same series in exchange for the mutilated Bond or in lieu of and substitution for the Bond so destroyed, lost, or stolen. In every case of exchange or substitution, the applicant shall furnish to the Issuer and to the Bond Registrar in a form satisfactory to both (i) evidence to their satisfaction of the mutilation, destruction, loss, or theft of the applicant's Bond and of the ownership thereof and (ii) in the case of any destroyed, lost, or stolen Bond, such security or indemnity as may be required by them to save each of them harmless from all risks, however remote. The Bond Registrar may authenticate any Bond issued upon such exchange or substitution and deliver such Bond upon the request of the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees, of the Issuer or the Bond Registrar.

If any Bond that has matured or is about to mature shall become mutilated or be destroyed, lost, or stolen, instead of issuing a Bond in exchange or substitution therefor, the Issuer may pay or authorize the payment of such Bond (without surrender thereof except in the case of a mutilated Bond) if the applicant for such payment shall furnish to the Issuer and to the Bond Registrar evidence to the satisfaction of the Issuer and the Bond Registrar of the mutilation, destruction, loss, or theft of such Bond and the ownership thereof and, in the case of any destroyed, lost, or stolen Bond, such security or indemnity as they may require to save them harmless from all risks.

Every Bond issued pursuant to the provisions of this Section in exchange or substitution for any Bond of the same series that is mutilated, destroyed, lost, or stolen shall constitute an additional contractual obligation of the Issuer, whether or not the destroyed, lost, or stolen Bond

shall be found at any time, or be enforceable by anyone, and shall be entitled to all the benefits hereof equally and proportionately with any and all other Bonds. All Bonds shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the respect to the replacement or payment mutilated, destroyed, lost, or stolen Bonds, and shall preclude any and all other rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

8. Cancellation and Disposition of Bonds. All mutilated Bonds, all Bonds surrendered for exchange or transfer, all Bonds that have been paid at maturity or upon prior redemption, and all Bonds surrendered to the Issuer for cancellation shall be canceled by the Bond Registrar Trustee (as the case may be) and cremated or destroyed by other means.

9. Execution, Authentication and Delivery. The Bonds shall be prepared under the direction of the City Auditor and shall be executed and authenticated on behalf of the Issuer by the signatures of the Mayor and the City Auditor. All signatures may be printed, lithographed or engraved facsimiles of the original. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this resolution unless and until a certificate of authentication on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. Certificates of authentication on different Bonds need not be signed by the same representative. The executed certificate of authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Resolution. When the Bonds have been so prepared and executed, the Issuer shall deliver the same to the Purchaser in exchange for the warrants of the Districts in the same aggregate principal amount, heretofore purchased by the Purchaser, and the Issuer shall pay to the Purchaser the interest accrued to the date of exchange of said warrants less the amount of interest accrued to said date on the Bonds; all in accordance with the agreement heretofore made and entered into relative to the refunding of the warrants, which agreement is hereby approved, ratified and confirmed.

In the event of the absence or unavailability of the Mayor, the City Auditor, or other appropriate officer of the City, the Bonds and the other documents authorized for execution and delivery pursuant to this section may be executed and delivered by the individual or individuals authorized generally by the City to act on behalf of the Mayor, the City Auditor, or other officer of the City in such circumstances, including, without limitation, the Deputy Mayor and the Deputy City Auditor, as the case may be.

10. Establishment of Bond Fund. There shall be and is hereby created a special fund to be maintained by the City Auditor separate and apart from all other funds of the Issuer, to be designated as the SERIES 2019A REFUNDING IMPROVEMENT BOND FUND (herein referred to as the "Bond Fund"). To the Bond Fund shall be credited the Warrants when received by the City Auditor, which Warrants shall thereupon become and shall thereafter be held as an asset of said fund, and the proceeds of all collections on said Warrants so acquired shall be held by the Issuer in trust for the use and benefit of the holders from time to time of the Bonds on a parity



basis between series. The Special Funds of the Improvement District described in the resolution referred to in paragraph 1 hereof shall be continued and payments shall be made therefrom on the Warrants drawn thereon in the same manner as though said Warrants had not been exchanged. All payments of principal and interest made on said Warrants shall be credited to the Bond Fund and shall be used and applied in payment of the principal of and interest on the Bonds as such principal and interest become due.

11. Covenants. The Issuer hereby covenants and agrees with the holders from time to time of the Bonds issued pursuant hereto:

(a) That it will use due diligence to collect all amounts due on the Warrants and to levy and collect the special assessments appropriated for their payment.

(b) That it will preserve and enforce for the benefit of the holders from time to time of the Bonds all of the rights, powers, and privileges reserved, to the holders of the Warrants, and all of the covenants of the Issuer as provided in the resolution authorizing the issuance of the improvement warrants.

(c) That at the time and in the manner prescribed by § 40-26-08, North Dakota Century Code, as amended, this governing body will levy general taxes on all taxable property in the corporate limits of the Issuer for the payment of any deficiency in any Special Fund and will cause the proceeds thereof to be applied in payment of the principal of and interest on the then unpaid Warrants drawn on said Special Fund; provided that the Issuer reserves the right to levy taxes in the manner and to the extent permitted by law for payment and discharge of any deficiency in said Special Funds prior to the date upon which it may become obligatory to levy such deficiency taxes, and the amounts thereof shall be credited against the levies which the Issuer might otherwise have been obligated to make.

(d) That in the event the moneys in the Bond Fund should at any time be insufficient to meet all payments of principal and interest then due on the Bonds, said moneys shall be first used to pay the interest accrued on all outstanding Bonds, and the balance shall be applied in payment of the principal of said Bonds in order of their maturity dates, earliest maturities first, Bonds bearing the same maturity dates being paid pro rata. The Issuer reserves the right and privilege of refunding any of such matured Bonds for the payment of which moneys are not at the time available by issuing new bonds payable from said Bond Fund, which bonds shall be on a parity with those theretofore issued as to interest charges thereon, but the maturity thereof shall be subsequent to the maturity of all Bonds payable from said fund and then outstanding, provided that no holder of Bonds herein authorized to be issued shall be obligated to accept any such bond in exchange for any of such matured Bond.

(e) The Issuer hereby reserves the right to issue additional improvement warrants and refunding improvement bonds, payable on a parity with the Bonds issued hereunder and the Warrants exchanged for the Bonds, to the extent required to complete the improvements presently proposed for the Improvement Districts and to be financed by the issuance of the additional improvement warrants exchanged for additional revenue bonds.

(f) The Issuer hereby pledges all special assessments for improvements funded in whole or in part from the proceeds of the Bonds, all Warrants and the payments thereon, and all amounts on deposit from time to time in the Special Funds and the Bond Fund to the payment of the principal of, and interest on, the Bonds (and any additional bonds issued as contemplated by Section 11(e) above) on a parity basis.

12. Payment and Discharge; Defeasance. When all of the Bonds have been discharged as provided in this paragraph, all pledges, covenants and other rights granted by this resolution shall cease. The Issuer may discharge its obligations with respect to all or a portion of the Bonds which are due on any date by depositing with the Paying Agent on or before that date a sum sufficient for the payment of the principal thereof, and interest accruing thereon to such duty in full. If any Bond shall not have been paid when due, the same may nevertheless be discharged by depositing with the Paying Agent a sum sufficient for the payment of the principal thereof in full with interest accrued thereon from the date to which interest has been paid to the date of such deposit and payment to the owners thereof. The Issuer may also discharge its obligations with respect to all or a portion of the Bonds, by depositing with the paying agent on or before that date an amount equal to the principal, interest and redemption premium, if any, which are due on the maturity date, or earlier redemption date selected by the Issuer, provided that notice of such redemption has been duly given as provided herein. The Issuer may also at any time discharge its obligations with respect to all or a portion of the Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank or financial institution qualified by law as an escrow agent for this purpose, cash or securities which are general obligations of the United States or securities of United States agencies which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be sufficient to pay all principal, interest, and redemption premium to become due thereon to maturity or the date of earlier redemption selected by the Issuer. If less than all of the Bonds are to be discharged pursuant to this paragraph, the maturity date, the mandatory sinking fund redemption requirement with respect to Term Bonds, and series may be selected by the Issuer in its sole discretion.

13. Authentication of Transcript. The officers of the Issuer are hereby authorized and directed to prepare and furnish to the Purchaser and to Dorsey & Whitney LLP, Bond Counsel, certified copies of all proceedings and records relating to the Bonds and such other affidavits, certificates and information as may be required to show the facts relating to the legality and marketability of the Bonds, as the same appear from the books and records in their custody and control or as otherwise known to them, and all such certified copies, affidavits and certificates, including any heretofore furnished, shall be deemed representations of the Issuer as to the correctness of all statements contained therein.

14. Securities Depository. (a) For purposes of this section the following terms shall have the following meanings:

“Beneficial Owner” shall mean, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant, or such person’s subrogee.



“Cede & Co.” shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.

“DTC” shall mean The Depository Trust Company of New York, New York.

“Participant” shall mean any broker-dealer, bank or other financial institution for which DTC holds Bonds as securities depository.

“Representation Letter” shall mean the Representation Letter pursuant to which the sender agrees to comply with DTC’s Operational Arrangements.

(b) The Bonds shall be initially issued as separately authenticated fully registered bonds, and one Bond shall be issued in the principal amount of each stated maturity of the Bonds. Upon initial issuance, the ownership of such Bonds shall be registered in the bond register in the name of Cede & Co., as nominee of DTC. The Registrar and the Issuer may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal of or interest on the Bonds, selecting the Bonds or portions thereof to be redeemed, if any, giving any notice permitted or required to be given to registered owners of Bonds under this resolution, registering the transfer of Bonds, and for all other purposes whatsoever; and neither the Registrar nor the Issuer shall be affected by any notice to the contrary. Neither the Registrar nor the Issuer shall have any responsibility or obligation to any Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or any Participant, or any other person which is not shown on the bond register as being a registered owner of any Bonds, with respect to the accuracy of any records maintained by DTC or any Participant, with respect to the payment by DTC or any Participant of any amount with respect to the principal of or interest on the Bonds, with respect to any notice which is permitted or required to be given to owners of Bonds under this resolution, with respect to the selection by DTC or any Participant of any person to receive payment in the event of a partial redemption of the Bonds, or with respect to any consent given or other action taken by DTC as registered owner of the Bonds. So long as any Bond is registered in the name of Cede & Co., as nominee of DTC, the Registrar shall pay all principal of and interest on such Bond, and shall give all notices with respect to such Bond, only to Cede & Co. in accordance with DTC’s Operational Arrangements, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer’s obligations with respect to the principal of and interest on the Bonds to the extent of the sum or sums so paid. No person other than DTC shall receive an authenticated Bond for each separate stated maturity evidencing the obligation of the Issuer to make payments of principal and interest. Upon delivery by DTC to the Registrar of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the Bonds will be transferable to such new nominee in accordance with paragraph (e) hereof.

(c) In the event the Issuer determines that it is in the best interest of the Beneficial Owners that they be able to obtain Bonds in the form of bond certificates, the Issuer may notify DTC and the Registrar, whereupon DTC shall notify the Participants of the availability through DTC of Bonds in the form of certificates. In such event, the Bonds will be transferable in accordance with paragraph (e) hereof. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Issuer and the Registrar and

discharging its responsibilities with respect thereto under applicable law. In such event the Bonds will be transferable in accordance with paragraph (e) hereof.

(d) The execution and delivery of the Representation Letter to DTC by the Issuer is hereby confirmed and ratified.

(e) In the event that any transfer or exchange of Bonds is permitted under paragraph (b) or (c) hereof, such transfer or exchange shall be accomplished upon receipt by the Registrar of the Bonds to be transferred or exchanged and appropriate instruments of transfer to the permitted transferee in accordance with the provisions of this resolution. In the event Bonds in the form of certificates are issued to owners other than Cede & Co., its successor as nominee for DTC as owner of all the Bonds, or another securities depository as owner of all the Bonds, the provisions of this resolution shall also apply to all matters relating thereto, including, without limitation, the printing of such Bonds in the form of bond certificates and the method of payment of principal of and interest on such Bonds in the form of bond certificates. Any successor depository must be both a "clearing corporation" as defined in North Dakota Century Code, Section 41-08-02 and a qualified and registered "clearing agency" as provided in Section 17A of the Securities Exchange Act of 1934, as amended.

15. Tax Covenants; Arbitrage Matters; Reimbursement and Continuing Disclosure.

(a) Tax Covenant. The Issuer covenants and agrees with the holders from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become subject to taxation under the Internal Revenue Code of 1986, as amended (the "Code"), and Regulations, Amended Regulations, and Proposed Regulations issued thereunder, as now existing or as hereinafter amended or proposed and in effect at the time of such action.

(b) Arbitrage Certification. The Mayor and the City Auditor being the officers of the Issuer charged with the responsibility for issuing the Bonds pursuant to this resolution, are authorized and directed to execute and deliver a certificate in accordance with the provisions of the Code and applicable Treasury Regulations (the "Regulations"), stating the facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds which make it reasonable to expect that the proceeds of the Bonds will not be used in a manner that would cause the Bonds to be arbitrage bonds within the meaning of the Code and Regulations.

(c) Rebate. The Issuer acknowledges that the Bonds are subject to the rebate requirements of Section 148(f) of the Code. The Issuer covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Regulations to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes, unless the Bonds qualify for one of the exceptions from the rebate requirement under Section 1.148-7 of the Regulations and no "gross proceeds" of the Bonds (other than amounts constituting a "bona fide debt service fund") arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the City Auditor is hereby authorized and directed to execute a Rebate Certificate, in the form prescribed by Bond Counsel, and the Issuer hereby covenants and agrees

to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

(d) Not Qualified Tax Exemption Obligations. The Bonds are not designated as “qualified tax-exempt obligations” for purpose of Section 265(b) of the Code.

(e) Reimbursement. The Issuer certifies that the proceeds of the Bonds will not be used by the Issuer to reimburse itself for any expenditure with respect to the Improvements which the Issuer paid or will have paid prior to the issuance of the Bonds unless, with respect to such prior expenditures, the Issuer shall have made a declaration of official intent which complies with the provisions of Section 1.150-2 of the Regulations; provided that this certification shall not apply (i) with respect to certain de minimis expenditures, if any, with respect to the Improvements meeting the requirements of Section 1.150-2(f)(1) of the Regulations, or (ii) with respect to “preliminary expenditures” for the Improvements as defined in Section 1.150-2(f)(2) of the Regulations, including engineering or architectural expenses and similar preparatory expenses, which in the aggregate do not exceed 20% of the “issue price” of the Bonds.

(f) Continuing Disclosure. The City Auditor is hereby authorized to execute, on behalf of the Issuer, the Continuing Disclosure Certificate in a form substantially similar to that attached as **Attachment D** hereto, which is hereby incorporated herein and made a part hereof.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Auditor

COMMISSIONER \_\_\_\_\_ introduced the following resolution and moved its adoption. The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER \_\_\_\_\_, and upon roll call vote, the following voted in favor thereof:

COMMISSIONERS \_\_\_\_\_.

The following were absent and not voting: \_\_\_\_\_,

and the following voted against the same: \_\_\_\_\_,

whereupon the resolution was declared duly passed and adopted.



CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that the preceding resolution attached hereto is a full, true, and correct copy of the RESOLUTION AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$42,000,000 CITY OF FARGO, NORTH DAKOTA REFUNDING IMPROVEMENT BONDS, SERIES 2019A, PRESCRIBING THE TERMS AND COVENANTS THEREOF, AND CREATING A FUND FOR THE PAYMENT THEREOF adopted by the governing body of the City of Fargo at the meeting held on July 1, 2019, and that such Resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this \_\_\_\_\_ day of July, 2019.

\_\_\_\_\_  
City Auditor

(S E A L)

## Attachment A

LIST OF IMPROVEMENT DISTRICTS WITH ESTIMATED PRINCIPAL AMOUNTS,  
LEVY YEARS, AMOUNTS, AND YEARS OF PAYMENT FOR EACH

| District Designation  | Aggregate Principal Amount | Levy Years (Inclusive) | Amounts and Payment Years  |
|---|----------------------------|------------------------|--|
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-17-A | \$ [ ]                     | 2019 through 2044      | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-A | [ ]                        | 2019 through 2044      | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-B | [ ]                        | 2019 through 2044      | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-E | [ ]                        | 2019 through 2044      | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-G | [ ]                        | 2019 through 2044      | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-J | [ ]                        | 2019 through 2044      | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Storm Sewer, Paving St Lights Improvement District No. BN-18-K                              | [ ]                        | 2019 through 2044      | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-L | [ ]                        | 2019 through 2044      | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Street Reconstruction Improvement District No. BR-18-C                                      | [ ]                        | 2019 through 2044      | Equal Principal and Interest Payments in each of the years 2020 through 2045 |

|   |     |                   |  |
|---|-----|-------------------|--|
| Water Main Replacement, Street Reconstruction Improvement District No. BR-18-G1 | [ ] | 2019 through 2044 | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Water Main Replacement, Street Reconstruction Improvement District No. BR-18-G2 | [ ] | 2019 through 2044 | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Storm Sewer Lift Station Improvement District No. NN-17-A                       | [ ] | 2019 through 2044 | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Street Reconstruction Improvement District No. PR-17-B                          | [ ] | 2019 through 2044 | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Street Lights No. No. SL-17-B   | [ ] | 2019 through 2029 | Equal Principal and Interest Payments in each of the years 2020 through 2030 |
| Traffic Signal Improvements No. TN16F1  | [ ] | 2019 through 2034 | Equal Principal and Interest Payments in each of the years 2020 through 2035 |
| Shared Use Path - Microsoft Area No. SN16C1                                     | [ ] | 2019 through 2039 | Equal Principal and Interest Payments in each of the years 2020 through 2040 |
| Sanitary Sewer, Water Main, Storm Sewer No. UN-18-B                             | [ ] | 2019 through 2044 | Equal Principal and Interest Payments in each of the years 2020 through 2045 |

Attachment B

OFFICIAL TERMS OF OFFERING

[To be attached]

Attachment C

FORM OF BONDS SERIES 2019A BONDS

UNITED STATES OF AMERICA  
STATE OF NORTH DAKOTA  
COUNTY OF CASS

CITY OF FARGO

REFUNDING IMPROVEMENT BOND, SERIES 2019A

|                      |                     |                              |                      |
|----------------------|---------------------|------------------------------|----------------------|
| No. <u>    </u>      |                     |                              | \$ <u>          </u> |
|                      |                     | DATE OF<br>ORIGINAL<br>ISSUE |                      |
| <u>INTEREST RATE</u> | <u>MATURITY</u>     |                              | <u>CUSIP</u>         |
| <u>    </u> %        | May 1, 20 <u>  </u> | <u>    </u> , 2019           | <u>          </u>    |

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: DOLLARS

KNOW ALL MEN BY THESE PRESENTS that the City of Fargo, Cass County, North Dakota (the "Issuer"), acknowledges itself to be indebted and for value received promises to pay to the registered owner named above, or registered assigns, the principal amount specified above on the maturity date specified above and promises to pay interest thereon from the date of original issue specified above or from the most recent Interest Payment Date (as hereinafter defined) to which interest has been paid or duly provided for, at the annual rate specified above, payable on May 1 and November 1 in each year, commencing May 1, 2020 (each such date, an "Interest Payment Date") all subject to the provisions referred to herein with respect to the redemption of the principal of this Bond before maturity. The interest so payable on any Interest Payment Date shall be paid to the person in whose name this Bond is registered at the close of business on the fifteenth day (whether or not a business day) of the calendar month next preceding such Interest Payment Date. Interest hereon shall be computed on the basis of a 360-day year composed of twelve 30-day months. The interest hereon and, upon presentation and surrender hereof, the principal hereof are payable in lawful money of the United States of America by check or draft drawn by the City Auditor of the Issuer, who will serve as the Bond Registrar (the "Registrar")

This Bond is one of an issue designated the CITY OF FARGO REFUNDING IMPROVEMENT BONDS, SERIES 2019A (the "Bonds"), in the aggregate principal amount of \$           all of like date and tenor except as to serial number, maturity date, interest rate, and redemption privilege, issued, pursuant to the Resolution adopted by the governing body of the Issuer for the purpose of refunding a like principal amount of valid outstanding special improvement warrants drawn on the funds of improvement districts heretofore duly created by the Issuer for the financing of the cost of local improvements in anticipation of the levy and collection of special assessments with respect



to the improvements, all pursuant to and in full conformity with the Constitution and laws of the State of North Dakota.

Bonds maturing on May 1 in the years 2020 through 2024 will not be subject to payment in advance of their respective stated maturity dates.

Bonds maturing on May 1 in the years 2025 through 2027 are subject to optional redemption on or after May 1, 2024 at a price of par plus accrued interest to the date of redemption

- Bonds maturing on May 1, 2028 will not be subject to payment in advance of their respective stated maturity dates; and

Bonds maturing on May 1 in the years 2029 through 2044 are subject to optional redemption on or after May 1, 2028 at a price of par plus accrued interest to the date of redemption.

In the event Bonds are to be called for optional redemption in part, the maturities and the Bonds within a maturity shall be selected by the Bond Registrar by lot or in such manner as the Bond Registrar shall determine. Not less than 20 days prior to the date specified for redemption and prepayment of any of the Bonds, the Issuer will cause notice of the call thereof to be sent by mail to the Bond Registrar, the Paying Agent, and the registered owner of the Bond to be redeemed, in whole or in part, at the address shown on the registration books of the Registrar.

[The Bonds maturing May 1, 20[\_\_\_], shall be known as Term Bonds. The Term Bonds are subject to mandatory sinking fund redemption in part at a Redemption Price equal to 100% of the principal amount thereof, together with accrued interest to the Redemption Date on May 1 of the following years and in the following principal amounts:

| Redemption Date<br>(May 1) | Principal<br>Amount |
|----------------------------|---------------------|
| 20__                       | \$ _____            |
| 20__*                      | \$ _____            |
| <hr/>                      |                     |
| *maturity                  |                     |

The Bonds maturing May 1, 20\_\_, shall be known as Term Bonds. The Term Bonds are subject to mandatory sinking fund redemption in part at a Redemption Price equal to 100% of the principal amount thereof, together with accrued interest to the Redemption Date on May 1 of the following years and in the following principal amounts:

| Redemption Date<br>(May 1) | Principal<br>Amount |
|----------------------------|---------------------|
| 20__                       | \$ _____            |
| 20__*                      | \$ _____            |
| <hr/>                      |                     |
| *maturity]                 |                     |

In the event a Bond is called for mandatory sinking fund redemption, the Bonds to be redeemed within a maturity shall be selected by the Bond Registrar by lot or in such manner as the Bond Registrar shall determine. Not less than 20 days prior to the date specified for redemption and prepayment of this Bond, the Issuer will cause notice of the call thereof to be sent by mail to the Bond Registrar, the Paying Agent, and the registered owner of this Bond to be redeemed, in whole or in part, at the address shown on the registration books of the Registrar. If less than all Term Bonds of a single maturity of the same series are to be redeemed at the option of the Issuer, the Issuer may apply the principal amount to be redeemed to reduce the mandatory sinking fund redemption requirements in such the Term Bond to be redeemed in such year or years as it determines in its sole discretion.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the Issuer at the principal office of the Bond Registrar, by the registered owner hereof in person or by its attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Bond Registrar, duly executed by the registered owner or attorney, and may also be surrendered in exchange for Bonds of other authorized denominations. Upon such transfer or exchange, the Issuer will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate, and maturing on the same date, subject to reimbursement for any tax, fee, or governmental charge required to be paid with respect to such transfer or exchange. The Issuer and the Bond Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the Issuer nor the Bond Registrar shall be affected by any notice to the contrary.

Notwithstanding any other provisions of this Bond, so long as this Bond is registered in the name of Cede & Co., as nominee of The Depository Trust Company, or in the name of any other nominee of The Depository Trust Company or other securities depository, the Registrar shall pay all principal of and interest on this Bond, and shall give all notices with respect to this Bond, only to Cede & Co. or other nominee in accordance with the operational arrangements of The Depository Trust Company or other securities depository as agreed to by the Issuer.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED, AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen and to be performed precedent to and in the valid issuance of this Bond have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that the Issuer has duly created the SERIES 2019A REFUNDING IMPROVEMENT BOND FUND as a separate and special fund and has appropriated thereto the improvement warrants refunded by the Bonds of this series, on which improvement warrant payments are required by law to be made as though none of such warrants had been refunded, and will use due diligence to collect said improvement warrants and the special assessments and any taxes appropriated for their payment; the Issuer has reserved the right and privilege of issuing additional improvement warrants on the funds of said improvement districts, if and to the extent necessary to complete payment of the cost of the improvements, and the right and privilege of refunding such warrants by the issuance of additional series of Refunding Improvement Bonds, payable on a parity with the Bonds of this series, provided that the total amount of special assessments and taxes appropriated for payment of the cost of the improvements shall be not less

than the total amount of warrants issued with respect thereto; that the governing body is required by law to levy a tax upon all the taxable property in the corporate limits of the Issuer, without limitation as to rate or amount, to meet any deficiency in any of said improvement district funds for the payment of all warrants drawn thereon, with interest; and that all collections of special assessments and taxes appropriated for the payment of said improvement warrants are required by law to be credited to the Bond Fund and applied in payment of the principal of and interest on the Bonds of this series and any other series issued pursuant to the authority hereinbefore reserved; all as more fully stated in the Resolution; and that the issuance of this Bond has not caused the indebtedness of the Issuer to exceed any constitutional or statutory limitation of indebtedness.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Bond Registrar by manual signature of one of its authorized representatives.

IN WITNESS WHEREOF the City of Fargo, North Dakota, by its governing body, has caused this Bond to be executed in its behalf by the manual or facsimile signature of the Mayor and City Auditor, and sealed with its official seal, and has caused the certificate appearing on the following page to be executed by the manual or facsimile signatures of said officers.

CITY OF FARGO

\_\_\_\_\_  
Mayor

(S E A L)

\_\_\_\_\_  
City Auditor

\_\_\_\_\_  
CERTIFICATE OF AUTHENTICATION

This is one of the Bonds delivered pursuant to the Resolution mentioned within.

Date of Authentication: \_\_\_\_\_

CITY AUDITOR, as Bond Registrar

By: \_\_\_\_\_  
Authorized Representative



Attachment D

**CONTINUING DISCLOSURE CERTIFICATE**

[\_\_\_\_], 2019

This Continuing Disclosure Certificate (the "Disclosure Certificate") is executed and delivered by the City of Fargo, North Dakota (the "Issuer") in connection with the Issuer's \$[PAR] REFUNDING IMPROVEMENT BONDS, SERIES 2019A (the "Bonds"). The Bonds are being issued pursuant to a resolution adopted by the governing body of the Issuer on July 1, 2019 (the "Resolution"), and delivered to the respective Purchasers on the date hereof. The Issuer hereby covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the Issuer for the benefit of the Owners of the Bonds in order to assist the Participating Underwriters within the meaning of SEC Rule 15c2-12(b)(5) (the "Rule") in complying with the Rule. This Disclosure Certificate constitutes the written undertaking and agreement of the Issuer for the benefit of the Owners of the Bonds as required by the Rule.

Section 2. Definitions. In addition to the defined terms set forth in the Resolution, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

"Annual Report" means the annual financial information (as defined in the Rule), including audited financial statements, to be provided to the MSRB in an electronic format prescribed by the MSRB pursuant to paragraph 5(i)(A) and (B) of the Rule, as described in Section 3 and 4 of this Disclosure Certificate.

"EMMA" means the Electronic Municipal Market Access system established by the MSRB with the support of the SEC, or any successor system, which can be accessed on the date hereof at [www.emma.msrb.org](http://www.emma.msrb.org).

"Financial Obligation" shall mean a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). This term shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

"Financial Statements" means audited or, if unavailable, unaudited general purpose financial statements of the Issuer prepared in accordance with generally accepted accounting principles, as in effect from time to time or as required to be modified as a matter of law. If unaudited financial statements are provided, audited financial statements will be provided when and if available.

"Fiscal Year" means the fiscal year of the Issuer.

"Final Official Statement" means the final official statement relating to the Bonds dated July [\_\_\_], 2019, which constitutes the final official statement delivered in connection with the Bonds, which is available from the MSRB.



“Issuer” means the City of Fargo, North Dakota, which is the obligated person (as defined in the Rule) with respect to the Bonds.

“Material Event” means any of the events listed in paragraph 5(i)(C) and paragraph 5(i)(D) of the Rule, which are set forth in Section 5(a) and (d) of this Disclosure Certificate.

“MSRB” means the Municipal Securities Rulemaking Board on the date hereof located at 1300 I Street, Suite 1000, Washington, DC 20005.

“Owner” means the person in whose name a Bond is registered or a beneficial owner of such a Bond.

“Participating Underwriter” means any of the original underwriter(s) of the Bonds (including the Purchaser) required to comply with the Rule in connection with the offering of the Bonds.

“Rule” means SEC Rule 15c2-12(b)(5) promulgated by the SEC under the Securities Exchange Act of 1934, as the same may be amended from time to time, and including written interpretations thereof by the SEC.

“SEC” means the Securities and Exchange Commission.

Section 3. Provision of Annual Financial Information and Financial Statements.

(a) The Issuer shall, not later than 12 months after the end of each Fiscal Year, commencing with the year ending December 30, 2019, provide to the MSRB in an electronic format as prescribed by the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Certificate and which shall include the CUSIP numbers for the all outstanding Bonds and such other identifying information as may be required from time to time by the Rule. The Annual Report shall be submitted to the MSRB at EMMA or as otherwise directed by the MSRB and may be submitted as a single document or as separate documents comprising a package, and may incorporate by specific reference information in documents available to the public on the MSRB’s internet website or filed with the SEC; provided that the Financial Statements of the Issuer may be submitted separately from the balance of the Annual Report.

(b) If the Issuer is unable or fails to provide an Annual Report by the date required in subsection (a) to the MSRB, the Issuer shall provide a notice of such failure to the MSRB as set forth in Section 5(b) hereof.

Section 4. Content of Annual Reports. The Issuer’s Annual Report shall contain or incorporate by reference the annual Financial Statements and annual financial information similar to that set forth in the following sections of the Final Official Statement:

- (1) Economic and Demographic Information.
- (2) Financial Summary.

- (3) City Indebtedness.
- (4) Outstanding Indebtedness.
- (5) Financial Information.
- (6) Property Valuation and Taxes.

Section 5. Reporting of Material Events.

(a) The Issuer shall provide to the MSRB in an electronic format prescribed by the MSRB notice of any of the following events with respect to the Bonds in a timely manner not in excess of ten (10) business days after the occurrence of the event, which notice shall be submitted to the MSRB at EMMA, or as otherwise directed by the MSRB:

- (1) Principal and interest payment delinquencies;
- (2) Non-payment related defaults, if material;
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) Substitution of credit or liquidity providers, or their failure to perform;
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (7) Modification to rights of security holders, if material;
- (8) Bond Calls, if material, and tender offers;
- (9) Defeasances;
- (10) Release, substitution, or sale of property securing repayment of the securities, if material;
- (11) Rating changes;
- (12) Bankruptcy, insolvency, receivership, or similar event of the obligated person;
- (13) The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) Appointment of a successor or additional trustee or the change of name of a trustee, if material;

(15) Incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the obligated person, any of which affect security holders, if material; and

(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.

(b) If the Issuer determines that it has failed to give notice of a Material Event as set forth above or to file the Annual Report in a timely fashion as required herein, the Issuer shall promptly file a notice of such occurrence to the MSRB in an electronic format prescribed by the MSRB, which notice shall be submitted to the MSRB at EMMA or as otherwise directed by the MSRB.

Section 6. Reporting Generally. The Issuer shall file its Annual Report, each notice of a Material Event, and each notice required by subsection (b) of Sections 3 and 5 of this Disclosure Certificate with the CUSIP numbers for all outstanding Bonds specified and such other identifying information as may be required from time to time by the Rule or by the MSRB. Each such item shall be submitted to the MSRB at EMMA, or as otherwise directed by the Rule or the MSRB, in an electronic format prescribed by the MSRB.

Section 7. Termination of Reporting Obligation. The Issuer's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption, or payment in full of all the Bonds.

Section 8. Agent. The Issuer may, from time to time, appoint or engage a dissemination agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such agent, with or without appointing a successor dissemination agent.

Section 9. Amendment: Waiver. Notwithstanding any other provision of this Disclosure Certificate and without consent of the Owners of the Bonds, the Issuer may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, if such amendment or waiver (i) is required by an amendment of the Rule by the SEC or procedures relating to the Rule by the MSRB, (ii) is to clarify an ambiguity or error, or (iii) does not provide for undertakings which violate the Rule or procedures of the MSRB then in effect or eliminates undertakings then required by the Rule or otherwise required by the SEC or the MSRB with respect to the Rule, which may be evidenced by a written opinion of legal counsel selected by the Issuer to the effect that such amendment or waiver would not, in and of itself, violate the Rule, requires undertakings which would violate the Rule or eliminates undertakings required by the Rule. If the Issuer determines that any such amendment or waiver materially changes the information provided to the MSRB or the timing of the information to be provided and that such information has not otherwise been provided to the MSRB in an Annual Report or Material Event filing, it shall provide the MSRB notice of such amendments as additional information pursuant to Section 9 hereof.

Section 10. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the Issuer from providing any other information to the public, using the means of filing with the MSRB as set forth in this Disclosure Certificate or any other means of communication. Such information may include any other information in addition to that which is required by this Disclosure Certificate. If the Issuer chooses to include any information in addition to that which is specifically required by this Disclosure Certificate, the Issuer shall have no obligation under this Disclosure Certificate to update such information and may state in the disclosure that it does not intend to update such information.

Section 11. Default. In the event of a failure of the Issuer to comply with any provision of this Disclosure Certificate, any Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an event of default with respect to the Bonds and the sole remedy under this Disclosure Certificate in the event of any failure of the Issuer to comply with this Disclosure Certificate shall be an action to compel performance.

Section 12. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the Issuer, the Participating Underwriters and Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

IN WITNESS WHEREOF, I have executed this Disclosure Certificate in my official capacity on behalf of the City of Fargo, North Dakota as of the date first written above.

CITY OF FARGO, NORTH DAKOTA

By: \_\_\_\_\_  
Steven Sprague  
City Auditor

RESOLUTION CREATING THE FUNDS OF IMPROVEMENT DISTRICTS,  
PROVIDING FOR AND APPROPRIATING SPECIAL ASSESSMENTS FOR  
THE SUPPORT AND MAINTENANCE OF SAID FUNDS, AND AUTHORIZING



THE ISSUANCE OF NOT TO EXCEED \$42,000,000 IMPROVEMENT WARRANTS  
(SERIES 2019A) THEREON

BE IT RESOLVED by the City Commission (the "Commission") of the City of Fargo, Cass County, North Dakota (the "Issuer") as follows:

1. Findings. It is hereby found, determined, and declared that the Issuer has heretofore duly created the improvement districts as set forth in **Attachment A** hereto, which is incorporated herein (the "Improvement Districts"), and has ordered, received, and approved plans and specifications, and estimates of the cost, for the construction of the improvements in said Improvement Districts (the "Improvements"); that the governing body determined the necessity of constructing the Improvements; that the Improvements have been petitioned by the owners or that insufficient protests to the project were filed in accordance with State of North Dakota (the "State") law; that contracts for construction of the Improvements have been duly awarded and executed; that the contracts and contractors' bonds have been and are hereby approved; that the Issuer possesses and has power to exercise through this governing body full and exclusive jurisdiction over all streets and places wherein said improvements are located; that the total cost of said Improvements in excess of any other funds on hand and appropriated for the payment of such cost including reimbursing other funds of the Issuer for any amounts temporarily advanced to meet immediate expenses of the Improvements less prepayments actually received and to be used to pay the cost of said Improvements is now estimated to be approximately the amount set forth in **Attachment B** hereto, which is incorporated herein; that to pay the total cost of said Improvements, the Issuer will sell at competitive sale improvement warrants in at least the total principal amount set forth in **Attachment B** hereto; that the total benefits to all lots, tracts, and parcels of land liable to be specially assessed for benefits resulting from the Improvements in said Improvement Districts will be substantially in excess of the cost of said Improvements to be assessed against said properties as herein provided; and that all acts, conditions, and things required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen, and to be performed preliminary to the issuance and sale of warrants to provide moneys to pay for said Improvements (the "Warrants") have been done, do exist, have happened, and have been performed in regular and due form and in the time and manner as so required. Each Warrant is payable from and secured by a special fund of the Issuer created with respect to an Improvement District and the special assessments levied within such Improvement District for the Improvements relating to such district.

2. Issuance and Sale of Warrants. In anticipation of the collection of said special assessments and taxes, if any, and for the purpose of borrowing money to pay the cost of said Improvements, the Issuer shall issue its Warrants on each Special Fund in an amount not to exceed \$42,000,000. The City Commission hereby authorizes the Issuer's municipal advisor Baker Tilly Municipal Advisors, LLC, St. Paul, Minnesota, to solicit bids for the purchase of the Warrants and authorizes the Issuer to accept bids to purchase the Warrants upon the terms and conditions set forth in this Resolution. The City Commission hereby delegates the power and authority to the Mayor, the City Auditor, and the City Finance Director of the Issuer to review bids received for the purchase of the Warrants, to be immediately refunded by the issuance by the Issuer of its Refunding Improvement Bonds, Series 2019A (the "Bonds") in an aggregate principal amount not to exceed \$42,000,000, and to execute a bond purchase agreement for the sale of the Warrants, subject to the terms set forth in Section 2.01 hereof, provided that the true interest cost may not



exceed 3.85%. The Mayor and City Auditor or their designees are authorized and directed to accept a bid and award the sale of the Warrant to the winning bidder subject to the limitations set forth above without further action of the Commission; provided, that the right to reject any or all bids is reserved. Issuance of the Warrant shall be conclusive evidence of the approval of such award.

3. Creation and Uses of Funds and Accounts There are hereby created special funds of the Issuer for each Improvement District (the "Special Funds," each a "Special Fund"), which Special Funds shall be held and administered by the City Auditor separate and apart from all other funds of the Issuer and each Special Fund shall be continued and maintained as directed in this resolution until all Warrants issued thereon shall have been fully paid with interest. In each such Special Fund there shall be maintained two separate accounts to be designated as the "Construction Account" and "Principal and Interest Account," respectively.

(a) There shall be credited to the Construction Account in each Special Fund the proceeds of the sale of the Warrants issued against such Special Fund except the accrued interest and except any amounts necessary to reimburse other funds of the Issuer for temporary advances made for the Improvements. All costs and expenses of making said Improvements, including interest coming due during construction, shall be paid from time to time as incurred and allowed from said Construction Account, upon Construction Account warrants signed by the Mayor and City Auditor, or in their absence, the Deputy Mayor and/or the Deputy City Clerk, and moneys in said Account shall be used for no other purpose, provided, that if upon completion of the Improvements and approval thereof by the Engineer for the Issuer, and payment of all claims and expenses in respect to said Improvement, there shall remain any unexpended balance in said Construction Account, such balance shall be transferred to the respective Principal and Interest Account and handled and accounted for in the same manner as other moneys in that account.

(b) There shall be credited to the Principal and Interest Account in each Special Fund the accrued interest, if any, on the Warrant drawn on said fund from the date of the Warrant to the date of delivery thereof to the purchaser, the entire amount of special assessments and any taxes to be levied with respect to that improvement as herein set forth, and any balance remaining in the Construction Account after completion of said Improvement. Moneys in the Principal and Interest Account shall be used only for payment of the principal of and interest on the Warrants drawn against said fund as such payments become due.

(c) The Issuer covenants and agrees with the holders from time to time of the Issuer's refunding improvement bonds, which are payable from, and secured by, the Warrants and the interest on which is excluded from gross income for federal tax purposes (the "Bonds"), that it will not take or permit to be taken by any of its officers, employees, or agents any action which would cause the interest on the Bonds to become subject to taxation under the Internal Revenue Code of 1986, as amended, and regulations, amended regulations, and proposed regulations issued thereunder, as now existing or as hereinafter amended or proposed and in effect at the time of such action.

4. Special Assessments. With respect to the Improvement Districts, the Issuer covenants and agrees with all holders of Warrants that it will do and perform as soon as may be possible, in accordance with law, all acts and things necessary for the final and valid levy of special

assessments against properties within the Improvement Districts benefited by the Improvements, in an aggregate amount equal to the total cost of the Improvement to the Issuer, except any portion, not exceeding one-fifth of the cost of the improvement and not exceeding any applicable constitutional or statutory debt limit, as the Issuer may determine to pay by the levy of *ad valorem* taxes upon all taxable property within its corporate limits.

In the event that the special assessment should at any time be held invalid with respect to any lot or tract of land, due to any error, defect or irregularity in any action or proceeding taken or to be taken by the Issuer or by the governing body or by any officers or employees, either in the making of the special assessment or in the performance of any condition precedent thereto, the Issuer and this governing body covenant and agree that they will forthwith do all such further acts and take all such further proceedings as may be required by law to make such special assessment a valid and binding lien upon such lot or tract.

The installments of special assessments from time to time remaining unpaid shall bear interest at the rate, not exceeding one percentage point (1%) above the true interest cost (TIC) annual interest rate on bonds issued on special improvement districts, set forth in **Attachment A** hereto, said special assessments to be levied in equal annual installments of principal, together with the interest to accrue thereon, as set forth in **Attachment A** hereto.

5. Form of Warrant. The Warrants shall be reproduced in substantially the form set forth in **Attachment B** hereto and incorporated herein.

6. Execution and Delivery. Each Warrant shall be prepared for execution under the direction of the City Auditor and shall be executed on behalf of the Issuer by the signature of the Mayor, countersigned by the City Auditor and sealed with the official seal of the Issuer. When executed, the warrants shall be delivered by the City Auditor to the Purchaser thereof upon payment of the purchase price agreed upon, and the Purchaser shall not be obligated to see to the application of the purchase price.

The Mayor, the City Auditor, and other officers of the City are also hereby authorized to execute and deliver any such additional certificates, showings, agreements, or documents necessary or otherwise appropriate in connection with the issuance of the Warrants and the transactions contemplated thereby.

In the event of the absence or unavailability of the Mayor, the City Auditor, or other appropriate officer of the City, the Warrants and the other documents authorized for execution and delivery pursuant to this section may be executed and delivered by the individual or individuals authorized generally by the City to act on behalf of the Mayor, the City Auditor, or other officer of the City in such circumstances, including, without limitation, the Deputy Mayor and the Deputy City Auditor, as the case may be.

In case any officer signing documents authorized to be executed and delivered by this resolution shall cease to be such officer before or after the delivery of any such document, such signature, nevertheless, shall be valid and remain sufficient for all purposes as if such officer had remained in office until such delivery or later applicable time.

7. Covenant as to Tax Levy. With respect to each Special Fund, the Issuer hereby recognizes its obligation with respect to the Warrants drawn against the Funds, as set forth in § 40-26-08, North Dakota Century Code, as amended, and covenants that whenever all special assessments and taxes, if any, theretofore collected for the related Improvement are insufficient to pay principal of or interest then due on the applicable Warrant, the governing body of the Issuer shall thereupon levy a tax upon all taxable property in the corporate limits of the Issuer for the payment of such deficiency; provided, that if said Warrant has been exchanged for refunding improvement bonds pursuant to the provisions of Chapter 40-27, North Dakota Century Code, such deficiency tax may be made payable in the years and amounts required to pay the principal of and interest on such refunding improvement bonds as the same become due. Nothing herein contained shall be deemed to limit the power of the Issuer and this governing body under the provisions of said § 40-26-08, as amended, to levy a general tax in anticipation of a deficiency considered likely to occur in said Special Fund within one year, and it is hereby declared to be the policy of the Issuer that the governing body will annually review the current requirements and resources of each Special Fund, at the time of the preparation of and hearing on the budget, in accordance with the provisions of Chapter 40-40, North Dakota Century Code, to the end that provisions may be made in each annual budget for any deficiency in said applicable Funds which is deemed likely to occur within the then next succeeding year. Any taxes levied in accordance with the provisions of this paragraph in payment of a deficiency, or in anticipation of a deficiency, shall be paid upon collection into the Principal and Interest Account of the Special Fund and applied as provided in paragraph 2(b) hereof.

8. Refunding. With respect to the Special Funds, the Issuer reserves the right and privilege of refunding any warrants drawn against any of the Special Funds and refunding improvement bonds payable from such warrants which are past due, or which are redeemable at the option of the Issuer, or to the redemption or exchange of which the holder thereof shall have consented, and for the payment of which Warrants moneys are not at the time available in said fund, by issuing new warrants pursuant to the provisions of § 40-27-06, North Dakota Century Code. Such refunding warrant shall be payable from the applicable Special Funds on a parity with the Warrants previously issued as to interest charges, provided, however, the principal maturities of such refunding warrant shall be subsequent to the maturities of all Warrants payable from such Special Fund and then outstanding, except the warrants so refunded.

With respect to the Special Funds, the Issuer also reserves the right to issue additional warrants and refunding improvement bonds for the payment of the cost of the improvement in said districts if the actual cost of said improvement should be greater than has been estimated, such additional warrants to be payable from said fund on a parity with other warrants drawn on said funds.

9. Certification of Proceedings. The officers of this Issuer and the County Auditor of Cass County are authorized and directed to prepare and furnish to the purchaser of said warrants and to Dorsey & Whitney LLP, Bond Counsel to the Issuer, certified copies of all ordinances, resolutions, affidavits or other instruments relating to the establishment and construction of said improvement and the operation and maintenance thereof, and the levy of special assessments and taxes therefore or the issuance of said improvement warrants, which may be necessary or proper to show the validity or marketability of said warrants, and all instruments and transcripts so

furnished, constitute representations of the Issuer as to the correctness of the facts as stated or recited therein.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Auditor

COMMISSIONER \_\_\_\_\_ introduced the preceding resolution and moved its adoption. The motion for the adoption of the foregoing resolution was duly seconded by COMMISSIONER \_\_\_\_\_, and upon roll call vote, the following voted in favor thereof:

COMMISSIONERS \_\_\_\_\_.

The following were absent and not voting:

\_\_\_\_\_, and the following voted against the same: \_\_\_\_\_, whereupon the resolution was declared duly passed and adopted this \_\_\_ day of July, 2019.



Attachment ALIST OF IMPROVEMENT DISTRICTS WITH ESTIMATED PRINCIPAL AMOUNTS,  
LEVY YEARS, AMOUNTS, AND PAYMENT YEARS FOR EACH

| <b>District Designation</b>   | <b>Aggregate Principal Amount</b> | <b>Levy Years (Inclusive)</b> | <b>Amounts and Payment Years</b>   |
|---|-----------------------------------|-------------------------------|--|
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-17-A | \$[_____]                         | 2019 through 2044             | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-A | [_____]                           | 2019 through 2044             | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-B | [_____]                           | 2019 through 2044             | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-E | [_____]                           | 2019 through 2044             | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-G | [_____]                           | 2019 through 2044             | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-J | [_____]                           | 2019 through 2044             | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Storm Sewer, Paving St Lights Improvement District No. BN-18-K                              | [_____]                           | 2019 through 2044             | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Sanitary Sewer, Water Main, Storm Sewer, Paving, St Lights Improvement District No. BN-18-L | [_____]                           | 2019 through 2044             | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Street Reconstruction Improvement District No. BR-18-C                                      | [_____]                           | 2019 through 2044             | Equal Principal and Interest Payments in each of the years 2020 through 2045 |



|   |     |                   |  |
|---|-----|-------------------|--|
| Water Main Replacement, Street Reconstruction Improvement District No. BR-18-G1 | [ ] | 2019 through 2044 | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Water Main Replacement, Street Reconstruction Improvement District No. BR-18-G2 | [ ] | 2019 through 2044 | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Storm Sewer Lift Station Improvement District No. NN-17-A                       | [ ] | 2019 through 2044 | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Street Reconstruction Improvement District No. PR-17-B                          | [ ] | 2019 through 2044 | Equal Principal and Interest Payments in each of the years 2020 through 2045 |
| Street Lights No. No. SL-17-B   | [ ] | 2019 through 2029 | Equal Principal and Interest Payments in each of the years 2020 through 2030 |
| Traffic Signal Improvements No. TN16F1  | [ ] | 2019 through 2034 | Equal Principal and Interest Payments in each of the years 2020 through 2035 |
| Shared Use Path - Microsoft Area No. SN16C1                                     | [ ] | 2019 through 2039 | Equal Principal and Interest Payments in each of the years 2020 through 2040 |
| Sanitary Sewer, Water Main, Storm Sewer No. UN-18-B                             | [ ] | 2019 through 2044 | Equal Principal and Interest Payments in each of the years 2020 through 2045 |

Attachment B

FORM OF WARRANT

UNITED STATES OF AMERICA  
STATE OF NORTH DAKOTA  
COUNTY OF CASS

CITY OF FARGO

IMPROVEMENT WARRANT, SERIES 2019A  
IMPROVEMENT DISTRICT NO. \_\_\_\_\_

R-[ ]

INTEREST RATE

DATE OF ORIGINAL ISSUE

\_\_\_\_\_ %

\_\_\_\_\_, 2019

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

KNOW ALL MEN BY THESE PRESENTS that the City of Fargo, Cass County, North Dakota, (the "Issuer") acknowledges itself to be specially indebted and for value received promises to pay to the registered owner specified above or registered assigns, the principal amount of \$ \_\_\_\_\_ in annual installments on May 1 in each of the years 20\_ through 20\_ but only from its \_\_\_\_\_ Fund, with interest thereon from the date hereof at the annual rate specified above, such interest payable on May 1 and November 1 in each year, commencing May 1, 2020, to the holder of record on the close of the 15th day (whether or not a business day) of the immediately preceding month. Both principal and interest are payable at the office of the City Auditor of the Issuer, in Fargo, North Dakota, in any coin or currency of the United States of America which on the respective dates of payment is legal tender for public and private debts.

This warrant is issued for the purpose of financing a portion of the cost of a necessary improvement benefiting the above-named District of the Issuer, and is issued pursuant to and in full conformity with the Constitution and laws of the State of North Dakota thereunto enabling, including Chapters 40-22 to 40-28 and Chapter 40-49 of the North Dakota Century Code, and amendatory and supplemental laws, and in anticipation of the collection of special assessments levied or to be levied and collected to pay for said improvement, which moneys are to be appropriated to the account and fund referred to above.

This warrant is subject to redemption and prepayment at the option of the Issuer at any time, at a price equal to the principal amount hereof and accrued interest, for the sole purpose of refunding the entire issue by the issuance of refunding improvement bonds of the Issuer pursuant to Chapter 40-27, North Dakota Century Code.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all acts, conditions and things required by the Constitution and laws of the State of North Dakota to be done, to exist, to happen and to be performed preliminary to and in the valid issuance of this warrant have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; that this warrant is duly issued to pay costs incurred and to be incurred in the making of a necessary improvement of special benefit to the above-named Improvement District, in anticipation of the collection of special assessments to be duly levied upon properties within said district, and of taxes to the extent determined by the governing body, which are irrevocably appropriated to the fund of the district in amounts sufficient to pay when due the principal of and interest on all warrants drawn thereon; that if the fund should at any time be insufficient to pay principal or interest due, the Issuer is also required by law to levy a tax upon all of the taxable property within its corporate limits for the payment of such deficiency, without limitation of rate or amount; and that the issuance of this warrant did not cause the special or general indebtedness of the Issuer to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF the City of Fargo, North Dakota, by its governing body has caused this warrant to be executed in its behalf by the signature of the Mayor and countersigned by the City Auditor, and sealed with its official seal.

\_\_\_\_\_  
Mayor

Countersigned:

\_\_\_\_\_  
City Auditor

(S E A L)

\_\_\_\_\_  
REGISTRATION

The City of Fargo, North Dakota, has registered the ownership of the within warrant, and of the interest payable thereon, on the books of the City maintained by its City Auditor at Fargo, North Dakota, in the name of the following owner:

City of Fargo, in trust for the owners of its Refunding Improvement Bonds, Series 2019A.

Dated as of the \_\_\_\_ day of July, 2019.

\_\_\_\_\_  
City Auditor

CERTIFICATE

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

I, Steven Sprague, the duly appointed City Auditor of the City of Fargo, North Dakota, do hereby certify that the preceding resolution attached hereto is a full, true, and correct copy of the RESOLUTION CREATING THE FUNDS OF IMPROVEMENT DISTRICTS, PROVIDING FOR AND APPROPRIATING SPECIAL ASSESSMENTS FOR THE SUPPORT AND MAINTENANCE OF SAID FUNDS, AND AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$42,000,000 IMPROVEMENT WARRANTS (SERIES 2019A) THEREON adopted by the governing body of the City of Fargo at the meeting held on July 1, 2019, and that such Resolution is now a part of the permanent records of the City of Fargo, North Dakota, as such records are filed in the office of the City Auditor.

Dated this \_\_\_\_ day of July, 2019.

\_\_\_\_\_  
City Auditor

(S E A L)

4851-8335-9641\4



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

**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JUNE 17, 2019**

**RE: NOTICE OF GRANT AWARD FOR PUBLIC HEALTH  
EMERGENCY PREPAREDNESS AND RESPONSE WITH THE  
NORTH DAKOTA DEPARTMENT OF HEALTH PHEP ALL  
HAZARDS ALLOCATION  
NO. G19.157 CFDA 93.069 \$17,232**

The attached Notice of Grant Award for \$17,232 with the North Dakota Department of Health is for the Public Health Emergency Preparedness (PHEP) All Hazards Allocation.

**2019 Expense**

Contract Service 101-6055-451-38-11 \$ 9,000

**2020 Revenue**

Emergency Preparedness 101-0000-451-12-33 \$ 9,000

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

**Suggested Motion:** Move to approve the contract for the public health emergency preparedness.

DF/lls  
Enclosure





**NOTICE OF GRANT AWARD - RESTRICTED FUNDING**  
 NORTH DAKOTA DEPARTMENT OF HEALTH  
 SFN 59920 (04-2019)

|  |  |                              |
|--|--|------------------------------|
| Grant Number<br>G19.157  | CFDA Name<br>Public Health <b>Emergency Preparedness</b>   | CFDA Number<br>93.069        |
| FAIN Number<br>NU90TP921920  | Grant Type (Check One)<br><input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D | Grant Start Date<br>7/1/2019 |
| Federal Award Date   | Grant End Date<br>6/30/2020  |                              |
| Federal Awarding Agency<br>Department of Health and Human Services |  |                              |

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

|   |  |  |  |
|---|--|--|--|
| Title of Project/Program<br>PHEP – All Hazards Allocation | North Dakota Department of Health (NDDoH) Project Code<br>6611 HLH 3270 11 |  |  |
| Grantee Name<br>Fargo Cass Public Health                  | Project Director<br>Tim Wiedrich   |  |  |
| Address<br>1240 – 25 <sup>th</sup> Street South           | Address<br>1720 Burlington Drive   |  |  |
| City/State/ZIP Code<br>Fargo, ND 58103-2367               | City/State/ZIP Code<br>Bismarck, ND 58504                                  |  |  |
| Contact Name<br>Desi Fleming                              | Contact Name<br>Juli Sickler   |  |  |
| Telephone Number<br>701-241-1360                          | Telephone Number<br>701-328-2270   |  |  |
| Email Address<br>dfleming@fargond.gov                     | Email Address<br>jsickler@nd.gov   |  |  |

|                           | NDDoH Cost Share  | Grantee Cost Share                              | Total Costs  |
|---------------------------|---|---|--|
| Amount Awarded            | \$17,232.00   | \$0.00  | \$17,232.00  |
| Previous Funds Awarded    | \$0.00  | \$0.00  | \$0.00   |
| Total Funds Awarded       | \$17,232.00   | \$0.00  | \$17,232.00  |
| Indirect Rate (Check One) | <input type="checkbox"/> Subrecipient waived indirect costs | <input type="checkbox"/> De minimus rate of 10% | <input type="checkbox"/> Negotiated/Approved rate of % |

Scope of Service  
 Grantee will complete the activities identified in Attachment A.

Reporting Requirements  
 Expenditure reports must be submitted monthly as required by the North Dakota Department of Health (NDDoH). Final expense report for the period ending June 30, 2020 must be received by July 15, 2020. A mid-year progress report, as prescribed by the NDDoH, must be submitted by January 10, 2020 for the period of July 1, 2019 through December 31, 2019. A year-end progress report, as prescribed by the NDDoH, must be submitted by August 31, 2020 for the period of January 1, 2020 through June 30, 2020. Payments will be processed upon Department approval of expenditure reports and progress reports.

Special Conditions  
 Funding for this award is restricted until such time as the Federal Award is received and processed by the Department. During this restriction, Grantee expenditures will be limited to salaries and fringe, routine in-state travel, standard utilities and rent. Financial obligation of the Department is contingent upon funds being made available by the Centers for Disease Control and Prevention. The Department will send notification to the Grantee when the restriction has been lifted. This notification serves as official documentation and should be filed with the Notice of Grant Award for documentation. This notice of grant award is subject to the terms and conditions incorporated with directly or by reference to the Centers for Disease Control and Prevention Funding Opportunity Announcement number: CDC-RFA-TP19-1901.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2019 to June 30, 2021 [Accounting Use Only:  Requirements Received;  Questionnaire received] and (2) applicable State and Federal regulations.

| Evidence of Grantee's Acceptance         |                                  | Evidence of NDDoH Acceptance  |           |
|--|----------------------------------|---|-----------|
| Date<br>6/18/19                          | Signature<br><i>Desi Fleming</i> | Date  | Signature |
| Desi Fleming, Director of Public Health  |                                  | Typed Name/Title of Authorized Representative<br>Tim Wiedrich, Section Chief<br>Emergency Preparedness and Response |           |
| Date                                     | Signature                        | Date  | Signature |
| Timothy J. Mahoney, Mayor, City of Fargo |                                  | Typed Name/Title of Authorized Representative<br>Brenda M. Weisz, Chief Financial Officer                           |           |

If attachments are referenced, they must be returned with the signed award.  
 If you did not receive attachments as indicated, contact the Program Director identified above.

## **Local Public Health – PHEP - EPR All Hazards Allocation**

Scope of Service: Attachment A

The following activities are required for reimbursement through this award:

1. Participate in one (1) state-hosted exercise. Quarterly exercises are held with the PHEP - EPR Response Management team and are open for participation from local public health employees.
2. Attend 75% of state-hosted videoconference meetings. Bi-monthly videoconference meetings will be held with local public health administrators throughout this budget period.
3. Participate in three (3) HAN (Health Alert Network) call-down drills as conducted by the PHEP - EPR Office. HAN call-down drills are conducted quarterly throughout the budget period.
4. Conduct one (1) full-scale POD (Point of Dispensing) exercise within your jurisdiction every five (5) years as approved by the NDDoH. Annual influenza clinics will be considered a full-scale exercise and count towards this requirement if the clinic is conducted with the POD location outlined in the jurisdiction's plans and the activity conducted within the POD closely resembles the activity described in the POD plan. An AAR/IP (After Action Report/Improvement Plan) shall be completed and loaded into the HAN Document library for each exercise.

The following activities are eligible for reimbursement through this award. Eligible expenses include equipment, office supplies, travel, salaries for public health employees, rent, utilities, connectivity fees, maintenance agreements, IT software, contracts for professional services, training and professional development costs.

1. Active participation in local/regional emergency preparedness and response planning committees.
2. Assist PHEP - EPR Management Team with maintenance of current local emergency operations plans (updates should occur every six (6) months). All plans should be available in the HAN Document Library i.e. local all hazards plans, pandemic influenza plans, risk communications plans, POD plans, etc.
3. Work with the PHEP- EPR Management Team to conduct quarterly call down drills of the local POD groups, regional groups, and local public health groups. Maintain accurate contact information for these groups throughout the contract period.
4. Maintain 24/7/365 access to knowledgeable public health personnel through a locally published phone number.
5. Public health response personnel may complete the following NIMS courses: ICS100, ICS200, ICS700 and ICS800. Department operation center incident commanders and section chiefs should complete the following NIMS courses: ICS100, ICS200, ICS300 and ICS400, ICS700, ICS800.
6. Work with the PHEP - EPR Management Team in assisting long term care facilities to develop emergency operations plans for their facilities and invite those representatives to participate in local community preparedness and response meetings.
7. Work with PHEP - EPR Management Team to develop and administer workshops and tabletop exercises for local emergency operations plans to identify gaps in community recovery.

Other activities may be eligible for funding as mutually agreed upon in writing between the local public health unit and the North Dakota Department of Health, Emergency Preparedness and Response Section.



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

**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JUNE 25, 2019**

**RE: NOTICE OF GRANT AWARD FOR ENHANCING HARM  
REDUCTION WITH THE NORTH DAKOTA DEPARTMENT OF  
HEALTH # G17.1224 CFDA # 93.354 FOR \$15,400**

The attached Notice of Grant Award for \$15,400 with the North Dakota Department of Health is for Enhancing Harm Reduction.

**2019 Expense**

|                   |                    |          |
|-------------------|--------------------|----------|
| General Supplies  | 101-6013-451-61-40 | \$ 2,350 |
| Contract Services | 101-6013-451-38-11 | \$ 7,000 |

**2020 Revenue**

|                          |                    |          |
|--------------------------|--------------------|----------|
| Enhancing Harm Reduction | 101-0000-331-12-56 | \$15,400 |
|--------------------------|--------------------|----------|

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

**Suggested Motion:** Move to approve the grant award with North Dakota Department of Health for Enhancing Harm Reduction.

DF/lls  
Enclosure





**NOTICE OF GRANT AWARD**  
SFN 53771 (1-2016)

**NORTH DAKOTA DEPT. OF HEALTH (NDDoH)**  
600 E BOULEVARD AVE, DEPT. 301  
BISMARCK, ND 58505-0200

**GRANT NUMBER** G17.1224 **CFDA NAME** Public Health Emergency Response **CFDA NUMBER** 93.354 **START DATE** 6/17/2019 **END DATE** 8/31/2019

**FEDERAL AWARD DATE** 8/29/2018 **FEDERAL AWARDDING AGENCY** Centers for Disease Control & Prevention **FAIN NUMBER** 11NU90TP921974 **GRANT TYPE: PROGRAM OR R&D** Acquisition

**THIS AWARD IS NOT EFFECTIVE AND EXPENDITURES RELATED TO THIS AWARD SHOULD NOT BE INCURRED UNTIL ALL PARTIES HAVE SIGNED THIS DOCUMENT.**

|                                 |                          |                           |                     |
|---------------------------------|--------------------------|---------------------------|---------------------|
| <b>TITLE OF PROJECT/PROGRAM</b> | Enhancing Harm Reduction | <b>NDDoH PROJECT CODE</b> | HLH3861-43 \$15,400 |
| <b>CONTRACTOR NAME</b>          | Fargo Cass Public Health | <b>PROJECT DIRECTOR</b>   | Lindsey VanderBusch |
| <b>ADDRESS</b>                  | 1240 25th St S           | <b>ADDRESS</b>            | 2635 E Main Ave     |
| <b>CITY/STATE/ZIP</b>           | Fargo, ND 58103          | <b>CITY/STATE/ZIP</b>     | Bismarck, ND 58506  |
| <b>CONTACT NAME</b>             | Desi Fleming             | <b>CONTACT NAME</b>       | Lindsey VanderBusch |
| <b>TELEPHONE NUMBER</b>         | 701.241.8575             | <b>TELEPHONE NUMBER</b>   | 701.328.4555        |
| <b>EMAIL</b>                    | dfleming@fargond.gov     | <b>EMAIL</b>              | lvanderbusch@nd.gov |

|                               |          |                           |     |                    |          |
|-------------------------------|----------|---------------------------|-----|--------------------|----------|
| <b>Amount Awarded</b>         | \$15,400 | <b>Grantee Cost Share</b> | \$0 | <b>Total Costs</b> | \$15,400 |
| <b>Previous Funds Awarded</b> | \$0      |                           | \$0 |                    | \$0      |
| <b>Total Funds Awarded</b>    | \$15,400 |                           | \$0 |                    | \$15,400 |

**SCOPE OF SERVICE**  
This award provides \$15,400 to enhance harm reduction services within the agency to reduce the risk of opioid overdose and death among persons who inject drugs. Funding can be used to provide or obtain training regarding harm reduction and overdose prevention. Conduct outreach and corollary services that are attached with syringe services programs and empower individuals to make informed choices and reduce additional exposure to harm.

**REPORTING REQUIREMENTS**  
Funding awarded under award must be tracked and reported using the 2019 Enhancing Harm Reduction RFR.

**SPECIAL CONDITIONS**  
Funding can not be used to purchase syringes or other equipment with the sole purpose of injecting drugs, fentanyl test strips, naloxone, prescription drug take back activities or individual level supplies. Funding may also not be used for the sole purpose of syringe exchange or disposal in the absence of other opioid overdose prevention or educational services. The funding from grant code HLH 3861-43 must be expended by August 31, 2019. The final request for reimbursement for these funds must be received by September 15, 2019.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the North Dakota Department of Health as signed by Grantee for the period of July 1, 2017 to June 30, 2019 [Accounting Use Only Requirements received] and (2) applicable State and Federal regulations.

**INDIRECT RATE (check one)**  Evidence of Contractor's Acceptance  Subrecipient waived indirect costs **EVIDENCE OF NDDoH ACCEPTANCE** Negotiated/Approved rate of \_\_\_\_\_ %

|  |   |  |   |
|--|---|--|---|
| <b>DATE</b> 6/25/19                                  | <b>SIGNATURE</b> <i>Desi Fleming</i>    | <b>DATE</b>  | <b>SIGNATURE</b>                                      |
| <b>TYPED NAME/TITLE OF AUTHORIZED REPRESENTATIVE</b> | Desi Fleming, Director of Public Health | <b>TYPED NAME/TITLE OF AUTHORIZED REPRESENTATIVE</b> | Kirby Kruger, Section Chief, Medical Services Section |

|  |  |  |                      |
|--|--|--|----------------------|
| <b>DATE</b>  | <b>SIGNATURE</b>                         | <b>DATE</b>  | <b>SIGNATURE</b>     |
| <b>TYPED NAME/TITLE OF AUTHORIZED REPRESENTATIVE</b> | Timothy J. Mahoney, Mayor, City of Fargo | <b>TYPED NAME/TITLE OF AUTHORIZED REPRESENTATIVE</b> | Brenda M. Weisz, CFO |

If attachments are referenced, they must be returned with the signed award. If you did not receive attachments as indicated, contact the Program Director identified above.





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

**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JUNE 21, 2019**

**RE: NOTICE OF GRANT AWARD FOR PUBLIC HEALTH  
EMERGENCY PREPAREDNESS AND RESPONSE WITH THE  
NORTH DAKOTA DEPARTMENT OF HEALTH PHEP/EPR  
STATEWIDE MANAGEMENT TEAM  
NO. G19.254 CFDA NO. 93.069 \$220,105**

The attached Notice of Grant Award for \$220,105 with the North Dakota Department of Health is for the Public Health Emergency Preparedness (PHEP) EPR Statewide Management Team.

No budget adjustment is required for this contract.

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

**Suggested Motion:** Move to approve the contract for the public health emergency preparedness.

DF/lls  
Enclosure







**Page 105 NOTICE OF GRANT AWARD - RESTRICTED FUNDING**  
**NORTH DAKOTA DEPARTMENT OF HEALTH**  
 SFN 59920 (04-2019)

|  |  |                              |
|--|--|------------------------------|
| Grant Number<br>G19.254  | CFDA Name<br>Public Health Emergency Preparedness  | CFDA Number<br>93.069        |
| FAIN Number<br>NU90TP921920  | Grant Type (Check One)<br><input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D | Grant Start Date<br>7/1/2019 |
| Federal Award Date   | Grant End Date<br>6/30/2020  |                              |
| Federal Awarding Agency<br>Department of Health and Human Services |  |                              |

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

|  |  |
|--|--|
| Title of Project/Program<br>PHEP – Statewide Management Team | North Dakota Department of Health (NDDoH) Project Code<br>6611 HLH 3270 11 |
| Grantee Name<br>Fargo Cass Public Health                     | Project Director<br>Tim Wiedrich   |
| Address<br>1240 – 25 <sup>th</sup> Street South              | Address<br>1720 Burlington Drive   |
| City/State/ZIP Code<br>Fargo, ND 58103-2367                  | City/State/ZIP Code<br>Bismarck, ND 58504                                  |
| Contact Name<br>Desi Fleming, Director of Public Health      | Contact Name<br>Juli Sickler   |
| Telephone Number<br>701-241-1360                             | Telephone Number<br>701-328-2270   |
| Email Address<br>dfleming@fargond.gov                        | Email Address<br>jsickler@nd.gov   |

|                           | NDDoH Cost Share  | Grantee Cost Share                              | Total Costs  |
|---------------------------|---|---|--|
| Amount Awarded            | \$220,105.00  | \$0.00  | \$220,105.00   |
| Previous Funds Awarded    | \$0.00  | \$0.00  | \$0.00   |
| Total Funds Awarded       | \$220,105.00  | \$0.00  | \$220,105.00   |
| Indirect Rate (Check One) | <input type="checkbox"/> Subrecipient waived indirect costs | <input type="checkbox"/> De minimus rate of 10% | <input type="checkbox"/> Negotiated/Approved rate of % |

Scope of Service  
Grantee will complete the activities identified in Attachment A.

Reporting Requirements  
Expenditure reports must be submitted monthly as required by the North Dakota Department of Health (NDDoH). Final expense report for the period ending June 30, 2020 must be received by July 15, 2020. A mid-year progress report, as prescribed by the NDDoH, must be submitted by January 10, 2020 for the period of July 1, 2019 through December 31, 2019. A year-end progress report, as prescribed by the NDDoH, must be submitted by August 31, 2020 for the period of January 1, 2020 through June 30, 2020. Payments will be processed upon Department approval of expenditure reports and progress reports.

Special Conditions  
Funding for this award is restricted until such time as the Federal Award is received and processed by the Department. During this restriction, Grantee expenditures will be limited to salaries and fringe, routine in-state travel, standard utilities and rent. Financial obligation of the Department is contingent upon funds being made available by the Centers for Disease Control and Prevention. The Department will send notification to the Grantee when the restriction has been lifted. This notification serves as official documentation and should be filed with the Notice of Grant Award for documentation. This notice of grant award is subject to the terms and conditions incorporated either directly or by reference to the Centers for Disease Control and Prevention Funding Opportunity Announcement number: CDC-RFA-TP19-1901.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2019 to June 30, 2021 [Accounting Use Only:  Requirements Received;  Questionnaire received] and (2) applicable State and Federal regulations.

| Evidence of Grantee's Acceptance  |           | Evidence of NDDoH Acceptance  |           |
|---|-----------|---|-----------|
| Date  | Signature | Date  | Signature |
| 6/24/19   |           |   |           |
| Typed Name/Title of Authorized Representative<br>Desi Fleming, Director of Public Health  |           | Typed Name/Title of Authorized Representative<br>Tim Wiedrich, Section Chief, Emergency Preparedness and Response |           |
| Date  | Signature | Date  | Signature |
| Typed Name/Title of Authorized Representative<br>Timothy J. Mahoney, Mayor, City of Fargo |           | Typed Name/Title of Authorized Representative<br>Brenda M. Weisz, Chief Financial Officer                         |           |

If attachments are referenced, they must be returned with the signed award.  
 If you did not receive attachments as indicated, contact the Program Director identified above.

**Local Public Health – PHEP – EPR Statewide Management Team**  
Scope of Service: **Attachment A – TP19-1901**

Funding is provided to hire staff for planning and coordination of public health emergency preparedness and response activity in the State of North Dakota. PHEP - EPR Statewide Management Team members shall work closely with the North Dakota Department of Health (NDDoH) and community leaders throughout the state to coordinate planning and response activities for health and medical emergency events. Emergency events that require in-state and out-of-state response from team members are described as federal, state, county and/or city declared disaster/emergency, and/or a local public health declared emergency.

- All hires must be approved by the NDDoH.
- Of the total funding awarded with this award, no more than 10% can be used for administrative personnel to assist with this award's activity (accountant, administrative assistance and/or supervisory duties). The remaining funds are restricted to support of the response personnel funded as part of the PHEP - EPR Statewide Management Team.
- Of the PHEP - EPR Statewide Management Team positions hired, one position must be one (1) FTE funded at 100%.
- Expenses such as supplies, rent, communications, etc., for team members NOT funded at 100%, must be split accordingly with other funding sources supporting the position.
- All PHEP - EPR Statewide Management Team members are required to participate in the following activity:
  - Bi-weekly videoconference meetings with the State.
  - Quarterly exercises (may be in different state-wide locations).
  - Annual training sessions equal to 20 hours as prescribed by the NDDoH.
  - Assist the local public health units in conducting at least one NDDoH approved full-scale exercise per five-year period at a POD (Point of Dispensing) site within that local public health unit's jurisdiction.
- Team members that have been assigned a port-a-count machine will be responsible to provide fit-testing as requested by other entities that include, but are not limited to EMS, hospitals, long term care, public health, law enforcement and fire departments. Grantees will store Department owned port-a-count machines from the State Medical Cache and allow other agencies from their region to borrow the said machines for the purposes of fit testing staff and responders.

Each port-a-count machine must have training/testing records maintained by the respective team members using the forms/methods mutually agreed upon by the Grantee and the Department. Grantee will keep accurate tracking records of the port-a-count machines assigned to their public health unit and have those records available at the Department's request. 30 days prior to expired calibration dates, grantee will provide notification to the Emergency Preparedness and Response (EPR) office and assist EPR staff with collecting the machines to be sent back to the manufacturer for proper calibration. The EPR office will return the machines to the Grantee once calibration activities are completed by the manufacturer.

Grantee will provide accurate tracking records to the EPR office monthly. Tracking records will include dates the machine was checked out and returned by a single agency, the name of the agency that used the machine and number of staff/responders fit tested during the time the machine was checked out with said agency. Prepared Tracking/Training forms will be submitted to the Department as attachments to the progress reports identified under the reporting requirements of this Notice of Grant Award.




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Fax 701-241-1366  
FargoCassPublicHealth.com

**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JUNE 21, 2019**

**RE: NOTICE OF GRANT AWARD FROM NORTH DAKOTA  
DEPARTMENT OF HEALTH FOR STATE AID FOR \$1,048,523  
GRANT G19.218**

The following Notice of Grant Award with the North Dakota Department of Health is for State Aid to Local Public Health Units for a total of \$1,048,523

No budget adjustments are required for this contract.

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

**Suggested Motion:** Move to approve the contract for the State Aid to Local Public Health Units

DF/ls  
Enclosures

**NOTICE OF GRANT AWARD**  
 NORTH DAKOTA DEPARTMENT OF HEALTH  
 SFN 53771 (04-2019)

|                           |  |                              |                             |
|---------------------------|--|------------------------------|-----------------------------|
| Grant Number<br>G19.218   | CFDA Name<br>N/A   | CFDA Number<br>N/A           |                             |
| FAIN Number<br>N/A        | Grant Type (Check One)<br><input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D | Grant Start Date<br>7/1/2019 | Grant End Date<br>6/30/2021 |
| Federal Award Date<br>N/A | Federal Awarding Agency<br>N/A   |                              |                             |

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

|  |   |  |  |
|--|---|--|--|
| Title of Project/Program<br>State Aid to Local Public Health Units | North Dakota Department of Health (NDDoH) Project Code<br>1151HL124421-01 |  |  |
| Grantee Name<br>Fargo Cass Public Health                           | Project Director<br>Kelly Nagel   |  |  |
| Address<br>1240 25 <sup>th</sup> Street South                      | Address<br>600 East Boulevard Ave. Dept. 301                              |  |  |
| City/State/ZIP Code<br>Fargo, ND 58103                             | City/State/ZIP Code<br>Bismarck ND, 58505                                 |  |  |
| Contact Name<br>Desi Fleming                                       | Contact Name<br>Kelly Nagel   |  |  |
| Telephone Number<br>701-241-1360                                   | Telephone Number<br>701-328-4596  |  |  |
| Email Address<br>dfleming@fargond.gov                              | Email Address<br>kjnagel@nd.gov   |  |  |

|                           | NDDoH Cost Share   | Grantee Cost Share                              | Total Costs  |
|---------------------------|--|---|--|
| Amount Awarded            | \$1,048,523  | \$0.00  | \$1,048,523  |
| Previous Funds Awarded    | \$0.00   | \$0.00  | \$0.00   |
| Total Funds Awarded       | \$1,048,523  | \$0.00  | \$1,048,523  |
| Indirect Rate (Check One) | <input checked="" type="checkbox"/> Subrecipient waived indirect costs | <input type="checkbox"/> De minimus rate of 10% | <input type="checkbox"/> Negotiated/Approved rate of % |

**Scope of Service**  
 Grantee will provide public health services in accordance with North Dakota Century Code 23-35. Grantee will assure the provision of comprehensive programming which includes: communicable disease, chronic disease, injury prevention, environmental health, maternal child and family health, and access to and linkage with clinical care.

**Reporting Requirements**  
 Grantee will submit quarterly expenditure and progress report within 45 days after the end of each quarter through the NDDoH's Reporting System (PRS). Expenditure reports for the quarter ending June 30 of each year must be received by July 15.

**Special Conditions**  
 House Bill 1004 (2019 Legislative Session) appropriated funding to the NDDoH to provide state aid to local public health units. Quarterly payments will be extended to the Grantee during the grant period. The grant amount may be increased or decreased by amendment to this Notice of Grant Award dependent upon availability of funds provided to the NDDoH.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2019 to June 30, 2021 [Accounting Use Only:  Requirements Received;  Questionnaire received] and (2) applicable State and Federal regulations.

| Evidence of Grantee's Acceptance  |                                  | Evidence of NDDoH Acceptance  |           |
|---|----------------------------------|---|-----------|
| Date<br>6/24/19   | Signature<br><i>Desi Fleming</i> | Date  | Signature |
| Typed Name/Title of Authorized Representative<br>Desi Fleming, Director of Public Health  |                                  | Typed Name/Title of Authorized Representative<br>Kelly Nagel, Director, Systems and Performance |           |
| Date  | Signature                        | Date  | Signature |
| Typed Name/Title of Authorized Representative<br>Timothy J. Mahoney, Mayor, City of Fargo |                                  | Typed Name/Title of Authorized Representative<br>Brenda M. Weisz, Chief Financial Officer       |           |

If attachments are referenced, they must be returned with the signed award.  
 If you did not receive attachments as indicated, contact the Program Director identified above.



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Fax 701-241-1366  
FargoCassPublicHealth.com

**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JUNE 24, 2019**

**RE: NOTICE OF GRANT AWARD FOR PUBLIC HEALTH  
EMERGENCY PREPAREDNESS AND RESPONSE WITH THE  
NORTH DAKOTA DEPARTMENT OF HEALTH FOR THE CITY  
READINESS INITIATIVE NO. G19.127 CFDA NO. 93.069 FOR  
\$75,000**

The attached Notice of Grant Award for \$75,000 with the North Dakota Department of Health is for the City Readiness Initiative.

**2019 Expense**

|                     |                    |          |
|---------------------|--------------------|----------|
| General Supplies    | 101-6055-451-61-40 | \$ 2,000 |
| Furniture & Fixture | 101-6055-451-74-30 | \$ 4,000 |

**2020 Revenue**

|                        |                    |          |
|------------------------|--------------------|----------|
| Emergency Preparedness | 101-0000-331-12-33 | \$ 6,000 |
|------------------------|--------------------|----------|

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

**Suggested Motion:** Move to approve the contract for the Public Health Emergency Preparedness City Readiness Initiative.

DF/ls  
Enclosure







## NOTICE OF GRANT AWARD - RESTRICTED FUNDING

NORTH DAKOTA DEPARTMENT OF HEALTH

SFN 59920 (04-2019)

|  |  |                              |
|--|--|------------------------------|
| Grant Number<br>G19.127  | CFDA Name<br>Public Health Emergency Preparedness  | CFDA Number<br>93.069        |
| FAIN Number<br>NU90TP921920  | Grant Type (Check One)<br><input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D | Grant Start Date<br>7/1/2019 |
| Federal Award Date   | Grant End Date<br>6/30/2020  |                              |
| Federal Awarding Agency<br>Department of Health and Human Services |  |                              |

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

|  |   |
|--|---|
| Title of Project/Program<br>PHEP/City Readiness Initiative (CRI) | North Dakota Department of Health (NDDoH) Project Code<br>6611 HLH3270-11 |
| Grantee Name<br>Fargo/Cass Public Health                         | Project Director<br>Tim Wiedrich  |
| Address<br>1240 – 25 <sup>th</sup> Street South                  | Address<br>1720 Burlington Drive  |
| City/State/ZIP Code<br>Fargo, ND 58103                           | City/State/ZIP Code<br>Bismarck, ND 58504                                 |
| Contact Name<br>Desi Fleming                                     | Contact Name<br>Juli Sickler  |
| Telephone Number<br>701-241-1380                                 | Telephone Number<br>701-328-2270  |
| Email Address<br>Dfleming@fargond.gov                            | Email Address<br>jsickler@nd.gov  |

|                              | NDDoH Cost Share  | Grantee Cost Share                              | Total Costs  |
|------------------------------|---|---|--|
| Amount Awarded               | \$75,000.00   | \$0.00  | \$75,000.00  |
| Previous Funds Awarded       | \$0.00  | \$0.00  | \$0.00   |
| Total Funds Awarded          | \$75,000.00   | \$0.00  | \$75,000.00  |
| Indirect Rate<br>(Check One) | <input type="checkbox"/> Subrecipient waived indirect costs | <input type="checkbox"/> De minimus rate of 10% | <input type="checkbox"/> Negotiated/Approved rate of % |

Scope of Service  
Grantee will complete the activities identified in Attachment A.

Reporting Requirements  
Expenditure reports must be submitted monthly as required by the North Dakota Department of Health (NDDoH). Final expense report for the period ending June 30, 2020 must be received by July 15, 2020. A mid-year progress report, as prescribed by the NDDoH, must be submitted by January 10, 2020 for the period of July 1, 2019 through December 31, 2019. A year-end progress report, as prescribed by the NDDoH, must be submitted by August 31, 2020 for the period of January 1, 2020 through June 30, 2020. Payments will be processed upon Department approval of expenditure reports and progress reports.

Special Conditions  
Funding for this award is restricted until such time as the Federal Award is officially received and processed by the Department. During this restriction, Grantee expenditures will be limited to salaries and fringe, routine in-state travel, standard utilities and rent. Financial obligation of the Department is contingent upon funds being made available from the Centers for Disease Control and Prevention. The Department will send notification to the Grantee when the restriction has been lifted. This notification serves as official documentation and should be filed with the Notice of Grant Award for documentation. This notice of grant award is subject to the terms and conditions incorporated either directly or by reference to the Centers for Disease Control and Prevention Funding Opportunity Announcement number CDC-RFA-TP19-1901.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2019 to June 30, 2021 [Accounting Use Only:  Requirements Received;  Questionnaire received] and (2) applicable State and Federal regulations.

| Evidence of Grantee's Acceptance  |                                  | Evidence of NDDoH Acceptance  |           |
|---|----------------------------------|---|-----------|
| Date<br>6/24/19   | Signature<br><i>Desi Fleming</i> | Date  | Signature |
| Typed Name/Title of Authorized Representative<br>Desi Fleming, Director of Public Health  |                                  | Typed Name/Title of Authorized Representative   |           |
| Date  | Signature                        | Date  | Signature |
| Typed Name/Title of Authorized Representative<br>Timothy J. Mahoney, Mayor, City of Fargo |                                  | Typed Name/Title of Authorized Representative<br>Brenda M. Weisz, Chief Financial Officer |           |

If attachments are referenced, they must be returned with the signed award.  
If you did not receive attachments as indicated, contact the Program Director identified above.




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Fargo, ND 58103-2367  
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Fax 701-241-1366  
FargoCassPublicHealth.com

**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JUNE 21, 2019**

**RE: NOTICE OF GRANT AWARD FROM NORTH DAKOTA  
DEPARTMENT OF HEALTH FOR REGIONAL  
ENVIRONMENTAL HEALTH SERVICES-STATE AID.  
CONTRACT NO. G19.240 (\$80,000)**

The following notice of grant award with the North Dakota Department of Health is for Environmental Health Practitioners at Fargo Cass Public Health to provide services to Steele, Traill, Ransom, Richland and Sargent counties.

Please feel free to call me if you have any questions. No budget adjustment is required for this contract.

**Suggested Motion:** Move to approve the contract with the North Dakota Department of Health for Regional Environmental Health Services.

DF/lis  
Enclosure





**NOTICE OF GRANT AWARD**  
 NORTH DAKOTA DEPARTMENT OF HEALTH  
 SFN 53771 (04-2019)

|                           |  |                              |
|---------------------------|--|------------------------------|
| Grant Number<br>G19.240   | CFDA Name<br>N/A   | CFDA Number<br>N/A           |
| FAIN Number<br>N/A        | Grant Type (Check One)<br><input checked="" type="checkbox"/> Program <input type="checkbox"/> R&D | Grant Start Date<br>7/1/2019 |
| Federal Award Date<br>N/A | Federal Awarding Agency<br>N/A   | Grant End Date<br>6/30/2021  |

This award is not effective and expenditures related to this award should not be incurred until all parties have signed this document.

|   |   |
|---|---|
| Title of Project/Program<br>Regional Environmental Health Services- State Aid | North Dakota Department of Health (NDDoH) Project Code<br>1151HL124421-02 |
| Grantee Name<br>Fargo Cass Public Health                                      | Project Director<br>Kelly Nagel   |
| Address<br>1240 25 <sup>th</sup> Str. S.                                      | Address<br>600 East Blvd. Ave.  |
| City/State/ZIP Code<br>Fargo, ND 58103  | City/State/ZIP Code<br>Bismarck, ND 58505-0200                            |
| Contact Name<br>Desi Fleming  | Contact Name<br>Kelly Nagel   |
| Telephone Number<br>701-241-1360  | Telephone Number<br>701-328-4596  |
| Email Address<br>DFleming@FargoND.gov   | Email Address<br>kjnagel@nd.gov   |

|                           | NDDoH Cost Share   | Grantee Cost Share                              | Total Costs  |
|---------------------------|--|---|--|
| Amount Awarded            | \$80,000   | \$0.00  | \$80,000   |
| Previous Funds Awarded    | \$0.00   | \$0.00  | \$0.00   |
| Total Funds Awarded       | \$80,000   | \$0.00  | \$80,000   |
| Indirect Rate (Check One) | <input checked="" type="checkbox"/> Subrecipient waived indirect costs | <input type="checkbox"/> De minimus rate of 10% | <input type="checkbox"/> Negotiated/Approved rate of % |

**Scope of Service**  
 Environmental Health Practitioner will provide general environmental health services in the underserved areas of the Grantee's service area in addition to the outlying counties of Steele, Traill, Ransom, Richland, and Sargent. General environmental health services include but are not limited to; 1) inspection of properties, sewer systems and swimming pools, 2) work with local authorities to develop and implement needed environmental health policies and ordinances, and 3) provide public information and education.

**Reporting Requirements**  
 Grantee will submit quarterly expenditure and progress report within 45 days after the end of each quarter through the NDDoH's Progress Reporting System (PRS). Progress report will include the type and amount of services provided in the counties outside of the city of Fargo. Expenditure reports for the quarter ending June 30 of each year must be received by July 15.

**Special Conditions**  
 House Bill 1004 (2019 Legislative Session) appropriated funding to the NDDoH to provide state aid to local public health units. Quarterly payments will be extended to the Grantee during the grant period. The grant amount may be increased or decreased by amendment to this Notice of Grant Award dependent upon availability of funds provided to the NDDoH.

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the NDDoH as signed by Grantee for the period of July 1, 2019 to June 30, 2021 [Accounting Use Only:  Requirements Received;  Questionnaire received] and (2) applicable State and Federal regulations.

| Evidence of Grantee's Acceptance  |                                  | Evidence of NDDoH Acceptance  |           |
|---|----------------------------------|---|-----------|
| Date<br>6/24/19   | Signature<br><i>Desi Fleming</i> | Date  | Signature |
| Typed Name/Title of Authorized Representative<br>Desi Fleming, Director of Public Health  |                                  | Typed Name/Title of Authorized Representative<br>Kelly Nagel, Director, Systems and Performance |           |
| Date  | Signature                        | Date  | Signature |
| Typed Name/Title of Authorized Representative<br>Timothy J. Mahoney, Mayor, City of Fargo |                                  | Typed Name/Title of Authorized Representative<br>Brenda M. Weisz, Chief Financial Officer       |           |

If attachments are referenced, they must be returned with the signed award.  
 If you did not receive attachments as indicated, contact the Program Director identified above.




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Fargo, ND 58103-2367  
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Fax 701-241-1366  
**FargoCassPublicHealth.com**

**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JUNE 25, 2019**

**RE: CONTRACT WITH THE NORTH DAKOTA DEPARTMENT OF HEALTH FOR WOMEN'S WAY PROGRAM**  
**CONTRACT # PF19.029 CFDA # 93.898 \$106,630**

The attached contract for \$106,630 with the North Dakota Department of Health is for the Women's Way program. No budget adjustment is needed for this grant agreement.

**Suggested Motion:** Move to approve the North Dakota Department of Health contract for the Women's Way program.

DF/lis  
Enclosure



**PURCHASE OF SERVICE AGREEMENT**

NORTH DAKOTA DEPARTMENT OF HEALTH

SFN 53772 (04-2019)

|                                  |  |                        |
|----------------------------------|--|------------------------|
| Contract Number<br>PF19 029      | CFDA Name<br>Cancer Prevention and Control for States, Territorial and Tribal Organizations                    | CFDA Number<br>93 898  |
| FAIN Number<br>NU58DP006282      | Contract Type (Check One)<br><input checked="" type="checkbox"/> Acquisition <input type="checkbox"/> Research | Start Date<br>7/1/2019 |
| Federal Award Date<br>05/03/2019 | Federal Awarding Agency<br>Department of Health and Human Services   |                        |

This contract is not effective and expenditures related to this contract should not be incurred until all parties have signed this document.

|  |   |
|--|---|
| Title of Project/Program<br><i>Women's Way</i> | North Dakota Department of Health (NDDoH) Project Code<br>4521 HL 3210 01 |
| Contractor Name<br>Fargo Cass Public Health    | Project Director<br>Susan Mormann   |
| Address<br>1240 25th Street South              | Address<br>600 East Boulevard Avenue, Dept. 301                           |
| City/State/ZIP Code<br>Fargo, ND 58103-2367    | City/State/ZIP Code<br>Bismarck, ND 58505-0200                            |
| Contact Name<br>Vanessa Gunning                | Contact Name<br>Susan Mormann   |
| Telephone Number<br>701-476-4084               | Telephone Number<br>701-328-2472  |
| Email Address<br>vgunning@FargoND.gov          | Email Address<br>smormann@nd.gov  |

|                        | NDDoH Cost Share | Contractor Cost Share | Total Costs |
|------------------------|------------------|-----------------------|-------------|
| Amount Awarded         | \$106,630        | \$0                   | \$106,630   |
| Previous Funds Awarded | \$0              | \$0                   | \$0         |
| Total Funds Awarded    | \$106,630        | \$0                   | \$106,630   |

**Scope of Service**  
Contractor will administer and manage *Women's Way* in order to conduct the North Dakota Breast and Cervical Cancer Early Detection Program within its mutually agreed upon service area. Contractor to follow the *Women's Way Local Coordinating Unit (LCU) Policy and Procedure Manual* as provided. Contractor will attend the bi-monthly teleconferences, the bi-annual face-to-face local coordinator's meetings and/or any mandatory training required by the state office. Screening goal is further defined in Attachment A.

**Reporting Requirements**  
Reporting requirements are defined in Attachment A.

**Special Conditions**  
Note: Health care reform and state appropriations may affect the amount of funding available in subsequent periods.

This Purchase of Service Agreement is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum for Purchase of Service Agreements issued by the NDDoH as signed by Contractor for the period of July 1, 2019 to June 30, 2021 [Accounting Use Only:  Requirements Received;  Questionnaire received] and (2) applicable State and Federal regulations.

| Evidence of Contractor's Acceptance   |                                  | Evidence of NDDoH Acceptance  |           |
|---|----------------------------------|---|-----------|
| Date<br>6/26/19   | Signature<br><i>Desi Fleming</i> | Date  | Signature |
| Typed Name/Title of Authorized Representative<br>Desi Fleming, Director of Public Health  |                                  | Typed Name/Title of Authorized Representative<br>Susan M. Mormann, Director, Division of Community and Health Systems |           |
| Date  | Signature                        | Date  | Signature |
| Typed Name/Title of Authorized Representative<br>Timothy J. Mahoney, Mayor, City of Fargo |                                  | Typed Name/Title of Authorized Representative<br>Brenda M. Weisz, Chief Financial Officer                             |           |

If attachments are referenced, they must be returned with the signed award. If you did not receive attachments as indicated, contact the Program Director identified above.





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Fargo, ND 58103-2367  
Phone 701-241-1360  
Fax 701-241-1366  
FargoCassPublicHealth.com

**M E M O R A N D U M**

**TO: BOARD OF CITY COMMISSIONERS**

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

**DATE: JUNE 19, 2019**

**RE: CONTRACT AMENDMENT FOR \$12,000 WITH NORTH DAKOTA DEPARTMENT OF HEALTH FOR WIC PROGRAM  
CONTRACT NO. G17.998A CFDA NO. 10.557**

The attached contract amendment with the North Dakota Department of Health is for the WIC program.

The following budget adjustments need to be made:

**2019 Expense:**

|                      |                    |          |
|----------------------|--------------------|----------|
| Out of State Travel  | 101-6090-451-57-60 | \$ 3,000 |
| Seminar & Conference | 101-6090-451-59-21 | \$ 1,000 |
| Computer Equipment   | 101-6090-451-74-11 | \$ 8,000 |

**2020 Revenue:**

|           |                    |          |
|-----------|--------------------|----------|
| WIC Grant | 101-0000-331-12-29 | \$12,000 |
|-----------|--------------------|----------|

Please call Desi Fleming at 241-1380 if you have any questions.

**Suggested Motion:** Move to approve the contract amendment with North Dakota Department of Health for the WIC program.

DF/lls  
Enclosure





**NOTICE OF GRANT AWARD AMENDMENT**  
**SFN 59919 (1-2016)**

**NORTH DAKOTA DEPT. OF HEALTH (NDDoH)**  
**600 E BOULEVARD AVE, DEPT. 301**  
**BISMARCK, ND 58505-0200**

|                     |   |                    |                   |                 |
|---------------------|---|--------------------|-------------------|-----------------|
| <b>GRANT NUMBER</b> | <b>CFDA NAME</b>  | <b>CFDA NUMBER</b> | <b>START DATE</b> | <b>END DATE</b> |
| G17 998A            | Special Supplemental Nutrition Program for Women, Infants, and Children | 10.557             | 10/1/2018         | 9/30/2019       |

|                           |                                |                    |                                       |
|---------------------------|--------------------------------|--------------------|---------------------------------------|
| <b>FEDERAL AWARD DATE</b> | <b>FEDERAL AWARDING AGENCY</b> | <b>FAIN NUMBER</b> | <b>GRANT TYPE: PROGRAM or R&amp;D</b> |
| 10/1/2018                 | U.S. Department Of Agriculture | 193ND707W1003      | Program                               |

**THIS AWARD IS NOT EFFECTIVE AND EXPENDITURES RELATED TO THIS AWARD SHOULD NOT BE INCURRED UNTIL ALL PARTIES HAVE SIGNED THIS DOCUMENT.**

|                                 |                                   |                         |
|---------------------------------|-----------------------------------|-------------------------|
| <b>TITLE OF PROJECT/PROGRAM</b> | <b>NDDoH PROJECT CODE</b>         | <b>PROJECT DIRECTOR</b> |
| Women, Infant & Children (WIC)  | 4561 HLH3159 01                   | Colleen Pearce          |
| <b>GRANTEE NAME</b>             | <b>ADDRESS</b>                    | <b>CITY/STATE/ZIP</b>   |
| Fargo/Cass Public Health WIC    | 600 East Boulevard Ave, Dept. 301 | Bismarck, ND 58505-0200 |
| <b>ADDRESS</b>                  | <b>CITY/STATE/ZIP</b>             | <b>CONTACT NAME</b>     |
| 1240 25th Street South          | Fargo, ND 58103                   | Colleen Pearce          |
| <b>CONTACT NAME</b>             | <b>TELEPHONE NUMBER</b>           | <b>EMAIL</b>            |
| Kim Vance                       | 701-277-1455                      | kvance@fargo.nd.gov     |
| <b>TELEPHONE NUMBER</b>         | <b>EMAIL</b>                      |                         |
| 701-277-1455                    | kvance@fargo.nd.gov               |                         |

|                        |                         |                           |                    |
|------------------------|-------------------------|---------------------------|--------------------|
| <b>Amount Awarded</b>  | <b>NDDoH Cost Share</b> | <b>Grantee Cost Share</b> | <b>Total Costs</b> |
| Previous Funds Awarded | \$12,000                | \$0                       | \$12,000           |
| Total Funds Awarded    | \$515,000               | \$0                       | \$515,000          |
|                        | \$527,000               | \$0                       | \$527,000          |

**SCOPE OF SERVICE**  
 This amendment provides additional funding of \$2,000 to attend the Mountain Plains Region Breastfeeding Training, \$2,000 to attend the National WIC Association meeting and \$8,000 to purchase four desk top computers with software. All other scope of service requirements of the original agreement remain the same.

**REPORTING REQUIREMENTS**  
 All reporting requirements of the original agreement remain the same.

|                                  |  |   |  |
|----------------------------------|--|---|--|
| <b>INDIRECT RATE (check one)</b> | <input checked="" type="checkbox"/> Subrecipient waived indirect costs | <input type="checkbox"/> De minimis rate of 10% | <input type="checkbox"/> Negotiated/Approved rate of _____ % |
|                                  | None.  |   |  |

**SPECIAL CONDITIONS**

This Notice of Grant Award is subject to the terms and conditions incorporated either directly or by reference in the following: (1) Requirements Addendum and Grantee Assurances for Notice of Grant Awards issued by the North Dakota Department of Health as signed by Grantee for the period of July 1, 2017 to June 30, 2019 [Accounting Use Only Requirements received] and (2) applicable State and Federal regulations.

|   |                     |                                     |                  |
|---|---------------------|-------------------------------------|------------------|
| <b>EVIDENCE OF GRANTEE'S ACCEPTANCE</b> |                     | <b>EVIDENCE OF NDDoH ACCEPTANCE</b> |                  |
| <b>DATE</b>                             | <b>SIGNATURE</b>    | <b>DATE</b>                         | <b>SIGNATURE</b> |
| 6/19/19                                 | <i>Desi Fleming</i> |                                     |                  |

**TYPED NAME/TITLE OF AUTHORIZED REPRESENTATIVE**  
 Desi Fleming, Director of Public Health

**TYPED NAME/TITLE OF AUTHORIZED REPRESENTATIVE**  
 Colleen Pearce, Director, Division of Family Health and Nutrition

**DATE** **SIGNATURE** **DATE** **SIGNATURE**

**TYPED NAME/TITLE OF AUTHORIZED REPRESENTATIVE**  
 Kelly J. Mahoney, Mayor, City of Fargo

**TYPED NAME/TITLE OF AUTHORIZED REPRESENTATIVE**  
 Brenda M. Weisz, CFO

If attachments are referenced, they must be returned with the signed award. If you did not receive attachments as indicated, contact the Program Director identified above.

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To: Board of City Commissioners

From: Jill Minette, Director of Human Resources *JM*

Re: Discovery Benefits – Administrative Services Agreements

Date: June 26, 2019

Please see the attached Administrative Services Agreements with Discovery Benefits for COBRA and reimbursement account administration. The agreement reflects the current terms under which COBRA and the flexible spending accounts are administered. The Assistant City Attorney has reviewed the agreements.

**RECOMMENDED MOTION:** To approve the Administrative Services Agreements with Discovery Benefits.



### ADMINISTRATIVE SERVICES AGREEMENTS

The attached agreements (the "Agreements") are entered into by and between **CITY OF FARGO** ("Employer") and **Discovery Benefits, LLC** ("DBI") as of 01/01/2018 ("Effective Date").

Administrative Service Agreements Attached:

- N/A COBRA
- N/A Direct Billing
- N/A Premium Conversion Plan
- X Reimbursement Account
- N/A Health Savings Account
- N/A Arrears Billing
- N/A Education Assistance Program
- N/A Non-Discrimination Testing Only / Discovery Tests™ Subscription

N/A HIPAA Business Associate Agreement (signed for by the Employer as the Sponsor on behalf of and as a representative of the Employer health plan)

### AUTHORIZATION AND SIGNATURE

Neither party to the Agreements, when dealing with the other party in relation to the Plan, will be obliged to determine the other party's authority to act pursuant to Agreements. Furthermore, the individuals signing below on behalf of DBI and Employer do each hereby represent and warrant that they are duly authorized by all necessary action to execute the Agreements on behalf of their respective principals, and the execution and delivery of the Agreements and the consummation of the transactions herein provided have been duly approved by Employer and DBI and do not violate any Agreements to which Employer or DBI is a party or otherwise bound.

If the Agreements are not signed and returned to DBI prior to the date our services commence, consent to the contract terms and conditions will be presumed and deemed to have been obtained upon submission of Employer data through the DBI portal, the DBI design guide or any other DBI authorized format.

The Agreements are accepted and entered into by the parties as of the Effective Date.

Signed for Employer by

Signed for Discovery Benefits, LLC by  
Lynda Godkin, Esq.

Name

Corporate Secretary

**Fee Schedule**

Effective Date 01/01/2018 or later if services start different months

|   | <u>Fee Amount</u> | <u>Fee Minimum</u> | <u>Frequency</u> | <u>Bill To</u> |
|---|-------------------|--------------------|------------------|----------------|
| <b>FSA - Monthly</b>  | \$4.15            | \$34.00            | Monthly          | Customer       |
| Fees per FSA Participant per month<br>Includes Dependent Care & Benefits Debit Card<br>Spouse, dependent, and replacement Benefits Debit Cards available at no additional fee |                   |                    |                  |                |

Fees are guaranteed until 01/01/2021 ("Rate Expiration Date").

Printing and postage are included for standard material and mailings.

Additional charges/fees will apply for non-standard mailings and/or expedited requests.

Additional fees may apply for non-discrimination testing services.

WebEx meetings are included at no additional fee.

Enrollment meetings (optional) are \$350 per day plus travel expenses.

If Employer/Customer has contracted with a third party whereby the third party pays DBI's fees on Employer's behalf, DBI's fees will be invoiced to that third party and are due within thirty (30) days after the date the invoice is received. If the third party fails to pay DBI, Employer remains responsible to pay DBI's fees. Fee rates may be based on a third-party discount. If DBI's fees are no longer to be paid by the third party on Employer's behalf, guarantees could be voided and the fee schedule revised.





## REIMBURSEMENT ACCOUNT ADMINISTRATIVE SERVICES AGREEMENT

### RECITALS

Employer has adopted an Internal Revenue Code Section 125 (26 USC § 125) Cafeteria Plan (the "125 Plan") for its eligible employees. Included in the 125 Plan is one or more of the following plans or arrangements: a health flexible spending arrangement ("Health FSA"); a dependent care flexible spending arrangement ("Dependent Care FSA") (a health FSA and a Dependent Care FSA are referred to collectively as an "FSA"); and/or a limited purpose health flexible spending arrangement ("Limited Health FSA").

Employer may have also adopted one or more of the following for its eligible employees: a health reimbursement arrangement ("HRA") Internal Revenue Code Section 105 (26 USC § 105); a limited purpose health reimbursement arrangement ("Limited HRA") Internal Revenue Code Section 105 (26 USC § 105); and/or a transportation fringe benefit plan spending account ("TSA" or "Commuter") qualified under Internal Revenue Code Section 132(f) (26 USC § 132(f)).

Individually and collectively, as the context may require, the foregoing shall be referred to as the "Plan."

Employer desires DBI to assist in its administration of the Plan and DBI desires to assist Employer in the administration of the Plan.

DBI and Employer agree that DBI shall assist in the administration of the Plan on the terms and conditions set forth in this Agreement, including, without limitation that:

- Employer has established the Plan for the exclusive benefit of its employees.
- Employer is the administrator of the Plan.
- Employer remains the administrator of the Plan and responsible for the operation and maintenance of the Plan, including the establishment of eligibility and benefits and funding payment of benefits owed to participants under the Plan.
- DBI is an independent contractor in relation to Employer and to the Plan and acts as an agent on behalf of Employer in rendering services for Employer pursuant to this Agreement.
- DBI is to provide the agreed upon services without assuming any liability for the performance of any services beyond those set forth below.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE 1 – DBI ADMINISTRATIVE SERVICES

#### 1.1 Plan Administration Assistance

DBI shall assist Employer in the administration of the Plan as provided in this Agreement. DBI's duties with respect to the Plan are limited to those expressly provided for in this Agreement. The benefit plan or plans covered for services under this Agreement are limited to plans selected by Employer via online or the paper design guide. If a plan is not selected, the plan is not covered for services under this Agreement and DBI shall have no responsibility or duty with respect to such non-selected plan.

#### 1.2 Plan Documents Assistance

(a) Upon request, DBI will assist Employer in the establishment and operation of its Plan by providing, for review by Employer, DBI's standard documents, including a plan document, a summary plan description, and other standard documents relating to the administration of a plan.

(b) Employer is under no obligation to use the standard documents from DBI in establishing and maintaining its plan.

(c) DBI's standard plan document, summary plan description, and the other standard documents are based on the legal and regulatory requirements then in effect and on DBI's internal policies and procedures, which may change from time to time.

(d) It is Employer's responsibility to determine whether DBI's standard documents are legally compliant for Employer's purposes, are appropriately completed, are in compliance with the requirements of its Plan, and are appropriately and timely adopted by Employer.

(e) Employer must provide DBI with an executed copy of its plan document.

(f) When there is a change in applicable domestic law or regulation or when requested by Employer due to Employer changing plan design, DBI will provide Employer with its standard plan amendments.

(g) It is Employer's responsibility to determine whether DBI's standard plan amendments or other revisions are legally compliant for Employer's purposes, are in compliance with the requirements of its Plan, are appropriately completed, and are appropriately and timely adopted by Employer.

(h) Employer must provide DBI with an executed copy of its amended plan document.

(i) For the establishment of HRAs, Limited HRAs, and TSAs, DBI provides a prototype plan with an agreement, that once adopted, becomes Employer's HRA, Limited HRA or TSA plan document.

### 1.3 Recordkeeping

DBI shall assist Employer in the development and maintenance of administrative and recordkeeping systems for the Plan. DBI's recordkeeping services are listed in the Services and Recordkeeping Addendum.

### 1.4 Information for Employer Disclosure and Plan Reporting

DBI shall provide Employer with general information about disclosure and Plan reporting requirements that relate to the Plan and information reasonably available to DBI that is necessary for Employer to prepare the annual Form 5500. DBI shall not be responsible for the accuracy of any information provided by Employer nor shall DBI be responsible for determining the level of compliance required by the Plan. It is the sole responsibility of Employer to assure compliance with all legal disclosure and Plan reporting requirements.

### 1.5 DBI Reporting to Employer

DBI shall provide the following reports to Employer:

- Employer Funding Report (daily or monthly – the frequency of this report is dependent on funding method selected)
- Payment History Report (on demand)
- Enrollment Report (monthly and on demand)
- Account Balance Detail Report (monthly and on demand)
- Payroll Deduction Report (frequency based on payroll frequency for auto-post groups)
- Statement of fees due to DBI (monthly invoice)
- Commuter Voucher Report (TSA only)

1.6 Forms

DBI shall provide Employer forms for use in administering the Plan. The forms are available at [www.discoverybenefits.com](http://www.discoverybenefits.com). All forms and all user guide information will be subject to periodic updates and revision. DBI shall also provide Employer instructions and forms for use in the processing of benefit claims under the Plan.

1.7 Plan Payments

Using funds received from Employer, DBI shall pay the amounts due as a result of the operation of the Plan and in compliance with the participant's current Plan elections.

1.8 Claims Processing

(a) DBI shall process claims received from Employer or from Plan participants on a daily basis during regular business hours (6:00 a.m. to 6:00 p.m. Central Time Zone, Monday through Friday excluding holidays).

(b) DBI shall arrange for the payment of approved reimbursement requests as provided in the Plan.

(c) DBI shall consider any initial claim for benefits made under the Plan provided the claim is submitted in accordance with the Plan, the summary plan description, and any reasonable rules established by DBI and communicated to Employer and participants.

(d) DBI will accept or deny (in whole or in part) an initial claim for benefits after making such investigation as it deems necessary.

(e) To the extent DBI determines that a participant is entitled to the claimed benefits under the Plan, DBI will arrange for the proper payment from the Plan using the funds provided by Employer.

(f) To the extent DBI determines that a participant is not entitled to claimed benefits under the Plan, DBI shall provide to such participant a written notification of its decision as soon as administratively practicable after the claim was received by DBI, but no later than within the time required per Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719 as applicable.

(g) Said notification shall comply with the requirements set out in Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719 as applicable.

(h) DBI shall be responsible for making the decision to accept or deny (in whole or in part) all appeals of denied benefit claims consistent with Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719.

(i) DBI shall be responsible for notifying the participant of its decision regarding an appeal consistent with Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719.

(j) In making decisions regarding claims for benefits and appeals of denied benefit claims, DBI shall have discretionary authority to construe and interpret the terms of the Plan and to determine whether a benefit claim is properly payable under the Plan.

(k) Notwithstanding anything herein to the contrary, Employer shall be responsible for all eligibility claims, eligibility appeals, and eligibility determinations.

(l) To the extent that DBI provides written non-English assistance to a participant during the course of claims processing as required by Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719, Employer shall reimburse DBI for the related fees and expenses, if any.

1.9 Claim Fiduciary

DBI has a fiduciary duty under the Plan only to the extent described in Section 1.8. All remaining fiduciary duties under the Plan are the responsibility of Employer.

1.10 Employer Funds and Custodial Account

Funds received by DBI from Employer for the payment of Plan benefits shall be held in the Custodial Account pursuant to Article 3.

1.11 Unused Amounts and Unclaimed Amounts

Except for those amounts that are subject to any Health FSA carryover elected by the Plan in accordance with IRS Notice 2013-71 (as such guidance may be modified or updated), all amounts that remain unused in an FSA or a TSA after the end of the period specified by the Plan during which a participant can make a claim plus any periods for appeal or claim dispute shall be forfeited by the participant and returned to Employer less any undisputed fees and expenses that are due and owing to DBI under this Agreement. The direct terms of an applicable plan may alter the forfeiture provisions of this Section 1.11 only with respect to a Plan participant.

Any amounts unclaimed by participants, including any unclaimed reimbursement checks (or other methods of payment) that have been issued but remain unendorsed or uncashed and unpaid after the end of the plan year's run-out period elected by the Plan, shall be returned to Employer less any undisputed fees and expenses that are due and owing to DBI under this Agreement. Employer shall be responsible to report unclaimed amounts in accordance with the Plan and applicable state law.

1.12 Retention and Release of Plan Data, Records, and Files

(a) DBI shall retain a copy of all information (as information is defined in Section 2.14, excluding emails or similar electronic communications destroyed in the ordinary course of business pursuant to DBI policy) for eight (8) years from the date created at DBI, including, without limitation, a record of all assets and transactions involving the Custodial Account (defined in Article 3).

(b) Following the termination of this Agreement, DBI shall cooperate with Employer or Employer's subsequent service provider to effect an orderly transition of services provided under this Agreement and, within a reasonable time, will release to Employer a copy of all data, records, and files in DBI's standard format.

(c) Upon termination of this Agreement, DBI is entitled to retain a copy of all information including the data, records, and files released by DBI pursuant to Section 1.12(b) and to use and disclose such information for claims, audits, and legal and contractual compliance purposes to the extent permitted by law.

1.13 Notice of Litigation

DBI shall notify Employer promptly of any summons, complaint or other communication concerning threatened litigation and any inquiry by any governmental agency that is related to the Plan unless such notification would be a violation of applicable law.

1.14 Confidentiality of Plan Information

DBI shall keep confidential all information that it obtains concerning the Plan. Other than in due course of business, such information shall not be disclosed without prior approval of Employer or as otherwise provided in Article 4. Employer may request that DBI share Plan information and other data with another vendor of the Plan or Employer. DBI shall consider all reasonable requests, however, prior to releasing or sharing any Plan information or other data with another vendor, Employer must enter into a confidentiality and data sharing agreement with the vendor and make a copy of such agreement available to DBI upon request.

1.15 Disclaimer

DBI does not insure or underwrite Employer's liability to provide benefits under the Plan. DBI shall not be liable or obligated to use its funds for payment of benefits under the Plan, including, without limitation, where such payment of benefits is sought as damages in an action against Employer, DBI or the Plan. Employer shall promptly reimburse DBI for any benefit payments made using DBI funds.

1.16 Audit

(a) During the term of this Agreement, and at any time within six (6) months following its termination, Employer (or a mutually agreeable third party auditor) may audit DBI to determine whether DBI is fulfilling its obligations under this Agreement with respect to processing claims for benefits. The audit shall be limited to such processing claims for benefits information relating to the calendar year in which the audit begins and/or the immediately preceding calendar year. DBI will provide timely inquiry and feedback regarding the sample size and sampling methodology as it relates to the objective of the audit. The audit must be completed within six (6) months following the date the audit begins. The place, time, type, duration, and frequency of any audit must be reasonable and mutually agreeable. Employer shall pay or cause to be paid any expenses that it incurs in connection with the audit, including DBI's then current internal billing rate for audit related tasks.

(b) Any audit will be subject to these additional requirements:

(i) Employer must provide DBI with a sixty (60) day advance written notice of its intent to audit.

(ii) Employer must utilize individuals to conduct the audit who are qualified by appropriate training and experience for such work; who will perform their review in accordance with published administrative safeguards and procedures against unauthorized use or disclosure (in the audit report or otherwise) of any individually identifiable information (including health care information) contained in the information audited; and who will not make or retain any record of payment identifying information concerning treatment of drug or alcohol abuse, mental/nervous disorders, HIV/AIDS or genetic markers in connection with the audit ("Auditor").

(iii) At least thirty (30) days in advance of the commencement of the audit, Employer must provide DBI with a complete and accurate list of the transactions to be selected for audit, along with the specific service for which each transaction or item is being tested. The sample must be based on a statistically valid random sampling methodology (e.g., systematic random sampling, simple random sampling, or stratified random sampling).

(iv) The Auditor must provide its draft findings to DBI before a final audit report is presented to Employer. The draft findings will be the basis for discussion between the Auditor and DBI to resolve any disagreement and to summarize the audit findings.

(v) The Auditor must provide its final audit report to DBI before delivery to Employer and allow DBI to include with the final audit report a supplementary statement containing facts that DBI considers pertinent to the audit.

(vi) The Auditor must provide DBI with a complete copy of the final audit report that is delivered to Employer.

(vii) The audit will be subject to proprietary and confidentiality protections. Before the audit commences, Employer and any third party auditor shall execute a non-disclosure and confidentiality agreement, the scope of which shall be reasonable and shall be determined by DBI.

1.17 Red Flags Rule

For the purposes of this Section 1.17, "Red Flags Rule" means regulation adopted by various federal agencies, including the Federal Trade Commission, in connection with the detection, prevention, and mitigation of identity theft and located at Federal Register Volume 72, Issue 217 (November 9, 2007), as amended.

For the purposes of this Section 1.17, "Covered Services" means the services provided by DBI with respect to the plans selected by Employer and as described in the Debit Card Services Addendum that allow Plan participants to pay for eligible expenses under the Plan with a debit card or other stored-value card and any other services provided by DBI pursuant to this Agreement that fall under the protections of the Red Flags Rule as determined by DBI in its sole discretion.

To the extent applicable, DBI shall comply with the Red Flags Rule with respect to Covered Services.



As part of its Red Flags Rule compliance, DBI shall adopt, maintain, and use appropriate and commercially reasonable rules, procedures, and safeguards to detect and identify red flags and to prevent and mitigate identity theft as required by the Red Flags Rule. Such rules, procedures, and safeguards are set forth in a written program (the "Red Flags Program"). DBI shall, upon request, make available to Employer a copy of its Red Flags Program.

The parties agree that if a breach of unsecured protected health information (as defined in the business associate agreement between the parties) occurs and a violation of the Red Flags Rule occurs with respect to the same incident, both the Red Flags Rule and the provisions of the business associate agreement between the parties shall apply, except that the notice requirements of the business associate agreement between the parties shall satisfy any notice obligations under the Red Flags Rule and this Section 1.17.

#### 1.18 Information Security Program

DBI represents and warrants that it has implemented and maintains a written and comprehensive information security program, and complies with all applicable domestic law and regulation, including, without limitation, state privacy and data security law and regulation such as the Massachusetts Standards for the Protection of Personal Information of Residents of the Commonwealth (201 CMR 17.00).

#### 1.19 Subcontractors

DBI may subcontract or delegate to a third party ("subcontractor") any portion of DBI services. For those DBI services that are subcontracted or delegated: (a) DBI shall ensure subcontractor compliance with all applicable provisions of this Agreement; and (b) DBI shall require the subcontractor not to use subcontractors located outside the United States. Should DBI use any other person or entity to perform any of DBI services as a subcontractor of DBI, DBI shall remain responsible to Employer for the performance of the DBI services under the terms and conditions of this Agreement. For purposes of clarity, any transit authority associated with a TSA shall not be considered a subcontractor of DBI.

#### 1.20 Overpayment Recovery

If DBI determines that it has paid benefits to an ineligible person or paid more than the appropriate amount, DBI shall, with Employer's full cooperation, undertake a good faith effort to recover such erroneous payment. For purposes of this provision, DBI shall have the sole discretion to determine what constitutes a "good faith effort," which effort may vary from time to time depending upon the circumstances of the overpayment, but may include DBI's attempt to contact the participant twice via letter, phone, email or another means about the recovery of the payment at issue.

#### 1.21 Total Authority

Except as otherwise expressly provided in this Agreement, Employer has total control and discretionary authority over the Plan and the manner in which the Plan is operated. DBI serves as Employer's agent only for the processing of qualifying expense/reimbursement requests as provided under this Agreement.

#### 1.22 External Review

To the extent that the external review requirements set forth in 29 CFR § 2590.715-2719 apply to the Plan, DBI shall serve as a conduit for external review requests. Meaning, DBI will send appropriate information to, and cooperate fully with, the external review organization conducting the review. Any cost, fee or expense related to the review or request for review shall be paid by Employer. If DBI pays any such cost, fee or expense on behalf of Employer, Employer shall reimburse DBI promptly upon request.

#### 1.23 Non-Discriminatory Plans – 125 Plans, FSA and HRA Non-Discrimination Testing

Employer may subscribe to DBI's non-discrimination testing portal per the Discovery Tests<sup>sm</sup> Subscription Addendum.

1.24 Direct Load Payments for TSA

Using Plan funds, and based on instructions received from the participant, DBI shall pay employer-provided transportation benefits through electronic media by transmitting funds to a participant's smartcard or account with the transit authority. Only pre-tax participant contributions are eligible for use with the transit authority smartcard. A transactional processing fee could be incurred.

**ARTICLE 2 – EMPLOYER RESPONSIBILITIES**2.1 Compliance with Laws

**Plan Compliance.** Although DBI serves as Employer's agent for services rendered pursuant to this Agreement, Employer remains responsible for all Plan activities, including compliance with the Patient Protection and Affordable Care Act of 2010 (the "PPACA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Internal Revenue Code (the "Code"), and any other law or regulation, domestic or foreign, as applicable.

**Employer Compliance.** To the extent permitted by law, Employer agrees to hold DBI harmless from and against any and all liability, damages, costs, losses and expenses (including attorney fees) that result from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer (other than DBI) to comply with PPACA, ERISA, HIPAA, the Code, and any other law or regulation, domestic or foreign, as applicable, or the provisions of this Agreement.

**Medicare Secondary Payer.** Employer agrees to hold DBI harmless from and against any and all liability, damages, costs, losses and expenses (including attorney fees) that result from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer (other than DBI) to provide DBI with the required information for proper and timely reporting under the Medicare Secondary Payer ("MSP") for Employer's HRA participants where DBI acts as Responsible Reporting Entity ("RRE") for any HRA offered by Employer.

**Prior Activity or Occurrence.** Employer expressly releases all claims against DBI in connection with any claim or cause of action based on any activity or occurrence prior to the Effective Date that results from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer to comply with PPACA, ERISA, HIPAA, the Code, and any other law or regulation, domestic or foreign, as applicable.

2.2 Plan Documents

Employer is responsible for the final content of all Plan materials and documents. It is Employer's responsibility to ensure that the Plan documents and any amendments to the Plan documents are legally compliant for Employer's purposes, appropriately completed, in compliance with the requirements of the Plan, and appropriately and timely adopted by Employer. Employer shall file with the appropriate governmental agencies all required returns, reports, documents, and other papers relating to the Plan. Employer shall distribute to its employees participating in the Plan all materials and documents as may be necessary or convenient for the operation of the Plan and to satisfy the requirements of applicable law.

2.3 Summary Plan Description

Employer shall distribute to its employees participating in the Plan a copy of the summary plan description and/or the summary of benefits and coverage.

2.4 Plan Amendments

Employer shall provide DBI with a copy of any contemplated amendment to the Plan no less than thirty (30) days prior to the anticipated amendment effective date (or less than thirty (30) days in the unlikely event in which an amendment is required by law within less than thirty (30) days of the effective date of the amendment). Under no circumstances may Employer adopt an amendment that would alter DBI's services or obligations under the Agreement without prior written consent of DBI. DBI has no obligation to provide any Plan amendments to Employer other than described in Section 1.2.

## 2.5 Eligibility and Enrollment

Employer shall provide DBI a record of all employees who are eligible to participate in the Plan and notify DBI of any changes on a monthly basis. Employer shall also provide DBI with the demographic and related information that DBI may need to perform its services under this Agreement. Employer shall be solely responsible for determining which of its employees are eligible to participate in the respective plan and to collect the required information from those employees and to inform DBI of such eligible employees. Employer shall be responsible to collect and to provide to DBI, in an electronic format, all reasonably required information to ensure compliance with the MSP rules and regulations where DBI acts as RRE for an HRA offered by Employer.

## 2.6 Employer Assistance

Employer shall assist in the enrollment of the employees in the Plan, cooperate with DBI regarding the proper settlement of claims, and transmit any inquiries pertaining to the Plan to DBI. Late notification of Plan eligibility or incorrect plan eligibility provided by Employer to DBI may result in erroneous plan benefit payments, for which Employer shall be solely responsible. Employer shall also be responsible for collecting any such erroneous payments from the employee. If there are insufficient Employer funds available to restore the erroneous payments or if the requested reimbursement of funds would otherwise cause the Minimum Account Balance deposit (if applicable) to become insufficient, DBI may suspend all services under this Agreement and request immediate restoration of funds from Employer.

## 2.7 Funds

Employer shall deposit funds in the Custodial Account to be used to pay benefits and expenses under the Plan as agreed to herein and in accordance with the Plan documents. Funds deposited in the Custodial Account shall consist solely of general assets of Employer. Participant contributions, if any, made by employees to the Plan through salary reduction or otherwise, shall be used to reimburse Employer for the funds advanced by Employer to pay benefits under the Plan. Employer has the sole responsibility and liability for the funding of all benefits under the Plan.

## 2.8 Claims Based Funding Method

If Employer selects the claims based funding method to pay claims, Employer gives DBI approval to withdraw applicable amounts from Employer's designated United States bank account to deposit in the Custodial Account from which disbursements can be made on Employer's behalf for payment of qualifying expenses, which are otherwise specified by Employer in its Plan document or as provided for under the Code. Disbursements cannot be made until the amounts are credited to the Custodial Account.

## 2.9 Contribution Based Funding Method

If Employer selects the contribution based funding method to pay claims, Employer establishes a pre-determined initial deposit amount that will adequately fund the reasonable needs of the Plan to be deposited into the Custodial Account (the "Minimum Account Balance") from which disbursements can be made on Employer's behalf for payment of qualifying expenses. If the deposited amount falls below the Minimum Account Balance, Employer will be notified of the deficiency and will be required to provide additional funds until such time the Minimum Account Balance can be restored. DBI may suspend all services under this Agreement until Employer restores the Minimum Account Balance.

## 2.10 Debit Card Payments

All participants in a Health FSA, Dependent Care FSA, TSA or a comprehensive HRA shall automatically receive one or more debit cards or similar electronic payment technology, for which the terms of the Debit Card Services Addendum shall control.

## 2.11 Ownership of Account Assets

All funds from Employer deposited in the Custodial Account remain Employer's general assets. DBI shall be responsible for administering the funds in accordance with the terms of this Agreement. Funds are disbursed from the Custodial Account by DBI or any of its designees only for an allowable Plan expense as determined by Employer or a representative of Employer (including DBI) or as otherwise required by a court of competent jurisdiction.

#### 2.12 Employer, Employee, and Plan Participant Fraud

Employer is solely responsible for making the Plan whole if fraud is committed against the Plan by its employees, Plan participants or anyone (other than DBI). DBI will assist in pursuing or remedying such fraud using its standard procedures.

#### 2.13 Plan Fiduciary

(a) Except as provided in Section 1.9, Employer agrees that DBI is not a named fiduciary, or a plan fiduciary under the Plan as such terms are described under ERISA. DBI is not the plan administrator and shall have no power or authority to waive, alter, breach or modify any terms and conditions of the Plan. DBI shall make payments or distributions from the Custodial Account in accordance with the framework of policies, interpretations, rules, practices, and procedures set forth in the Plan, this Agreement, and as otherwise agreed upon or directed by Employer.

(b) Except as provided in Section 1.9, DBI shall neither have nor shall be deemed to exercise any discretion, control or authority with respect to the disposition of Employer funds. Employer agrees that the use of or offset or recoupment of funds in the Custodial Account to pay undisputed fees or other undisputed amounts due to DBI pursuant to this Agreement constitutes an Employer action that is authorized by Employer under this Agreement and agrees that such actions are not discretionary acts of DBI and do not create a fiduciary status for DBI.

(c) DBI agrees that it will perform services on the Plan's behalf as set forth in this Agreement, including any addenda to this Agreement. However, DBI will not undertake any duties or responsibilities, regardless of whether they are set forth in the Plan, if such actions are in violation of any applicable domestic law or regulation.

#### 2.14 Employer Information and Instructions

(a) DBI shall be fully protected in relying upon representations and communications made by or on behalf of Employer in effecting its obligations under this Agreement.

(b) DBI is entitled to rely on the most current information in its possession when providing services under this Agreement.

(c) DBI shall provide the services in accordance with this Agreement based on information that is provided to DBI by Employer.

(d) For this purpose, the term "information" means all data, records, and other information supplied to DBI, obtained by DBI or produced by DBI (based on data, records or other information supplied to, or obtained by, DBI) in connection with performing the services pursuant to this Agreement, regardless of the form of the information or the manner in which the information is provided to DBI.

(e) In engaging DBI to perform the services under this Agreement, Employer has authorized and instructed DBI to implement DBI's standard administrative forms and procedures.

(f) DBI is not responsible for any acts or omissions it makes in reliance upon: (i) the direction or consent of Employer; or (ii) inaccurate, misleading or incomplete information received by DBI from anyone other than DBI, its agents or subcontractors.

(g) Employer and DBI agree that if Employer instructs DBI with a specific written request (in a format acceptable to DBI) to provide services in a manner other than in accordance with DBI's standard forms and procedures, DBI may (but need not) comply with such an instruction. This would include any Employer instruction to add a vendor link to the participant's online account. To the extent that DBI complies with such an instruction, Employer and not DBI shall be solely responsible for DBI's action so taken, and Employer agrees to hold DBI harmless from and against any and all liability, damages, costs, losses and expenses (including attorney fees) and expressly releases all claims against DBI in connection with any claim or cause of action that results from or in connection with DBI complying with Employer's specific written instruction to provide services in a manner other than in accordance with DBI's standard procedures.

(h) Employer is responsible for the integrity of data in the files. Therefore, complete and accurate information from Employer or a vendor on behalf of Employer is required in order for DBI to perform the services set forth herein.

(i) DBI's system is unable to mask the employee identification number ("Employee ID") field, including in reports and the participant's online account. Therefore, if Employer uses the social security number ("SSN") as the Employee ID and requires that DBI set up its systems to use the SSN in the Employee ID field, Employer agrees to hold DBI harmless from and against any and all liability, damages, costs, losses, and expenses (including attorney fees) and expressly releases all claims against DBI in connection with any claim or cause of action that results from or in connection with the use of the SSN as the Employee ID.

#### 2.15 Employer's Electronic Account

If Employer chooses to access the services provided by DBI via an online account or other electronic means ("Employer's Electronic Account"), Employer is solely responsible for:

- (a) Designating who is authorized to have access to Employer's Electronic Account;
- (b) Safeguarding all of Employer's passwords, usernames, logins or other security features used to access Employer's Electronic Account ("Electronic Account Access");
- (c) Employer's use of Employer's Electronic Account under any usernames, logins or passwords;
- (d) Ensuring that use of Employer's Electronic Account complies fully with the provisions of this Agreement; and
- (e) Any unauthorized access or use of Employer's Electronic Account caused by Employer's actions or inactions, including, without limitation, its failure to safeguard the Employer's Electronic Account or Electronic Account Access.

Employer is solely responsible for the maintenance and routine review of its computing and electronic system usage records (i.e., log files) and the security of its own data, data storage, computing devices, other electronic systems, and network connectivity.

Employer acknowledges and agrees that DBI has no control over and is not liable to Employer, Employer's employees or any other third-party for any consequences, losses or damages resulting from unauthorized access or use of the Employer's Electronic Account as set forth in this Section 2.15.

#### 2.16 Plan Tax Obligations

The Plan and/or Employer on behalf of the Plan is responsible for any state, federal or foreign tax, fee, assessment, surcharge and/or penalty imposed, assessed or levied against or with respect to the Plan and/or DBI relating to the Plan or the services provided by DBI pursuant to this Agreement, including those imposed pursuant to PPACA. This includes the funding, remittance, and determination of the amount due for PPACA required taxes and fees. In the event that DBI is required to pay any such tax, fee, assessment, surcharge and/or penalty on behalf of Employer, DBI shall report the payment to Employer along with documentation of the payment and Employer shall promptly reimburse DBI for the full amount or for Employer's proportionate share of such amount, except as provided in Section 7.10. This reimbursement would be in addition to the fees described in Section 6.1. Employer is at all times responsible for the tax consequences of the establishment and operation of the Plan. Further, the parties agree that DBI does not provide any legal tax or accounting advice to the Plan and/or Employer. DBI is at all times responsible for all the taxes based upon its net income and its property ownership.



### 2.17 Health Plan Identifier

Employer acknowledges and agrees that DBI does not, and shall not, have any responsibility for obtaining one or more health plan identifiers ("HPID") for the Plan from the Enumeration System identified in 45 CFR § 162.508 or for updating the Enumeration System with respect to the HPID.

### 2.18 Acknowledgment

Employer acknowledges and agrees that the services provided by DBI pursuant to this Agreement relate to enrollment and disenrollment in the Plan and that these services to the extent permitted under HIPAA shall be deemed to be performed by DBI on behalf of Employer in its capacity as the sponsor of the Plan.

Employer further acknowledges and agrees that DBI may use or disclose enrollment or disenrollment information that it receives from Employer with respect to a particular participant to provide the participant access to additional services at no cost to Employer.

## **ARTICLE 3 – CUSTODIAL ACCOUNT**

### 3.1 Appointment and Acceptance of Custodian

By signing this Agreement, Employer appoints DBI as custodian of Employer funds for the purposes and upon the terms and conditions set forth in this Agreement, and DBI accepts such appointment and agrees to act as custodian hereunder and to hold any Employer funds received hereunder in accordance with the terms and conditions set forth in this Agreement.

### 3.2 Custodial Account

DBI maintains one or more depository accounts ("Custodial Account") at Bell Bank ("Bank"), Fargo, North Dakota and holds in such Custodial Account all funds initially received from Employer plus any additional funds that may be received from Employer for Custodial Account from time to time. For administrative convenience and to reduce costs, DBI shall hold funds received from Employer together with similar funds from other employers in a single Custodial Account (or one or more Custodial Accounts as determined by DBI). DBI shall maintain records as to the exact amount of funds attributable to each employer so that each employer has a legal right to the specific amount of its funds held in the Custodial Account (less any applicable fees, costs or expenses as set forth in this Agreement). At all times, the assets comprising each employer's funds in the Custodial Account shall be considered a separate subaccount for purposes of this Agreement. Depending upon the context, the term "Custodial Account" as used herein shall refer to either the separate subaccount for Employer or all of the subaccounts for all employers in the aggregate.

### 3.3 Employer Funds

DBI and Employer intend and agree that all funds received from Employer for deposit in the Custodial Account shall be comprised of and shall remain Employer's general assets. In no event will funds received from Employer and deposited in the Custodial Account constitute or include participant or employee contributions to employee benefit plans, whether made by salary reduction or otherwise, as those terms have their general meaning under ERISA. Except to the extent that outstanding checks have been written or withdrawals have been made against the Custodial Account balance on behalf of Employer, and subject to Section 6.3, all funds received from Employer and deposited in the Custodial Account may be withdrawn by Employer at any time (less applicable fees, costs or expenses as set forth in this Agreement) and are subject to the claims of Employer's general creditors in the same manner as funds contributed to Employer's ordinary checking accounts. Notwithstanding the foregoing, this Agreement does not alter or eliminate any separate obligation of Employer to fund and maintain the Minimum Account Balance in the Custodial Account as described in Section 2.9.

### 3.4 Disbursements

DBI shall make payments or distributions from the Custodial Account in accordance with the framework of policies, interpretations, rules, practices, and procedures established by DBI for this purpose and as set forth in the Plan or as otherwise agreed upon or directed by Employer. DBI shall neither have nor shall be deemed to have any discretion, control or other authority with respect to the disposition of Employer funds.

### 3.5 Interest Earned

Employer acknowledges and understands that from time to time, DBI may receive earnings and interest on the funds held in the Custodial Account and that any such earnings or interest shall be part of DBI's compensation. Employer acknowledges and understands that fees otherwise charged by DBI for services under this Agreement would be greater if DBI did not retain such earnings and interest on these funds. The period during which interest may be earned begins on the date Employer Funds are deposited into the Custodial Account and continues for as long as Employer Funds remain in the Custodial Account. Funds shall be disbursed on a first-in, first-out basis.

### 3.6 Maintenance of Records

Upon Employer's written request, DBI shall provide Employer with an accounting of all assets and transactions involving the Custodial Account in relation to Employer, including a description of all receipts, payments or disbursements, and other transactions.

## **ARTICLE 4 – CONFIDENTIAL BUSINESS INFORMATION AND INTELLECTUAL PROPERTY**

### 4.1 General Obligations

For purposes of this Article 4, "confidential business information" shall mean any information identified by either party as "confidential" and/or "proprietary", or which, under the circumstances, ought to be treated as confidential or proprietary, including non-public information related to the disclosing party's business, employees, service methods, software, documentation, financial information, prices, and product plans. Neither DBI nor Employer shall disclose confidential business information of the other party. The receiving party shall use reasonable care to protect the confidential business information and ensure it is maintained in confidence, and in no event use less than the same degree of care as it employs to safeguard its own confidential business information of like kind. The foregoing obligation shall not apply to: (a) any information that is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party; (b) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving party; (c) was known to the receiving party at the time of disclosure; (d) was generated independently by the receiving party; or (e) is required to be disclosed by law, subpoena or other process.

DBI may disclose Employer's or the Plan's confidential business information to a governmental agency or other third party to the extent necessary for DBI to perform its obligations under this Agreement or if Employer has given DBI written authorization to do so.

Each party agrees that its obligations contained in this Article 4 apply also to its parent, subsidiary, and affiliated companies, if any, and to similarly bind all successors, employees, agents, and representatives.

### 4.2 Financial Statements and Audit Information

If Employer requests access to certain financial statements and/or service organization control audit reports or other audit information of DBI for the purpose of reviewing the financial, operating, and business condition of DBI, and DBI agrees to provide such information, Employer's acceptance of or access to such confidential information shall constitute its agreement with the following:

- Employer will maintain the information (whether communicated by means of oral, electronic or written disclosures) in confidence and shall not use the same for its own benefit, or for any purpose other than the furtherance of its review, or disclose the same to any third party.
- Employer may only disclose the information to its own officers, employees, and agents on a need-to-know basis for the purposes of its review.
- If Employer is a state agency or otherwise subject to a freedom of information type statute, the information shall be treated as confidential and exempt from disclosure in accordance with the applicable law and the information contains sensitive proprietary business information and data defined as trade secret information that would not otherwise be publicly available and that disclosure of this information to the public, including DBI's competitors, would likely result in substantial harm to DBI's competitive positions and also contains

confidential supervisory information and personal information relating to directors, officers, and major shareholders of DBI, the disclosure of which would constitute an unwarranted invasion of personal privacy.

#### 4.3 Intellectual Property

All materials, including, without limitation, documents, forms (including data collection forms provided by DBI), brochures, and online content ("Materials") furnished by DBI to Employer are licensed, not sold. Employer is granted a personal, non-transferable, and nonexclusive license to use Materials solely for Employer's own internal business use. Employer does not have the right to copy, distribute, reproduce, alter, display or use these Materials or any DBI trademarks for any other purpose other than its own internal business use. Employer shall use commercially reasonable efforts to prevent and protect the content of Materials from unauthorized use. Employer's license to use Materials ends on the termination date of this Agreement.

Upon termination, Employer agrees to destroy Materials or, if requested by DBI, to return them to DBI, except to the extent Employer is required by law to maintain copies of such Materials.

DBI retains exclusive ownership rights to and reserves the right to independently use its experience and know-how, including processes, ideas, concepts, and techniques acquired prior to or developed in the course of performing services under this Agreement.

#### 4.4 Subcontractors or Third Parties

Notwithstanding anything to the contrary, although DBI remains responsible for the confidentiality obligations as set forth in this Article 4, DBI reserves the right to have this information processed, managed, and/or stored with subcontractors or third parties.

### **ARTICLE 5 – TERM AND TERMINATION OF THE AGREEMENT**

5.1 The term of this Agreement shall commence as of the Effective Date and shall continue for a period of twelve (12) months ("Initial Term").

5.2 This Agreement shall automatically renew for another twelve (12) months at the end of the Initial Term and every twelve (12) months thereafter unless terminated pursuant to this Article 5.

5.3 This Agreement may be terminated at any time during the Initial Term or any renewal term by Employer or by DBI without cause and without liability with written notice of the intention to terminate to be effective as of a date certain set forth in the written notice not fewer than sixty (60) days from the date of such notice.

5.4 Except as provided in Section 5.5, all obligations of DBI relating to payment of claims under the Plan will be terminated on the effective date of termination given in the notice, regardless of when the claim for such benefit is incurred.

5.5 This Agreement shall automatically terminate:

(a) If any law is enacted or interpreted to prohibit the continuance of this Agreement, upon the effective date of such law or interpretation;

(b) If any fee for any service provided by DBI to Employer remains unpaid to DBI beyond ten (10) days past the due date, upon notification by DBI to Employer in writing that DBI intends to exercise its option to enforce this provision;

(c) If at any time Employer fails to provide funds for the payment of Plan benefits or fails to restore the Minimum Account Balance, upon written notification by DBI; or

(d) If Employer fails to provide the required information in a timely manner to ensure compliance with the MSP reporting required for HRAs.

5.6 If a party is in default under any provision of this Agreement, the other party may give written notice to the defaulting party of such default. If the defaulting party has not used good faith efforts to cure such breach or default within thirty (30) days after it receives such notice or if good faith efforts to cure have begun within thirty (30) days, but such cure is not completed within sixty (60) days after receipt of the notice, the other party shall have the right by further written notice ("Termination Notice") to terminate this Agreement as of any future date designated in the Termination Notice.

5.7 If this Agreement is terminated under Sections 5.3 or 5.5, DBI will cease the performance of services. If, however, the parties agree in writing that this Agreement shall continue while DBI performs services during a run-out period (and upon prepayment for such run-out period if requested by DBI), DBI will continue to process qualifying expense reimbursements and to provide general Plan administration and services with respect to any claims that are received by DBI on or before the run-off period end date. The terms of this Agreement will remain in force and effect during any such run-out period.

5.8 Upon the completion of the termination of this Agreement, DBI will cease the processing of any claims that are received and Employer shall be immediately responsible for all aspects of its Plan, including the processing of all claims, annual reporting, and general plan administration. DBI shall promptly return to Employer any funds in the Custodial Account that have not been used for Plan benefit payments along with any unpaid or other pending payment requests and/or subsequent claims that are received after the end date of any specified run-out period. Such return shall remain subject to the completion of a final accounting of all account activities, as well as the deduction of any undisputed unpaid fees and other expenses under this Agreement or any other agreement between the parties. As necessary, DBI shall have the immediate right to demand and pursue collection of any unpaid fees, reimbursements or other amounts that are due and owing to DBI as of the date of termination under the terms of this Agreement or any other agreement between the parties.

5.9 Within sixty (60) days after the later of the termination of this Agreement or the specified run-out period, DBI shall prepare and deliver to Employer a complete and final accounting and report of the financial status of the Plan as of the date of termination together with all books and records in DBI's possession and control pertaining to the administration of the Plan, all claims files, and all reports pertaining to the Plan.

## **ARTICLE 6 – COST OF ADMINISTRATION**

### 6.1 Plan Administrative Service Fees

(a) Employer shall pay DBI a fee for its services rendered pursuant to this Agreement in accordance with the fee schedule attached hereto. Fees are invoiced monthly and are due within thirty (30) days of the invoice date. If Employer disputes any portion of the fees invoiced in good faith, Employer shall provide DBI with written notice of any disputed fees together with a complete written explanation of the reasons for the dispute (the "Dispute Notice") within thirty (30) days of the invoice date. The parties shall work together in good faith to reach a mutually agreeable resolution of the dispute identified in the Dispute Notice for a period of ten (10) days following the date of the Dispute Notice. If the parties cannot reach such mutually agreeable resolution, the dispute shall be settled pursuant to the procedures set forth in Section 7.13.

(b) Employer shall have thirty (30) days from the date of the invoice to correct a participant count for credit or refund.

(c) Notwithstanding the foregoing, DBI reserves the right to increase fees at any time based on postal rate or bank fee increases or increased costs due to legislative or regulatory changes, domestic or foreign, actually incurred in performing its services. DBI shall provide Employer with reasonable prior written notice of such increases.

(d) DBI reserves the right to charge fees for the provision of additional services requested by Employer that were neither included in nor contemplated by this Agreement on the Effective Date.

(e) On or after the Rate Expiration Date noted on the fee schedule, DBI reserves the right to amend the fee schedule with sixty (60) days' advance written notice. If Employer is unwilling to accept the changes to the fee schedule, Employer may terminate this Agreement by providing notice to DBI no later than the effective date of the fee schedule amendment.

(f) Fees quoted assume that DBI standard software and systems will be compatible with Employer's software and systems and with any prior service provider's software and systems so that the services can be readily performed without any modifications or alterations of DBI's software and systems. In the unusual event that costs are incurred by DBI to integrate the DBI Services with Employer's software and systems and/or in migrating the data from the prior service provider to DBI's systems, those costs may be charged separately on a time and materials basis or as otherwise provided under a separate agreement between the parties.

#### 6.2 Non-Party Payment on Behalf of Employer and Compliance with Anti-Rebating Law

Employer represents and warrants that if someone other than Employer is making the payment of DBI's fees on behalf of Employer the making of such payment does not violate any applicable anti-rebating law. Employer agrees to hold DBI harmless and not liable and release it from all liability whatsoever from any and all losses and expenses that may result from a breach of this Section 6.2.

#### 6.3 Past Due Fees

Notwithstanding anything in this Agreement or any other agreement between the parties to the contrary, if Employer fails to pay DBI, any amount (except for amounts subject to a good faith dispute) that is due as a result of the services provided by DBI to Employer under this Agreement or any other Agreement between the parties, DBI shall be permitted to deduct (in accordance with Section 2.13(b)) the undisputed amount from any funds held by DBI that were received from Employer. This right of offset shall be in addition to any other remedies that DBI may have under this Agreement or any other agreement between the parties with respect to such non-payment, including, without limitation, any right to terminate this Agreement or right to recoupment, regardless of whether the past due amount is paid in full as a result of the offset or recoupment rights provided herein.

#### 6.4 Participant Count

Employer represents and warrants the accuracy of the information provided by or on behalf of Employer to DBI regarding the participant count.

The participant count for billing purposes is determined on the last business day of each month. Participants losing eligibility after the first business day of the month are included in the count for that month's billing.

Employee means those employees eligible to participate in the Plan. For the purposes of this Section 6.4, "participants" are those individuals who are eligible for account coverage based on the Employer's plan document, including plan run-out periods, plan carryovers in accordance with IRS Notice 2013-71 and Prop. Treas. Reg. §§ 1.125-1(o) and 1.125-5(c) and Plan grace periods in accordance with IRS Notice 2005-42, 2005-1 C.B. 1204, and Prop. Treas. Reg. § 1.125-1(e).

### **ARTICLE 7 – GENERAL**

#### 7.1 Assignment

This Agreement may not be assigned by either party without the prior written consent of the other unless in connection with a merger, acquisition or sale of all or substantially all of the party's assets and provided that the surviving entity has agreed to be bound by this Agreement and has notified the other party in writing within thirty (30) days of the assignment. The parties shall not unreasonably withhold consent.

#### 7.2 Force Majeure

Notwithstanding anything herein to the contrary, neither party shall be liable or deemed to be in default under or in breach of this Agreement for failure to perform or delay in the performance of any of their respective obligations under this Agreement to the extent that such failure or delay results from any act of God, military operation, terrorist attack, widespread and prolonged loss of use of the Internet, national emergency, government restrictions, or disruption of the financial markets. The affected party shall use all commercially reasonable efforts to remedy any inability to perform under this Agreement.



### 7.3 Governing Law

This Agreement shall be governed and interpreted by the laws of the State of North Dakota to the extent such laws are not inconsistent with or preempted by ERISA, the Code or any other applicable federal law. In the event of any conflict of laws, the laws of the State of North Dakota shall prevail. The parties agree that any claim or action arising from this Agreement can only be brought in the United States District Court for the District of North Dakota, and both parties consent to such jurisdiction and venue.

### 7.4 Number

Where the context of this Agreement requires, the singular shall include the plural and vice versa.

### 7.5 Relationship of the Parties

The parties agree that in performing their responsibilities under this Agreement, they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partner or joint venture or any association for profit between Employer and DBI.

### 7.6 Severability

If any provision of this Agreement is found to be unenforceable or invalid, such determination shall not affect any other provision, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein, and the parties will negotiate a mutually acceptable replacement provision consistent with the parties' original intent.

### 7.7 Successor

In the event of DBI's resignation or inability to serve, Employer may appoint a successor. In such situations, the replacement of DBI shall be considered a termination of this Agreement and the termination provisions of Article 5 shall remain effective and controlling.

### 7.8 Survival

The provisions of Section 2.1, 2.14, Article 4, 5.6, 5.7, 5.8, 6.2, and Article 7 shall survive the termination of this Agreement.

### 7.9 Waiver

If either party fails to enforce any right or remedy under this Agreement, that failure is not a waiver of the right or remedy for any other breach or failure by the other party.

### 7.10 Indemnification

(a) Subject to the limitations in Section 7.11, DBI will be liable to and will defend, indemnify, and hold harmless Employer and its respective officers, directors, employees, agents, representatives, successors, and permitted assigns from and against any and all liability, damages, costs, losses, and expenses (including attorney fees), disbursements, and court costs reasonably incurred by Employer in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party to the extent solely and directly caused by DBI's willful misconduct, criminal conduct, material breach of this Agreement or violation of HIPAA privacy or security rules related to or arising out of the services performed by DBI under this Agreement.

(b) To the extent permitted by law and except as provided in (a) above, and in addition to the provisions in Sections 2.1, 2.14, and 6.2, Employer will be liable to and will defend, indemnify and hold harmless DBI and its respective officers, directors, employees, agents, representatives, successors, and permitted assigns from and against any and all liability, damages, costs, losses, and expenses (including attorney fees), disbursements, and court costs reasonably incurred by DBI in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party to the extent solely and directly caused by Employer's willful misconduct, criminal conduct, material breach of this Agreement or violation of HIPAA privacy or security rules related to or arising out of the services performed by DBI under this Agreement.

If Employer is a state agency or otherwise subject to a public entity/political subunit non-indemnification type statute and therefore unable to indemnify under this subsection, DBI shall not be responsible for any injury or damage that occurs as a result of any negligent act or omission committed by Employer, including its agents, employees or assigns.

(c) The party seeking indemnification must notify in writing the indemnifying party within thirty (30) days of any knowledge of any actual action, suit or proceeding (and within a reasonable period of time with respect to any threatened action, suit or proceeding) to which it claims such indemnification applies. Failure to so notify the indemnifying party shall not be deemed a waiver of the right to seek indemnification except to the extent the actions of the indemnifying party have been prejudiced by the failure of the other party to provide notice within the required time period.

(d) In addition to the foregoing, in the event of a legal, administrative or other action arising out of the administration, processing or determination of a claim for Plan benefits, which is filed or asserted against DBI ("Claim Litigation"), DBI may, at its election, select and retain its own counsel to protect its interests. DBI and Employer shall cooperate fully with each other in the defense of Claim Litigation. DBI shall consult with Employer before settling Claim Litigation. DBI shall be responsible for payment of all legal fees and expenses incurred by it in defense of Claim Litigation unless the Claim Litigation is attributable to Employer's actions or inactions. Nothing in this subsection (d) shall prevent DBI and/or Employer from pursuing any rights that such party has under this Section 7.10.

#### 7.11 Limitations of Liability

In no event shall either party be liable to the other for consequential, special, exemplary, punitive, indirect or incidental damages, including, but not limited to, any damages resulting from loss of use or loss of profits arising out of or in connection with this Agreement, whether in an action based on contract, tort (including negligence) or any other legal theory whether existing as of the Effective Date or subsequently developed, even if the party has been advised of the possibility of such damages. In the event the foregoing is found to be invalid, in no event will DBI's liability for such damages exceed the fees paid by Employer for the services in the twelve-month period in which the cause of action occurred. In addition, notwithstanding any other provision in this Agreement to the contrary, the maximum total liability of DBI to Employer shall be limited to direct money damages in an amount not to exceed the dollar amount that is available to cover such liability under the insurance policy or policies provided for in Section 7.12. This is Employer's sole and exclusive remedy.

No action under this Agreement may be brought more than two (2) years after the cause of action has accrued. For the purposes of the time limitation: (a) a cause of action shall be deemed to accrue when the claimant sustains injury and becomes aware or reasonably should have become aware, of the circumstances giving rise to the claim; or (b) if a party fraudulently conceals the existence of a claim, the running of the prescribed time shall be tolled during such concealment.

DBI and Employer expressly agree that the limitations of liability in this Section 7.11 represent an agreed allocation of the risks of this Agreement between the parties. This allocation is reflected in the pricing offered by DBI to Employer and is an essential element of the basis of the bargain between the parties.

#### 7.12 Insurance

During the term of this Agreement, DBI shall maintain general liability insurance and professional/cyber liability insurance with policy limits of not less than \$5,000,000 per occurrence and in the aggregate for the purpose of providing coverage for claims arising out of the performance of its services under this Agreement. Upon request, DBI shall provide Employer with a certificate of insurance reflecting the general liability insurance coverage.

DBI shall maintain a fidelity bond (or an insurance policy similar to a fidelity bond) for DBI and any of its employees who may collect, disburse or otherwise handle or have possession of any funds provided by Employer or who may have the authority to order disbursements or payments on behalf of the Plan.

7.13    Mediation and Arbitration of Disputes

INTENTIONALLY OMITTED.

7.14    Waiver of Jury Trial

INTENTIONALLY OMITTED.

7.15    Notice

Any notice required or permitted to be given under this Agreement shall be deemed delivered to the address set forth in this Agreement or such other physical or electronic address as specified by the party: (a) when received if delivered by hand; (b) the next business day if placed with a reputable express carrier for delivery during the morning of the following business day; (c) three (3) days after deposit in the U.S. mail for delivery, postage prepaid; or when received if delivered electronically. DBI: 4321 20<sup>th</sup> Avenue South, Fargo, ND 58103, Attention: Chief Compliance Officer.

7.16    Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings regarding the subject matter hereof, whether written or verbal. Any amendment to this Agreement must be in writing and consented to by authorized representatives of both parties. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, permitted assigns, and successors in interest. Nothing express or implied in this Agreement is intended to confer, and nothing herein shall confer upon any person other than the parties hereto, any rights, remedies, obligations or liabilities whatsoever.

7.17    Counterparts

Any number of counterparts of this Agreement may be signed, delivered, and transmitted electronically, each of which shall be considered an original and all of which, together, shall constitute one and the same instrument.

**SERVICES AND RECORDKEEPING ADDENDUM**

| <b>Services and Recordkeeping</b>  |  |                          |
|--|--|--------------------------|
| Adjudicate FSA, HRA and Parking reimbursement requests   |  | Included                 |
| Administration for 2 ½ month grace period extension, if applicable   |  | Included                 |
| Automatic email to participant when claims received and reimbursement is made  |  | Included                 |
| Claims Based or Deduction/Contribution Based   |  | Included                 |
| Daily processing of reimbursement requests   |  | Included                 |
| Debit card   |  | Included                 |
| Employee group meetings  |  | Additional fee           |
| IIAS compliant debit card  |  | Included                 |
| Issue direct deposit to participant savings or checking accounts   |  | Included                 |
| Issue reimbursement checks to participants   |  | Included                 |
| Maintain and update employee FSA/HRA/TSA records   |  | Included                 |
| Online enrollment presentation (Health FSA and Dependent Care FSA Only)  |  | Included                 |
| Plan design and set up   |  | Included                 |
| Postage for standard mailings  |  | Included                 |
| Process claims during plan year run-out period   |  | Included                 |
| Reconcile records to employer's payroll, if applicable   |  | Included                 |
| Retain records for 8 years from the date the record is created at DBI  |  | Included                 |
| Web enrollment   |  | Included                 |
| <b>Reporting and Communication – Employer</b>  |  |                          |
| Consult on interpretation of applicable United States law  |  | Included                 |
| Daily, weekly, and/or monthly reporting available on status of account balances  |  | Included                 |
| Employer Administrative Guide  |  | Included                 |
| LEAP® by Discovery Benefits  |  | Included                 |
| <b>Reporting and Communication – Participant</b>   |  |                          |
| Account balance statement sent 60 days prior to end of plan year (FSA Only)  |  | Included                 |
| Communication concerning ineligible claims   |  | Included                 |
| Employee Administrative Guide  |  | Included                 |
| Enrollment Materials   |  | Included                 |
| Online access to account information 24/7  |  | Included                 |
| Quarterly emailed statements to participants   |  | Included                 |
| Statement included with each reimbursement check   |  | Included                 |
| <p style="text-align: center;">Toll-free customer service line    Central Time Zone    Monday through Friday</p> <p style="text-align: center;">Clients                      7:00 a.m. to 7:00 p.m.<br/>Participants                6:00 a.m. to 9:00 p.m.</p> <p>In compliance with United States federal and state law, DBI may monitor and/or record calls that are made to and from the customer service line for quality assurance and training purposes and/or to ensure that DBI's services fully comply with the terms of the Agreement.</p> |  | Included                 |
| <b>Compliance</b>  |  |                          |
| Generic sample plan document (Section 125, FSA and HRA only)   |  | Included                 |
| Generic sample plan document and summary plan description updates  |  | Included                 |
| Generic sample summary plan description  |  | Included                 |
| Information for annual 5500 Filing (Health FSA and HRA)  |  | Included                 |
| Discovery Tests™ non-discrimination testing (cafeteria plan, FSA, HRA, self-insured medical plan)  |  | Additional fee may apply |

**DEBIT CARD SERVICES ADDENDUM**

To the extent that debit cards are used for the reimbursement accounts, the following applies with respect to the debit card services:

1        Definitions for the purposes of this Addendum:

- 1.1        "Card Transaction" means the presentation of the debit card for payment of Qualified Services.
- 1.2        For a Health FSA and/or HRA account, "Qualified Services" means any and all related goods and services within the meaning of the term "medical care" or "medical expense" as defined in Internal Revenue Code Section 213 (26 USC § 213) and the rulings and Treasury regulations thereunder to the extent that such goods and services are allowable for the Account in question.
- 1.3        For a TSA account, "Qualified Services" means parking, transit passes, and commuter highway vehicle, within the meaning of Internal Revenue Code Section 132(f) (26 USC § 132(f)) as it relates to qualified transportation plans.
- 1.4        "Account" means the FSA, TSA and/or HRA, as the context requires and as elected by Employer as part of the Agreement.
- 1.5        "Employee" means those employees eligible to participate in the Plan.
- 1.6        Plan participants or "Participant" means Employees who are entitled to account coverage based on the Employer's plan document.

2        General Provisions of Debit Card Services

- 2.1        DBI is responsible to provide debit card services to Participants, including:
- Updating Participant records;
  - Maintaining accurate account balances and deposit information;
  - Activating and deactivating the debit cards;
  - Canceling the debit cards;
  - Responding to Participant inquiries; and
  - Providing appropriate notices of actions taken.
- 2.2        DBI agrees to reasonably ensure compliance with proper use of the debit card and take whatever action is necessary to investigate and resolve errors in Card Transactions that are asserted by Participants within five (5) business days of notice of an assertion.
- 2.3        DBI agrees to cancel access to a Participant's account when a debit card is reported as lost or stolen.
- 2.4        DBI agrees to deactivate a Participant's debit card upon notice from Employer of ineligibility or termination. If Employer fails to provide notice, Employer will be responsible for any ensuing Card Transactions.
- 2.5        DBI will make available to Employer, for distribution to the Participants, information as to the proper use of the debit card.
- 2.6        Employer acknowledges that it must, in accordance with applicable law, facilitate an after-tax payroll deduction in those instances where the debit card was used to pay for an ineligible expense and the participant failed to reimburse the Plan or the ineligible expense could not be offset with an eligible expense.
- 2.7        Employer agrees to notify DBI immediately upon suspicion or confirmation of inappropriate or fraudulent debit card use.



2.8 The liability for payment of claims falls on Employer or the Participant. Additional Card Transaction costs, if any, are paid by Employer or Participant.

2.9 DBI standard administrative procedures may be different for Card Transactions with respect to a health FSA, TSA, and HRA and with respect to a group or groups of Card Transactions.

### 3 Settlement Provisions of Debit Card Services

3.1 Employer has, in conjunction with this Agreement, executed and delivered to DBI an Authorization Agreement for Automated Clearing House (ACH) Direct Payments, which authorizes the issuer of the debit cards ("Issuer") to debit the account of the depository financial institution designated by Employer in said Agreement ("Account") as more fully set forth therein.

3.2 Each business day, Issuer is authorized to debit Employer's Account in the amount required to settle all Card Transactions ("Daily Settlement Amount") and the collected and available funds in Employer's Account must be greater than or equal to the Daily Settlement Amount for the previous business day.

3.3 Employer shall reimburse/pay Issuer for all Card Transactions irrespective of whether any authorization for a Card Transaction was made in accordance with the terms of the Plan.

3.4 If Employer fails to fund the Account to settle with Issuer for Card Transactions, fails to reimburse/pay Issuer for all Card Transactions, or breaches its obligations to Issuer, Issuer may, at its option, suspend or terminate all debit cards or change the method by which Employer may settle with Issuer for Card Transactions.

3.5 Employer acknowledges that Issuer is not a party to the Agreement and Issuer has no obligation or responsibility to process and or adjudicate benefit claims. Issuer's function is to issue debit cards and to make settlements arising from Card Transactions based solely on the information provided to it by the debit card processor.

### 4 Miscellaneous Provisions of Debit Card Services

4.1 Card Transactions and direct deposit payments will be settled directly to the Account at the depository financial institution designated by Employer and on record with DBI.

4.2 Changes to Account information must be made via the submission to DBI of a new Authorization Agreement for Automated Clearing House (ACH) Direct Payments.

4.3 Said authorization remains in full force and effect until DBI and Issuer receive written notification to revoke it in such time and manner as to afford DBI, Issuer, and the depository financial institution designated by Employer a reasonable opportunity to act on it.

4.4 Employer acknowledges that the Issuer shall be deemed to be a third party beneficiary with respect to Sections 3 and 4 of this Addendum with full rights to rely upon and enforce the provisions thereof.

4.5 Employer understands and acknowledges that the origination of ACH transactions to the account must comply with the provisions of United States law.

4.6 Unless otherwise stated, all provisions of the Agreement apply to the debit card services.

## **DISCOVERY TESTS™ SUBSCRIPTION ADDENDUM**

Discovery Tests™ is DBI's non-discrimination testing portal available on LEAP®.

To the extent Employer desires to access to Discovery Tests™ for testing one or more of its Plans, the following additional provisions shall apply with respect to non-discrimination testing.

### 1 DBI Non-Discrimination Testing

#### 1.1 Plan Testing

The benefit plan or plans covered for services are limited to Premium Only Plan (POP), Premium Only Plan and Flexible Spending Account (POPFSA), Health Reimbursement Arrangement (HRA), and/or Self-Insured Medical Plan (SIMP), for which DBI provides access to Discovery Tests™ (individually and collectively, as the context may require, all of the foregoing shall be referred to as the "Plan").

#### 1.2 Test Templates

DBI provides Employer non-exclusive, non-transferable, non-assignable right to access and use of Discovery Tests™.

#### 1.3 Non-Discrimination Testing Report

DBI provides a final testing report with test results and recommendations for correcting failed tests. The report is made available through Discovery Tests™, which is a tool designed to help Employer evaluate Employer's compliance with applicable domestic law and regulation.

#### 1.4 Template Information Retention

DBI deletes the data inputted or uploaded into Discovery Tests™ and the resulting completed templates ten (10) calendar days after submission by Employer.

#### 1.5 Report Retention

DBI retains the testing report for eight (8) years from the date the report is created under this Addendum.

#### 1.6 Disclaimers

All templates are subject to periodic updates and revision.

DBI does not insure or underwrite Employer's liability to provide benefits under the Plan or provide services other than those stated in this Addendum.

DBI is not liable nor will DBI use its own funds for payment of benefits under the Plan, including, without limitation, where such payment of benefits is sought as damages in an action against Employer, DBI or the Plan.

### 2 Employer Responsibilities

#### 2.1 System of Records

Employer's HRIS/payroll system is the system of record for non-discrimination testing information. Employer must provide DBI with the information necessary to perform the standard non-discrimination testing services and in the file format required by DBI.

#### 2.2 Compliance

It is the sole responsibility of Employer to assure compliance with all legal reporting and disclosure requirements, including non-discrimination testing rules.

### 2.3 Authorized Users

Employer shall not make Discovery Tests™ available to any person or entity other than its authorized users. Employer shall maintain a written, current list of authorized users and shall provide the list to DBI upon request.

### 2.4 Protection of Discovery Tests™

Employer agrees to take all reasonable steps to protect Discovery Tests™ from unauthorized copying, possession, access or use. Upon Employer becoming aware of any such unauthorized copying, possession, access or use, Employer shall promptly notify DBI and assist DBI in preventing the recurrence thereof, and cooperate with DBI in any litigation or proceedings reasonably necessary to protect the rights of DBI.

### 2.5 Secure Passwords

Employer shall ensure that each authorized user maintains the secure password for its use of the testing portal and keeps its password confidential. Employer shall immediately notify DBI of any compromise of any secured password of any authorized user, and shall cooperate with DBI in any manner deemed reasonably necessary by DBI to protect its rights.

### 2.6 Viruses and Improper Materials

Employer shall not access, store, distribute, upload, or transmit any viruses, or any material during the course of its use of Discovery Tests™ that is unlawful, harmful, threatening, defamatory, libelous, obscene, infringing, harassing or racially or ethnically offensive; promotes or facilitates any unlawful activity; depicts sexually explicit images; discriminates on the basis of nationality, race, gender, color, religious belief or other characteristic protected by applicable law; or causes damage or injury to any person or property.

### 2.7 Employer Data

Employer owns all right, title and interest in and to and is solely responsible for the reliability, integrity, accuracy, quality and lawfulness of data inputted and/or uploaded into Discovery Tests™. DBI has no obligation to back up or archive any data and Employer is solely responsible therefor.

### 2.8 Test Results

Employer acknowledges that any reports, test results, and any and all other information that Employer obtains as a result of using Discovery Tests™ is based solely on the data of Employer and/or its authorized users provided by or on behalf of Employer; DBI is not liable for any inaccuracies or invalid results or reports based on such data; and Employer expressly assumes all risk and liability with respect to its use and interpretation of such reports, results, and other information obtained from Employer's use of Discovery Tests™. Although Discovery Tests™ is a tool designed to help Employer evaluate Employer's compliance with applicable domestic law and regulation, all legal, regulatory and administrative matters related in any way to Employer, its data, authorized users or its Plan, and the compliance of any of the foregoing with applicable domestic law, are the sole responsibility of Employer and DBI has no liability or responsibility therefor. Employer further acknowledges and agrees that DBI does not provide legal or tax advice with respect to these matters and that Employer must obtain its own legal and tax advice pertaining in any way to such matters.

### 2.9 Employer Systems

Employer is solely responsible for the maintenance and routine review of its computing and electronic system usage records (i.e., log files) and the security of its own data, data storage, computing devices, other electronic systems, and network connectivity.

### 2.10 Unauthorized Access

Employer acknowledges and agrees that DBI is not liable to Employer, Employer's employees or any other third-party for any consequences, losses or damages resulting from unauthorized access to or use of its data.

### 3 Confidential Information and Intellectual Property

#### 3.1 Confidentiality of Employer Data

DBI shall maintain appropriate administrative, physical, and technical safeguards for protection of the confidentiality of Employer data.

DBI shall not disclose any Employer data except as compelled by law in accordance with this Section 3 or as expressly permitted in writing by Employer.

DBI agrees that all Employer data shall be stored on computer servers located within the United States and shall not be transferred to any computer servers located outside of the United States, without the prior written consent of Employer.

#### 3.2 Information Security

Each party agrees to use industry standard current firewall and virus-protection software.

#### 3.3 Remedies upon Breach

Each party agrees that the other party may have no adequate remedy at law if there is a breach or threatened breach of this Section 3 and, accordingly, that either party is entitled (in addition to any legal or equitable remedies available to such party) to seek injunctive or other equitable relief to prevent or remedy such breach.

#### 3.4 Ownership

As between the parties, the parties agree that the confidential information of the other party is, and will remain, the property of such other party. The receiving party obtains no right, title, interest, or license in or to any of the confidential information of the disclosing party except for the rights expressly set forth in this Addendum.

#### 3.5 No Return of Data

Employer acknowledges that DBI has no obligation to maintain Employer data relating to this Addendum. Accordingly, DBI does not return any data to Employer or make any such data available for download by Employer after the termination or expiration of the Agreement.

### 4 Warranties and Remedies

#### 4.1 Limited Warranties

DBI warrants that Discovery Tests<sup>sm</sup> will perform materially in accordance with the data submitted and the functionality of Discovery Tests<sup>sm</sup> will not be materially decreased during the Term.

#### 4.2 Exclusions

Notwithstanding the foregoing, DBI does not warrant, and specifically disclaims, that Employer's access to or use of Discovery Tests<sup>sm</sup> and the DBI Technology will be uninterrupted or error-free or that the information obtained by Employer through Discovery Tests<sup>sm</sup> will meet Employer's requirements. Further, DBI is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of Employer data any other data or information over communications networks and facilities, including the Internet, and Employer acknowledges that Discovery Tests<sup>sm</sup> and the resulting information may be subject to limitations, delays and other problems inherent in the use of such communications facilities. Employer further acknowledges that it is solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to DBI's data center and all problems, conditions, delays, delivery failures, and all other loss or damage arising from or relating to Employer's network connections or telecommunications links or that are caused by the Internet.

#### 4.3 Exclusive Remedies

Employer shall promptly notify DBI in writing of any nonconformity to the functionality described herein. DBI is not obligated to correct any such nonconformity if Employer fails to promptly notify DBI in writing, which notice must provide a detailed description of the specific existence and nature of the alleged nonconformity upon Employer's discovery thereof. Provided the nonconformity giving rise to the warranty claim exists, Employer's sole and exclusive remedy in relation to its access to Discovery Tests™ and DBI's entire liability for any such conformity is as follows: DBI shall as promptly as practicable, and in any event within thirty (30) days after DBI's receipt of Employer's written notice if applicable, correct such nonconformity or provide Employer with a plan reasonably acceptable to Employer for correcting the nonconformity at DBI's expense and in a reasonably timely fashion. If neither can be accomplished with reasonable commercial efforts from DBI, DBI will notify Employer, whereupon Employer may cancel the Discovery Tests™ subscription and return any and all materials and related documentation to DBI. If Employer elects not to cancel the subscription as provided in this Section 4.3, Employer waives all rights for the applicable breach of the warranty set forth herein.

#### 4.4 Disclaimer of Warranty

THE LIMITED WARRANTIES SET FORTH HEREIN CONSTITUTE THE ONLY WARRANTIES WITH RESPECT TO THE SERVICES, DISCOVERY TESTS™, AND THE DBI TECHNOLOGY. THE LIMITED WARRANTIES ARE IN LIEU OF, AND DBI SPECIFICALLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, TITLE, USAGE OR TRADE PRACTICE. UPON ANY INTERRUPTION, DELAY OR FAILURE OF ACCESS TO DISCOVERY TESTS™ AND THE DBI TECHNOLOGY, DBI'S SOLE OBLIGATION IS TO USE COMMERCIALY REASONABLE EFFORTS TO CORRECT THE PROBLEM AND/OR RESUME SUCH ACCESS AS SOON AS PRACTICABLE.





**ADMINISTRATIVE SERVICES AGREEMENTS**

The attached agreements (the "Agreements") are entered into by and between **CITY OF FARGO (COBRA)** ("Employer") and **Discovery Benefits, LLC ("DBI")** as of 01/01/2018 ("Effective Date").

Administrative Service Agreements Attached:

- X** COBRA
- N/A** Direct Billing
- N/A** Premium Conversion Plan
- N/A** Reimbursement Account
- N/A** Health Savings Account
- N/A** Arrears Billing
- N/A** Education Assistance Program
- N/A** Non-Discrimination Testing Only / Discovery Tests™ Subscription

**N/A** HIPAA Business Associate Agreement (signed for by the Employer as the Sponsor on behalf of and as a representative of the Employer health plan)

**AUTHORIZATION AND SIGNATURE**

Neither party to the Agreements, when dealing with the other party in relation to the Plan, will be obliged to determine the other party's authority to act pursuant to Agreements. Furthermore, the individuals signing below on behalf of DBI and Employer do each hereby represent and warrant that they are duly authorized by all necessary action to execute the Agreements on behalf of their respective principals, and the execution and delivery of the Agreements and the consummation of the transactions herein provided have been duly approved by Employer and DBI and do not violate any Agreements to which Employer or DBI is a party or otherwise bound.

If the Agreements are not signed and returned to DBI prior to the date our services commence, consent to the contract terms and conditions will be presumed and deemed to have been obtained upon submission of Employer data through the DBI portal, the DBI design guide or any other DBI authorized format.

The Agreements are accepted and entered into by the parties as of the Effective Date.

Signed for Employer by

Signed for Discovery Benefits, LLC by  
Lynda Godkin, Esq.

Corporate Secretary

Name

**Fee Schedule**

Effective Date 01/01/2018 or later if services start different months

|  | <u>Fee Amount</u> | <u>Fee Minimum</u> | <u>Frequency</u> | <u>Bill To</u> |
|--|-------------------|--------------------|------------------|----------------|
| <b>COBRA - Monthly</b>   | \$1.00            | \$0.00             | Monthly          | Customer       |
| Fees per Covered Employee<br>The 2% additional premium for administrative costs is retained by DBI<br>If the 2% additional premium is not chargeable to COBRA Continuants due to state or local law,<br>DBI will include the 2% additional premium on a monthly invoice to the Employer, and the<br>Employer will pay such amount as part of the COBRA administrative fee. |                   |                    |                  |                |

Fees are guaranteed until 01/01/2021 ("Rate Expiration Date").

Printing and postage are included for standard material and mailings.

Additional charges/fees will apply for non-standard mailings and/or expedited requests.

Additional fees may apply for non-discrimination testing services.

WebEx meetings are included at no additional fee.

Enrollment meetings (optional) are \$350 per day plus travel expenses.

If Employer/Customer has contracted with a third party whereby the third party pays DBI's fees on Employer's behalf, DBI's fees will be invoiced to that third party and are due within thirty (30) days after the date the invoice is received. If the third party fails to pay DBI, Employer remains responsible to pay DBI's fees. Fee rates may be based on a third-party discount. If DBI's fees are no longer to be paid by the third party on Employer's behalf, guarantees could be voided and the fee schedule revised.

## COBRA ADMINISTRATIVE SERVICES AGREEMENT

### RECITALS

Employer has established one or more health plans that include medical, dental, vision, employee assistance plan, health flexible spending arrangement, and/or health reimbursement arrangement benefits (the "Plan") for its employees.

Employer desires to retain DBI as an independent contractor to administer certain elements of its obligations under COBRA and DBI desires to assist Employer in the administration of such COBRA obligations. "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the related regulation and interpretations by the Department of Labor and the Internal Revenue Service.

DBI and Employer agree that DBI shall assist in the administration of Employer's COBRA obligations on the terms and conditions set forth in this Agreement, including, without limitation that:

- Employer is the administrator of the Plan.
- DBI is an independent contractor in relation to Employer and to the Plan and may act as an agent and/or designee on behalf of Employer.
- Employer remains responsible for maintaining the Plan, including the establishment of eligibility and paying all benefits owed or established under the Plan to its participants.
- DBI is to provide the agreed upon services without assuming any liability for the performance of any services beyond those set forth below.

Now, therefore, in consideration of the premises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### ARTICLE 1 – DBI ADMINISTRATIVE SERVICES

- 1.1 Except for those obligations that are Employer's responsibility under this Agreement, DBI shall assume responsibility for the proper administration, application, and interpretation of COBRA rules and regulations for the Plan for COBRA administration under DBI's control. DBI services under this Agreement are limited to the benefit plans selected for services by Employer via the DBI portal or design guide. DBI shall have no responsibility or duty with respect to any plan where complete information about the plan is not provided. DBI's responsibilities and duties with respect to the plans are limited to those expressly provided in this Agreement.
- 1.2 DBI shall consult with Employer regarding the interpretation and application of regulations concerning COBRA administration as they apply to the Plan.
- 1.3 If requested by Employer, DBI shall mail its standard initial rights notification letter to all Covered employees and spouses at the initiation of this Agreement. In order for DBI to complete this mailing, Employer must provide the information requested by DBI in a timely manner. "Covered" means participating in any COBRA qualified benefit offered by Employer and selected for services under this Agreement.
- 1.4 Upon timely receipt of the required information from Employer and within the applicable time frame required by COBRA or upon the effective date of coverage, whichever is later, DBI shall send, via Accountable Mail DBI's standard initial rights notification letter (or "initial notice") to newly Covered employees and spouses informing them of their rights under COBRA. If information is not timely received from Employer, DBI shall send the notice described in this Section 1.4 as soon as administratively practicable after receiving the information. Consequently, however, such notice may not be provided within the time frame required by COBRA. If complete information is not provided, such notice also may be incomplete. "Accountable Mail" means mail that provides documented proof that the letter or notice was mailed to the recipient at the recipient's address and meets COBRA regulation requirements, but does not mean that delivery is tracked.
- 1.5 Upon timely receipt of complete information from Employer, DBI shall send via Accountable Mail within the applicable time frame required by COBRA, DBI's standard qualifying event eligibility and election notice to all Covered employees who have a qualifying event. If complete information is not timely received from Employer, DBI shall send the notice described in the preceding sentence as soon as administratively

practicable after receiving the required information, however, such notice may not be provided within the applicable time frame required by COBRA. The terms "qualifying event" and "qualified beneficiary" shall have the meanings given to them under COBRA.

- 1.6 Except to the extent not allowed by state or local law, COBRA continuation coverage premiums will include an additional 2% for administrative costs. In addition to the monthly administrative fee per Covered employee under this Agreement, DBI will retain the 2% additional premium allowed by COBRA for administrative costs charged to qualified beneficiaries electing or participating in COBRA continuation coverage ("COBRA Continuant").
- 1.7 DBI shall mail DBI's portal login notice and standard payment coupons to COBRA Continuant after COBRA continuation coverage is elected and the first COBRA premium payment has been received.
- 1.8 DBI shall provide COBRA Continuant the option to make their COBRA premium payments by check or via automatic recurring ACH (an electronic funds-transfer system run by the National Automated Clearing House Association) at no additional charge.
- 1.9 DBI shall provide COBRA Continuant the option to make their COBRA premium payments online with a credit card or via a single-occurrence ACH request. To the extent permitted by law and the applicable credit card operating rules and regulations, an additional online processing fee charged by the online third party vendor and payable by the third-party beneficiaries will apply to these payment methods. The fee is collected by DBI and remitted to the third-party vendor.
- 1.10 DBI shall deposit COBRA premium payments in a custodial account for the benefit of Employer in the manner described in Article 3.
- 1.11 DBI shall collect, track, process, and remit to Employer the COBRA premium payments paid by COBRA Continuant. A collect, track, process, and remit to carrier option ("Remit to Carrier") is available to employers. In order for DBI to implement Remit to Carrier, employers must complete a COBRA Authorization Agreement for Direct Payment form. A failure to provide the completed form to DBI would result in DBI remitting COBRA premium payments to the employer.
- 1.12 DBI shall coordinate with Employer and its insurers and third party administrators (collectively "Carriers") to answer questions pertaining to COBRA continuation coverage eligibility and COBRA premium payment status.
- 1.13 Using DBI's standard forms and letters, DBI shall communicate with COBRA Continuant concerning change of address, premium rate and benefit changes, COBRA continuation coverage eligibility status, Medicare eligibility, advance-termination notice for the individual conversion, and verification of termination.
- 1.14 DBI shall provide real-time, online access to information related to the status of qualified beneficiaries and COBRA Continuant.
- 1.15 DBI shall provide the information required in the event of an IRS or other third party audit as follows:
- The written compliance procedures that DBI uses in the administration of COBRA.
  - Samples of DBI forms and notices.
  - DBI records that pertain to a qualified beneficiary's actual qualifying event.
  - A description of how DBI administers COBRA coverage.
- 1.16 DBI shall supply Employer with the initial login information so that Employer may access the employer web portal to notify DBI when an employee, spouse or dependent is initially added to coverage under the Plan and when an employee, spouse or dependent has experienced a qualifying event and is eligible for COBRA continuation coverage under the Plan.
- 1.17 DBI shall supply Employer with the file format required by DBI so that Employer may upload employee demographic, benefit, and qualifying event information using the employer web portal.

- 1.18 DBI shall provide a customer service line toll-free number for use during DBI normal business hours to answer questions and address issues concerning COBRA regulation, COBRA compliance, and COBRA premium payments.

Toll-free customer service line      Central Time Zone      Monday through Friday

Clients 7:00 a.m. to 7:00 p.m.

Qualified Beneficiaries 6:00 a.m. to 9:00 p.m.

In compliance with applicable federal and state law, DBI may monitor and/or record calls that are made to and from the customer service line for quality assurance and training purposes and/or to ensure that DBI's services fully comply with the terms of the Agreement.

- 1.19 DBI shall notify a COBRA Continuant if COBRA coverage terminates earlier than the end of the maximum period of coverage applicable to the qualifying event that entitled the individual to COBRA continuation coverage. The notice will be provided as soon as administratively practicable after DBI determines that the COBRA continuation coverage will be terminated early.

- 1.20 DBI shall extend the maximum COBRA continuation coverage period in cases of disability and second qualifying events as allowed under COBRA.

- 1.21 DBI shall provide its standard system generated open enrollment/premium rate change letter during open enrollment. If requested by Employer, DBI will provide qualified beneficiaries with a link to additional plan and benefit description materials provided by Employer through the web portal for qualified beneficiary and COBRA Continuant viewing and printing.

1.22 Plan Records and Data

- (a) DBI shall retain a copy of all information (as information is defined in Section 2.21, excluding emails or similar electronic communications destroyed in the ordinary course of business pursuant to DBI policy) for eight (8) years from the date the record is created at DBI, including, without limitation, a record of all assets and transactions involving the Custodial Account (defined in Article 3) in an electronic format.
- (b) Following the termination of this Agreement, DBI shall cooperate with Employer or Employer's subsequent service provider to effect an orderly transition of services provided under this Agreement and, within a reasonable time, will release to Employer a copy of data, records, and files in DBI's standard format.
- (c) Upon termination of this Agreement, DBI shall be entitled to retain a copy of all information, including any data, records, and files released by DBI pursuant to this Agreement and will be entitled to continue to use and disclose such information for claims, audits, and legal and contractual compliance purposes to the extent permitted by law.

1.23 Information Security Program

DBI represents and warrants that it has implemented and maintains a written and comprehensive information security program, and complies with all applicable domestic law and regulation, including without limitation state privacy and data security law and regulation, such as the Massachusetts Standards for the Protection of Personal Information of Residents of the Commonwealth (201 CMR § 17.00).

**ARTICLE 2 – EMPLOYER RESPONSIBILITIES**

- 2.1 Employer shall provide accurate Covered employee counts to DBI on a monthly basis or as requested by DBI. Employer shall have thirty (30) days from the date of the invoice to correct a Covered employee count for credit or refund. Employer represents and warrants the accuracy of any information Employer provides to DBI regarding Covered employee counts.

- 2.2 Employer shall provide complete demographic and benefit information to DBI for its current COBRA Continuant on or by the date agreed upon during the implementation process.



- 2.3 Employer shall enter or upload an electronic file via the employer web portal containing complete demographic and benefit election information within seven (7) days of employees, their spouses, and/or dependents obtaining coverage under the Plan.
- 2.4 Employer shall notify DBI within seven (7) days of any initial qualifying event or the date coverage is lost due to the qualifying event once Employer is notified with respect to an employee, spouse or dependent.
- 2.5 Employer shall notify DBI within seven (7) days of a second qualifying event should Employer be notified of a second qualifying event that occurs with respect to an employee, spouse or dependent.
- 2.6 Unless directed otherwise by DBI, Employer shall provide notice of a qualifying event by entering the required qualifying event information directly into the employer web portal or by uploading an electronic file via the employer web portal. Employer is solely responsible for determining whether an employee, spouse or dependent has experienced an initial qualifying event under the Plan and the date of the qualifying event.
- 2.7 For Remit to Carrier, Employer shall be solely responsible for its Carriers to send a separate billing statement to DBI that includes only COBRA Continuant.
- 2.8 For Remit to Carrier, Employer shall provide a completed COBRA Authorization Agreement for Direct Payment form to DBI. Failure to provide a completed COBRA Authorization Agreement for Direct Payment form will result in DBI remitting COBRA premium payments to Employer. Employer is at all times responsible to pay to DBI its portion of the premium, where applicable, prior to DBI remitting premiums to the Carrier.
- 2.9 Employer shall be responsible for reconciling Carrier billings with the online reports provided by DBI through the employer web portal. Most Carriers restrict the ability to retroactively terminate COBRA coverage (even in cases of non-payment of premiums by the COBRA Continuant). DBI shall not be liable for paying any loss or damage (including premiums) to Employer with respect to any retroactive termination of COBRA coverage, provided that DBI has performed in accordance with this Agreement. DBI reserves all rights to decline to implement any retroactive changes in premium rates requested by Employer, retroactive beyond thirty (30) days.
- 2.10 Employer shall be responsible for selecting a determination period and establishing and advising DBI of the applicable premium rates to be charged for COBRA continuation coverage. Employer must notify DBI in writing at least forty-five (45) days in advance of the applicable billing date of any changes in premium rates affecting COBRA coverage under the Plan and at least forty-five (45) days in advance of the applicable billing date of any changes in premium rates during an open enrollment period, so that DBI has time to process the changes prior to the effective date.
- 2.11 DBI is aware that carriers may not always provide information about premium rate changes in a timely manner. If Employer is unable to notify DBI in writing at least forty-five (45) days in advance of the applicable billing date of any changes in premium rates, DBI will make commercially reasonable efforts to process the changes prior to the effective date.
- 2.12 Employer shall be solely responsible for differences in premium payments when notification of premium rate changes is not provided to DBI at least forty-five (45) days in advance, causing payments made by COBRA Continuant to be incorrect for the new determination period.
- 2.13 Employer shall advise DBI of any changes in the benefits and options provided by the Plan.
- 2.14 Employer shall be responsible for complying with the Patient Protection and Affordable Care Act of 2010 ("PPACA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Internal Revenue Code (the "Code"), and other applicable law and regulation, other than for the COBRA administrative services responsibilities assumed by DBI under this Agreement.
- 2.15 Employer agrees to hold DBI harmless from and against any and all liability, damages, costs, losses and expenses (including attorney fees) and expressly releases all claims against DBI in connection with any claim or cause of action arising out of any activity or occurrence prior to the Effective Date of this Agreement that

results from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer to comply with the PPACA, COBRA, ERISA, HIPAA, the Code or any other applicable law or regulation.

- 2.16 Employer shall review and be responsible for the payment of all claims under the Plan and ERISA, including, without limitation, claims and appeals for benefits and claims and appeals for eligibility determinations under the Plan. DBI is not responsible to receive or review claims for benefits under the Plan and shall not be liable for the payment or funding of any claims for benefits in connection with the Plan, including, without limitation, where sought as damages in an action against Employer or the Plan or for any activity or occurrences prior to the Effective Date of this Agreement, provided that such failure did not result from the services performed by DBI in accordance with this Agreement.
- 2.17 Employer shall maintain and provide written internal compliance procedures used for notifying DBI of a newly covered employee, spouse or dependent, a qualifying event, a report of terminations for each tax year, or when there are premium rate and benefit changes in the event of an IRS or any third party audit.
- 2.18 Employer shall provide for the release of information necessary for COBRA compliance and administration under this Agreement.
- 2.19 Employer shall provide plan and benefit descriptions (e.g., Summary of Benefits and Coverage (SBC), Summary Plan Description (SPD) and benefit plan booklets, etc.) to qualified beneficiaries during open enrollment. DBI's standard process is to provide a link to these additional materials through the qualified beneficiary web portal for viewing and printing. If requested by Employer, DBI may include these additional materials with its standard open enrollment/rate change letter as long as Employer provides DBI with an electronic PDF image of the additional open enrollment materials. A handling fee of \$1.00 per page (duplex) will apply for these additional materials. DBI will allow for a total of up to 25 duplexed pages, including the standard open enrollment/rate change letter.
- 2.20 Employer acknowledges and agrees that DBI shall:
- (a) Have no duty with respect to the funding of premiums by Employer or qualified beneficiaries who elect COBRA;
  - (b) Not be liable for paying any premiums of a qualified beneficiary to a Carrier or Employer to the extent that DBI did not receive the corresponding payment from the qualified beneficiary, Employer or third party;
  - (c) Not be liable for any failure of Employer to remit to the Carriers of the Plan any funds Employer receives from DBI;
  - (d) Not be liable for any failure of Employer to reconcile its Carrier billings to online reports provided by DBI through Employer web portal;
  - (e) Not be liable for any retroactive premium rate changes requested by Employer;
  - (f) Not be liable for any failure of Employer to modify its Carrier billing and notify Carriers of a COBRA Continuant's termination from COBRA coverage when DBI remits premiums paid by continuants to Employer;
  - (g) Not be responsible for failure of delivery of any notice mailed by DBI using the qualified beneficiary information provided to DBI by Employer; and
  - (h) Not be responsible for any loss or damage suffered by any participant, continuant, Employer or Plan, should DBI fail to give a required notice or a complete notice because DBI did not receive notice of an event for which a notice was required, DBI did not receive complete information or DBI received incorrect information.

2.21 Employer Information and Instructions

- (a) DBI shall be fully protected in relying upon representations and communications made by or on behalf of Employer in effecting its obligations under this Agreement.
- (b) DBI is entitled to rely on the most current information in its possession when providing services under this Agreement.
- (c) DBI shall provide the services in accordance with this Agreement based on information that is provided to DBI by Employer or qualified beneficiary.
- (d) For this purpose, "information" means all data, records and other information supplied to DBI, obtained by DBI or produced by DBI (based on data, records or other information supplied to, or obtained by, DBI) in connection with performing the services pursuant to this Agreement, regardless of the form of the information or the manner in which the information is provided to DBI.
- (e) In engaging DBI to perform the services under this Agreement, Employer has authorized and instructed DBI in this Agreement to implement DBI's standard administrative forms and procedures.
- (f) DBI is not responsible for any acts or omissions it makes in reliance upon: (i) the direction or consent of Employer or a qualified beneficiary; or (ii) inaccurate, misleading or incomplete information.
- (g) Employer and DBI agree that if Employer instructs DBI with a specific written request (in a format acceptable to DBI) to provide services in a manner other than in accordance with DBI's standard forms and procedures, DBI may (but need not) comply with such an instruction. This would include, but is not limited to, any Employer instruction to add a vendor link to the consumer portal. To the extent that DBI complies with such an instruction, Employer and not DBI shall be solely responsible for DBI's action so taken, and Employer agrees to hold DBI harmless from and against any and all liability, damages, costs, losses and expenses (including attorney fees) and expressly releases all claims against DBI in connection with any claim or cause of action that results from or in connection with DBI complying with Employer's specific written instruction to provide services in a manner other than in accordance with DBI's standard procedures.
- (h) Employer is responsible for the integrity of data in the files. Therefore, complete and accurate information from Employer is required in order for DBI to perform the services set forth herein.
- (i) DBI's system is unable to mask the employee identification number ("Employee ID") field, including in reports and the online portal. Therefore, if Employer uses the social security number ("SSN") as the Employee ID and requires that DBI set up its systems to use the SSN in the Employee ID field, Employer agrees to hold DBI harmless from and against any and all liability, damages, costs, losses and expenses (including attorney fees) and expressly releases all claims against DBI in connection with any claim or cause of action that results from or in connection with the use of the SSN as the Employee ID.

2.22 Employer's Electronic Account

If Employer chooses to access the services provided by DBI via an online account or other electronic means ("Employer's Electronic Account"), Employer is solely responsible for:

- (a) Designating who is authorized to have access to Employer's Electronic Account;
- (b) Safeguarding all of Employer's passwords, usernames, logins or other security features used to access Employer's Electronic Account ("Electronic Account Access");
- (c) Employer's use of Employer's Electronic Account under any usernames, logins or passwords;

(d) Ensuring that use of Employer's Electronic Account complies fully with the provisions of this Agreement; and

(e) Any unauthorized access or use of Employer's Electronic Account caused by Employer's actions or inactions, including, without limitation, its failure to safeguard the Employer's Electronic Account or Electronic Account Access.

Employer is solely responsible for the maintenance and routine review of its computing and electronic system usage records (i.e., log files) and the security of its own data, data storage, computing devices, other electronic systems, and network connectivity.

Employer acknowledges and agrees that DBI has no control over and is not liable to Employer, Employer's employees or any other third-party for any consequences, losses or damages resulting from unauthorized access or use of the Employer's Electronic Account as set forth in this Section 2.22.

#### 2.23 Plan Tax Obligations

The Plan and/or Employer on behalf of the Plan is responsible for any state or federal tax, fee, assessment, surcharge and/or penalty imposed, assessed or levied against or with respect to the Plan and/or DBI relating to the Plan or the services provided by DBI pursuant to this Agreement, including those imposed pursuant to PPACA. This includes the funding, remittance, and determination of the amount due for PPACA required taxes and fees. In the event that DBI is required to pay or elects to pay any such tax, fee, assessment, surcharge and/or penalty on behalf of Employer, DBI shall report the payment to Employer along with documentation of the payment and Employer shall promptly reimburse DBI for the full amount or for Employer's proportionate share of such amount, as determined by DBI, except as provided in Section 7.10. This reimbursement would be in addition to the fees described in Section 6.1. Employer is at all times responsible for the tax consequences of the establishment and operation of the Plan. Further, the parties agree that DBI does not provide any legal tax or accounting advice to the Plan and/or Employer. DBI is at all times responsible for all the taxes based upon its net income and its property ownership.

#### 2.24 Health Plan Identifiers

Employer acknowledges and agrees that DBI does not, and shall not, have any responsibility for obtaining one or more health plan identifiers (HPID) for the Plan from the Enumeration System identified in 45 CFR § 162.508 or for updating the Enumeration System with respect to the HPID.

#### 2.25 Acknowledgement

Employer acknowledges and agrees that the services provided by DBI pursuant to this Agreement relate to enrollment and disenrollment in the Plan and that these services to the extent permitted under HIPAA shall be deemed to be performed by DBI on behalf of Employer in its capacity as the sponsor of the Plan.

Employer further acknowledges and agrees that DBI may use or disclose enrollment or disenrollment information that it receives from Employer with respect to a particular Covered employee to provide the Covered employee access to additional services at no cost to Employer.

#### 2.26 Carrier Notifications

DBI's standard practice is to notify the insurance carrier or "carrier" of a qualified beneficiary's enrollment in, changes to or termination from COBRA coverage. If Employer instructs DBI to instead send all such notifications to Employer or to a third party other than the carrier, Employer: (a) is responsible to ensure the carrier is updated in a timely manner; (b) is responsible to provide urgent updates to the carriers in a timely manner as necessary; (c) accepts all responsibility and liability for the carrier notifications; and (d) expressly releases all claims against DBI in connection with the carrier notifications and agrees to hold DBI harmless from and against any and all liability, damages, costs, losses and expenses (including attorney fees) that result from the failure or alleged failure of Employer, its officers and employees, and any other entity (other than DBI) in connection with such carrier notifications.

**ARTICLE 3 – CUSTODIAL ACCOUNT****3.1 Appointment and Acceptance of Custodian**

By signing this Agreement, Employer appoints DBI as custodian of Employer Funds for the purposes and upon the terms and conditions set forth in this Agreement, and DBI accepts such appointment and agrees to act as custodian hereunder and to hold any Employer Funds received hereunder in accordance with the terms and conditions set forth in this Agreement.

**3.2 Custodial Account**

DBI maintains one or more depository accounts (the "Custodial Account") at Bell Bank (the "Bank"), Fargo, North Dakota, and holds in such Custodial Account all COBRA continuation premiums received from COBRA Continuant or on their behalf by third parties, less any portion of the premium payment that constitutes administrative fees payable by the COBRA Continuant. Upon deposit, such premiums shall become "Employer Funds" (less any applicable fees or other costs as set forth in this Agreement). For administrative convenience and to reduce costs, DBI shall hold Employer Funds of Employer together with similar funds from other employers in a single Custodial Account (or one or more Custodial Accounts as determined by DBI). DBI shall maintain records as to the exact amount of funds allocated to each employer. Each employer has a legal right to the specific amount of its funds held in the Custodial Account.

**3.3 Employer Funds**

Employer and DBI intend and agree that all Employer Funds transferred by Employer to the Custodial Account shall be comprised of and shall remain the general assets of Employer. The COBRA continuation premiums received from COBRA Continuant are after-tax contributions relieved from the ERISA trust requirements. Except to the extent that outstanding checks have been written or withdrawals made against the Custodial Account balance on behalf of Employer, and subject to Section 6.3, Employer Funds may be withdrawn by Employer at any time (less any applicable fees or other costs as set forth in this Agreement) and are subject to Employer's general creditors in the same manner as funds contributed to Employer's ordinary checking accounts.

**3.4 Disbursements**

DBI shall forward the COBRA continuation premiums (less the 2% additional premium charged to COBRA Continuant) from the Custodial Account to the applicable Carrier or to Employer or Employer's designee as directed by Employer and in accordance with this Agreement. DBI shall neither have nor shall be deemed to have any discretion, control or authority with respect to the disposition of Employer Funds.

**3.5 Interest Earned**

Employer acknowledges and understands that from time to time, DBI may receive earnings and interest on the funds held in the Custodial Account and that any such earnings or interest shall be part of DBI's compensation. Employer acknowledges and understands that fees otherwise charged by DBI for services under the Agreement would be greater if DBI did not retain such earnings and interest on these funds. The period during which interest may be earned begins on the date Employer Funds are deposited into the Custodial Account and continues for as long as Employer Funds remain in the Custodial Account. Funds shall be disbursed on a first-in, first-out basis.

**3.6 Maintenance of Records**

Upon Employer's written request, DBI shall provide Employer with an accounting of all assets, transfers, and transactions involving the Custodial Account, including a description of all receipts, disbursements, and other transactions.



**ARTICLE 4 – CONFIDENTIAL BUSINESS INFORMATION AND INTELLECTUAL PROPERTY****4.1 General Obligations**

For purposes of this Article 4, "confidential business information" shall mean any information identified by either party as "confidential" and/or "proprietary", or which, under the circumstances, ought to be treated as confidential or proprietary, including non-public information related to the disclosing party's business, employees, service methods, software, documentation, financial information, prices, and product plans. Neither DBI nor Employer shall disclose confidential business information of the other party. The receiving party shall use reasonable care to protect the confidential business information and ensure it is maintained in confidence, and in no event use less than the same degree of care as it employs to safeguard its own confidential business information of like kind. The foregoing obligation shall not apply to: (a) any information that is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party; (b) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving party; (c) was known to the receiving party at the time of disclosure; (d) was generated independently by the receiving party; or (e) is required to be disclosed by law, subpoena or other process.

DBI may disclose Employer's or the Plan's confidential business information to a governmental agency or other third party to the extent necessary for DBI to perform its obligations under this Agreement or if Employer has given DBI written authorization to do so.

Each party agrees that its obligations contained in this Article 4 apply also to its parent, subsidiary, and affiliated companies, if any, and to similarly bind all successors, employees, agents, and representatives.

**4.2 Financial Statements and Audit Information**

If Employer requests access to certain financial statements and/or service organization control audit reports or other audit information of DBI for the purpose of reviewing the financial, operating, and business condition of DBI, and DBI agrees to provide such information, Employer's acceptance of or access to such confidential information shall constitute its agreement with the following:

- Employer will maintain the information (whether communicated by means of oral, electronic or written disclosures) in confidence and shall not use the same for its own benefit, or for any purpose other than the furtherance of its review, or disclose the same to any third party.
- Employer may only disclose the information to its own officers, employees, and agents on a need-to-know basis for the purposes of its review.
- If Employer is a state agency or otherwise subject to a freedom of information type statute, the information shall be treated as confidential and exempt from disclosure in accordance with the applicable law and the information contains sensitive proprietary business information and data defined as trade secret information that would not otherwise be publicly available and that disclosure of this information to the public, including DBI's competitors, would likely result in substantial harm to DBI's competitive positions and also contains confidential supervisory information and personal information relating to directors, officers, and major shareholders of DBI, the disclosure of which would constitute an unwarranted invasion of personal privacy.

**4.3 Intellectual Property**

All materials, including, without limitation, documents, forms (including data collection forms provided by DBI), brochures, and online content ("Materials") furnished by DBI to Employer are licensed, not sold. Employer is granted a personal, non-transferable, and nonexclusive license to use Materials solely for Employer's own internal business use. Employer does not have the right to copy, distribute, reproduce, alter, display or use these Materials or any DBI trademarks for any other purpose other than its own internal business use. Employer shall use commercially reasonable efforts to prevent and protect the content of Materials from unauthorized use. Employer's license to use Materials ends on the termination date of this Agreement.

Upon termination, Employer agrees to destroy Materials or, if requested by DBI, to return them to DBI, except to the extent Employer is required by law to maintain copies of such Materials.

DBI retains exclusive ownership rights to and reserves the right to independently use its experience and know-how, including processes, ideas, concepts, and techniques acquired prior to or developed in the course of performing services under this Agreement.

#### 4.4 Subcontractors or Third Parties

Notwithstanding anything to the contrary, although DBI remains responsible for the confidentiality obligations as set forth in this Article 4, DBI reserves the right to have this information processed, managed, and/or stored with subcontractors or third parties.

### **ARTICLE 5 – TERM AND TERMINATION**

5.1 The term of this Agreement shall commence as of the Effective Date and shall continue for a period of twelve (12) months (the "Initial Term").

5.2 This Agreement shall automatically renew for another twelve (12) months at the end of the Initial Term and every twelve (12) months thereafter, unless terminated pursuant to Section 5.3 or Section 5.4.

5.3 This Agreement may be terminated at any time during the initial term or any renewal term by Employer or by DBI without cause and without liability with written notice of the intention to terminate to be effective as of a date certain set forth in the written notice, not fewer than sixty (60) days from the date of such notice.

5.4 The Agreement shall automatically terminate:

- (a) If any law is enacted or interpreted to prohibit the continuance of this Agreement, upon the effective date of such law or interpretation; or
- (b) If any fee for any service provided by DBI to Employer remains unpaid to DBI beyond ten (10) days past the due date, upon notification by DBI to Employer in writing that DBI intends to exercise its option to enforce this provision.

5.5 If a party is in default under any provision of this Agreement, the other party may give written notice to the defaulting party of such default. If the defaulting party has not used good faith efforts to cure such breach or default within thirty (30) days after it receives such notice or if good faith efforts to cure have begun within thirty (30) days but such cure is not completed within sixty (60) days after receipt of the notice, the other party shall have the right by further written notice (the "Termination Notice") to terminate the Agreement as of any future date designated in the Termination Notice.

5.6 Employer shall pay all fees that have accrued up to the date of the termination of this Agreement within thirty (30) days after the date of the termination.

5.7 Upon termination of this Agreement, any funds in the Custodial Account that have not been disbursed in accordance with the terms and conditions of this Agreement shall be returned to Employer less any applicable fees, costs or expenses as set forth in this Agreement.

5.8 If this Agreement is terminated under Sections 5.3 or 5.4, DBI will cease the performance of any further services under this Agreement unless both parties agree in writing that certain services shall continue for an additional period. Upon prepayment, if requested by DBI, of the fees for this additional period or continued monthly invoicing, DBI will continue the processing of qualifying events, initial notices, the collection and tracking of COBRA premium payments, forwarding premiums to Employer and processing and reporting of COBRA elections and terminations with respect to those qualified beneficiaries who incurred a qualifying event prior to the date of termination of this Agreement.

5.9 Upon the completion of the later of the Agreement, or any period of further services, DBI will cease the performance of these COBRA administration services and Employer shall be immediately responsible for all aspects of COBRA administration. DBI shall return to Employer any Employer Funds in the Custodial Account.

However, the return of such funds shall remain subject to the completion of a final accounting of all account activities, as well as the deduction of undisputed unpaid fees and other expenses under this Agreement or any other agreement between the parties. As necessary, DBI shall have the immediate right to demand and pursue collection of any unpaid fees, reimbursements or other amounts that are due and owing to DBI as of the date of termination pursuant to the terms of this Agreement or any other agreement between the parties.

## **ARTICLE 6 – COST OF ADMINISTRATION**

### **6.1 Administrative Services Fees**

- (a) Employer shall pay DBI a fee for its services under this Agreement. This fee shall be payable in accordance with the Fee Schedule attached hereto. Fees are invoiced monthly and are due within thirty (30) days of the invoice date. If Employer disputes any portion of the fees invoiced in good faith, Employer shall provide DBI with written notice of any disputed fees together with a complete written explanation of the reasons for the dispute (the "Dispute Notice") within thirty (30) days of the invoice date. The parties shall work together in good faith to reach a mutually agreeable resolution of the dispute identified in the Dispute Notice for a period of ten (10) days following the date of the Dispute Notice. If the parties cannot reach such mutually agreeable resolution, the dispute shall be settled pursuant to the procedures set forth in Section 7.13.
- (b) As part of the administrative fees under this Agreement, DBI shall also retain the 2% additional premium allowed by COBRA for administrative costs charged to COBRA Continuant. If state or local law prevents COBRA Continuant from being charged the additional 2% premium, then the additional 2% premium shall become a fee paid by the Employer to DBI for its services under this Agreement. This fee shall be payable in accordance with the Fee Schedule attached hereto. Such fee will be invoiced monthly and will be due within thirty (30) days of the invoice date.
- (c) Notwithstanding the foregoing, DBI reserves the right to increase fees at any time based on postal rate or bank fee increases or increased costs due to legislative or regulatory changes, domestic or foreign, actually incurred in performing its services. DBI shall provide Employer with reasonable prior written notice of such increases.
- (d) DBI reserves the right to charge fees for the provision of additional services that were neither included in nor contemplated by this Agreement on the Effective Date, including for the administration of retroactive premium rate changes requested by Employer.
- (e) On or after the Rate Expiration Date noted on the fee schedule, DBI reserves the right to amend the fee schedule with sixty (60) days' advance written notice. If Employer is unwilling to accept the changes to the fee schedule, Employer may terminate this Agreement by providing notice to DBI no later than the effective date of the fee schedule amendment.
- (f) Fees quoted assume that DBI standard software and systems will be compatible with Employer's software and systems and with any prior service provider's software and systems so that the services can be readily performed without any modifications or alterations of DBI's software and systems. In the unusual event that costs are incurred by DBI to integrate the DBI Services with Employer's software and systems and/or in migrating the data from the prior service provider to DBI's systems, those costs may be charged separately on a time and materials basis or as otherwise provided under a separate agreement between the parties.

### **6.2 Non-Party Payment on Behalf of Employer and Compliance with Anti-Rebating Law**

Employer represents and warrants that if someone other than Employer is paying DBI's fees on behalf of Employer, the making of such payment shall not violate any applicable anti-rebating law. Furthermore, Employer agrees to hold DBI harmless (including reasonable attorney fees) from any and all losses that may result from a breach of this provision.

### 6.3 Past Due Fees

Notwithstanding anything in this Agreement or any other agreement between the Parties to the contrary, if Employer fails to pay DBI any amount (except for amounts subject to a good faith dispute) that is due as a result of the services provided by DBI to Employer under this Agreement or any other agreement between the parties, DBI shall be permitted to deduct the undisputed amount from any funds held by DBI that were received from Employer. This right of offset shall be in addition to any other remedies that DBI may have in this Agreement or any other agreement between the parties with respect to such non-payment, including, without limitation, any right to terminate this Agreement or a right to recoupment, regardless of whether the past due amount is paid in full as a result of the offset or recoupment rights provided herein.

## **ARTICLE 7 – GENERAL**

### 7.1 Assignment

This Agreement may not be assigned by either party without the prior written consent of the other unless in connection with a merger, acquisition or sale of all or substantially all of the party's assets and provided that the surviving entity has agreed to be bound by this Agreement and has notified the other party in writing within thirty (30) days of the assignment. The parties shall not unreasonably withhold consent.

### 7.2 Audit Rights

Employer may inspect any transactions, procedures, records, and participant files relating to Covered employees or COBRA Continuant, at DBI's office and at a time reasonably acceptable to DBI, upon providing ten (10) business days' advance written notice to DBI.

### 7.3 Force Majeure

Notwithstanding anything to the contrary contained herein, neither party shall be liable or deemed to be in default under or in breach of this Agreement for failure to perform or delay in the performance of any of their respective obligations under this Agreement to the extent that such failure or delay results from any act of God, military operation, terrorist attack, widespread and prolonged loss of use of the Internet, national emergency, government restrictions, or disruption of the financial markets. The affected party shall use all commercially reasonable efforts to remedy any inability to perform under this Agreement.

### 7.4 Governing Law

All questions with respect to the construction of this Agreement and the rights and liabilities of the parties, except as otherwise provided, shall be determined in accordance with the laws of the State of North Dakota. In the event of any conflict of laws, the laws of the State of North Dakota shall prevail. The parties agree that any claim or action arising from this Agreement can only be brought in the United States District Court for the District of North Dakota, and both parties consent to such jurisdiction and venue.

### 7.5 Number

Where the context of this Agreement requires, the singular shall include the plural and vice versa.

### 7.6 Relationship of the Parties

Employer and DBI acknowledge and agree that DBI is retained under this Agreement as an independent contractor of Employer to assist Employer with its obligations to comply with the continuation coverage provisions of COBRA, and that DBI is not a fiduciary under ERISA and lacks any discretion hereunder. Employer agrees that use of or offset of amounts in the Custodial Account to pay for fees or other amounts due to DBI under this Agreement shall constitute an Employer action that is authorized by Employer under this Agreement. Employer agrees that such actions are not discretionary acts of DBI and do not create fiduciary status for DBI. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partner or joint venture or any association for profit between Employer and DBI.

### 7.7 Severability

If any provision of this Agreement is determined by a court to be unenforceable or invalid, such determination shall not affect any other provision, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein.

### 7.8 Survival

Sections 2.15, 2.21, and 2.26, Article 4, Sections 5.7 and 5.8, Section 6.2, and Article 7 shall survive the termination of this Agreement.

### 7.9 Waiver

If either party fails to enforce any right or remedy under this Agreement, that failure is not a waiver of the right or remedy for any other breach or failure by the other party.

### 7.10 Indemnification

(a) Subject to the limitations in Section 7.11, DBI will be liable to and will defend, indemnify and hold harmless Employer and its respective officers, directors, employees, agents, representatives, successors, and permitted assigns from and against any and all Charges, liability, damages, costs, losses, and expenses (including attorney fees), disbursements, and court costs reasonably incurred by Employer in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party to the extent solely and directly caused by DBI's willful misconduct, criminal conduct, material breach of the Agreement or violation of the HIPAA privacy or security rules related to or arising out of the services performed by DBI under this Agreement.

(b) To the extent permitted by law and except as provided in (a) above, and in addition to Sections 2.15, 2.21, and 2.26, Employer will be liable to and will defend, indemnify and hold harmless DBI and its respective officers, directors, employees, agents, representatives, successors, and permitted assigns from and against any and all Charges, liability, damages, costs, losses, and expenses (including attorney fees), disbursements, and court costs reasonably incurred by DBI in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party to the extent solely and directly caused by Employer's willful misconduct, criminal conduct, material breach of the Agreement or violation of the HIPAA privacy or security rules related to or arising out of the services performed by DBI under this Agreement.

If Employer is a state agency or otherwise subject to a public entity/political subunit non-indemnification type statute and therefore unable to indemnify under this subsection, DBI shall not be responsible for any injury or damage that occurs as a result of any negligent act or omission committed by Employer, including its agents, employees or assigns.

(c) For purposes of this indemnification provision, "Charges" means: (i) excise taxes imposed under Code Section 4980B (26 USC § 4980B), subject to the provisions of the aggregate limitations set forth in Code Section 4980B and the right of the assessed party to challenge the Internal Revenue Service with respect to all or part of the imposition of such excise taxes; and/or (ii) penalties (in an amount up to \$110 per day) that are imposed by a court under Section 502(c)(1) of ERISA (29 USC § 1132) and that are paid. Charges shall not include the payment of the claims for benefits under the terms of the Plan.

(d) Notwithstanding anything in this Section 7.10 to the contrary, neither party shall be entitled to indemnification under this Section in circumstances where the Charges sought hereunder result from: (i) the indemnifying party (the "Indemnitor") following the written instruction of the party seeking indemnification (the "Indemnitee"); (ii) reasonable reliance by the Indemnitor on information furnished by the Indemnitee; or (iii) the actions or inactions of the Indemnitor in circumstances where the Indemnitor requested, but did not receive, information or guidance from the Indemnitee, which information or guidance the Indemnitee is obligated to provide under the Agreement or which is within the sole control of the Indemnitee under the Plan.



- (e) The party seeking indemnification under (a) or (b) above must notify the indemnifying party within thirty (30) days in writing of any actual action, suit or proceeding (and within a reasonable period of time with respect to any threatened action, suit or proceeding) to which it claims such indemnification applies. Failure to so notify the indemnifying party shall not be deemed a waiver of the right to seek indemnification, except to the extent the actions of the indemnifying party have been prejudiced by the failure of the other party to provide notice within the required time period.
- (f) In addition to the foregoing, in the event of a legal, administrative or other action arising out of the administration, processing or determination of a claim for Plan benefits which is filed or asserted against DBI ("Claim Litigation"), DBI may, at its election, select and retain its own counsel to protect its interest. DBI shall be responsible for payment of all legal fees and expenses reasonably incurred by it in defense of Claim Litigation unless the Claim Litigation is attributable to Employer's actions or inactions in which case Employer shall be responsible for payment of DBI's legal fees and expenses. DBI and Employer shall cooperate fully with each other in the defense of Claim Litigation. DBI shall consult with Employer before settling Claim Litigation, but DBI shall have the sole discretion to resolve Claim Litigation. Nothing in this subsection (f) shall prevent DBI and/or Employer from pursuing any rights that such party has under this Section.

#### 7.11 Limitations of Liability

In no event shall either party be liable to the other for consequential, special, exemplary, punitive, indirect or incidental damages, including, but not limited to, any damages resulting from loss of use or loss of profits arising out of or in connection with this Agreement, whether in an action based on contract, tort (including negligence) or any other legal theory whether existing as of the Effective Date or subsequently developed, even if the party has been advised of the possibility of such damages. In the event the foregoing is found to be invalid, in no event will DBI's liability for such damages exceed the fees paid by Employer for the services in the twelve-month period in which the cause of action occurred. In addition, notwithstanding any other provision in this Agreement to the contrary, the maximum total liability of DBI to Employer shall be limited to direct money damages in an amount not to exceed the dollar amount that is available to cover such liability under the insurance policy or policies provided for in Section 7.12. This is Employer's sole and exclusive remedy.

No action under this Agreement may be brought more than two (2) years after the cause of action has accrued. For the purposes of the time limitation: (a) a cause of action shall be deemed to accrue when the claimant sustains injury and becomes aware or reasonably should have become aware, of the circumstances giving rise to the claim; or (b) if a party fraudulently conceals the existence of a claim, the running of the prescribed time shall be tolled during such concealment.

DBI and Employer expressly agree that the limitations of liability in this Section 7.11 represent an agreed allocation of the risks of this Agreement between the parties. This allocation is reflected in the pricing offered by DBI to Employer and is an essential element of the basis of the bargain between the parties.

#### 7.12 Insurance

During the term of this Agreement, DBI shall maintain general liability insurance and professional/cyber liability insurance with policy limits of not less than \$5,000,000 per occurrence and in the aggregate for the purpose of providing coverage for claims arising out of the performance of its services under this Agreement. Upon request, DBI shall provide Employer with a certificate or certificates of insurance reflecting such insurance coverages. DBI shall maintain a fidelity bond (or an insurance policy similar to a fidelity bond) for DBI and any of its employees who may collect, disburse or otherwise handle or have possession of any funds provided by Employer or COBRA Continuant.

#### 7.13 Mediation and Arbitration of Disputes

INTENTIONALLY OMITTED.

#### 7.14 Waiver of Jury Trial

INTENTIONALLY OMITTED.

7.15 Notice

Any notice required or permitted to be given under this Agreement shall be deemed delivered to the address set forth in this Agreement or such other physical or electronic address as specified by the party: (a) when received if delivered by hand; (b) the next business day if placed with a reputable express carrier for delivery during the morning of the following business day; (c) three (3) days after deposit in the U.S. mail for delivery, postage prepaid; or when received if delivered electronically. DBI: 4321 20th Avenue South, Fargo, ND 58103, Attention: Chief Compliance Officer.

7.16 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings regarding the subject matter hereof, whether written or verbal. Any amendment to this Agreement must be in writing and consented to by authorized representatives of both parties. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, permitted assigns, and successors in interest. Nothing express or implied in this Agreement is intended to confer, and nothing herein shall confer upon any person other than the parties hereto, any rights, remedies, obligations or liabilities whatsoever.

7.17 Counterparts

Any number of counterparts of this Agreement may be signed and delivered with digital signatures and transmitted electronically, each of which shall be considered an original and all of which, together, shall constitute one and the same instrument.

June 25, 2019

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

**Re: 2019 FARGO/CASS COUNTY MOSQUITO CONTROL AGREEMENT**

Commissioners:

Enclosed please find the Fargo/Cass Mosquito Control Agreement for the 2019 mosquito season. At this time, the enclosed contract has been fully reviewed and approved by city staff. The Fargo contract costs have remained consistent with the 2018 contract and no changes have been made.

All funding associated with the enclosed agreement has been fully accounted for within the 2019 vector control budget.

RECOMMENDED MOTION: I/we hereby move to approve and authorize the execution of the enclosed Mosquito Control Agreement with Cass County for 2019.

Respectfully submitted,



Ben Dow  
Director of Operations

2019 MOSQUITO CONTROL AGREEMENT  
CITY OF FARGO AND CASS COUNTY GOVERNMENT

This is an agreement to formalize the partnership for mosquito control between the City of Fargo and Cass County Government during the 2019 mosquito control season. The agreement is made between the City of Fargo, whose office is located at 200 North 3<sup>rd</sup> Street, Fargo, North Dakota 58102, hereinafter CITY, and Cass County Government whose office is 211 Ninth Street, Fargo, ND 58018 hereinafter COUNTY.

THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

1. COUNTY agrees to provide mosquito control activities throughout the Vector Control District commensurate with the funding available. For the 2019 season, approximately \$750,900 in Vector Control Mill funds has been designated for the Countywide Vector Program. COUNTY funds will be used within the CITY and in surrounding areas with the objective being to distribute products and services commensurate with the source of revenue.
2. In addition to service provided in paragraph 1, COUNTY will provide services within the CITY for various mosquito control activities such as but not limited to: making applications of pesticides using off-highway vehicles, spraying mosquitoes in and surrounding Fargo including parks and schools, inspection of public and private property, collection of mosquito traps for population monitoring. The COUNTY Vector Director will provide technical direction and coordination of these activities. The Vector Director will also work in cooperation with CITY officials to provide other technical and administrative assistance as necessary.
3. CITY agrees to provide funding to support the activities referred to in paragraph 2. The total cost for these activities is \$290,000. Estimated start date and end dates for activities is April 15<sup>th</sup> to October 1<sup>st</sup> respectively.
4. COUNTY will provide services within the predetermined "Extra-territorial" area for various mosquito control activities such as but not limited to: making applications of pesticides using off-highway vehicles, inspection of public and private property, and collection of mosquito traps for population monitoring.
5. CITY agrees to fund fifty percent (50%) of the activities described in paragraph 4. COUNTY agrees to fund fifty percent (50%) of the activities described in paragraph 3. Anticipated total cost of services defined in paragraph 4 are estimated to not exceed \$40,000 Fargo.
6. COUNTY will provide monthly statements to CITY of time and materials, and invoice CITY monthly.
7. CITY agrees to fund the cost of city-wide adult mosquito spraying at \$3,000 per full application. Estimate between 5 and 10 applications per season dependent upon conditions. Adult mosquito spraying will be invoiced monthly.
8. If funding needed to maintain activities in paragraph 2 and paragraph 5 is forecasted to exceed \$302,000 COUNTY must provide CITY with written notice requesting contract adjustment 14 days prior to contract funding shortfall. All COUNTY contract adjustments will receive acceptance or rejection through written notice by CITY within 10 days of request. Failure by CITY to respond to COUNTY within 10 days of request will constitute CITY acceptance of contract adjustments.

All requests for contract adjustments shall be submitted to:

Fargo Public Works  
402 23<sup>rd</sup> Street N.  
Fargo, ND 58102

9. If COUNTY fails to comply with paragraph 6, all costs associated with activities outlined in paragraph 2 exceeding contracted dollar amounts will be the sole responsibility of COUNTY to fund.
10. COUNTY will fund up to \$73,000 for one (1) aerial spray application or comparable partial applications within the metro area including within CITY limits and surrounding area when determined necessary.
11. CITY agrees to fund any additional costs for aerial spraying above or beyond paragraph 8 when CITY requests the contracted services of an aerial applicator. COUNTY will coordinate the aerial spray operation upon the CITY's approval or after expressed written permission is given by the CITY authorizing the Vector Control Director as its agent to make the determination.
12. COUNTY agrees to assume all liability and agrees to indemnify and defend the CITY from all direct and indirect, present and future claims or causes of action, which in any way result from the activities of the COUNTY in completion of the tasks stated herein or may result from the decisions, recommendations, actions, omissions of actions or other errors on the part of COUNTY, its employees or contractors and any party from which COUNTY may obtain information or services for the completion of the same. This assumption of liability and agreement to hold harmless is intended to cover any present or future activities undertaken by COUNTY in furtherance of this agreement.
13. CITY agrees to assume all liability and agrees to indemnify and defend the COUNTY from all direct and indirect, present and future claims or causes of action, which in any way result from the activities of the CITY in completion of the tasks stated herein or may result from the decisions, recommendations, actions, omissions of actions or other errors on the part of CITY, its employees or contractors and any part from which CITY may obtain information or services for the completion of the same. This assumption of liability and agreement to hold harmless is intended to cover any present or future activities undertaken by CITY in furtherance of this agreement.

Chair, Cass County Commission

  
\_\_\_\_\_

Date

6-17-19

Mayor, City of Fargo

Date

\_\_\_\_\_

\_\_\_\_\_



June 25, 2019

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

RE: Geotechnical polyurethane lifting foam sole source purchase

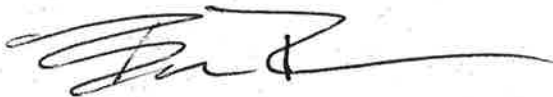
Commissioners:

For the past four years, the Street Department has been using polyurethane lifting foam to level curb/gutter sections and concrete road panels throughout the city. The average dollar amount spent annually on materials has been in the \$20,000.00 to \$25,000.00 range. As we prepared for operations this year, staff secured pricing through the formal quote process (Quote sheet attached).

The Engineering Department recently requested assistance with lifting the 42<sup>nd</sup> Street and 194 bridge approach panels. After reviewing the street section, it appears the concrete panels will need to be lifted almost 13" to restore the road to its original design specifications. In order to complete the project, we are estimating that the foam needed will cost approximately \$50,000.00. Engineering has agreed to fund the cost of the product through the 42<sup>nd</sup> Street concrete spot repair project; however, the additional material will exceed the allowable dollar amount for formal quotes. To avoid possible impacts to the concrete spot repair schedule, Engineering has requested the panel work be finalized within three weeks. The tight deadline does not allow for the completion of a formal RFP process so we would like to sole source the product needed based on the formal quotes (QF19094) staff obtained in May of 2019.

On June 24<sup>th</sup>, the Finance Committee approved the sole source purchase as requested. At this time, we are requesting Commission approval to sole source the product needed from NCFI Polyurethanes, based on the formal quotes QF19094 obtained.

Respectfully submitted,



Ben Dow  
Fargo Public Works  
Director of Operations

|   |                                |
|---|--------------------------------|
|  | <h1>Purchasing Quote Form</h1> |
|---|--------------------------------|

This form is required for every purchase between \$3,001 and \$25,000 per item. It applies to purchases made by credit card and/or by purchase order.

Purchase Date: \_\_\_\_\_ Requisition No. or Pcard No. (last 4 digits only): \_\_\_\_\_

Purchaser Name or Purchasing Card Name: \_\_\_\_\_

What is being purchased?

Geo-technical polyurethane two-component hydrophobic four pound lifting foam

Vendor #1 Name and Quote: NCFI Polyurethanes \$1834.74 per set including freight

Vendor #2 Name and Quote: HMI \$2018.80 per set including freight

Vendor #3 Name and Quote: Prime Resins \$1999.50 per set including freight

Vendor Selected: NCFI polyurethanes

Quantity Purchased: \_\_\_\_\_ Total Purchase Price \$: \_\_\_\_\_

**If equipment over \$3,000 per unit was purchased, please complete the Fixed Asset Addition Form.**

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Auditors Office:**

Documentation complete \_\_\_\_\_ (Yes/ No) Verified by \_\_\_\_\_ Date: \_\_\_\_\_

## MEMORANDUM

**TO:** Fargo City Commission

**FROM:** Nicole Crutchfield, Director of Planning & Development *NC*  
Aaron Nelson, Planning Coordinator *AN*

**DATE:** June 26, 2019

**SUBJECT:** Initiation and RFP for Core Neighborhoods Plan

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Staff is requesting formal approval to move forward with a request for proposal (RFP) to hire a professional consultant to conduct and develop a Core Neighborhoods Plan. This planning process is intended to build upon the work recently completed with the Downtown InFocus Plan by bringing together city officials, residents, the development community, and other stakeholders to collaboratively expand planning efforts to the neighborhoods surrounding the downtown core. The study will build upon the vision and goals of the Go2030 Comprehensive Plan; identify and respond to current conditions and issues; and guide public and private investment within the City's core neighborhoods.

### Background

The need for a core neighborhoods plan has become increasingly evident in recent years, as the City has continued to grow at a rapid pace. The City's oldest neighborhoods have felt increasing pressures relating to topics such as aging infrastructure; property maintenance & neighborhood character; infill, redevelopment, increasing density, and changes in land markets; affordable housing and a lack of diverse housing options; shifts in demographics; and general livability issues, such as crime and safety.

Within the most recent budgeting cycle, staff has worked to realign funding towards planning services in order to better utilize professional consultants for strategic projects such as this, and has identified this plan as a priority on the Planning Department's current work plan.

On May 15, staff hosted a joint Brown Bag meeting of the Planning Commission and Community Development Committee. At which, detailed discussion was had regarding the proposed Core Neighborhoods Plan and feedback was solicited from these two groups as well as from members of the public who were in attendance. Ultimately, at their June 4 meeting, the Planning Commission unanimously approved staff's request to initiate this study and to move forward with the RFP process.

In summary, staff intends to partner with a qualified professional consultant to lead the development of a Core Neighborhoods Plan and a detailed implementation strategy. To this end, staff will draft and publish an RFP in order to solicit interest from qualified consultants from across the country. Staff anticipates the RFP to be published in July 2019, and for the selected consultant to complete work by the end of 2020.

### Suggested Motion

"To approve staff's request to draft and publish a request for proposal for the Core Neighborhoods Plan and to otherwise initiate this project."

# Project Summary

Project Name: Core Neighborhoods Plan

June 26, 2019

## Project Abstract:

The purpose of this project is to partner with a qualified consultant to produce a Core Neighborhoods Plan that will build upon vision and goals of the Go2030 Comprehensive Plan; identify and respond to current conditions and issues; and guide public and private investment over the next 10-15 years.

This planning process is intended to build upon the work recently completed with the Downtown InFocus Plan by working with stakeholders to collaboratively expand planning efforts to the neighborhoods surrounding the downtown core. This planning process will build upon previous and current planning efforts within core neighborhoods, and seeks to strategically refine the principles of the Go2030 Comprehensive Plan for use at the neighborhood level.

## Purposes and Needs

- To develop a broadly supported and achievable vision for the core neighborhoods.
- To define and understand the issues and forces affecting the core neighborhoods, as well as opportunities to thrive.
- To develop a mutual understanding of the desires and concerns of all stakeholders, to improve communications amongst stakeholders, and to manage expectations of participants in the planning process.
- To synthesize existing plans and policies with contemporary values and any identified new vision and/or goals for the core neighborhoods, and to prioritize competing goals.
- To identify and define actions necessary to address issues and achieve identified vision/goals.
- To guide private development and public improvements in accordance with identified vision and goals.
- To outline a housing strategy which contemplates and accounts for such things as affordable housing, market forces, land use & housing regulations, and diversity of housing options.

## Issues:

- Property maintenance & character
- Code Enforcement & blight
- Unpredictable Infill & redevelopment pressures
- Affordable Housing
- Lack of diverse housing options
- School Enrollment
- Aging infrastructure
- Other livability issues (e.g. healthy food, recreational amenities & trails, trees/vegetation, public/social spaces, employment, crime, safety, art, aesthetics, events, walkability, sustainability, etc.)
- Competing goals/conflicting priorities
- Lack of consensus on future vision, land use, and density

## Project Outcomes:

- A collective and broadly supported future vision and plan for the core neighborhoods
- A clear understanding of the various issues affecting core neighborhoods, as well as the opportunities to thrive.
- Improved trust and understanding between and amongst stakeholders (primarily citizens, City staff, and development community)
- A framework for enhanced neighborhood identity and vibrancy, and for which future planning efforts can build upon (e.g. plans for specific topics or individual neighborhoods)
- Clearly defined implementation actions and recommendations
- Stakeholders and City decision-makers will have relevant data, information, and policy guidance to inform future decision making.

Preliminary Timeline:

- July 22, 2019 RFP Published & Available for Viewing
- August 23, 2019 Proposals Due 11 AM (Central Daylight Time)
- Oct 7-11, 2019 Interviews
- Oct 18, 2019 Award Notice
- Dec 2, 2019 Contract to City Commission for Approval
- Dec 2019 Project Kick-off
- Jan 2021 Project Completion

Scope of Work:

- **Project Management** – The consultant will take the lead in managing their time, staff, resources, budget, and related activities to ensure that the project objectives are met. The consultant will be in close communication with staff throughout the life of the project. Staff will provide general oversight of the consultant and will help to facilitate interactions with City staff, board/committee members, and project stakeholders.
- **Public & Stakeholder Participation** – Public and stakeholder participation will be one of the primary components of this study. The consultant shall be responsible for developing and proposing a comprehensive public & stakeholder participation strategy that is best suited to meet project objectives. Special emphasis shall be placed on broad participation from all stakeholders (especially underrepresented stakeholders), and on ensuring that participation is reflective of both the current and future citizenry. The City intends to establish a project steering committee, which should be incorporated into the proposed participation strategy. As reflected in the Project Objectives, broad support and improved stakeholder relations are paramount to the success of this planning effort.
- **Existing Conditions & Data Analysis** – The consultant will work to gain a firm understanding of the context, trends, and related information applicable to the core neighborhoods in relation to the larger community. This information and data will be used to inform the study and to ground the study in objectivity.
- **Vision & Goal Setting** – The consultant will work with the City and project stakeholders to develop a broadly supported and achievable vision and related goals for the core neighborhoods. The vision and goals shall build upon the City's Go2030 Comprehensive Plan and related policies.
- **Identification of Focus Areas** – The consultant will work with the City during the planning process to solidify areas of focus for the study based on existing conditions, data analysis, stakeholder input, and overall vision and goals. Aside from the topics detailed below, the exact focus areas will not be defined at the outset of this project, but will be identified and selected as part of the planning process.

Topics to be included:

- o Development Regulation & Land Use
- o Affordability & Housing Choice
- o Neighborhood Context, Property Maintenance, & Blight
- o Livability, Safety, & Quality of Life

Potential other topics to be addressed by the plan:

- o Mobility (pedestrian, bike, transit, & vehicle)
- o Public & Gathering Space (Parks, Streetscape, & Open Space)
- o Utilities & Infrastructure
- o Economic Development

- **Policy Development & Analysis** – The consultant will develop a process and lead efforts to iteratively generate and refine potential solutions and strategies for achieving study goals and project objectives.
- **Plan Development** – The consultant shall document the planning process and outcomes within a final report. The final report will include an executive summary (or similarly concise overview) and a



detailed implementation strategy, in addition to all other relevant information necessary to document the planning process and outcomes.

- Implementation Strategy – The consultant will develop a strategy for achieving study goals and project objectives. The consultant will be innovative and proactive in their approach to implementation, in order to ensure the highest chance for success.
- Presentations & Communications – The consultant will present the final plan and implementation strategy to the Planning Commission, Community Development Committee, City Commission, and other applicable committees as defined in the final scope of work. Additionally, the consultant will work with staff to communicate with project stakeholders throughout the process, and to present intermediate deliverables and related information.

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**MEMORANDUM**

**TO:** BOARD OF CITY COMMISSIONERS

**FROM:** NICOLE CRUTCHFIELD, PLANNING DIRECTOR  
MAEGIN ELSHAUG, PLANNING COORDINATOR *me*

**DATE:** JUNE 27, 2019

**SUBJECT:** REQUEST FOR APPROVAL OF SERVICES WITH REACH PARTNERS, INC.

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The Planning Department is requesting sole source procurement for Reach Partners, Inc in order to aid staff in administrative duties related to communications, project operations and management, event planning and management, providing technical assistance to the Planning Department and strategic planning for the Planning Department. Tasks for this scope include The Fargo Project: World Garden Commons, The Fargo Project: Kresge Renewal, 2019-2020 Events: Indigenous People's Day and Martin Luther King Jr Day Celebration, Strategic Planning and Technical Assistance. Reach Partners has provided a scope of work in the form of a master services agreement, which is attached.

The Planning Department has contracted with Reach Partners since 2015 on various projects for project management and communications, and has a deep understanding of Planning Department and City of Fargo processes.

On June 24, 2019, the Finance Committee recommended moving the item forward to the City Commission for approval. The amount is for \$70,000 and will be paid from Planning Services fund that was approved with the 2019 budget as well as from The Fargo Project funds from the Kresge Foundation.

**Suggested Motion:**

To approve the contract with Reach Partners Inc. for \$70,000.



# Sole Source and Piggyback Procurement Form

## Sole Source and Piggyback Justification for Procurement

The following information is offered for the sole source acquisition of goods or services described below. The purchase has been thoroughly researched and it has been determined that the vendor/brand is the only acceptable vendor/brand for the product or services that will fit the particular need.

Vendor Name:

Reach Partners, Inc.

Estimated Dollar Amount of Purchase:

\$70,000

The project/service is required to:

The Planning Department is requesting sole source procurement for Reach Partners, Inc in order to aid staff in administrative duties related to communications, project operations and management, event planning and management, providing technical assistance to the Planning Department and strategic planning for the Planning Department. Tasks include The Fargo Project: World Garden Commons, The Fargo Project: Kresge Renewal, 2019-2020 Events: Indigenous People's Day and Martin Luther King Jr Day Celebration, Strategic Planning and Technical Assistance. Reach Partners has provided a scope of work in the form of a master services agreement, which is attached. The amount is for \$70,000 and will be paid from Planning Services fund that was approved with the 2019 budget as well as from The Fargo Project funds from the Kresge Foundation.

Description of features or capabilities unique to the vendor/brand being requested as related to project requirements:

Reach Partners, Inc specializes in project management, including communications and program and event management. Reach Partners has previously worked with the Planning Department on a number of projects, including The Fargo Project, The Fargo Project Renewal, Events Planning, and Human Relations Strategic Planning. Reach Partners has a deep understanding of the Planning Department and City of Fargo processes.

**Provide a brief description of how your investigation was conducted.** (Internet, publications, consultations) List all sources identified and investigated to determine that no other source exists for similar products capable of meeting requirements (Must be exhaustive of all sources for the commodity being purchased. \*\*)

The Planning Department has contracted with Reach Partners since 2015 on various projects for project management and communications, and has a deep understanding of the Planning Department and City of Fargo processes. Based on Reach Partners specialty of project management, including communications and program and event management and history of work with the City of Fargo, they are best suited to conduct this work. We are aware of other strategic planning firms and communication firms; however, with the community contacts and broad reach of their network, Reach Partners provides a strong community connection on behalf of the Planning Department. This is especially helpful during the staff and board transitions over the past 18 months. Their qualifications includes: community organizing skills, event planning, communications, grant writing, graphic design and networking skills. They are also certified project managers.

**\*\*If all sources are not investigated a competitive solicitation must be issued.**

Provide a side-by-side comparison of the features/service of all other vendors/brands considered. (List the features or capabilities required for your project and how each vendor investigated does or does not meet those requirements. A table format is recommended)

The Planning Department has contracted with Reach Partners since 2015 on various projects for project management and communications, and has a deep understanding of the Planning Department and City of Fargo processes. Based on Reach Partners specialty of project management, including communications and program and event management and history of work with the City of Fargo, they are best suited to conduct this work. In addition, they have participated in prior training conducted by our granters and are familiar with the Creative Placemaking field work.

If the piggyback procurement method is being used, please provide a copy of the piggyback contract.

N/A



Signature: Nicole Crutchifield  
Digitally signed by Nicole Crutchifield  
DN: cn=Nicole Crutchifield, o, ou,  
email=ncrutchifield@fargond.gov, c=US  
Date: 2019.06.19 15:17:38 -0500  
(Requestor)

Printed Name: Nicole Crutchifield

Department: Planning and Development

Title: Director

Date: 6/19/2019

I, hereby, certify that this justification for other than full and open competition is accurate and complete to the best of my knowledge and belief.

NC (Requestor initials)



June 7, 2019

Having worked closely with the City of Fargo Planning Department staff, and played an integral part of The Fargo Project's management structure, communication, events and volunteer management over the last three years, Reach Partners is grateful for the opportunity extend those principles into other aspects of City of Fargo boards, commissions and granted activities.

## SCOPE OF WORK

From start to finish, Reach Partners will work with your volunteers and team: listening, communicating, leading and problem solving. We can work as an agent of the city, taking direct feedback and supervision from city staff. Our responsibilities to you include:

**The Fargo Project: World Garden Commons** Work with partners internal and external to City staff to provide consultation and execution services on ongoing communications, operations and event management activities.

**The Fargo Project: Kresge Renewal** Work with partners internal and external to City staff to provide consultation on communications, project management, facilitate conversations between partners, and manage activities to amplify the values of compassion, radical acceptance and empathy.

**2019-2020 Events: Indigenous People's Day and Martin Luther King Jr Day Celebrations** Provide expert event planning and execution services, evaluation, and technical assistance to parties internal and external to City of Fargo staff, boards and commissions specific to the named events.

**Strategic Planning** Use a strategy of dialogue to make connections, co-create meaning, and develop shared understanding among stakeholders internal and external to the Planning Department. Engage and collaborate with stakeholders to identify and establish priorities, clarify roles, focus energy and resources, strengthen operations, and pursue common goals.



**Technical Assistance** Provide technical assistance to Planning Department staff in strategic planning, project management, facilitation, professional event planning, and internal communications strategies. Work jointly with the staff to identify underlying needs and long-term goals for capacity building. Remain adaptive throughout the engagement according to the needs of the internal staff, external partners, commissions, and boards.

## TERMS

**Fee** Hourly not to exceed \$70,000.00.

**Period of Performance** FROM JULY 2019 to DECEMBER 2020.

**Billing & Payment** Invoices will be rendered by the 14<sup>th</sup> calendar day of the month for services provided the preceding monthly period. Invoices are payable within 30 days after the date of the invoice. If any invoice is not paid in full within thirty (30) days after the date of the invoice, the balance is subject to an 8.5% monthly finance charge.

**Reimbursement** Reach Partners' invoices will reflect actual hours for the time period worked at the hourly rate of One Hundred Five Dollars an hour (\$105.00/hr) plus, authorized expenses will be invoiced for the time period billed and subject to an 8.5% mark-up.

**Additional Scope** Any additional work will be mutually agreed upon prior to work being completed. Additions beyond the scope of work will be billed at \$105.00 an hour to manage, plus actual expenses.

**Publication** To the extent not otherwise prohibited, Reach Partners is free to publish or present work conducted under this Agreement without prior approval. Proper acknowledgment will be made for the contributions of each party to the results published.

**Release of Contract** Either party may terminate the agreement upon 5-days' written notice for any or no reason. Actual hours worked and out-of-pocket expenses will be invoiced in full. City of Fargo will pay Reach Partners within thirty (30) days of receipt of the invoice.



**Indemnification** Except for the negligence or willful misconduct of a party, the parties agree to indemnify, defend and hold harmless each other, their parents, affiliates, and subsidiaries, and each of their officers, trustees, directors, employees, and agents from any claims, loss, damage, in injuries, cost, expense or liability arising out of or related to performance or nonperformance of it or its employees or agents' obligations under this Agreement.

**Insurance** Reach Partners maintains, at its own expense, general liability insurance in at least such amounts as are usual and customary for the services to be provided hereunder and sufficient to satisfy its indemnification obligations. Reach Partner's will, at the request of City of Fargo, produce a certificate of insurance evincing Reach Partner's insurance obligations hereunder.

**Independent Contractors** City of Fargo contracts with Reach Partners, and Reach Partners accepts engagement with City of Fargo, as an independent contractor to provide the services hereunder.

**Signature** By my signature below, I hereby acknowledge that I have read the entire agreement, understand it, and agree to be bound by its terms and conditions. This agreement is governed by North Dakota law.

|  |               |  |               |
|--|---------------|--|---------------|
| _____<br>Rachel Asleson, PMP<br>Reach Partners, Inc<br>15 21 <sup>st</sup> St S, Suite 208<br>Fargo ND 58103 | _____<br>Date | _____<br>Nicole Crutchfield<br>Planning Department<br>City of Fargo<br>225 4th Street North<br>Fargo, ND 58102 | _____<br>Date |
|--|---------------|--|---------------|



25

**MEMORANDUM**

**DATE:** June 25, 2019  
**TO:** City Commission  
**FROM:** Kylie Bagley, Planner *KB*  
Nicole Crutchfield, Director of Planning and Development  
**RE:** Certified Local Government Grants

The Fargo Historic Preservation Commission applied for and was awarded a 2019 Certified Local Government (CLG) grant from the State Historical Society of North Dakota for \$9,300, grant number 38-19-171422-30. There is a matching share requirement of \$6,200 (which can be in kind). The total project cost is \$15,500 with the grant period extending into 2020.

The funds will be used to create a five year strategic plan for the Fargo Historic Preservation Commission. The strategic plan is intended to guide the Historic Preservation Commission on future preservation within Fargo.

**Recommended Action:** Accept the 2019 CLG grant award to the City of Fargo from the State Historical Society of North Dakota.



STATE HISTORICAL SOCIETY  
CLG (Certified Local Government) AGREEMENT  
FOR  
NATIONAL PARK SERVICE'S  
HISTORIC PRESERVATION GRANT FUNDS  
2019

Catalog of Federal Domestic Assistance Number 15-904

THIS AGREEMENT, for the purpose of implementing the National Historic Preservation Act of 1966 as amended (16 USC 470 et seq.) is entered into by and between the STATE OF NORTH DAKOTA through the STATE HISTORICAL SOCIETY OF NORTH DAKOTA with its principal place of business at Bismarck, North Dakota, hereinafter called the "SOCIETY," and the City of Fargo, with its principal place of business at Cass, ND, hereinafter called the "GRANTEE."

The parties recite and declare:

THAT SOCIETY desires to have performed Administration of the Fargo CLG and for a 5 year strategic plan hereafter called the "Project," for the purposes described in the State Historical Society of North Dakota's Announcement of CLG Funds Available for FFY 2019, a copy of which is found as Attachment 1 to this Agreement, and;

That it is the desire of GRANTEE that the SOCIETY share in the funding and administration of the Project, and to further act as agent of the National Park Service, a division of the United States Department of Interior, to assure satisfactory performance;

THEREFORE, in consideration of the covenants to be performed by each party on behalf of the other, as hereinafter set forth, IT IS UNDERSTOOD AND AGREED by and between the parties hereto as follows;

SECTION I. WORK STANDARDS

- A. Work performed by GRANTEE will, at a minimum, be done in strict accordance with the standards outlined in Attachment 1 (State Historical Society of North Dakota's Announcement of CLG Funds Available for FFY 2019) of this Agreement and the submitted proposal and related correspondence found as Attachment 2 of this Agreement.
- B. Any modification which materially alters the Project scope of work, materials to be produced, reporting/products submittal dates, or items in the budget must have written approval of SOCIETY before such change is implemented.
- C. All products developed to identify, evaluate, or preserve historic properties and which were generated using Project funds must be in compliance with the Secretary of Interior's "Standards for Historic Preservation."
- D. Work performed under this agreement must be supervised by personnel meeting qualification

requirements in 36 CFR §61.6(e)(2)(ii) as set forth in the Secretary of the Interior's Historic Preservation Professional Qualifications Standards.

SECTION II. CONTRADICTIONS BETWEEN AGREEMENT AND ATTACHMENTS 1 & 2 TO THIS AGREEMENT.

- A. In the event contradictions in interpretation between this Agreement and Attachments 1 and 2 to this Agreement occur, the Agreement shall be considered the governing document.

SECTION III. GRANT AWARD

- A. SOCIETY shall award a National Park Service's Historic Preservation grant in the amount of **nine thousand three hundred dollars (\$9,300)** to GRANTEE for GRANTEE'S use in execution of the Project.
- B. GRANTEE shall match the nine thousand three hundred dollars (\$9,300) of grant monies awarded by SOCIETY with nonfederal funds, or donated labor, equipment and materials, or any combination thereof. The amount of match shall not be less than forty percent (40%) of the grant amount or **six thousand two hundred dollars (\$6,200)** and the combined amount of grant and match shall not be less than fifteen thousand five hundred dollars (\$15,500) and shall be used only to execute the Project.
- C. SOCIETY, in the event that the final cost of the Project is less than fifteen thousand five hundred dollars (\$15,500)), shall reimburse GRANTEE a maximum of sixty (60%) of the actual Project cost.
- D. If the actual and final Project cost fifteen thousand five hundred dollars (\$15,500) GRANTEE shall be solely responsible for payment of the excess amount.
- E. Grant funds awarded to GRANTEE cannot be used as match in any other federal project.

SECTION IV. DONATED LABOR, EQUIPMENT, AND MATERIALS

- A. When donated labor is used in whole or in part as GRANTEE'S nonfederal matching contribution, the reporting and use of this labor shall comply with the requirements set forth in Attachment 3 of this Agreement.
- B. When donated equipment and material are used in whole or in part of GRANTEE'S nonfederal matching contribution, the use and reporting of this material and equipment shall comply with the requirements set forth in Attachment 4 of this Agreement.
- C. When donated materials, labor, or equipment are used by GRANTEE on the Project, GRANTEE shall submit completed forms (Attachments 3 and 4) to SOCIETY within ninety (90) days of the use of the donation.
- D. GRANTEE shall not submit as donated labor, equipment, or materials any labor, equipment, or

materials which was obtained using federal funds or is used as nonfederal share to match any other federal grant program or contract.

SECTION V. NONEXPENDABLE PERSONAL PROPERTY

- A. Nonexpendable personal property (as defined by Office of Management and Budget (OMB) Circular A-110, Attachment N, Section 2.c) purchased in whole or in part with National Park Service's Historic Preservation grant funds is the property of the SOCIETY, and shall be delivered to the SOCIETY at the end of the period of the grant award unless otherwise agreed to in writing by SOCIETY.

SECTION VI. DISTRIBUTION OF RESEARCH FINDINGS

- A. During the effective dates of this Agreement any and all reports, information, data, and findings prepared or assembled under this Agreement shall be made available to any individual or organization through SOCIETY to the extent as provided under NDCC 55-02-07.1, and the publication of such information in any form must have prior written agreement from SOCIETY.
- B. Any press release or other public dissemination of information about the Project must acknowledge the Department of Interior, National Park Service, and the SOCIETY'S grant support and must have prior written approval for dissemination from SOCIETY.

SECTION VII. PROJECT REPORTING

- A. GRANTEE shall submit to the SOCIETY, on or before the last day of each month, reports of the Project's progress and any impediments which might delay progress. This report shall include a brief narrative description of GRANTEE'S performance and Project's development.
- B. GRANTEE shall submit to SOCIETY reports, documents, or other materials as listed in Attachment 5 to Society for approval. These submittals must occur on or before the deadline listed for each on Attachment 5. After each submittal, SOCIETY will have at least thirty (30) days and no more than sixty (60) days to review each submittal and to return to GRANTEE a report of required modifications. GRANTEE must incorporate these modifications into the reports, documents or other material (as appropriate) before resubmittal of such to the SOCIETY.
- C. GRANTEE shall submit to SOCIETY on or before May 1, 2020, a comprehensive report identifying the portion of the project that was completed before March 1, 2020. GRANTEE shall include a section of this report an accurate estimate of the amount of grant funds and nonfederal match that was spent on the project before March 1, 2020.
- D. GRANTEE shall submit to Society within 30 days of project completion a report comparing completed activities, products, and expenses with those approved listed in the Project proposal (Attachment 2). This report must be submitted no later than May 1, 2020.

SECTION VIII. PUBLICATIONS, AND COPYRIGHTS

- A. An acknowledgment of NPS support must be made in connection with the publication or dissemination of any printed, audio-visual, or electronic material based on, or developed under, any activity supported by HPF grant funds. This acknowledgment shall be in the form of the following statement.

Project was partially funded by the Historic Preservation Fund, National Park Service, Department of the Interior. Any opinions, findings, and conclusions or recommendations expressed in this material do not necessarily reflect the views of the Department of the Interior.

- B. GRANTEE is free to copyright any books, publications, or other copyrightable materials developed as a result of this Agreement. However, any such copyrightable materials will be subject to a royalty free, nonexclusive, and irrevocable license throughout the world to SOCIETY and/or the United States Government to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. Furthermore, SOCIETY and/or the United States Government shall have the right at any time to modify, remove, obliterate, or ignore any of the markings on materials produced as a result of this agreement. GRANTEE shall not include in the materials produced as a result of this Agreement any copyrighted matter without the written approval of the copyright owner. The written copyright approval must indicate that the release of material extends to SOCIETY and/or the United States Government.

SECTION IX. REIMBURSEMENT

- A. GRANTEE shall forward a request for reimbursement for the Project work performed to SOCIETY on SOCIETY-provided reimbursement forms (Attachment 6). Reimbursement will be paid according to the schedule found on Attachment 7. Reimbursement requests must list the federal share of expenses, the expenditure of GRANTEE match and the date on which each occurred. All other documentation required to substantiate Project costs (canceled checks, invoices, mileage logs, time sheets, work logs, and expense receipts, as applicable) shall be kept on file by GRANTEE and submitted upon request to SOCIETY.
- B. All reimbursement requests and matching fund documentation for expenses incurred between March 1, 2019 and February 29, 2020 must be received by SOCIETY on or before May 1, 2020.
- C. SOCIETY will withhold all reimbursement from GRANTEE until corrective measures are taken if GRANTEE submits reports that indicate a lack of progress or if GRANTEE does not meet report/material submission deadlines.
- D. SOCIETY will not reimburse expenses for any product that does not meet the Secretary of Interior's "Standards" or does not conform to the terms and conditions of this contract.
- E. GRANTEE shall reimburse SOCIETY for any and all overpayments on the Project, including but not limited to any work items, supplies, materials, equipment, wages, salaries or expenses if disallowed by SOCIETY and/or the National Park Service as part of their audit procedures.
- F. GRANTEE agrees to document all allowable Project expense not reimbursed by federal funds and

all in-kind donations of labor and/or equipment given to Project which exceeds the agreed upon match listed in Section III of this Agreement and submit the same to SOCIETY as Project match for SOCIETY's use.

SECTION X. PERIOD OF GRANT AWARD

- A. The funds awarded to GRANTEE through this Agreement shall be available to the GRANTEE for use on the Project from March 1, 2019 through September 30, 2020. Expenses incurred by GRANTEE after September 30, 2020 will not be eligible for reimbursement. Funds awarded under the Agreement for which GRANTEE has not submitted eligible reimbursement requests on or before **November 1, 2020** or for which GRANTEE has submitted reimbursement requests but has not received reimbursement by December 1, 2020 (due to GRANTEE noncompliance with product submittal dates or standards) shall revert to SOCIETY, and GRANTEE shall under no circumstances, nor at any future time, be eligible to request nor receive all or any portion of the grant funds.

SECTION IX. PROHIBITION OF TRANSFER OF INTEREST

- A. GRANTEE shall not transfer interest in this Agreement, neither in whole or in part, without the express written consent of SOCIETY.

SECTION XII. ACCOUNTING SYSTEMS, RECORD RETENTION AND AUDIT EXAMINATION

- A. GRANTEE, upon signing this Agreement, assures SOCIETY that GRANTEE has an adequate accounting system and is able to administer the National Park Service's Historic Preservation grant according to accepted accounting standards appropriate to the amount of the grant.
- B. SOCIETY, the United States Department of the Interior, the Comptroller General of the United States, or any of their duly authorized representative shall have access to any books, documents, papers, notes, tapes, and records of GRANTEE which are directly pertinent to this Agreement, for the purpose of making audit examination, or to transcribe all or any portion of the above described materials (Pursuant to Office of Management and Budget (OMB) Circular A-102, [43 CFR 12]).
- C. GRANTEE shall maintain all administrative and fiscal records relating to the Project for three years after the final grant reimbursement is made by SOCIETY to GRANTEE and all other pending matters are closed (Pursuant to Office of Management and Budget (OMB) Circular A-102, [43 CFR 12]).
- D. GRANTEE shall comply with the Single Audit Act of 1996 and (OMB) Circular A-133 for state and local governments. Upon completion of the applicable audits, a letter from the auditor regarding the audit findings must be submitted to the SOCIETY.

SECTION XIII. COMPLIANCE WITH CIVIL RIGHTS ACT

- A. GRANTEE shall comply with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq.,



with regards to the Project for which the grant funds awarded shall be used.

SECTION XIV. ASSURANCES

- A. All rules and regulations of the National Park Service, United States Department of the Interior, applicable to the conduct of a project under the National Historic Preservation Act of 1966 as amended, including the "Assurances" found as Attachment 8 to this Agreement, are made a part of this Agreement and are binding on both SOCIETY and GRANTEE.
- B. GRANTEE shall comply with the regulations, policies, guidelines, and requirements, including Office of Management and Budget circulars A-21, A-87, A-102, A-122, and 48 CFR 31.2 as they relate to the application, acceptance and use of federal funds for this federally-funded grant.

SECTION XV. PROHIBITION ON LOBBYING

- A. GRANTEE shall not include in requests for payment under this Agreement any costs to influence legislation pending before Congress. GRANTEE must conform to the provisions of 18 USC 1913:

"No part of the money appropriated by an enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or its Departments or agencies from communicating to Members of Congress at the request of any Member, or to Congress through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."

SECTION XVI. TERMINATION

- A. SOCIETY, by written notice, may terminate this Agreement, in whole or in part, if GRANTEE fails to comply with the conditions of this Agreement. Upon determination by SOCIETY that GRANTEE has failed to comply with the conditions of this Agreement, SOCIETY shall promptly provide written notification to GRANTEE, of the determination, reasons for the termination, and the effective termination date. SOCIETY shall not, however, terminate this Agreement without first issuing a termination notice informing GRANTEE of reasons for termination and providing a period of not less than twenty-five (25) days for GRANTEE to take corrective measures. Grant funds awarded to GRANTEE by SOCIETY through this Agreement shall be suspended until required corrective measures have been taken by GRANTEE. No reimbursement requests for project costs incurred, whether before or after the date of notification of reasons for termination, will be processed by SOCIETY during the suspension period. No proposal for future funding may be considered by SOCIETY while GRANTEE is suspended. If GRANTEE fails to take corrective

measure in the time allowed and if the contract between SOCIETY and GRANTEE is terminated for GRANTEE noncompliance, GRANTEE may be prohibited from submitting proposals to SOCIETY for future grant projects for a period of not less than three (3) years from the date of termination.

- B. Upon termination as described in the above part A. of SECTION XII. the GRANTEE shall:
  - 1. Immediately cancel as many outstanding project-incurred obligations as possible, and
  - 2. Submit within fifteen days (15) days of the date of the termination, all Project-related materials produced prior to the date of termination, and
  - 3. Repay any or all grant funds received upon request by SOCIETY or alternatively, at SOCIETY'S discretion, pay to SOCIETY the amount needed to complete the project by a third party in accordance with the terms of this Agreement.
- C. SOCIETY or GRANTEE may terminate this Agreement, in whole or in part, when both parties agree that continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The SOCIETY and GRANTEE shall agree upon the termination conditions, the effective termination date and, in the case of partial terminations, the revised project requirements and guidelines.
- D. Upon termination as described in the above part C. of SECTION XII. the GRANTEE shall:
  - 1. Immediately cancel as many outstanding project-incurred obligations as possible, and
  - 2. Submit within fifteen days (15) days of the date of the termination, all Project-related materials produced prior to the date of termination and all documentation necessary for SOCIETY to make reimbursement for eligible project costs incurred by GRANTEE prior to the date of the termination. Extensions to the fifteen (15) day deadline may be requested in writing by GRANTEE. If SOCIETY agrees to the extension request, written notification of approval will be sent to GRANTEE.
- E. GRANTEE may unilaterally cancel this Agreement any time prior to receiving the first reimbursement for eligible expenses incurred while Project work was performed. After initial reimbursement is received by GRANTEE, the Project may only be terminated, modified, or amended by GRANTEE after receiving written notification of the mutual agreement of SOCIETY.
- F. SOCIETY reserves the right to cancel or modify this agreement should federal funding be rescinded or reduced or state laws or rules modified or changed in such a way that SOCIETY is unable to fulfill the terms of this Agreement.
- G. SOCIETY reserves the right to cancel or modify this agreement should GRANTEE be unable to obtain any license, permit, or certificate required by law or regulation to be held by the GRANTEE to enable them to complete the Project.

SECTION XVII. EXTENSIONS

- A. SOCIETY may grant extensions to most scheduled Project deadline dates, for a period of up to thirty (30) calendar days, in response to each written extension request submitted by GRANTEE. In no event may GRANTEE request an extension beyond the federal funding deadline of September 30, 2020.

SECTION XVIII. AMENDMENTS

- A. This Agreement shall be amended only upon written request of either party and a receipt of written concurrence from the party to whom the request was made except as noted in Section XVII. of this Agreement.

SECTION XIX. PROPERTY OWNER CONSENT

- A. Prior to entering private property and conducting field work, the GRANTEE shall obtain written consent from the property owner, or their authorized representative, unless authorized by Society to proceed with oral consent.

SECTION XX. PROCUREMENT

- A. GRANTEE agrees to follow Federal competitive requirements found in 43 CFR 12 for all purchases of goods and services made with Federal grant funds or nonfederal matching funds and to provide evidence this process was followed when requesting reimbursement.
- B. GRANTEE agrees to abide by the federal conflict of interest restrictions as listed in 43 CFR 12.

SECTION XXI. DISCRIMINATION IN EMPLOYMENT PROHIBITED

- A. GRANTEE agrees not to discriminate in employment practices by failing or refusing to hire a person; by discharging an employee; by according adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance. GRANTEE further agrees not to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental disability or because of that person's religion.

SECTION XXII. NONDISCRIMINATION ON THE BASIS OF DISABILITIES

- A. GRANTEE agrees to comply with Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112, as amended, 29 U.S.C. 794 et. seq.) and the provisions of the Americans with Disabilities Act (ADA) which requires that no qualified disabled individual is solely, by reason of disability, excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. GRANTEE further agrees to operate the Project so that the Project, when viewed in its entirety, is readily accessible to and usable by qualified disabled person. However, this requirement does not necessarily require GRANTEE to

make each of its existing historic properties or every part of a particular historic property accessible to and usable by qualified disabled persons.

SECTION XXIII. INDEPENDENT CONTRACTOR PROVISION

- A. GRANTEE is not an employee of the SOCIETY and as such is not entitled to any employee related benefits. SOCIETY does not have the right to control the manner in which the work is completed or other details of the work except to the extent specified by the terms of the contract.

SECTION XXIV. AGE DISCRIMINATION

- A. GRANTEE must comply with the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101, et seq.)

SECTION XXV. PERMITS

- A. GRANTEES performing field work on land owned by an instrumentality of the State of North Dakota must obtain a permit for each calendar year in which the field work takes place. Copies of the valid permit must be submitted to SOCIETY before any work on State lands commences.

SECTION XXVI. ARTIFACT CURATION AND STORAGE

- A. All analyzed artifacts shall be carefully washed, cataloged, recorded, and stored (or returned to landowner if requested). After analysis and final reporting, the artifacts shall be curated at the discretion of SOCIETY at either SOCIETY's facilities or facilities approved by SOCIETY. Artifacts curated at SOCIETY facilities by GRANTEE shall be curated according to SOCIETY's curation specifications.

SECTION XXVII. APPLICABLE LAW

- A. This Agreement shall be governed by and construed in accordance with the law of the State of North Dakota.

SECTION XXVIII. ADDITIONAL REQUIREMENTS

- A. GRANTEE agrees to comply with such other additional requirements as found on Attachment 9.

Dated this \_\_\_\_\_ day of \_\_\_\_\_.

STATE OF NORTH DAKOTA  
STATE HISTORICAL SOCIETY OF NORTH DAKOTA

By: \_\_\_\_\_  
Claudia J. Berg, Director

City of Fargo

By: \_\_\_\_\_





# North Dakota Certified Local Government Grant Application Guidelines

Attachment 1

FFY 2019: March 1, 2019 – February 29, 2020

---

The State Historical Society of North Dakota (SHSND) has not received information on the final Historic Preservation Fund (HPF) monies for Federal Fiscal Year (FFY) 2019. We anticipate a similar level to 2018 of \$705,578. A minimum of 10% of the HPF funds will be dedicated to Certified Local Governments and available through a competitive grant award to the 7 CLGs in North Dakota.

Special note: Contracts will not be finalized until the SHPO has finalized HPF award with the National Park Service. Any major work (ie: hiring contractor) on projects should not occur until after contract is signed.

## APPLICATION PROCESS

To apply for a portion of this funding, CLGs must submit **six (6)** complete copies of the application to the State Historical Society of North Dakota by **Friday, February 15, 2019**.

The application must contain the following items:

- 1) Completed Application Form (Attachment 2). A signed form is preferred but the CLG may submit an unsigned form with the application and wait to submit a signed form after the total amount of the grant has been finalized.
- 2) A comprehensive budget for the entire grant year (March 1, 2019 - February 29, 2020) which includes the combined expenses and match for all projects.
- 3) A proposal for each project which includes the following:
  - a) A narrative description of the project. The narrative should include the importance, goals and objectives of the project, public benefit, how this project will further local, regional or state historic preservation plans.
  - b) A list of products which will result from the project, (contexts, nominations, survey reports, brochures, historic preservation plans, public education activities, etc.).
  - c) A time line with dates for submission of products and completion of goals
  - d) A detailed budget, showing line item expenses, methods used to arrive at the figures, and match amounts and their sources.

- 4) A list of all current Historic Preservation Commission members, including the Coordinator (if applicable). The list must include each member's address, phone number, email address, position on the commission, and the rate that is used to evaluate their donated time.
- 5) A list of current city or county commissioners for the CLG and their contact information; include the chief elected officer of the local government.
- 6) Historic Preservation Commission meeting minutes which show that the Commission has approved the projects for which funding is being requested and has approved the submittal of the grant application.
- 7) The signed "Assurances-non-construction programs" form (Attachment 8)

The forms required for items 1 and 7, are attached. The forms must be signed by the chief elected officer of the county or city (i.e. president, mayor, chairman).

The application will be for funds to be spent from March 1, 2019 - February 28, 2020.

#### **PROJECT INSTRUCTIONS**

Each project must have a separate narrative, budget, time line and products list. General CLG administration, as well as each survey, nomination, or development project are considered separate projects. For example, if a CLG is planning to ask for funds for administering the CLG, for doing a survey, for writing a national register nomination, and for printing a brochure; that CLG would submit a separate narrative, budget, product list and time line for each of those four projects. (See the sample application.)

**Each CLG must apply for an administrative budget. This should be project #1. The administration project must be a complete project with narrative and budget.**



The Administration Project will contain activities pertinent to budget formulation and execution, personnel management, finance, property management, equal opportunity, and other "overhead" functions not directly attributable to specific projects. In accordance with National Park Service requirements, funding in this Program Area may not exceed 25% of the CLGs annual award.

#### **BUDGET INFORMATION**

All figures should be rounded to the nearest dollar and miscellaneous categories are not eligible.

Allowable travel costs cannot exceed the rates established by the State of North Dakota:

- 1) The rate for mileage cannot exceed 54.5¢ per mile to a geographic point 300 miles each way from the borders of the state, and 18¢ per mile for the remaining distance.
- 2) The rate for meals cannot exceed \$35.00 (Breakfast: \$7, Lunch \$10.50, Dinner: \$17.50) per day per person in North Dakota; federal rates apply outside of North Dakota and vary per city.
- 3) The rate paid for in state lodging cannot exceed \$84.60 plus tax per night per person.

Federal rates apply outside of North Dakota and vary per city. If you need out-of-state rates for travel, please contact Amy Munson.

### **MATCHING FUNDS**

Matching funds are the cash and in-kind support that is provided by the CLG and community that support the grant. Local matching funds are required for all CLG grants. Matching funds can be a local cash match or in-kind donations and must be a minimum of 40% of the project total.

Each project does not have to have 40% match but the cumulative match for the total grant must be 40%. The cumulative match must equal the total match on the application form.

### **CALCULATING MATCH**

The minimum required match is 40% of the project total. The project total is the amount of the requested federal funds **added** to the amount of match provided. It is not 40% of the federal amount. To calculate the minimum amount of match required use the following formula:

$$(\text{Federal Funds requested}/0.6) \times 0.4 = \text{minimum required match}$$

Example: If requesting \$3500 in federal funds:

$$\$3500 \div 0.6 = \$5833 \text{ (total project costs);}$$

$$\$5833 \times 0.4 = \$2333. \text{ (total matching funds)}$$

The minimum amount of match needed is \$2333.

### **PAYMENT**

The type of contract that will be written is "reimbursement." CLGs will be required to submit expense receipts, in-kind labor and material forms, and a reimbursement form. SHSND will reimburse the CLG after verifying the expense and match. However, reimbursement requests will not be honored if products are overdue or if the cumulative amount of match submitted is low in comparison to the amount of reimbursement paid.

## **DEADLINE**

The application must be received in the State Historic Preservation Office by 5:00 p.m. on **Friday, February 15, 2019.**

## **CRITERIA**

In addition to the ability of an applicant to generate the required matching contribution, all applications will be evaluated with regard to standardized evaluation criteria.

The proposal will be judged by what degree it demonstrates that:

- the applicant understands historic preservation goals and requirements.
- the proposed project is feasible and HPF eligible
- budget amounts are sufficient to accomplish the project as proposed.
- supporting rationale and documentation are adequate to justify budget line items.
- the contract amount is reasonable for the project.
- the planning and scheduling techniques assure quality performance.
- the quality of work done previously by the CLG meets Society's standards.
- the CLG has performed satisfactorily in past years.
- the proposed schedule will meet SHSND needs.
- the proposed project will meet SHSND comprehensive plan goals.

**All application reviewers will be given information regarding CLG's performance on previous projects. This information will include any discrepancies between project deadlines and work completion dates, the accuracy of budget projections, and the quality of work performed.**

## **STANDARDS FOR PROJECTS**

Standards for survey, planning, and National Register projects are attached. Projects proposed in these areas must follow the required standards. If a context or an archeological survey project is going to be proposed, the Society should be contacted for further information.



Send completed applications to:

Amy Munson  
Grants & Contracts Officer  
State Historical Society of North Dakota  
612 East Boulevard  
Bismarck ND 58505

Questions should be directed to Amy at (701)328-3573 or e-mailed to [amunson@nd.gov](mailto:amunson@nd.gov).

ENCLOSURES:

- CLG Grant Program Application Guide
- Proposal Development: Goals & Objectives
- Sample CLG Application
- Application Checklist
- Application Form (Attachment 2)
- Assurances – Non-construction Programs (Attachment 8)
- Requirements for National Register, Planning, and Survey Projects

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This program receives Federal funds from the National Park Service. Regulations of the U.S. Department of the Interior strictly prohibit unlawful discrimination in departmental Federally Assisted Programs on the basis of race, color, national origin, age, or disability. Any person who believes she or he has been discriminated against in any program, activity, or facility operated by a recipient of Federal assistance should write to: Director, Equal Opportunity Program, U.S. Department of the Interior, National Park Service, 1849 C Street, NW, Mail Stop 2255 Washington, D.C. 20240.

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**HISTORIC PRESERVATION FUND GRANT APPLICATION FORM**

CLG NAME: Fargo Historic Preservation Commission

MAILING ADDRESS: 225 4<sup>th</sup> Street North

CITY, STATE, ZIP: Fargo, ND 58102

CONTACT PERSON: Kylie Bagley

TITLE: CLG Coordinator

PHONE: (701) 476-4152 E-MAIL: KBagley@FargoND.gov

ADDRESS: 225 4<sup>th</sup> Street North Fargo, ND 58102

**PROJECT PERIOD**

Start Date: March 2019 End Date: February 2020

**PROJECTS**

Project 1: Administration

Project 2: Five Year Strategic Plan

Project 3: \_\_\_\_\_

Project 4: \_\_\_\_\_

**FEDERAL FUNDS and MATCHING SHARE:**

FEDERAL FUNDS \$: 9,300

MATCHING SHARE \$: 6,200

TOTAL PROJECT COST \$: 15,500

I certify that I understand the terms and conditions relating to the use of HPF grant funds. I understand that I may not proceed with any project work for which reimbursement is expected until I receive written notification from the State Historical Society of North Dakota that the project has been approved. I also certify that the organization I represent has sufficient resources to satisfy the proposed matching share.

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE

**ADMINISTRATION PROJECT – NARRATIVE**

**Project Purpose and Intent**

The Fargo Historic Preservation Commission (FHPC) intends to use the requested administrative funds to support its ongoing work, as it relates to National Register/Eligible properties in the City of Fargo.

**Project Need**

The FHPC will provide part of its grant match through attendance at the CLG meeting and regular meetings.

**Product List**

1. Members will attend regular FHPC monthly meetings and annual CLG meeting

**Timeline**

March 2019 – February 2020

| <b>ADMIN BUDGET</b>                         | <b>Match</b>   | <b>HPF</b>   | <b>Total</b>   |
|---|----------------|--------------|----------------|
| Travel to CLG Meeting                       | \$0            | \$300        | \$300          |
| FHPC (Meetings/Activities/Supplies/Postage) | \$1,200        | \$0          | \$1,200        |
| <b>SUBTOTAL</b>                             | <b>\$1,200</b> | <b>\$300</b> | <b>\$1,500</b> |

**Five YEAR STRATEGIC PLAN**

**Project Purpose and Intent**

The Fargo Historic Preservation Commission intends to use the requested funds to create a 5 year strategic plan which would support its ongoing work. The 5 year strategic plan would identify neighborhoods within Fargo that could benefit from having a historic overlay district. The strategic plan would also identify historic buildings and homes that meet the national register criteria, as well as identify any future historic projects with cost estimates and timelines that are needed for project completion. This strategic plan would direct the commission on which areas of the city are important to preserve.

**Project Need**

Currently the way neighborhoods are preserved in Fargo are through Historic Overlay Districts. These districts are proposed by representatives of the neighborhood. This 5 year strategic plan would allow the commission to be more proactive in preserving historic neighborhoods.

**Product List**

1. Ultimately, Fargo will have a document detailing historic areas and or buildings in Fargo that should be preserved. This document will also be a tool for the community to show what neighborhoods are historic as well as what projects can be done to keep and/or enhance the historic nature of Fargo.
2. Other products include scope of work, chosen proposal, and a contract with a consultant.

**Timeline**

- Scope of Work/RFP \_\_\_\_\_ June 1, 2019
  - o Submit to the State Historic Preservation Office (SHPO) for review.
- Chosen Proposal \_\_\_\_\_ August 1, 2019
- Contract \_\_\_\_\_ August 15, 2019
  - o Contract should be reviewed by the SHPO
  - o Contract should be reviewed by the Fargo City Commission
- Present 5 Year Strategic Plan to FHPC \_\_\_\_\_ February 2020

| <b>FIVE YEAR STRATEGIC PLAN</b> | <b>Match</b>   | <b>HPF</b>     | <b>Total</b>    |
|---------------------------------|----------------|----------------|-----------------|
| Consultant                      | \$5,000        | \$9,000        | \$14,000        |
| <b>SUBTOTAL</b>                 | <b>\$5,000</b> | <b>\$9,000</b> | <b>\$14,000</b> |

| <b>COMPREHENSIVE BUDGET SUMMARY</b> | <b>Match</b>   | <b>HPF</b>     | <b>Total</b>    |
|-------------------------------------|----------------|----------------|-----------------|
| <b>PROJECT – ADMIN</b>              | \$1,200        | \$300          | \$1,500         |
| <b>FIVE YEAR STRATEGIC PLAN</b>     | \$5,000        | \$9,000        | \$14,000        |
| <b>TOTAL BUDGET</b>                 | <b>\$6,200</b> | <b>\$9,300</b> | <b>\$15,500</b> |

**2018 Fargo Historic Preservation Commission**

**Heather Fischer, Chair**  
1110 7<sup>th</sup> St S  
Fargo, ND 58103  
701-367-6376  
[heatherfischer@gmail.com](mailto:heatherfischer@gmail.com)  
Hourly Rate \$32.78 (Architect)

**Christine Kloubec, Vice Chair**  
620 8<sup>th</sup> St S  
Fargo, ND 58103  
701- 235-8872  
[back400@centurylink.net](mailto:back400@centurylink.net)  
Hourly Rate: \$16.88

**Jay Nelson**  
524 14<sup>th</sup> St S  
Fargo, ND 58103  
701-730-0290  
[jaumelson@archercommercial.com](mailto:jaumelson@archercommercial.com)  
Hourly Rate: \$30.00 (Realtor)

**Matt Boreen**  
805 6<sup>th</sup> St S  
Fargo, ND 58103  
701-200-3458  
[matthew.boreen@gmail.com](mailto:matthew.boreen@gmail.com)  
Hourly Rate: \$30.90 (Architect)

**Paul Gleye**  
311 8<sup>th</sup> St S  
Fargo, ND 58103  
701-231-5789  
[paul.gleye@ndsu.edu](mailto:paul.gleye@ndsu.edu)  
Hourly Rate: \$52.58 (Architect)

**Nathan Larson**  
819 8<sup>th</sup> Ave N  
Fargo, ND 58103  
701-237-5031  
[nathan.a.larson@gmail.com](mailto:nathan.a.larson@gmail.com)  
Hourly Rate: \$30.00 (Architect)

**Mike Dawson**  
614 8<sup>th</sup> St S  
Fargo, ND 58103  
701-371-5860  
[mike.dawson.1186@gmail.com](mailto:mike.dawson.1186@gmail.com)  
Hourly Rate: \$30.00 (Architect)

**Kylie Bagley, CLG Coordinator**  
225 4<sup>th</sup> St N  
Fargo, ND 58102  
701-476-4152  
[kbagley@fargond.gov](mailto:kbagley@fargond.gov)  
Hourly Rate: \$29.14



**2019 Fargo City Commission**

**Mayor Tim Mahoney, MD**

200 North Third Street  
Fargo, ND 58102  
(701) 241-1310  
Fax: (701) 476-4136  
E-mail: [tmahoney@cityoffargo.com](mailto:tmahoney@cityoffargo.com)

**Commissioner Tony Grindberg**

200 North Third Street  
Fargo, ND 58102  
(701) 793-3763  
Fax: (701) 476-4136  
E-mail: [tgrindberg@cityoffargo.com](mailto:tgrindberg@cityoffargo.com)

**Commissioner Dave Piepkorn**

200 North Third Street  
Fargo, ND 58102  
(701) 241-1310  
Fax: (701) 476-4136  
E-mail: [dpiepkorn@cityoffargo.com](mailto:dpiepkorn@cityoffargo.com)

**Commissioner John Strand**

200 North Third Street  
Fargo, ND 58102  
(701) 241-1310  
Fax: (701) 476-4136  
E-mail: [jstrand@cityoffargo.com](mailto:jstrand@cityoffargo.com)

**Tony Gehrig**

200 North Third Street  
Fargo, ND 58102  
(701) 241-1310  
Fax: (701) 476-4136  
E-mail: [tgehrig@cityoffargo.com](mailto:tgehrig@cityoffargo.com)

**BOARD OF HISTORIC PRESERVATION COMMISSIONERS  
MINUTES**

**Regular Meeting:**

**Tuesday, January 15, 2019**

The Regular Meeting of the Board of Historic Preservation Commissioners of the City of Fargo, North Dakota, was held in the City Commission Room at City Hall at 8:00 o'clock a.m., Tuesday, January 15, 2019.

The Historic Preservation Commissioners present or absent were as follows:

**Present:** Christine Kloubec, Heather Fischer, Matthew Boreen, Paul Gleye, Mike Dawson, Nathan Larson, Jay Nelson

**Absent:** None

Chair Fischer called the meeting to order and welcomed Members to the meeting.

**Item 1: Minutes: Regular Meeting of December 18, 2018**

Member Boreen moved the minutes of the December 18, 2018 Historic Preservation Commission meeting be approved. Second by Member Gleye. All Members present voted aye and the motion was declared carried.

**Item 2: CLG Grant Application Projects: APPROVED**

Assistant Planner Kylie Bagley explained the application process stating that every year a new application must be completed and submitted to the State for approval of federal funding for projects approved by the Board.

Member Dawson present.

The Board further discussed the proposed project for 2019 is to create a 5-year strategic plan to identify neighborhoods within Fargo that could benefit from having a historic overlay district; funds to hire a consultant to add their expertise and objective direction; and clarification that the grant also will match the hours put forth by the Board and staff.

Ms. Bagley also clarified that the State receives this federal funding each year and disperses it to the 6 communities in North Dakota that participate in this program. She stated the State can approve or deny any funding requests, and that all funds approved must be used during the timeline of March 2019 to February 2020.

Member Gleye moved to approve the submission of the CLG Grant Application as presented. Second by Member Boreen. All Members present voted aye and the motion was declared carried.

**Item 3: Liaison Reports**

No reports were provided at this time.

**Item 4: Other Business or Public Comment**

No other business or public comments were discussed.

**Item 5: Next Meeting – February 19, 2019**

## **Donated Labor**

1. If the services performed by the donor are in the same skill area for which the employee is normally paid, the GRANTEE may value the donor's services at the rate the State of North Dakota pays for similar services (exclusive of fringe benefits and overhead costs).
2. If the services performed by donors are outside their normal profession or trade, the GRANTEE shall value the donor's service at the Federal minimum wage as stated in the Federal Fair Labor Standards Act.
3. All donated services shall be documented on the attached Donated Labor Time Sheet. The value of the donated labor shall only be used as the GRANTEE'S matching share if the donated labor is performed to accomplish work on the project.
4. Services paid under another federal grant or contract shall not be considered eligible as donated services by the SOCIETY.
5. Students in a federally funded work/study or Federal student loan program cannot contribute donated services as matching share for an HPF grant.
6. The maximum donation of services eligible as the GRANTEE'S matching share shall not exceed forty (40) hours per week per donation.
7. When donated labor is used by GRANTEE on the project, GRANTEE shall submit completed forms to SOCIETY within ninety (90) days of the use of donation.



## Donated Equipment & Materials

Donated supplies and materials such as office supplies, mileage, long distance phone costs, laboratory supplies, etc. can be used in whole or in part as the GRANTEE'S non-federal matching share on the condition that:

1. The donation is for supplies and materials required to complete the project.
2. Values assessed to the donations must be reasonable and must not exceed the fair market value at the time of donation.
3. The GRANTEE must provide the SOCIETY with written documentation to justify values assessed to the donations.
4. The GRANTEE must submit to the SOCIETY a properly completed Donated Equipment & Materials Record, a copy of which is attached hereto, along with the documentation required above.

The GRANTEE shall submit completed forms to the SOCIETY within ninety (90) days of the use of the donation.





## **Product Schedule**

Fargo CLG  
38-19-171422-30

### **Administration**

|                           |  |
|---------------------------|--|
| Coordinator Reports       | Monthly; with the first set of minutes       |
| Expense & Match Reports   | Final Report due no later than November 2020 |
| Fargo CLG Meeting Minutes | Within ten days of each meeting              |

### **5 Year Strategic Plan**

|                                 |                 |
|---------------------------------|-----------------|
| Scope of Work/RFP               | June 1, 2019    |
| Chosen Proposal                 | August 1, 2019  |
| Contract                        | August 15, 2019 |
| Final Plan Presentation to FHPC | February 2020   |

**REIMBURSEMENT REQUEST AND MATCH REPORTING FORM**  
 for the Historic Preservation Grant Program administered by the State Historical Society of North Dakota

|                                      |  |            |  |
|--------------------------------------|--|------------|--|
| Project #:                           |  | Request #: |  |
| Project Name:                        |  | Grantee:   |  |
| Time Period covered by this request: |  |            |  |

|   | (a) Grant | (b) Match |
|---|-----------|-----------|
| 1. Agreement amounts  |           |           |
| 2. Amount of reimbursement requested                            |           |           |
| 3. Amount of match reported                                     |           |           |
| 4. Total amount of reimbursement received (before this request) |           |           |
| 5. Total amount of match credited (before this request)         |           |           |

Please attach all receipts, invoices, pay records, donated labor and equipment sheets, etc. required to document expenses.

**CERTIFICATE FOR PAYMENT**

I certify that to the best of my knowledge, information and belief the work covered by this Payment Request has been completed to date in accordance with the Agreement, that all amounts have been incurred in conformance to the Agreement and have been claimed in previous Payment Requests, that all reporting requirements and scheduled activities have been met to date, and that current payments requested herein is now due.

|           |       |
|-----------|-------|
| By:       | Date: |
| Position: |       |

**For State Historical Society of North Dakota Use Only**

**Certification For Payment**

Project Personnel: Based on on-site inspections of work and/or review of reports and other materials submitted by the Grantee, I certify that to the best of my knowledge, information and belief that the work covered by this Payment Request has been completed to date in accordance with the Agreement, that all reporting requirements and scheduled activities have been met to date, and that the Grantee is entitled to payment.

|     |       |
|-----|-------|
| By: | Date: |
|-----|-------|

Grant Personnel: Based upon review of this Payment Request and attached auditable records, I certify that to the best of my knowledge, information and belief that all amounts covered by this Payment Request have been incurred in conformance to the Agreement and have not been claimed in previous Payment Requests, and that the Grantee is entitled to payment.

|     |       |
|-----|-------|
| By: | Date: |
|-----|-------|

My records concur with the above figures.

|                     |       |
|---------------------|-------|
| SHSND Grant Officer | Date: |
|---------------------|-------|

## **Payment Schedule**

Fargo CLG  
38-19-171422-30

Reimbursement will be made upon submittal of the Request for Reimbursement form (Attachment 6) and supporting documentation. However if a deadline for products has been missed or amount of match submitted is low, payments may be withheld until the issues are corrected.

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

ATTACHMENT 8

OMB Approval No. 0348-0040

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
  - (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.



9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

|   |                |
|---|----------------|
| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE          |
| APPLICANT ORGANIZATION                      | DATE SUBMITTED |



## **Additional Requirements**

Fargo CLG  
38-19-171422-30

1. No Additional Requirements

## **Grant Review Feedback**

Fargo CLG  
38-19-171422-30

Each year, CLG grant applications are reviewed by a committee of six State Historic Preservation Office (SHPO) staff. Starting in 2017, the comments will be included with the contracting information and is meant to provide the grant writer and HPC feedback to improve future grant funding application. If you have any questions please contact Grants & Contracts Officer Amy Munson [amunson@nd.gov](mailto:amunson@nd.gov) or 701-328-3573.

Fargo  
2019  
Funded Budget

| Administrative Budget               |                |              |                |
|-------------------------------------|----------------|--------------|----------------|
|                                     | Match          | Federal      | Total          |
| Travel to CLG Conference            |                | \$300        | \$300          |
| FHPC (Meetings/Activities/Supplies) | \$1,200        |              | \$1,200        |
| <b>Administrative Total</b>         | <b>\$1,200</b> | <b>\$300</b> | <b>\$1,500</b> |

| Five Year Strategic Plan |                |                |                 |
|--------------------------|----------------|----------------|-----------------|
|                          | Match          | Federal        | Total           |
| Consultant               | \$5,000        | \$9,000        | \$14,000        |
| <b>TOTAL</b>             | <b>\$5,000</b> | <b>\$9,000</b> | <b>\$14,000</b> |

|              | Match | Federal    | Total      |
|--------------|-------|------------|------------|
|              |       |            | \$0        |
| <b>TOTAL</b> |       | <b>\$0</b> | <b>\$0</b> |

|                     | Match          | Federal        | Total           |
|---------------------|----------------|----------------|-----------------|
| <b>Grant Totals</b> | <b>\$6,200</b> | <b>\$9,300</b> | <b>\$15,500</b> |

40%

40% min required match                      \$        6,200            \$9,300            \$        15,500

**BOARD OF ADJUSTMENT  
MINUTES**

**Regular Meeting:**

**Tuesday, June 25, 2019**

The Regular Meeting of the Board of Adjustment of the City of Fargo, North Dakota, was held in the Commission Chambers at City Hall at 9:00 a.m., Tuesday, June 25, 2019.

The Members present or absent were as follows:

Present: Deb Wendel-Daub, Matthew Boreen, Michael Love, Mike Mitchell

Absent: Mark Lundberg, Russell Ford-Dunker

Chair Love called the meeting to order.

**Item 1: Approval of Minutes: Regular Meeting of May 28, 2019**

Member Boreen moved the minutes of the May 28, 2019 Board of Adjustment meeting be approved. Second by Member Wendel-Daub. All Members present voted aye and the motion was declared carried.

**Item 2: New Business**

**a) Variance Request – 4288 Clubhouse Drive: DENIED**

***Request for a variance of Section 20-0403 of the LDC. The requested variance is to allow a side yard fence to exceed height restrictions within the SR-3, Single-Dwelling Residential, zoning district.***

Assistant Planner Maggie Squyer presented the staff report and reviewed the criteria used during staff's analysis of the application. Ms. Squyer stated staff is recommending denial, as review criteria (c) has not been met.

Member Wendel-Daub moved the findings of staff be accepted and the variance be denied as requested. Second by Member Mitchell. Upon call of the roll Members Wendel-Daub, Boreen, Mitchell, and Love voted aye. Absent and not voting: Members Ford-Dunker and Lundberg. The motion was declared carried.

**Item 3: Other Business**

No other business was presented.

**Item 4: Adjournment:**

Member Boreen moved to adjourn the meeting at 9:06 a.m. Second by Member Wendel-Daub. All Members present voted aye and the motion was declared carried.

**City of Fargo Finance Committee Meeting**  
**Report of Action**

26

Meeting Date: June 24, 2019

**Item Description: Contract Extension for Recycling Services**

Terry Ludlum presented a proposal to extend the existing recycling contract with Minnkota Recycling. There has been a significant decline in the price of recyclable materials along with a significant increase for materials because of our mixed recycling program. He recommended a three-year extension with a reasonable price increase vs. going out for bids. He believes that doing an external bid now would simply increase our costs over the prices that Minnkota Recycling is willing to accept. The new price would be \$99.50 per ton vs. the existing contract price of \$92.00 per ton.

Committee agreed with this recommendation and moved to recommend this to the City Commission for final ratification.

|            |           |    |        |
|------------|-----------|----|--------|
| Motion by: | Redlinger |    |        |
| Second by: | Sprague   |    |        |
| Vote:      | Yes       | No | Absent |
| Mahoney    | x         |    |        |
| Piepkorn   | x         |    |        |
| Grubb      | x         |    |        |
| Redlinger  | x         |    |        |
| Sprague    | x         |    |        |
| Costin     | x         |    |        |



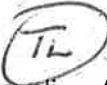
## Division of Solid Waste

2301 8<sup>th</sup> Avenue North  
Fargo, North Dakota 58102  
Phone: 701-241-1449  
Fax: 701-241-8109

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# MEMORANDUM

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TO: Finance Committee  
FROM: Terry Ludlum, Solid Waste Utility Director   
RE: Extension to MinnKota EnviroServices Recycling Agreement  
DATE: June 17, 2019

On March 21, 2016, the City of Fargo issued a *Request for Proposals* for the **Marketing Services for Recyclable Materials**. Proposals were received from Waste Management and MinnKota EnviroServices, Inc. An evaluation committee (Bruce Grubb, Commissioner Tony Gehrig, Recycling Coordinator Jen Pickett, and Terry Ludlum) reviewed the proposals and met with both firms to discuss their submittals. On May 23, 2016, the Commission approved a three-year Recycling Agreement with MinnKota EnviroServices, with an option to extend the contract for an additional three years under the same terms and conditions with mutual consent.

On February 7, 2019, Solid Waste staff met with MinnKota representatives to discuss the three-year extension and were informed that in order to extend the contract, there would need to be price adjustments for all recycled material delivered to MinnKota due to the severely depleted markets. MinnKota was asked to prepare a recent history of recycled material market indexes and provide them to the City for further discussion. (Please note that due to the activation of Sandbag Central, this item was delayed by 60-days).

The attached material breakdowns and **Recyclable Product Values Per Ton** have been provided by MinnKota and confirm the depressed markets which warrant the request for price adjustments of all recycled materials. The specific price adjustments include processing fees of \$22.50/ton for all sorted magazines (up from \$15.00/ton), \$30.50/ton for all plastics #1-7 (up from \$23.00/ton), \$30.50/ton for all sorted glass, and \$99.50/ton for all commingled materials (up from \$92.00/ton). The total financial impact of the adjustments equals approximately \$36,000 annually.

Given the uncertainty of recyclable markets moving forward, Solid Waste staff would recommend approval of a three-year extension with MinnKota EnviroServices. Of main concern should a formal request for service be advertised at this time would be drastically inflated prices for the handling of recycled material based on world-wide market unknowns over the next 3-5 years. (Please note that during the RFP process in 2016, MinnKota's proposed handling price for comingled material was \$92.00 per ton and the other submittal was \$161.18 per ton).

### Recommended Motion:

Approve the attached three-year extension with MinnKota EnviroServices for the handling of recyclable materials with the above-referenced price adjustments. The agreement would be effective from May 1, 2019, through May 1, 2022.

Your consideration in this matter is greatly appreciated.



## RECYCLING AGREEMENT

THIS AGREEMENT made and intended to be effective the 1<sup>st</sup> day of May, 2019, by and between the CITY OF FARGO, NORTH DAKOTA, a municipal corporation (Fargo); and MINNKOTA ENVIROSERVICES, INC., a North Dakota corporation doing business as MINNKOTA RECYCLING (Minnkota).

### RECITALS:

- A. Fargo operates a collection service for purposes of recycling certain solid wastes.
- B. Minnkota handles recyclable materials.
- C. The parties have previously entered into an agreement, addendum to agreement, and extension agreement concerning recyclable materials and recycling equipment.
- D. The parties have negotiated a new agreement and wish to commit the same to writing.

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

1. The term of this agreement shall be for a period of three years calculated from May 1, 2019, thus expiring April 30, 2022.
2. Minnkota agrees to accept all sorted newsprint, magazines, aluminum, bi-metals, plastics #1-7, glass, and cardboard, which are deposited in Fargo's collection sites located throughout the city, as well as such material collected from Fargo's commercial recycling program, or Fargo's curbside residential collection program. Minnkota also agrees to accept the same described materials collected as comingled or single-sort from the residential curbside recycling collection program or the commercial recycling collection program. This agreement is predicated on Minnkota receiving all of Fargo's recyclable materials as hereinbefore stated which will be delivered by Fargo to Minnkota at its site in Fargo, North Dakota.
3. Fargo shall pay to Minnkota a processing fee of \$22.50/ton for all sorted magazines, \$30.50/ton for all sorted plastics #1-7, and \$30.50/ton for all sorted glass, delivered to Minnkota. Fargo shall also pay to Minnkota a processing fee of \$99.50/ton for all comingled material as described previously which is delivered to Minnkota.
4. Minnkota shall pay to Fargo for all sorted items specified in paragraph 2 above, sixty percent (60%) of the market price, which is above a protected base price of \$50.00 per ton for each such class of item. The market price shall be disclosed on a monthly recycling activity report sent to Fargo by Minnkota. Fargo's sixty percent (60%) share of recyclables sold, above the protected base price, shall be based on the market price per ton, which will be set forth on the Minnkota Recycling Activity Report (monthly).

5. Payment by Minnkota to Fargo or by Fargo to Minnkota under the formulas set forth herein, shall be payable on a monthly basis, and within 25 days from the end of the particular month involved. Accounting and tracking of comingled or single sort recyclable materials by Minnkota shall be separate from accounting and tracking of source separated recyclable materials.
6. Fargo will not charge landfill fees for Minnkota's landfill disposal of non-recyclable materials or roll-off container pull fees of associated non-recyclable materials.
7. In the event of breach of any of the terms of this agreement by Minnkota, Fargo shall provide written notice of such breach to Minnkota and Minnkota shall have ninety (90) day from the date of that notice to cure that breach. If the breach is not cured within that ninety (90) day time period, Fargo may terminate this agreement.
8. This agreement shall be construed in accordance with the laws of the State of North Dakota and shall be binding upon the successors and assigns of each of the parties hereto.

Dated the day and year first above written.

CITY OF FARGO, NORTH DAKOTA  
a municipal corporation

By, \_\_\_\_\_  
Timothy Mahoney, Mayor

Attest:

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

MINNKOTA ENVIROSERVICES, INC., OF FARGO, NORTH DAKOTA

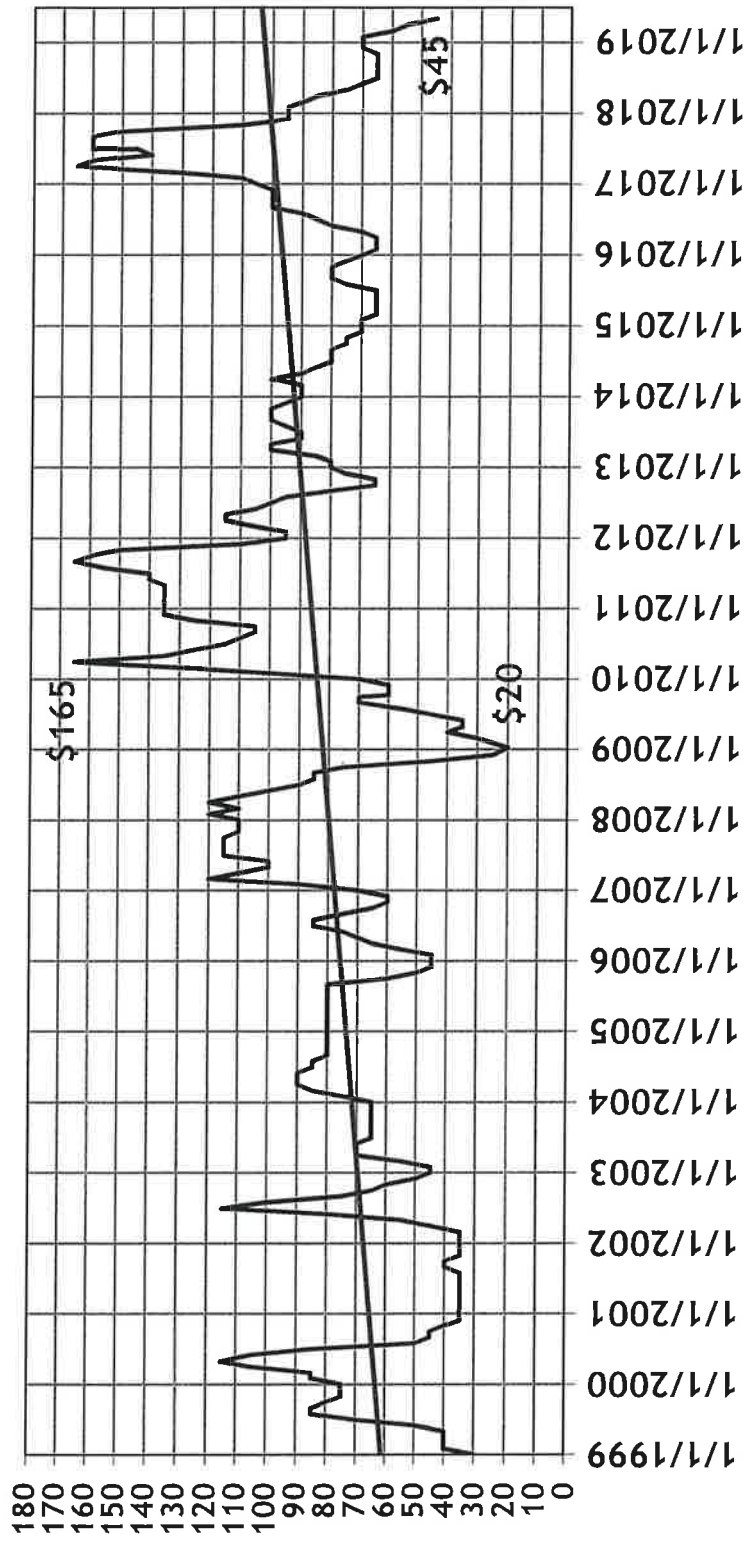
By, \_\_\_\_\_  
Randy Christianson, President

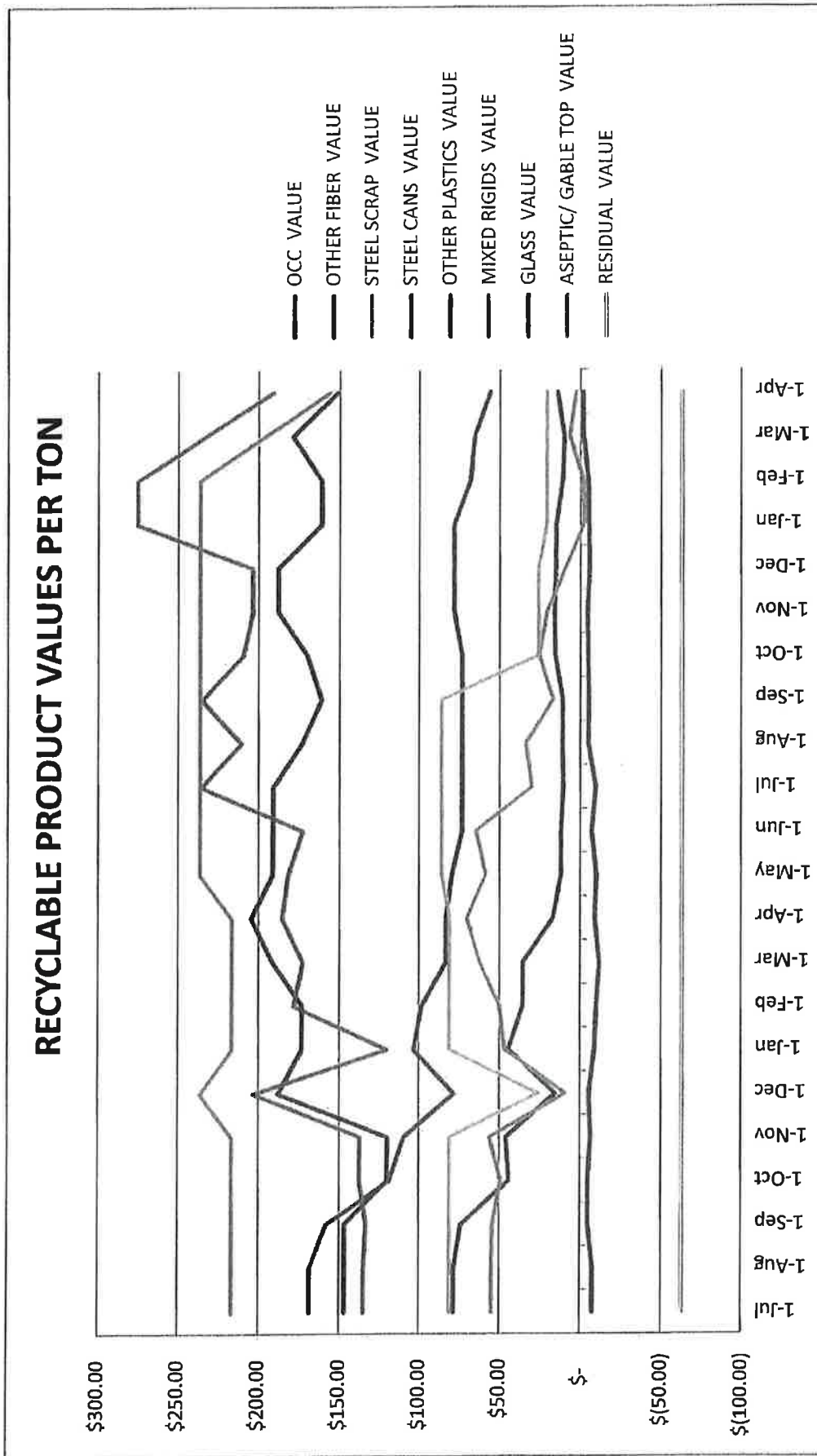
Attest:

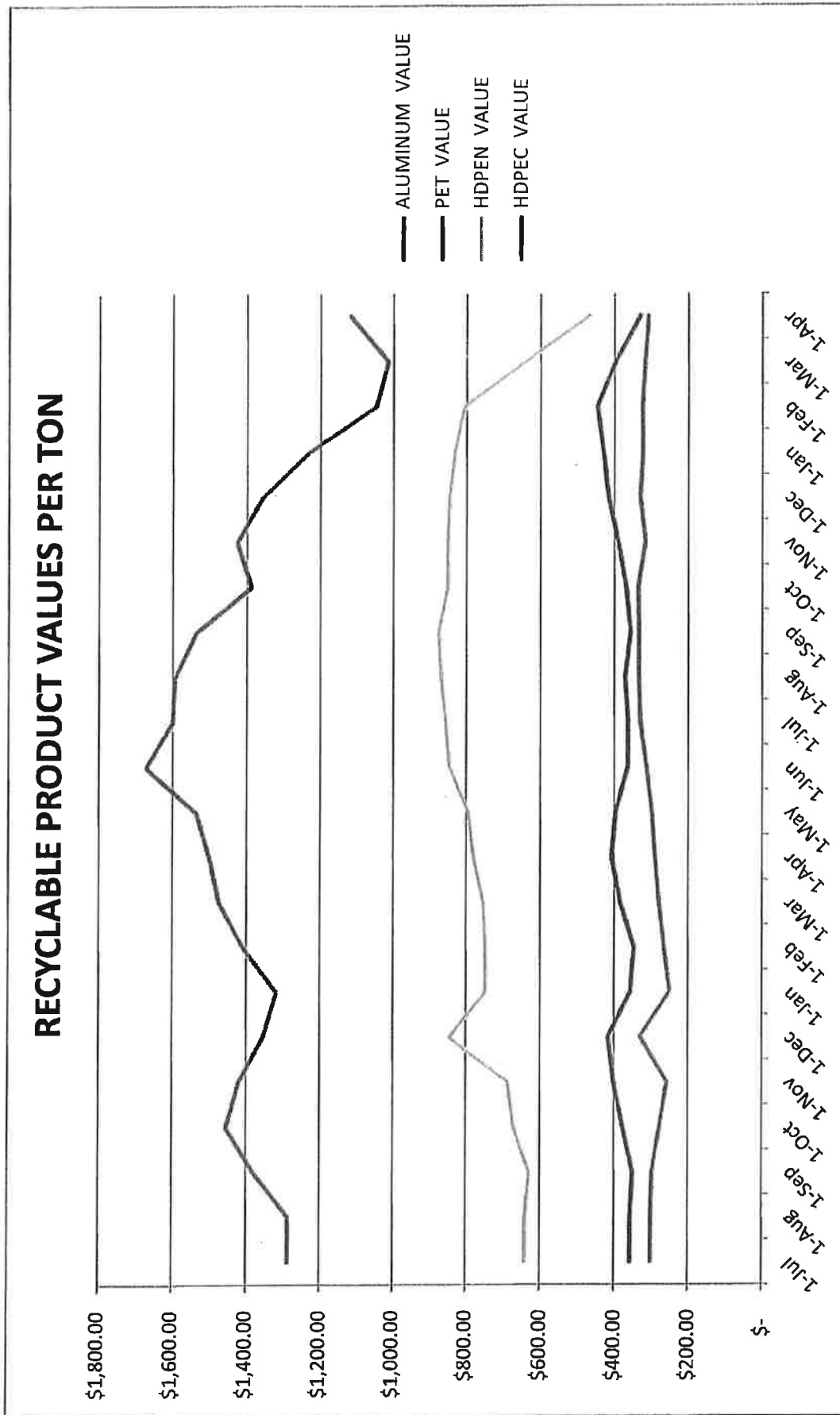
\_\_\_\_\_  
Brad Holm, Vice President/General Manager

| <b>MATERIAL</b>              | <b>TOTAL</b>      | <b>MONTHLY AVE</b> |
|------------------------------|-------------------|--------------------|
| Fargo Curbside Lbs           | 15,698,710        | 713,578            |
| <b>TOTAL RECEIVED</b>        | <b>25,346,803</b> | <b>1,152,127</b>   |
| <b>BREAK DOWN</b>            |                   |                    |
| OCC %                        | 22%               | 22%                |
| OTHER FIBER %                | 42%               | 42%                |
| ALUMINUM %                   | 2%                | 2%                 |
| STEEL SCRAP %                | 0%                | 0%                 |
| STEEL CANS %                 | 2%                | 2%                 |
| PET %                        | 5%                | 5%                 |
| HDPEN %                      | 1%                | 1%                 |
| HDPEC %                      | 2%                | 2%                 |
| OTHER PLASTICS %             | 2%                | 2%                 |
| MIXED RIGIDS %               | 0%                | 0%                 |
| GLASS %                      | 14%               | 14%                |
| ASEPTIC/ GABLE TOP %         | 0%                | 0%                 |
| RESIDUAL %                   | 8%                | 8%                 |
| <b>TOTAL%</b>                | <b>100%</b>       | <b>100%</b>        |
| <b>TONS</b>                  |                   |                    |
| OCC TONS                     | 1,725.18          | 78.42              |
| OTHER FIBER TONS             | 3,280.87          | 149.13             |
| ALUMINUM TONS                | 132.73            | 6.03               |
| STEEL SCRAP TONS             | 32.71             | 1.49               |
| STEEL CANS TONS              | 153.17            | 6.96               |
| PET TONS                     | 358.47            | 16.29              |
| HDPEN TONS                   | 104.01            | 4.73               |
| HDPEC TONS                   | 144.86            | 6.58               |
| OTHER PLASTICS TONS          | 150.18            | 6.83               |
| MIXED RIGIDS TONS            | 22.85             | 1.04               |
| GLASS TONS                   | 1,123.45          | 51.07              |
| ASEPTIC/ GABLE TOP TONS      | 4.63              | 0.21               |
| RESIDUAL TONS                | 616.24            | 28.01              |
| <b>CALCULATED TOTAL TONS</b> | <b>7,849.36</b>   | <b>356.79</b>      |

# Old Corrugated Cardboard Official Board Market (High Side)









27

June 27, 2019

City of Fargo Commission  
225 Fourth St N  
Fargo, ND 58102

Commissioners:

The City of Fargo Transit Department will begin providing the TapRide service to the Fargo Industrial Park August 4, 2019. The service was approved by this Commission in late May.

The new service will be a pilot project to determine the need and use of transit to the Fargo Industrial Park, therefore, instead of purchasing a vehicle for the service we will need to lease a vehicle. We are working with Assistant City Attorney Nancy Morris on finalizing the terms of the attached draft lease agreement. The price contained in the attached draft lease will be the same in the final lease.

**Requested motion:** approve the attached draft vehicle lease between the City of Fargo and North Central Bus & Equipment, Inc. and upon finalization of the terms of the lease, authorize execution of the final lease.

Thank you.



Julie Bommelman  
Transit Director  
City of Fargo  
650 23<sup>rd</sup> St N  
Fargo, ND 58102

/enc



2629 Clearwater Road, PO Box 1084  
 Website: [www.northcentralinc.com](http://www.northcentralinc.com)

Saint Cloud, Minnesota 56301  
 Email: [jodij@northcentralinc.com](mailto:jodij@northcentralinc.com)

Phone: 320-298-1217

## LEASE AGREEMENT

North Central Bus & Equipment, Inc. ("North Central") and City of Fargo (the "Customer") enter into this Agreement this 1st day of July, 2019 (the "Effective Date") related to the following bus / motor vehicle (the "Equipment") pursuant to the terms and conditions contained herein.

### 1. Equipment.

|                               |                |                        |                           |
|-------------------------------|----------------|------------------------|---------------------------|
| Year:                         | 2018           | Make:                  | Elkhart Coach             |
| Model:                        | ECII Ford E450 | VIN:                   | 1FDFE4FS0JDC37279         |
| Starting Mileage:             | X              | Ending Mileage:        | Not More Than 30,000      |
| Estimated Value Of Equipment: | \$72,640.00    | Estimated Return Date: | 12 Months From Lease Date |

**2. Insurance.** Customer will provide insurance as described below as coverage for the listed Equipment as of the Effective Date and will relieve North Central of and absolutely all liabilities until the Equipment is returned to North Central. Customer shall be solely responsible for all risk of loss, vandalism or damage while the Equipment is in Customer's control or possession pursuant to this Agreement.

- a. Customer agrees to carry comprehensive/collision insurance coverage for no less than the value of the equipment noted above and Automobile liability (including hired/non-owned) insurance, with a limit of not less than \$1,000,000 per occurrence, and to designate North Central as additional insured and loss payee on such insurance. Customer agrees to deliver prompt written notice to North Central Lessor of (1) loss, theft, or destruction of any equipment, (2) any damage to any equipment or that the equipment is not in as good of condition as when delivered, ordinary wear and tear excepted, (3) provide a 10-day notice of cancellation of insurance policy.
- b. Prior to delivery of the Equipment from North Central to Customer, Customer will email ([jodij@northcentralinc.com](mailto:jodij@northcentralinc.com)) proof of the above required insurance.

### CUSTOMER'S INSURANCE INFORMATION

Insurance Company \_\_\_\_\_  
 Policy#: \_\_\_\_\_  
 Expiration Date: \_\_\_\_\_

**3. Equipment Condition and Use.** Customer agrees to keep the Equipment in the same condition as when received and agrees to pay North Central, on the return of the Equipment for all damage to the Equipment, including but not limited to scratches, dents, cracks, breakages, bent parts, interior damage or mechanical damage, ordinary wear and

tear excepted. North Central Bus & Equipment, Inc. does acknowledge and accept that the Customer will be installing a camera system, as well as a graphics wrap on the vehicle during the lease period. The Customer has agreed to remove the graphics wrap so the bus is returned white. The Customer also has agreed to remove the camera system, including all camera heads, DVR recording system devices, and wiring from the vehicle. North Central Bus & Equipment, Inc. will patch the holes left by the camera system at our expense.

The measure of damages shall be the estimated manufacturer retail cost of repair, labor to repair the Equipment, Equipment downtime, plus all towing charges which may be incurred, all as reasonably determined by North Central. Customer shall ensure that the Equipment is used in strict accordance with all applicable rules, laws, ordinances, regulations and guidelines.

4. **Indemnification.** The parties expressly agree that North Central is not responsible for any injuries, damages, penalties, claims or losses, including, but not limited to, legal costs and expenses, whether civil or criminal, incurred by Customer or any other person caused by Customer's transportation, control, operation, storage, possession, repair, modification, maintenance, condition, use, return or disposition of the Equipment to the extent permitted by law. Customer agrees to indemnify, defend (upon North Central's request), and hold North Central harmless from and against any and all liabilities, losses, damages, penalties, claims, actions, suits, costs, and expenses, including court costs and attorneys' fees, imposed on, incurred by or asserted against North Central that in any way relate to or arise from the transportation, control, operation, storage, possession, repair, modification, maintenance, condition, use, return or disposition of the Equipment. This indemnity continues even after this Lease has expired or is terminated.

5. **Lease Terms.** The proposed lease terms for this agreement are as follows:

- Total Finance Amount:** \$72,640.00
- Lease Term Options:** 12 Months
- Preliminary Interest Rate:** 2.75%
- Lease-Purchase Payments:** 12 Monthly Payments of \$2,285.65 to begin July 1<sup>st</sup>, 2019
- Purchase Option:** (need revision or clarification)
- Additional Costs:** No Additional Document Costs or Closing Costs

6. **License, Title, and Rebates.** The bus will be titled as follows, with SCB Public Finance listed as the Lienholder:  
**City of Fargo**  
**650 North 23<sup>rd</sup> Street**  
**Fargo, ND 58102**

As shown on the quote, the purchase price of \$72,640.00 includes \$4,800.00 in GPC Rebates and an additional \$1000.00 in Mobility Rebates. These rebates are being paid through Ford Motor Company, and require that the vehicle must stay titled in the Customer's Name, exactly as shown above, for a period of not less than 12 months / 365 days.

**NORTH CENTRAL BUS & EQUIPMENT, INC.**

**CUSTOMER INFORMATION**

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

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

By: Jodi Janssen

By: \_\_\_\_\_

Title: Commercial Sales Administrator

Title: \_\_\_\_\_

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

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

28

June 27, 2019

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

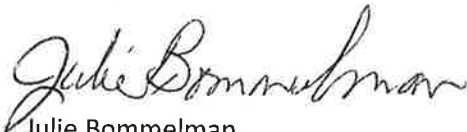
Commissioners:

The State of North Dakota Department of Transportation (ND DOT) has extended contract 38171124A to December 31, 2019. The amendment is solely for the purpose of extending the grant period, there are no other changes to the original agreement.

ND DOT Contract No. 38171124A, CFDA No. 20.526 is attached.

***The requested motion:*** approve the amendment to ND DOT Contract No. 38171124A.

Thank you.



Julie Bommelman  
Transit Director  
City of Fargo  
650 23<sup>rd</sup> St N  
Fargo, ND 58102

\enc

**North Dakota Department of Transportation  
AMENDMENT TO CONTRACT NO. 38171124  
Project No.**

THIS AMENDMENT to the above-referenced contract is entered into by and between the State of North Dakota, acting through its Director of Transportation, hereinafter known as NDDOT, whose address is 608 East Boulevard Avenue, Bismarck, North Dakota 58505-0700, and City of Fargo, hereinafter known as the Contractor, whose address is 650 23<sup>rd</sup> St N, Fargo, ND 58102.

WHEREAS, the parties entered into a contract on October 16, 2017; and

WHEREAS, no additional funding is awarded to this contract; and

WHEREAS, additional time is required to complete the contract; and

NOW THEREFORE, the Contractor and NDDOT agree that the contract entered into on October 16, 2017, shall have a new completion date of December 31, 2019.



All other terms and conditions of the above-referenced contract are incorporated herein by reference and remain in full force and effect.

EXECUTED the date last below signed.

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

To be signed by Owner; Partner; Corp. Pres., Vice Pres., or other authorized Corp. Officer. (If signed by other authorized Corp. Officer, please attach copy of Power of Attorney or other documentation showing authority to sign.)

WITNESS:

NAME (TYPE OR PRINT)

SIGNATURE

CONTRACTOR:

City of Fargo

COMPANY NAME

Dr. Timothy J. Mahoney

OFFICER'S NAME (TYPE OR PRINT)

SIGNATURE

Mayor, City of Fargo

TITLE

DATE

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION

DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

APPROVED as to substance by:

DIVISION DIRECTOR (TYPE OR PRINT)

SIGNATURE

DATE

CLA 52494 (Div. 06)  
L.D. Approved 5-19-00; 5-03





31

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. PN-18-B1 Type: NuStar Energy Pipeline Relocation

Location: 23rd Ave S from 42nd St to 38th St & 41st St from 23rd Ave to 24th Ave Date of Hearing: 6/24/2019

|                 |                        |
|-----------------|------------------------|
| <u>Routing</u>  | <u>Date</u>            |
| City Commission | <u>7/1/2019</u>        |
| PWPEC File      | <u>X</u>               |
| Project File    | <u>Jeremy Engquist</u> |

The committee reviewed a communication from Project Engineer, Jeremy Engquist, regarding the need to relocate a 10" petroleum pipeline at the intersection of 41st Street and 23rd Avenue as well as re-coat 300' of pipeline at approximately 600' east of 41 Street for additional protection. The total cost for pipeline relocation and re-coating is \$482,990.00. Staff is recommending approval.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to approve the pipeline relocation and re-coating.

RECOMMENDED MOTION

Concur with the findings of PWPEC and approve the payment in the amount of \$482,990.00, for the relocation and re-coating of the pipeline to support the construction of 23rd Avenue South from 42nd Street to 38th Street and 41st Street from 23rd Avenue to 24th Avenue.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: General Infrastructure Funds


|  |            |            |
|--|------------|------------|
|  | Yes        | No         |
| Developer meets City policy for payment of delinquent specials | <u>N/A</u> | <u>N/A</u> |
| Agreement for payment of specials required of developer        | <u>N/A</u> | <u>N/A</u> |
| Letter of Credit required (per policy approved 5-28-13)        | <u>N/A</u> | <u>N/A</u> |

COMMITTEE

|  | <u>Present</u>                      | <u>Yes</u>                          | <u>No</u>                | <u>Unanimous</u>                    |
|--|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Tim Mahoney, Mayor                       | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Nicole Crutchfield, Director of Planning | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Steve Dirksen, Fire Chief                | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ryan Erickson                       |
| Bruce Grubb, City Administrator          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Ben Dow, Director of Operations          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Steve Sprague, City Auditor              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Brenda Derrig, City Engineer             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Kent Costin, Finance Director            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs  
 Assistant City Engineer

# Memorandum

**To:** Members of PWPEC  
**From:** Jeremy Engquist, Project Manager  
**Date:** June 19, 2019  
**Re:** Improvement District No. PN-18-B1 – NuStar Energy Pipeline Relocation

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**Background:**

Improvement District No. PN-18-B1 is for new construction of paving and incidentals on 23rd Avenue South from 42nd Street to 38th Street and on 41st Street South from 100' north of 23rd Avenue to 24th Avenue.

NuStar Energy has a high-pressure 10" petroleum pipeline centered in their own 50-foot private easement running east and west in the north boulevard of 23<sup>rd</sup> Avenue South. Following months of reviewing our staff's 23<sup>rd</sup> Avenue design, NuStar has identified two locations that pose conflicts with their pipeline. The locations are described as follows:

1. The first location is at the proposed roundabout intersection of 41st Street and 23rd Avenue, where the pipeline crosses near the widest part of the roundabout. According to NuStar staff, the existing pipeline's thickness and coating rating will not provide adequate protection during the proposed construction activities and added embankment loads to be placed on pipeline in this area. If pipe is left in place as is, NuStar feels there would be a likelihood of needing to access the pipeline for future repairs, which would require significant amounts of pavement removals and inconveniences to traveling motorist. NuStar is requesting the pipeline be relocated to the north at a narrower section of pavement and be replaced with pipe material rated for this construction activity and extra embankment loads. The estimated cost to relocate the pipeline at 41<sup>st</sup> Street is \$397,490.00.
2. The second location is at a future street return located approximately 600' east of 41<sup>st</sup> Street, which also crosses the pipeline in the north boulevard. At this location, NuStar is recommending the existing pipeline to remain in place but approximately 300' of pipe crossing return to be re-coated for additional protection. The estimated cost to re-coat the pipeline is \$85,500.00.

The total cost for pipeline relocation and re-coating is \$482,990.00. Attached is a cost estimate from NuStar Energy and I have attached a drawing showing the new pipeline relocation route for your reference. The pipeline was installed in 1957. Considering the age of the pipeline and the amount of construction activities the City Contractors need to perform parallel and over the top of pipeline, NuStar has provided a "worst-case" scenario cost estimate. They have indicated the actual costs may be substantially lower than this cost estimate.

We are currently waiting for NuStar to provide a Final Reimbursement Agreement to the City of Fargo.

Funding for this pipeline work will be from the General Infrastructure Funds (TIF – 401).

**Recommended Motion:**

Upon receipt of the Final Reimbursement Agreement, approve estimated payment of \$482,990.00 to NuStar Energy based on provided preliminary estimate for above-mentioned pipeline work.

JJE/klb  
Attachments (2)

C: Brenda Derrig, City Engineer  
Tom Knakmuhs, Assistant City Engineer

|    |   |  |  | ESTI.<br>UNITS<br>REQD' | ITEM<br>UNIT<br>COST | TOTAL<br>BY<br>ITEM | TOTAL COST<br>BY<br>WBS |
|----|---|--|--|-------------------------|----------------------|---------------------|-------------------------|
|    |   |  | DESCRIPTION OF EXPENDITURES  |                         |                      |                     |                         |
|    |   |  | <b>PROJECT CAPITAL INVESTMENT COSTS</b>  |                         |                      |                     |                         |
| 2  |   |  | <b>Internal Labor -Salaried Support for Executing Projects</b>                   |                         |                      |                     | \$0                     |
|    | * |  | Engineering / Project Management / GIS Documentation                             | 80                      | 150                  | 12,000              |                         |
|    | * |  | Real Estate / Legal / Survey Support   | 40                      | 148                  | 5,920               |                         |
|    | * |  | Safety, Permitting and Environmental Support                                     | 20                      | 148                  | 2,960               |                         |
|    | * |  | Operations Support   | 36                      | 145                  | 5,220               |                         |
|    | * |  | Procurement / Financial Accounting Support                                       | 25                      | 135                  | 3,375               |                         |
| 3  |   |  | <b>Inspection</b>  |                         |                      |                     | \$30,000                |
|    | * |  | Third Party Inspection during construction                                       | 20                      | 1,500                | 30,000              |                         |
| 5  |   |  | <b>Waste Disposal</b>  |                         |                      |                     | \$6,470                 |
|    | * |  | Coating waste disposal   | 500                     | 13                   | 6,470               |                         |
| 6  |   |  | <b>Surveying</b>   |                         |                      |                     | \$12,000                |
|    | * |  | Pre-construction Survey / Permit drawings - Depth profile, mark line             | 4                       | 1,500                | 6,000               |                         |
|    | * |  | Post-construction Survey As-builts   | 4                       | 1,500                | 6,000               |                         |
|    | * |  | Plat drawings revised  | 2                       | 1,200                | 2,400               |                         |
| 7  |   |  | <b>Travel / Meals</b>  |                         |                      |                     | \$3,600                 |
|    | * |  | travel / lodging / meals   | 20                      | 180                  | 3,600               |                         |
|    |   |  | <b>TOTAL INDIRECT COSTS</b>  |                         |                      |                     | <b>\$52,070</b>         |
| 11 |   |  | <b>Materials</b>   |                         |                      |                     | \$68,630                |
|    | * |  | 10"x 0.279"w.t. API 5L X-42 pipe with FBE + ARO coating                          | 400                     | 30                   | 12,000              |                         |
|    | * |  | 10"x 0.279"w.t. API 5L X-42 pipe bare for bending                                | 40                      | 25                   | 1,000               |                         |
|    | * |  | 10" 5R 45 degree bends   | 4                       | 1,300                | 5,200               |                         |
|    | * |  | Coating materials for joints and re-habbing existing coating                     | 500                     | 85                   | 42,500              |                         |
|    | * |  | Pipeline Markers   | 1                       | 200                  | 200                 |                         |
|    | * |  | Test leads and cad-welding supplies on both sides                                | 2                       | 150                  | 300                 |                         |
|    | * |  | Rockshield and backfill material   | 500                     | 10                   | 5,000               |                         |
|    | * |  | 2" TOR tapping ring  | 2                       | 1,215                | 2,430               |                         |
| 12 |   |  | <b>Pipeline Construction</b>   |                         |                      |                     | \$225,200               |
|    | * |  | Mob/Demob of pipeline contractor crew  | 2                       | 12,000               | 24,000              |                         |
|    | * |  | ROW prep in square ft  | 17,500                  | 0.3                  | 5,250               |                         |
|    | * |  | Haul pipe from Moorhead MN, string on ROW  | 400                     | 8                    | 3,200               |                         |
|    | * |  | Pipe line fabrication  | 400                     | 93                   | 37,200              |                         |
|    | * |  | Joint coat and/ or re-hab old coal tar coating                                   | 540                     | 175                  | 94,500              |                         |
|    | * |  | Trenching  | 850                     | 25                   | 21,250              |                         |
|    | * |  | Horizontal Directional Drill under existing 42nd St S                            | -                       | 125                  | 0                   |                         |
|    | * |  | Bore under future 41st St S  | -                       | 125                  | 0                   |                         |
|    | * |  | Line lowering under future 39th St S   | -                       | 10                   | 0                   |                         |
|    | * |  | backfill and clean up  | 850                     | 10                   | 8,500               |                         |
|    | * |  | Hydrotest  | 400                     | 2                    | 700                 |                         |
|    | * |  | TDW Hot tap tee and services   | 1                       | 8,000                | 8,000               |                         |
|    | * |  | Vac truck for tie-in   | 1                       | 1,500                | 1,500               |                         |
|    | * |  | Company Labor - Tap line for drain up and tie-in new pipe                        | 1                       | 8,000                | 8,000               |                         |
|    | * |  | Remove abandoned pipeline  | 1                       | 9,100                | 9,100               |                         |
|    | * |  | Compaction around abandoned line removal   | 1                       | 4,000                | 4,000               |                         |
| 17 |   |  | <b>Right of Way (if we have to obtain additional ROW or damages outside ROW)</b> |                         |                      |                     | \$7,200                 |
|    | * |  | Contract work to acquire additional work space                                   | 2.5                     | 800                  | 2,000               |                         |
|    | * |  | Additional ROW Easement (rods)   | 2                       | 2,000                | 4,000               |                         |
|    | * |  | Permitting Expenses and recording fees   | 1                       | 1,200                | 1,200               |                         |
|    | * |  | Damages  | 0                       | 5,000                | 0                   |                         |

|  | DESCRIPTION OF EXPENDITURES  | ESTI.<br>UNITS<br>REQD' | ITEM<br>UNIT<br>COST | TOTAL<br>BY<br>ITEM | TOTAL COST<br>BY<br>WBS |
|--|--|-------------------------|----------------------|---------------------|-------------------------|
| <b>TOTAL FIELD COSTS</b>                               |  |                         |                      |                     | <b>\$301,030</b>        |
| 29   | <b>Downtime</b>  |                         |                      |                     |                         |
|  | * Lost revenue during downtime for drain up and tie-in   | 24                      | 1,500                | \$ 1.65             | \$59,270                |
| <b>TOTAL LOST REVENUE</b>                              |  |                         |                      |                     | <b>\$59,270</b>         |
| <b>Admin Fee</b>                                       |  |                         |                      |                     |                         |
|  | * 20% of Actual Cost covers internal overhead, capital interest and salaried labor providing project support | 353,100                 | 20%                  | 70,620              |                         |
| <b>ADMINISTRATION FEE FOR INTERNAL PROJECT SUPPORT</b> |  |                         |                      |                     | <b>\$70,620</b>         |
| <b>TOTAL Re-Route COSTS &gt;</b>                       |  |                         |                      |                     | <b>\$482,990</b>        |





32

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-18-G2 Type: Change Order #1  
 Location: 4 St S, 6 Ave S – 2 St Date of Hearing: 6/24/2019

|                 |                  |
|-----------------|------------------|
| <u>Routing</u>  | <u>Date</u>      |
| City Commission | <u>7/1/2019</u>  |
| PWPEC File      | <u>X</u>         |
| Project File    | <u>Jake Rick</u> |

The Committee reviewed the accompanying correspondence from Project Manager, Jake Rick, for Change Order #1 in the amount of \$22,000.00, for a design change to the traffic signal intersection at 4<sup>th</sup> Street and the FMCT, bringing the total contract amount to \$1,542,568.27.

Staff is recommending approval of Change Order #1, in the amount of \$22,000.00.

On a motion by Steve Sprague, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #1 to Dakota Underground.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #1 in the amount of \$22,000.00, bringing the total contract amount to \$1,542,568.27 to Dakota Underground.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Utility Funds, Sales Tax & Special Assessments


|  |            |                 |
|--|------------|-----------------|
|  | <u>Yes</u> | <u>No</u>       |
| Developer meets City policy for payment of delinquent specials | <u>N/A</u> | <u>        </u> |
| Agreement for payment of specials required of developer        | <u>N/A</u> | <u>        </u> |
| 50% escrow deposit required                                    | <u>N/A</u> | <u>        </u> |

COMMITTEE

|  | <u>Present</u> | <u>Yes</u> | <u>No</u> | <u>Unanimous</u>     |
|--|----------------|------------|-----------|----------------------|
|  |                |            |           | <u>✓</u>             |
| Tim Mahoney, Mayor                       | <u>Γ</u>       | <u>Γ</u>   | <u>Γ</u>  |                      |
| Nicole Crutchfield, Director of Planning | <u>✓</u>       | <u>✓</u>   | <u>Γ</u>  |                      |
| Steve Dirksen, Fire Chief                | <u>✓</u>       | <u>✓</u>   | <u>Γ</u>  | <u>Ryan Erickson</u> |
| Bruce Grubb, City Administrator          | <u>✓</u>       | <u>✓</u>   | <u>Γ</u>  |                      |
| Ben Dow, Director of Operations          | <u>✓</u>       | <u>✓</u>   | <u>Γ</u>  |                      |
| Steve Sprague, City Auditor              | <u>✓</u>       | <u>✓</u>   | <u>Γ</u>  |                      |
| Brenda Derrig, City Engineer             | <u>✓</u>       | <u>✓</u>   | <u>Γ</u>  |                      |
| Kent Costin, Finance Director            | <u>✓</u>       | <u>✓</u>   | <u>Γ</u>  |                      |

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs  
 Assistant City Engineer



## Memorandum

**To:** Members of PWPEC  
**From:** Jake Rick, Project Manager Traffic  
**Date:** June 18, 2019  
**Re:** Improvement District #BR-18-G2 – Change Order # 1

---

### **Background:**

Improvement District BR-18-G2 runs along 4<sup>th</sup> Street South from 6<sup>th</sup> Avenue South to 2<sup>nd</sup> Street and on 6<sup>th</sup> Avenue South from 4<sup>th</sup> Street South to approximately 250' west of 4<sup>th</sup> Street.

Dakota Underground is the prime Contractor, and Strata Corporation is the sub-contractor doing the electrical portion for Improvement District #BR-18-G2.

The City of Fargo has requested a change in the design of the traffic signal intersection at 4th Street and the FMCT. The original design called for a Type IV (mast arm style) 2 way controlled signal system. This was replaced with a HAWK crosswalk system instead. This change will have an extra cost of \$22,000.

### **Recommended Motion:**

Approve Change Order #1 in the amount of \$22,000.

### Attachments

C: Thomas Knakmuhs  
Jeremy Gorden



**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

Improvement District No BR-18-G2 Change Order No 1  
 Project Name Water Main Replacement, Street Reconstruction & Incidentals  
 Date Entered 6/27/2018 For Dakota Underground Co Inc

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

**EXPLANATION OF CHANGE:** Installing HAWK Signal

The City of Fargo is requesting a change in the design of the traffic signal intersection at FMCT. The original design calls for a Type IV (mast arm style) signal system, and we would like to install a HAWK system instead.

| Section                               | Line No | Item Description                   | Unit | Orig Cont Qty | Prev C/O Qty | Prev Cont Qty | Curr C/O Qty | Tot Cont Qty | Unit Price (\$) | C/O Ext Price (\$) |
|---------------------------------------|---------|------------------------------------|------|---------------|--------------|---------------|--------------|--------------|-----------------|--------------------|
| Traffic Signals                       | 124     | F&I Equipment Cabinet & Controller | EA   | 0.00          | 0.00         | 0.00          | 1.00         | 1.00         | 22,000.00       | 22,000.00          |
| <b>Traffic Signals Sub Total (\$)</b> |         |                                    |      |               |              |               |              |              |                 |                    |
| 22,000.00                             |         |                                    |      |               |              |               |              |              |                 |                    |

**Summary**

Source Of Funding Sales Tax Funds - Infrastructure - 420, Special Assessments  
 Net Amount Change Order # 1 (\$) 22,000.00  
 Previous Change Orders (\$) 7,621.07  
 Original Contract Amount (\$) 1,512,947.20  
 Total Contract Amount (\$) 1,542,568.27

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

**CONTRACT TIME**

| Current Substantial Completion Date | Current Final Completion Date | Additional Days Substantial Completion | Additional Days Final Completion | New Substantial Completion Date | New Final Completion Date |
|-------------------------------------|-------------------------------|--|----------------------------------|---------------------------------|---------------------------|
| 10/13/2018                          | 11/20/2018                    | 0.00                                   | 0.00                             | 10/13/2018                      | 11/20/2018                |

Description The cost to F&I new pole mounted HAWK TS2 signal cabinet is \$20,000 + 10% prime Contractor markup = \$22,000

**APPROVED**

*Bob Johnson*

**APPROVED DATE**



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

For Contractor

Dakota Underground Company

Title Project Manager

Department Head

*[Signature]* 6/25/19

Mayor

Attest

33

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. NN-18-A1 Type: Change Order #2 & Time Extension  
 Location: Drain 27 Date of Hearing: 6/24/2019

|                 |                    |
|-----------------|--------------------|
| <u>Routing</u>  | <u>Date</u>        |
| City Commission | <u>7/1/2019</u>    |
| PWPEC File      | <u>X</u>           |
| Project File    | <u>Roger Kluck</u> |

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, for Change Order #2 & Time Extension requested by CC Steel, LLC. This Change Order & Time Extension are for extra work caused by a design error. A 30-day time extension to the Substantial Completion Date has been requested to allow for delivery of materials and installation.

Staff is recommending approval of Change Order #2, in the amount of \$19,087.50, of which \$13,500.00 will be reimbursed to the City by AE2S due to their design error, and a 30-day time extension adjusting the Substantial Completion Date to August 15, 2019.

On a motion by Steve Sprague, seconded by Kent Costin, the Committee voted to recommend approval of Change Order #2 & Time Extension to CC Steel, LLC.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Change Order #2 in the amount of \$19,087.50, bringing the total contract amount to \$1,519,329.45 and the time extension to the Substantial Completion Date.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Water Utility & Special Assessments

|  |            |            |
|--|------------|------------|
|  | <u>Yes</u> | <u>No</u>  |
| Developer meets City policy for payment of delinquent specials | <u>N/A</u> | <u>N/A</u> |
| Agreement for payment of specials required of developer        | <u>N/A</u> | <u>N/A</u> |
| Letter of Credit required (per policy approved 5-28-13)        | <u>N/A</u> | <u>N/A</u> |

COMMITTEE

|  | <u>Present</u>                      | <u>Yes</u>                          | <u>No</u>                | <u>Unanimous</u>                    |
|--|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Tim Mahoney, Mayor                       | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Nicole Crutchfield, Director of Planning | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Steve Dirksen, Fire Chief                | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ryan Erickson                       |
| Bruce Grubb, City Administrator          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Ben Dow, Director of Operations          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Steve Sprague, City Auditor              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Brenda Derrig, City Engineer             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Kent Costin, Finance Director            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs  
 Assistant City Engineer

# Memorandum

**To:** Members of PWPEC

**From:** Roger E. Kluck, PE, CFM Civil Engineer II

**Date:** June 19, 2019

**Re:** Improvement District No. NN-18-A1 – Change Order #2 & Time Extension  
Drain Improvements and Incidentals

---

## Background:

Improvement District No. NN-18-A1 was bid on September 19, 2018, with the bid awarded on September 24, 2018. The project began the week of November 1, 2018. The project documents identified a Final Completion Date for all cleanup and punch list items for September 1, 2019. CC Steel, LLC. was awarded the project and subsequently given a notice to proceed. After installation of the wet well roof, it was found that a conflict existed between the hatch/internal grating and the operation of the sluice gate. The Consultant, AE2S, developed a remedy for the situation and agreed to cover the cost of remediation due to their design error. The cost for the wet well repairs is \$13,500.00 and will be reimbursed to the City by AE2S. There is also a delay in the Substantial Completion Date of one month to allow for delivery of materials and to be installed. The Final Completion Date will remain at September 1, 2019. During placement of topsoil it was found that the original stripping's would not be enough to satisfactorily cover all disturbed areas. A price to haul in up to 625 CY of topsoil was negotiated with the Contractor for a cost of \$5,587.50. The topsoil cost will be paid for in a shared cost per the Contract between the Water Utility and Special Assessments.

The price increase is reasonable and Engineering recommends approval.

## Recommended Motion:

Approve Change Order #2 in the amount of \$19,087.50 and adjust the Substantial Completion Date as shown in the table below:

| Completion Dates | Original Contract | Revised This Memo |
|------------------|-------------------|-------------------|
| Substantial      | 7/15/2019         | 8/15/2019         |
| Final            | 9/1/2019          | 9/1/2019          |

REK/klb  
Attachment

C: Tom Knakmuhs, Assistant City Engineer  
Jody Bertrand, Division Engineer

6/17/2019  
 JOB: Fargo NN-18



**Change Order 2 - Itemization and Detail**

Descripton:

- A. Additional city provided dirt loaded and hauled to site
- B. Additional purchased dirt to be brought in and placed
- C. Install an alternate 36" aluminum hatch with associated grates, anchors, supports, and rails. Install requires removal and reinstallation of ladder, new vent, handrail, retrofitting of beam and grating, and sawcutting a 40" opening to accommodate the new hatch.

**A. Black dirt hauled on 6-12-19**

|  |          |            |
|--|----------|------------|
| JD Kraemer (2 trucks 6.5 hrs each) 13 hours @ \$90 /hr | 1,170.00 |            |
| Plus Subcontractor OH and profit margin 10%            | 117.00   |            |
| <b>Total Subcontractor</b>                             |          | \$1,287.00 |

|   |        |          |
|---|--------|----------|
| CC Steel union operator labor 6 hours @ \$28.00 | 168.00 |          |
| Plus union benefits 6 hours @ \$16.60           | 99.60  |          |
| Plus 12.65% payroll taxes on \$168.00 wages     | 21.25  |          |
| Subtotal  | 288.85 |          |
| Plus Labor 25% OH and profit margin             | 72.21  |          |
| <b>Total Labor</b>                              |        | \$361.07 |

|                     |                   |
|---------------------|-------------------|
| <b>TOTAL PART A</b> | <b>\$1,648.07</b> |
|---------------------|-------------------|

**B. Dirt to be purchased and brought in**

|   |          |  |
|---|----------|--|
| JD Kraemer \$14 per CY. Estimated quantity 225 CY's | 3,150.00 |  |
| Plus Materials 25% OH and profit margin             | 787.50   |  |
| <b>Total Materials</b>                              | 3,937.50 |  |

|                     |  |                   |
|---------------------|--|-------------------|
| <b>TOTAL PART B</b> | <b>NOTE: UNIT PRICE PER CY = \$17.50</b> | <b>\$3,937.50</b> |
|---------------------|--|-------------------|

55,89.57  
62.501

**C. Install alternate hatch and modifications**

|          |           |  |
|----------|-----------|--|
| Lump Sum | 13,500.00 |  |
|----------|-----------|--|

|                     |                    |
|---------------------|--------------------|
| <b>TOTAL PART C</b> | <b>\$13,500.00</b> |
|---------------------|--------------------|

|                           |                    |
|---------------------------|--------------------|
| <b>Change Order Total</b> | <b>\$20,733.63</b> |
|---------------------------|--------------------|

19,085.57 DOUBLE  
COUNTED  
PART A

Submitted by:

Mike Cebulla  
 CC Steel, LLC  
 612-964-6351  
 mike@ccsteel.com





**CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT**

Improvement District No **NN-18-A1** Change Order No **2**  
 Project Name **Storm Sewer Lift Station, Storm Sewer & Incidentals**  
 Date Entered **6/18/2019** For **CC Steel, LLC**

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

**EXPLANATION OF CHANGE:** Revise wet well and import top soil

After pouring of wet well cover it was found that hatch and interior grating as designed conflicted with operation of sluice gate. The Consultant AE2S reviewed the situation and accepted financial responsibility for fixing the problem. During final placement of top soil it was found the on site stripped topsoil was not enough to adequately complete the contract requirements and the Contractor was directed to import top soil.

| Section  | Line No | Item Description | Unit | Orig Cont Qty | Prev C/O Qty | Prev Cont Qty | Curr C/O Qty | Tot Cont Qty | Unit Price (\$) | C/O Ext Price (\$) |
|--|---------|------------------|------|---------------|--------------|---------------|--------------|--------------|-----------------|--------------------|
| Storm Sewers   | 32      | Modify Gatewell  | EA   | 0.00          | 0.00         | 0.00          | 0.00         | 1.00         | 13,500.00       | 13,500.00          |
| Excavation, Filling and Subgrade Preparation                       | 33      | Topsoil - Import | CY   | 0.00          | 0.00         | 0.00          | 625.00       | 625.00       | 8.94            | 5,587.50           |
| <b>Storm Sewers Sub Total (\$)</b>                                 |         |                  |      |               |              |               |              |              |                 | <b>13,500.00</b>   |
| <b>Excavation, Filling and Subgrade Preparation Sub Total (\$)</b> |         |                  |      |               |              |               |              |              |                 | <b>5,587.50</b>    |

**Summary**

Source Of Funding **Special Assessments, Utility Funds - Water - 501**

Net Amount Change Order # 2 (\$)

19,087.50

Previous Change Orders (\$)

1,773.75

Original Contract Amount (\$)

1,498,468.20

Total Contract Amount (\$)

1,519,329.45

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

**CONTRACT TIME**

| Current Substantial Completion Date | Current Final Completion Date | Additional Days Substantial Completion | Additional Days Final Completion | New Substantial Completion Date | New Final Completion Date |
|-------------------------------------|-------------------------------|--|----------------------------------|---------------------------------|---------------------------|
| 07/15/2019                          | 08/14/2019                    | 31.00                                  | 18.00                            | 08/15/2019                      | 09/01/2019                |



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

**Description** Additional contract time was allowed due to needed delivery times for new hatch and grating support steel

**APPROVED**

For Contractor

CC Steel, LLC

by Kevin M. Trio, Chief Manager

Title

Department Head

Mayor

6/25/19

APPROVED DATE

Attest

3A

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-16-F1 Type: Final Balancing Change Order #3

Location: 28 & 29 St, 8 – 11 Ave N Date of Hearing: 6/24/2019

|                 |                       |
|-----------------|-----------------------|
| <u>Routing</u>  | <u>Date</u>           |
| City Commission | <u>7/1/2019</u>       |
| PWPEC File      | <u>X</u>              |
| Project File    | <u>Kristy Schmidt</u> |

The Committee reviewed the accompanying correspondence from Project Manager, Kristy Schmidt, for Final Balancing Change Order #3 in the amount of \$71,680.05, bringing the total contract amount to \$1,885,859.06.

Staff is recommending approval of Final Balancing Change Order #3, in the amount of \$71,680.05.

On a motion by Steve Sprague, seconded by Kent Costin, the Committee voted to recommend approval of Final Balancing Change Order #3.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Final Balancing Change Order #3 in the amount of \$71,680.05, bringing the total contract amount to \$1,885,859.06 to Shermans, LLC.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax, Street Rehab, Water Utility, WW & Special Assessments

|  |            |                 |
|--|------------|-----------------|
|  | <u>Yes</u> | <u>No</u>       |
| Developer meets City policy for payment of delinquent specials | <u>N/A</u> | <u>        </u> |
| Agreement for payment of specials required of developer        | <u>N/A</u> | <u>        </u> |
| Letter of Credit required (per policy approved 5-28-13)        | <u>N/A</u> | <u>        </u> |

COMMITTEE

|  | <u>Present</u>                      | <u>Yes</u>                          | <u>No</u>                | <u>Unanimous</u>                                   |
|--|-------------------------------------|-------------------------------------|--------------------------|--|
|  |                                     |                                     |                          | <u>    <input checked="" type="checkbox"/>    </u> |
| Tim Mahoney, Mayor                       | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> |  |
| Nicole Crutchfield, Director of Planning | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Steve Dirksen, Fire Chief                | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Ryan Erickson</u>                               |
| Bruce Grubb, City Administrator          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Ben Dow, Director of Operations          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Steve Sprague, City Auditor              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Brenda Derrig, City Engineer             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |
| Kent Costin, Finance Director            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |  |

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs  
 Assistant City Engineer

# Memorandum

**To:** Members of PWPEC  
**From:** Kristy Schmidt, Civil Engineer II  
**Date:** June 18, 2019  
**Re:** Improvement District No. BR-16-F1 – Final Balancing Change Order #3  
Water Main Replacement, Street Reconstruction & Incidentals

---

**Background:**

Attached is Final Balancing Change Order #3 in the amount of \$71,680.05 for Improvement District No. BR-16-F1. Please refer to the attached Final Balancing Change Order (FBCO) #3, which reconciles the estimated quantities used in the contract with the final quantities measured in the field.

|                    |                     |
|--------------------|---------------------|
| Original Contract: | \$ 1,690,769.54     |
| Change Order #1:   | \$ 73,000.00        |
| Change Order #2:   | \$ 50,409.47        |
| <u>FBCO #3:</u>    | <u>\$ 71,680.05</u> |
| Total Contract:    | \$ 1,885,859.06     |

**Recommended Motion:**

Approve Final Balancing Change Order #3 in the amount of \$71,680.05 to Shermans LLC.

KLS/klb  
Attachment

C: Brenda Derrig, City Engineer  
Dan Eberhardt, Special Assessments Coordinator



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

|                         |   |                 |              |
|-------------------------|---|-----------------|--------------|
| Improvement District No | BR-16-F1  | Change Order No | 3            |
| Project Name            | Water Main Replacement, Street Reconstruction & Incidentals |                 |              |
| Date Entered            | 6/12/2019   | For             | Shermans LLC |

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

**EXPLANATION OF CHANGE:**

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

| Section                        | Line No | Item Description                      | Unit | Orig Cont Qty | Prev C/O Qty | Prev Cont Qty | Curr C/O Qty | Tot Cont Qty | Unit Price (\$) | C/O Ext Price (\$) |
|--------------------------------|---------|---------------------------------------|------|---------------|--------------|---------------|--------------|--------------|-----------------|--------------------|
| Sanitary                       | 1       | F&I Pipe SDR 26 - 4" Dia PVC          | LF   | 50.00         | 700.00       | 750.00        | -6.30        | 743.70       | 45.00           | -283.50            |
|                                | 2       | F&I Pipe SDR 26 - 6" Dia PVC          | LF   | 50.00         | 0.00         | 50.00         | 10.60        | 60.60        | 50.00           | 530.00             |
|                                | 3       | F&I Pipe w/GB SDR 26 - 4" Dia PVC     | LF   | 50.00         | 0.00         | 50.00         | 473.50       | 523.50       | 70.00           | 33,145.00          |
|                                | 4       | F&I Pipe w/GB SDR 26 - 6" Dia PVC     | LF   | 500.00        | -300.00      | 200.00        | -158.50      | 41.50        | 70.00           | -11,095.00         |
|                                | 5       | Connect Sewer Service 10' to 15' Deep | EA   | 22.00         | 25.00        | 47.00         | 15.00        | 62.00        | 2,500.00        | 37,500.00          |
|                                | 6       | Connect Sewer Service Option B        | EA   | 5.00          | 0.00         | 5.00          | -5.00        | 0.00         | 500.00          | -2,500.00          |
|                                | 7       | Connect Sewer Service Option C        | EA   | 22.00         | 0.00         | 22.00         | 40.00        | 62.00        | 500.00          | 20,000.00          |
|                                | 8       | Repair Pipe w/GB 8" Dia               | EA   | 4.00          | 0.00         | 4.00          | -1.00        | 3.00         | 3,500.00        | -3,500.00          |
|                                | 10      | Clean Pipe 8" Dia All Types           | LF   | 3,100.00      | 0.00         | 3,100.00      | -33.00       | 3,067.00     | 1.03            | -33.99             |
|                                | 11      | Spot Repair Pipe w/GB                 | EA   | 5.00          | 0.00         | 5.00          | 2.00         | 7.00         | 5,000.00        | 10,000.00          |
|                                | 73      | * televising storm and sanitary mains | LS   | 0.00          | 0.00         | 0.00          | 1.00         | 1.00         | 5,747.50        | 5,747.50           |
| <b>Sanitary Sub Total (\$)</b> |         |                                       |      |               |              |               |              |              |                 | 89,510.01          |
| Water Main Replacement         | 12      | Remove Pipe All Sizes All Types       | LF   | 3,280.00      | 0.00         | 3,280.00      | -180.00      | 3,100.00     | 0.01            | -1.80              |
|                                | 13      | F&I Fittings Ductile Iron             | LB   | 3,940.00      | 0.00         | 3,940.00      | 300.00       | 4,240.00     | 4.00            | 1,200.00           |
|                                | 15      | F&I Pipe w/GB C900 DR 18 - 6" Dia PVC | LF   | 70.00         | 0.00         | 70.00         | 6.60         | 76.60        | 60.00           | 396.00             |
|                                | 16      | F&I Pipe w/GB C900 DR 18 - 8" Dia PVC | LF   | 3,210.00      | 0.00         | 3,210.00      | -23.30       | 3,186.70     | 65.00           | -1,514.50          |
|                                | 18      | F&I Gate Valve 8" Dia                 | EA   | 12.00         | 0.00         | 12.00         | -1.00        | 11.00        | 1,900.00        | -1,900.00          |



CITY OF FARGO  
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|  |                        |   |    |           |      |           |           |           |          |           |
|--|------------------------|---|----|-----------|------|-----------|-----------|-----------|----------|-----------|
| 19   | Water Main Replacement | F&I Pipe w/GB 1" Dia Copper   | LF | 1,697.00  | 0.00 | 1,697.00  | 0.20      | 1,697.20  | 45.00    | 9.00      |
| 20   |                        | F&I Pipe w/GB 1.5" Dia Copper   | LF | 105.00    | 0.00 | 105.00    | -56.00    | 49.00     | 50.00    | -2,800.00 |
| 21   |                        | Rem & Repl CS & Box 1" Dia  | EA | 73.00     | 0.00 | 73.00     | 1.00      | 74.00     | 425.00   | 425.00    |
| 22   |                        | Rem & Repl CS & Box 1.5" Dia  | EA | 2.00      | 0.00 | 2.00      | -1.00     | 1.00      | 650.00   | -650.00   |
| 23   |                        | Transfer Water Svc  | EA | 75.00     | 0.00 | 75.00     | -1.00     | 74.00     | 75.00    | -75.00    |
| 24   |                        | Furnish Temp Water Svc  | EA | 75.00     | 0.00 | 75.00     | -1.00     | 74.00     | 150.00   | -150.00   |
| 25   |                        | F&I 1-1/4" Trench Found Rock 4" thru 12" Dia  | LF | 100.00    | 0.00 | 100.00    | -100.00   | 0.00      | 1.00     | -100.00   |
| 26   |                        | F&I Insulation 2" Thick   | SY | 200.00    | 0.00 | 200.00    | -200.00   | 0.00      | 25.00    | -5,000.00 |
| 68   |                        | * lower water main 1' on 29th St  | LS | 0.00      | 0.00 | 0.00      | 1.00      | 1.00      | 885.18   | 885.18    |
| 69   |                        | * Lower water main on 28th St (11th Ave to 12th Ave) additional gravel & excavation | LS | 0.00      | 0.00 | 0.00      | 1.00      | 1.00      | 2,577.90 | 2,577.90  |
| <b>Water Main Replacement Sub Total (\$)</b> |                        |   |    |           |      |           |           |           |          |           |
| 30   | Storm Sewer            | F&I Pipe w/GB SDR 26 - 12" Dia PVC  | LF | 50.00     | 0.00 | 50.00     | -50.00    | 0.00      | 70.00    | -6,698.22 |
| 31   |                        | Connect Pipe to Exist Pipe  | EA | 1.00      | 0.00 | 1.00      | 2.00      | 3.00      | 500.00   | 1,000.00  |
| 32   |                        | Connect Pipe to Exist Structure   | EA | 1.00      | 0.00 | 1.00      | 12.00     | 13.00     | 700.00   | 8,400.00  |
| 35   |                        | F&I Pipe w/GB 12" Dia Reinf Conc  | LF | 506.00    | 0.00 | 506.00    | 1.28      | 507.28    | 65.00    | 83.20     |
| 70   |                        | * 2' Riser for MH   | LS | 0.00      | 0.00 | 0.00      | 1.00      | 1.00      | 1,027.02 | 1,027.02  |
| <b>Storm Sewer Sub Total (\$)</b>            |                        |   |    |           |      |           |           |           |          |           |
| 36   | Paving                 | Remove Pavement All Thicknesses All Types   | SY | 13,372.00 | 0.00 | 13,372.00 | -98.94    | 13,273.06 | 4.00     | -395.76   |
| 37   |                        | Remove Curb & Gutter  | LF | 7,785.00  | 0.00 | 7,785.00  | 116.61    | 7,901.61  | 4.00     | 466.44    |
| 38   |                        | Remove Driveway All Thicknesses All Types   | SY | 1,675.00  | 0.00 | 1,675.00  | 367.36    | 2,042.36  | 7.00     | 2,571.52  |
| 39   |                        | Remove Sidewalk All Thicknesses All Types   | SY | 1,200.00  | 0.00 | 1,200.00  | -155.29   | 1,044.71  | 4.00     | -621.16   |
| 40   |                        | Subgrade Preparation  | SY | 16,612.00 | 0.00 | 16,612.00 | -272.39   | 16,339.61 | 2.00     | -544.78   |
| 41   |                        | F&I Woven Geotextile  | SY | 16,612.00 | 0.00 | 16,612.00 | -272.39   | 16,339.61 | 0.85     | -231.53   |
| 42   |                        | F&I Class 5 Agg - 8" Thick  | SY | 16,612.00 | 0.00 | 16,612.00 | -272.39   | 16,339.61 | 8.35     | -2,274.46 |
| 43   |                        | F&I Edge Drain 4" Dia PVC   | LF | 7,785.00  | 0.00 | 7,785.00  | -1,262.00 | 6,523.00  | 4.40     | -5,552.80 |
| 44   |                        | F&I Curb & Gutter Standard (Type II)  | LF | 7,785.00  | 0.00 | 7,785.00  | 116.61    | 7,901.61  | 19.46    | 2,269.23  |





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| Item #   | Description                               | Unit             | Quantity  | Rate | Amount    | Change    | Balance   |  |                       |            |  |                               |        |  |                         |                  |
|--|---|------------------|-----------|------|-----------|-----------|-----------|--|-----------------------|------------|--|-------------------------------|--------|--|-------------------------|------------------|
| 45   | F&I Aggregate for Asph Pavement<br>FAA 43 | TON              | 5,292.00  | 0.00 | 5,292.00  | -253.06   | 5,038.94  |  |                       |            |  |                               |        |  |                         |                  |
| 46   | F&I Asphalt Cement PG 58-34               | GAL              | 71,500.00 | 0.00 | 71,500.00 | -8,575.77 | 62,924.23 |  |                       |            |  |                               |        |  |                         |                  |
| 47   | Rem & Repl Casting - Self Leveling        | EA               | 14.00     | 0.00 | 14.00     | -2.00     | 12.00     |  |                       |            |  |                               |        |  |                         |                  |
| 50   | GV Box to Grade - Blvd                    | EA               | 7.00      | 0.00 | 7.00      | 1.00      | 8.00      |  |                       |            |  |                               |        |  |                         |                  |
| 52   | F&I Sidewalk 4" Thick Reinf Conc          | SY               | 1,080.00  | 0.00 | 1,080.00  | -189.36   | 890.64    |  |                       |            |  |                               |        |  |                         |                  |
| 53   | F&I Sidewalk 6" Thick Reinf Conc          | SY               | 120.00    | 0.00 | 120.00    | 34.07     | 154.07    |  |                       |            |  |                               |        |  |                         |                  |
| 54   | F&I Det Warn Panels Cast Iron             | SF               | 304.00    | 0.00 | 304.00    | 32.00     | 336.00    |  |                       |            |  |                               |        |  |                         |                  |
| 55   | F&I Driveway 6" Thick Reinf Conc          | SY               | 1,675.00  | 0.00 | 1,675.00  | 317.94    | 1,992.94  |  |                       |            |  |                               |        |  |                         |                  |
| 56   | F&I Flat MH Cover 8" Thick Reinf Conc     | EA               | 1.00      | 0.00 | 1.00      | 3.00      | 4.00      |  |                       |            |  |                               |        |  |                         |                  |
| 59   | Seeding Type B                            | SY               | 6,000.00  | 0.00 | 6,000.00  | -2,466.15 | 3,533.85  |  |                       |            |  |                               |        |  |                         |                  |
| 60   | Weed Control Type B                       | SY               | 6,000.00  | 0.00 | 6,000.00  | -6,000.00 | 0.00      |  |                       |            |  |                               |        |  |                         |                  |
| 63   | Mulching Type 1 - Hydro                   | SY               | 6,000.00  | 0.00 | 6,000.00  | 1,066.78  | 7,066.78  |  |                       |            |  |                               |        |  |                         |                  |
| 71   | Boulevard Grading                         | SY               | 6,500.00  | 0.00 | 6,500.00  | 395.15    | 6,895.15  |  |                       |            |  |                               |        |  |                         |                  |
| 72   | * mowing                                  | LS               | 0.00      | 0.00 | 0.00      | 1.00      | 1.00      |  |                       |            |  |                               |        |  |                         |                  |
| 66   | Paint Epoxy Line 24" Wide                 | LF               | 170.00    | 0.00 | 170.00    | -2.00     | 168.00    |  |                       |            |  |                               |        |  |                         |                  |
| : * NC Items   |   |                  |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |
| <b>Summary</b>   |   |                  |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |
| <b>Source Of Funding</b>   |   |                  |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |
| <b>Net Amount Change Order # 3 (\$)</b>  |   |                  |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |
| <b>Previous Change Orders (\$)</b>   |   |                  |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |
| <b>Original Contract Amount (\$)</b>   |   |                  |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |
| <b>Total Contract Amount (\$)</b>  |   |                  |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |
| I hereby accept this order both as to work to be performed and prices on which payment shall be based.   |   |                  |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |
| <b>CONTRACT TIME</b>   |   |                  |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |
| <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"></td> <td style="text-align: right;">Paving Sub Total (\$)</td> <td style="text-align: right;">-18,106.94</td> </tr> <tr> <td></td> <td style="text-align: right;">Paving Marking Sub Total (\$)</td> <td style="text-align: right;">-35.02</td> </tr> <tr> <td></td> <td style="text-align: right;"><b>Grand Total (\$)</b></td> <td style="text-align: right;"><b>71,680.05</b></td> </tr> </table> |   |                  |           |      |           |           |           |  | Paving Sub Total (\$) | -18,106.94 |  | Paving Marking Sub Total (\$) | -35.02 |  | <b>Grand Total (\$)</b> | <b>71,680.05</b> |
|  | Paving Sub Total (\$)                     | -18,106.94       |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |
|  | Paving Marking Sub Total (\$)             | -35.02           |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |
|  | <b>Grand Total (\$)</b>                   | <b>71,680.05</b> |           |      |           |           |           |  |                       |            |  |                               |        |  |                         |                  |



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

| Current Substantial Completion Date | Current Final Completion Date | Additional Days Substantial Completion | Additional Days Final Completion | New Substantial Completion Date | New Final Completion Date |
|-------------------------------------|-------------------------------|--|----------------------------------|---------------------------------|---------------------------|
| 10/26/2016                          |                               | 0.00                                   | 0.00                             | 10/26/2016                      |                           |

Description

APPROVED

For Contractor

Title



Owner/CEO

APPROVED DATE

Department Head

Mayor



6/25/19

Attest

35

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. TN-16-F1 Type: Final Balancing Change Order #3

Location: 52 Ave S – Timbercreek Pkwy Date of Hearing: 6/24/2019

|                 |                    |
|-----------------|--------------------|
| <u>Routing</u>  | <u>Date</u>        |
| City Commission | <u>7/1/2019</u>    |
| PWPEC File      | <u>X</u>           |
| Project File    | <u>Jason Baker</u> |

The Committee reviewed the accompanying correspondence from Project Manager, Jason Baker, for Final Balancing Change Order #3 in the amount of \$7,961.26, bringing the total contract amount to \$462,044.71.

Staff is recommending approval of Final Balancing Change Order #3, in the amount of \$7,961.26.

On a motion by Steve Sprague, seconded by Kent Costin, the Committee voted to recommend approval of Final Balancing Change Order #3.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve Final Balancing Change Order #3 in the amount of \$7,961.26 bringing the total contract amount to \$462,044.71 to Strata Corporation.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax & Special Assessments


|  |            |                 |
|--|------------|-----------------|
|  | <u>Yes</u> | <u>No</u>       |
| Developer meets City policy for payment of delinquent specials | <u>N/A</u> | <u>        </u> |
| Agreement for payment of specials required of developer        | <u>N/A</u> | <u>        </u> |
| Letter of Credit required (per policy approved 5-28-13)        | <u>N/A</u> | <u>        </u> |

COMMITTEE

|  | <u>Present</u>                      | <u>Yes</u>                          | <u>No</u>                | <u>Unanimous</u>                    |
|--|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Tim Mahoney, Mayor                       | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Nicole Crutchfield, Director of Planning | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Steve Dirksen, Fire Chief                | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ryan Erickson                       |
| Bruce Grubb, City Administrator          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Ben Dow, Director of Operations          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Steve Sprague, City Auditor              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Brenda Derrig, City Engineer             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Kent Costin, Finance Director            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |

ATTEST:

C: Kristi Olson

  
 Tom Knakmuhs  
 Assistant City Engineer

## Memorandum

**To:** Members of PWPEC  
**From:** Jason Baker, Project Engineer  
**Date:** June 18, 2019  
**Re:** Improvement District #TN-16-F1 (Traffic Signal Improvements & Incidentals) – Final Balancing Change Order #3

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**Background:**

Improvement District #TN-16-F1 is located on 52<sup>nd</sup> Avenue South at both intersections of Timbercreek Parkway and 63<sup>rd</sup> Street South.

Attached is the Final Balancing Change Order #3 in the amount of \$7,961.26 for Improvement District No. TN-16-F1 that reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

The original contract bid price for this project was \$434,393.85. This FBCO will bring the project final amount to \$462,044.71 (6.40% increase). This Improvement District is funded by sales tax and special assessment.

**Recommended Motion:**

Approve Final Balancing Change Order #3 in the amount of \$7,961.26 for this work.

JMB/jmg  
Attachment



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

Improvement District No TN-16-F1 Change Order No 3  
 Project Name Traffic Signal Improvements & Incidentals  
 Date Entered 6/18/2019 For Sirata Corporation

This change is made under the terms of or is supplemental to your present contract, if and when approved, you are ordered to perform the work in accordance with the additions, changes, or alterations hereinafter described.

**EXPLANATION OF CHANGE:** Final Balancing

This change order reconciles the estimated quantities used in the contract with the final quantities as measured in the field.

| Section                             | Line No                                       | Item Description                          | Unit   | Orig Cont Qty | Prev C/O Qty | Prev Cont Qty | Curr C/O Qty | Tot Cont Qty | Unit Price (\$) | C/O Ext Price (\$) |
|-------------------------------------|---|---|--------|---------------|--------------|---------------|--------------|--------------|-----------------|--------------------|
| Site 1 Paving                       | 1   | Remove Sidewalk 4" Thick Conc             | SY     | 52.00         | 0.00         | 52.00         | 50.00        | 102.00       | 15.00           | 750.00             |
|                                     | 2   | F&I Sidewalk 4" Thick Reinf Conc          | SY     | 92.00         | 0.00         | 92.00         | 41.00        | 133.00       | 75.00           | 3,075.00           |
|                                     | 3   | F&I Det Warn Panels Cast Iron             | SF     | 32.00         | 0.00         | 32.00         | 44.00        | 76.00        | 50.00           | 2,200.00           |
| <b>Site 1 Paving Sub Total (\$)</b> |   |   |        |               |              |               |              |              |                 | <b>6,025.00</b>    |
| Site 1 Pavement Marking             | 4   | Paint Epoxy Line 4" Wide                  | LF     | 1,448.00      | 0.00         | 1,448.00      | -354.00      | 1,094.00     | 2.20            | -778.80            |
|                                     | 5   | Paint Epoxy Message                       | SF     | 32.00         | 0.00         | 32.00         | 146.00       | 178.00       | 26.00           | 3,796.00           |
|                                     | 6   | Paint Epoxy Line 8" Wide                  | LF     | 398.00        | 0.00         | 398.00        | -239.00      | 159.00       | 6.00            | -1,434.00          |
|                                     | 7   | Paint Epoxy Line 16" Wide                 | LF     | 205.00        | 0.00         | 205.00        | -104.00      | 101.00       | 14.00           | -1,456.00          |
|                                     | 8   | Obliterate Pavement Markings              | SF     | 29.50         | 0.00         | 29.50         | 60.50        | 90.00        | 12.00           | 726.00             |
|                                     | 77  | Paint Epoxy Line 24" Wide                 | LF     | 128.00        | 0.00         | 128.00        | 12.80        | 140.80       | 13.40           | 171.52             |
|                                     | <b>Site 1 Pavement Marking Sub Total (\$)</b> |   |        |               |              |               |              |              |                 |                    |
| Site 2 Paving                       | 15  | Remove Pavement All Thicknesses All Types | SY     | 158.00        | 0.00         | 158.00        | -22.00       | 136.00       | 16.00           | -352.00            |
|                                     | 16  | F&I Curb & Gutter Standard (Type II)      | LF     | 229.00        | 0.00         | 229.00        | -5.00        | 224.00       | 70.00           | -350.00            |
| 18                                  | F&I Pavement 10" Thick Doweled Conc           | SY  | 25.00  | 0.00          | 25.00        | -7.00         | 18.00        | 200.00       | -1,400.00       |                    |
| 19                                  | F&I Median Nose - Conc                        | SY  | 14.00  | 0.00          | 14.00        | 4.00          | 18.00        | 150.00       | 600.00          |                    |
| 20                                  | F&I Sidewalk 6" Thick Reinf Conc              | SY  | 69.50  | 0.00          | 69.50        | -7.83         | 61.67        | 80.00        | -626.40         |                    |
| 21                                  | F&I Sidewalk 4" Thick Reinf Conc              | SY  | 112.00 | 0.00          | 112.00       | 39.34         | 151.34       | 75.00        | 2,950.50        |                    |
| 22                                  | Remove Sidewalk 4" Thick Conc                 | SY  | 5.70   | 0.00          | 5.70         | 91.60         | 97.30        | 15.00        | 1,374.00        |                    |



CITY OF FARGO  
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| Item #  | Description                                       | SY | 31.50    | 0.00 | 31.50    | 8.75    | 40.25  | 40.00    | 350.00    |
|---|---|----|----------|------|----------|---------|--------|----------|-----------|
| 23  | Remove Sidewalk 6" Thick Conc                     | SY |          |      |          |         |        |          |           |
| 24  | F&I Impressed 4" Thick Reinf Conc                 | SY | 48.70    | 0.00 | 48.70    | 11.83   | 60.53  | 125.00   | 1,478.75  |
| 25  | F&I Det Warn Panels Cast Iron                     | SF | 168.00   | 0.00 | 168.00   | -18.00  | 150.00 | 50.00    | -900.00   |
| <b>Site 2 Paving Sub Total (\$)</b>           |   |    |          |      |          |         |        |          |           |
| 26  | F&I Grooved Plastic Film Message                  | SF | 16.00    | 0.00 | 16.00    | -16.00  | 0.00   | 38.00    | 3,124.85  |
| 27  | F&I Grooved Plastic Film 6" Wide                  | LF | 697.00   | 0.00 | 697.00   | -279.00 | 418.00 | 10.00    | -608.00   |
| 28  | F&I Grooved Plastic Film 8" Wide                  | LF | 75.00    | 0.00 | 75.00    | -11.00  | 64.00  | 12.00    | -2,790.00 |
| 29  | F&I Grooved Plastic Film 16" Wide                 | LF | 189.00   | 0.00 | 189.00   | -69.00  | 120.00 | 20.00    | -132.00   |
| 30  | F&I Grooved Contrast Film 7" Wide                 | LF | 430.00   | 0.00 | 430.00   | 10.00   | 440.00 | 12.00    | -1,380.00 |
| 31  | Obliterate Pavement Markings                      | SF | 182.00   | 0.00 | 182.00   | 66.00   | 248.00 | 6.00     | 120.00    |
| 76  | F&I Grooved Plastic Film 24" Wide                 | LF | 548.00   | 0.00 | 548.00   | 54.80   | 602.80 | 32.80    | 396.00    |
| <b>Site 2 Pavement Marking Sub Total (\$)</b> |   |    |          |      |          |         |        |          |           |
| 39  | F&I Ped Push Button Post                          | EA | 3.00     | 0.00 | 3.00     | -1.50   | 1.50   | 1,500.00 | 1,797.44  |
| 41  | F&I Foundation Type V                             | EA | 2.00     | 0.00 | 2.00     | 1.00    | 3.00   | 400.00   | -2,596.56 |
| 54  | F&I Signal Cable AWG 16/3                         | LF | 81.00    | 0.00 | 81.00    | 5.00    | 86.00  | 1.25     | 400.00    |
| 55  | F&I Signal Cable CAT 6                            | LF | 81.00    | 0.00 | 81.00    | 5.00    | 86.00  | 5.00     | 6.25      |
| 56  | F&I Conduit 1" Dia                                | LF | 108.00   | 0.00 | 108.00   | 14.00   | 122.00 | 6.00     | 25.00     |
| 57  | F&I Conduit 2" Dia                                | LF | 168.00   | 0.00 | 168.00   | 14.00   | 182.00 | 8.00     | 84.00     |
| 58  | F&I Conduit 4" Dia                                | LF | 354.00   | 0.00 | 354.00   | -94.00  | 260.00 | 20.00    | 112.00    |
| 64  | F&I Detection In-Ground Loop                      | EA | 39.00    | 0.00 | 39.00    | -4.00   | 35.00  | 1,500.00 | -1,880.00 |
| 65  | F&I Signal Standard Type V 10' High               | EA | 1.00     | 0.00 | 1.00     | 1.00    | 2.00   | 2,000.00 | -6,000.00 |
| 75  | * Adding video detection to 63rd interim signals. | LS | 0.00     | 0.00 | 0.00     | 1.00    | 1.00   | 7,500.00 | 2,000.00  |
| <b>Site 2 Traffic Signals Sub Total (\$)</b>  |   |    |          |      |          |         |        |          |           |
| 71  | Remove Street Light                               | EA | 3.00     | 0.00 | 3.00     | -1.00   | 2.00   | 200.00   | 7,500.00  |
| 72  | Remove Base                                       | EA | 3.00     | 0.00 | 3.00     | -1.00   | 2.00   | 500.00   | -2.75     |
| 73  | F&I Conductor #6 USE Cu                           | LF | 1,000.00 | 0.00 | 1,000.00 | -445.00 | 555.00 | 1.20     | -200.00   |
| <b>Site 2 Street Lighting Sub Total (\$)</b>  |   |    |          |      |          |         |        |          |           |
|   |   |    |          |      |          |         |        |          | -500.00   |
|   |   |    |          |      |          |         |        |          | -534.00   |
|   |   |    |          |      |          |         |        |          | -1,234.00 |





CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

Site 1 Traffic Signals 78 LS \* Street lights were added to the temporary signal poles at site 1, 63rd St and 52nd Ave S. 1.00 0.00 0.00 1.00 1,620.00 1,620.00

Site 1 Traffic Signals Sub Total (\$) 1,620.00  
Grand Total (\$) 7,961.26

\* NC Items

**Summary**  
**Source Of Funding**  
**Net Amount Change Order # 3 (\$)** 7,961.26  
**Previous Change Orders (\$)** 19,689.60  
**Original Contract Amount (\$)** 434,393.85  
**Total Contract Amount (\$)** 462,044.71

I hereby accept this order both as to work to be performed and prices on which payment shall be based.

**CONTRACT TIME**

|  |            |                                      |  |   |      |   |      |  |            |                                  |  |
|--|------------|--------------------------------------|--|---|------|---|------|--|------------|----------------------------------|--|
| <b>Current Substantial Completion Date</b> | 05/14/2018 | <b>Current Final Completion Date</b> |  | <b>Additional Days Substantial Completion</b> | 0.00 | <b>Additional Days Final Completion</b> | 0.00 | <b>New Substantial Completion Date</b> | 05/14/2018 | <b>New Final Completion Date</b> |  |
|--|------------|--------------------------------------|--|---|------|---|------|--|------------|----------------------------------|--|

**Description**

**APPROVED**

**For Contractor**

**Title**

*[Signature]*  
 State Corporation  
 Electrical Manager

**APPROVED DATE**

*[Signature]*  
 Department Head  
 Mayor

**Attest**

6/25/19

36

**PUBLIC WORKS PROJECTS EVALUATION COMMITTEE**

Improvement District No. TR-18-B0 Type: Contract Amendment #1

Location: 7<sup>th</sup> Ave & 16<sup>th</sup> St N Date of Hearing: 6/24/2019

|                 |                      |
|-----------------|----------------------|
| <u>Routing</u>  | <u>Date</u>          |
| City Commission | <u>7/1/2019</u>      |
| PWPEC File      | <u>X</u>             |
| Project File    | <u>Jeremy Gorden</u> |

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, regarding Contract Amendment #1 submitted by Stantec in the amount of \$23,008.00, bringing the total contract amount to \$96,508.00. This Amendment is for out of scope work related to additional coordination with the FRA and BNSF, as well as additional survey work.

Staff is recommending approval of Contract Amendment #1 in the amount of \$23,008.00, bringing the total Contract amount to \$96,508.00.

On a motion by Steve Sprague, seconded by Kent Costin, the Committee voted to recommend approval of Contract Amendment #1 to Stantec.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Amendment #1 in the amount of \$23,008.00 to Stantec.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Infrastructure Sales Tax


|  |            |                 |
|--|------------|-----------------|
|  | <u>Yes</u> | <u>No</u>       |
| Developer meets City policy for payment of delinquent specials | <u>N/A</u> | <u>        </u> |
| Agreement for payment of specials required of developer        | <u>N/A</u> | <u>        </u> |
| Letter of Credit required (per policy approved 5-28-13)        | <u>N/A</u> | <u>        </u> |

COMMITTEE

|  | <u>Present</u>                      | <u>Yes</u>                          | <u>No</u>                | <u>Unanimous</u>                    |
|--|-------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| Tim Mahoney, Mayor                       | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Nicole Crutchfield, Director of Planning | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Steve Dirksen, Fire Chief                | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Ryan Erickson                       |
| Bruce Grubb, City Administrator          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Ben Dow, Director of Operations          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Steve Sprague, City Auditor              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Brenda Derrig, City Engineer             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |
| Kent Costin, Finance Director            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                                     |

ATTEST:

C: Kristi Olson

  
Tom Knakmuhs  
Assistant City Engineer

## Memorandum

**To:** Public Works Project Evaluation Committee

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

**Date:** June 20, 2019

**Re:** Contract Amendment #1 with Stantec for Consulting Engineering Services  
City of Fargo Project No. TR-18-B0

---

### **Background:**

Last year we selected Stantec Consulting Services, Inc. to provide design services, and to coordinate with both the Federal Railroad Administration (FRA) and the Burlington Northern Santa Fe Railroad (BNSF) so that the necessary paperwork was completed to allow for the creation of a new railway quiet zone through the 7<sup>th</sup> Avenue and 16<sup>th</sup> Street North rail crossings. They have been making good progress on the project.

They are seeking a contract amendment for out of scope work related to additional coordination with the FRA and BNSF as it relates to a Waiver Determination for one of the yard tracks at the 16<sup>th</sup> Street crossing, as well as a minor addition to the survey work needed for design.

Their original contract amount was \$73,500, and this amendment is for \$23,008. Please refer to the attachment for additional details on the out of scope work. I fully recommend approving this amendment.

### **Recommended Motion:**

Approve Contract Amendment No. 1 with Stantec Consulting Services, Inc. in the amount of \$23,008 using Infrastructure Sales Tax funds.

JMG/jmg  
Attachment

June 5, 2019  
File: 193804260

**Attention: Ron Solberg, City of Fargo, Civil Engineer II**  
200 3<sup>rd</sup> Street North  
Fargo, ND 58102

Dear Ron,

**Reference: Change Order No. 1 for the Design of a Railroad Quiet Zone located in the Engineering Department, City of Fargo, for Improvement District No. TR-18-B0**

#### **BACKGROUND**

The City of Fargo, ND (The City) is pursuing the implementation of a quiet zone at two crossings along the Burlington Northern Santa Fe (BNSF) Prosper subdivision. The crossings in this proposed quiet zone include two public crossings at 7<sup>th</sup> Avenue North (USDOT #) and 16<sup>th</sup> Street North (USDOT #070857D). The City is the jurisdictional owner for both public crossings.

Under the Train Horn Rule (49 CFR Part 222) the Federal Railroad Administration (FRA) requires each public crossing in a new quiet zone to be equipped with gates and flashing lights with power out indicators. The Rule also requires that crossings be equipped with constant warning time (CWT) detectors "where reasonably practical." The 16<sup>th</sup> Street North crossing consists of two mainline tracks and two siding tracks. The crossing is equipped with gates, flashing lights, and CWT detectors on the two mainline tracks and one siding track. The siding track, which is the southernmost track line at the crossing, is equipped with gates and lights but is not equipped with CWT detectors.

During the Quiet Zone Diagnostic Meeting held on June 26, 2018; BNSF representative Richard Scott, felt that adding CWT detectors at the southernmost siding track would not be possible due to the short length of the track. Prior to the diagnostic meeting, the City was planning to install CWT to the siding track as part of the project. The coordination, preparation, submittal and follow up needed for the request for FRA Waiver Determination of CWT Requirements at the 16<sup>th</sup> Street North Crossing is not in the original scope of work for this contract.

At the June 26, 2018 Quiet Zone Diagnostic Meeting, City of Fargo representatives also determined that they would like the installation of a pedestrian sidewalk along the west side of the roadway at the 16<sup>th</sup> Street North Crossing. The City then requested that the new sidewalk addition should extend along the north side of Great Northern Drive as the roadway curves to the west up to the intersection of 18<sup>th</sup> Street North. This will require additional survey and design for the sidewalk extension that was not in the original scope of work for this contract.



June 5, 2019  
Ron Solberg,  
Page 2 of 3

**Reference: Change Order No. 1 for the Design of a Railroad Quiet Zone located in the Engineering Department, City of Fargo, for Improvement District No. TR-18-B0**

### SCOPE OF SERVICES

#### Change Order 1 – Task 1 – Request for FRA Waiver Determination of CWT Requirements at the 16<sup>th</sup> Street North Crossing (USDOT #070857D)

The purpose of Change Order 1 – Task 1, is for Stantec to develop a request to the FRA to determine whether adding CWT detectors at the southernmost spur line at the 16<sup>th</sup> Street North crossing is reasonably practical. To complete the request, the following will need to be compiled and completed for submittal to FRA:

- Determination of CWT letter to FRA inclusive of the reasons we believe CWT is not reasonably practical in the areas of Physical Characteristics, Operational Characteristics, Limited Use, Slow Train Speed and Crash History = 50 Hours
- Coordination of information needed from BNSF for the FRA submittal to include the 1967 ownership agreement of the spur line with Fargo Glass and Paint, verification of spur line ownership, usage data specific to the spur line, and determination of whether flaggers are currently being used at this location. = 4 Hours
- Completion of the following attachments: = 34 Hours
  - Project location map
  - Proposed crossing improvements graphics
  - Physical limitations for installation of CWT graphic
  - Request and correspondence with BNSF for a joint submittal of the waiver
  - Diagnostic Meeting summary
  - Updated grade crossing inventory forms
  - Grade crossing accident/incident forms
- Additional project management, coordination and follow up with the City of Fargo, BNSF and FRA during the completion and FRA review of the document. Historically, FRA's review of this document has taken approximately 6 to 9 months for review. = 36 Hours

Change Order 1 – Task 1 will be completed for in 124 hours.



June 5, 2019  
Ron Solberg,  
Page 3 of 3

**Reference: Change Order No. 1 for the Design of a Railroad Quiet Zone located in the Engineering Department, City of Fargo, for Improvement District No. TR-18-B0**

Change Order 1 - Task 2 – Additional survey and design for extension of the proposed sidewalk along the east and south side of 16<sup>th</sup> Street North/Great Northern Drive up to 18<sup>th</sup> Street

Task 2.1 – Design Survey to accommodate the sidewalk and the standard cross section for the roadway corridor, it is necessary to reconstruct 16<sup>th</sup> street north to the intersection of 16<sup>th</sup> street and Dakota Drive. Houston Engineering will perform the additional survey for a lump sum of \$1500.00

**PERIOD OF PERFORMANCE**

Due to the additional time needed for the FRA review of the Request for FRA Waiver Determination of CWT Requirements at the 16<sup>th</sup> Street North Crossing (USDOT #070857D), an additional 24 months or 2 year should be added to the timeline of the contract. This changes the contract completion date to February 1, 2021.

**COMPENSATION**

Stantec will complete the proposed scope of work as a "Time and Expenses" budget of up to \$25,058.00. The following amounts represent the total cost to complete each task under Change Order No. 1.

|   |             |
|---|-------------|
| Task 1 – FRA Waiver Determination for CWT =         | \$21,508.00 |
| Task 2 – Survey and Design of Additional Sidewalk = | \$1,500.00  |
| Total =   | \$23,008.00 |

Sincerely,

**Stantec Consulting Services, Inc.**

A handwritten signature in black ink, appearing to read "Joel Paulsen".

**Joel Paulsen PE**  
Senior Associate  
Mobile: 701-781-4758  
Joel.Paulsen@stantec.com



REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-18-A2 Type: Contract Amendment #2

Location: Main Avenue Date of Hearing: 6/10/2019

|                 |                      |
|-----------------|----------------------|
| <u>Routing</u>  | <u>Date</u>          |
| City Commission | <u>7/1/2019</u>      |
| PWPEC File      | <u>X</u>             |
| Project File    | <u>Jeremy Gorden</u> |

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, regarding Contract Amendment #2 submitted by SRF in the amount of \$104,663.12, bringing the total contract amount to \$374,395.92. This Amendment is for additional design work performed by SRF due to splitting this project into two separate construction projects.

Staff is recommending approval of Contract Amendment #2 in the amount of \$104,663.12, bringing the total Contract amount to \$374,395.92.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of Contract Amendment #2 to SRF.

RECOMMENDED MOTION

Concur with recommendations of PWPEC and approve Amendment #2 in the amount of \$104,663.12 to SRF.

PROJECT FINANCING INFORMATION:


Recommended source of funding for project: Water Utility, WW Utility, Street Sales Tax & Special Assessments

|  |                      |
|--|----------------------|
|  | <u>Yes</u> <u>No</u> |
| Developer meets City policy for payment of delinquent specials | <u>N/A</u>           |
| Agreement for payment of specials required of developer        | <u>N/A</u>           |
| Letter of Credit required (per policy approved 5-28-13)        | <u>N/A</u>           |

COMMITTEE

|  | <u>Present</u>                      | <u>Yes</u>                          | <u>No</u>                | <u>Unanimous</u> |
|--|-------------------------------------|-------------------------------------|--------------------------|------------------|
|  |                                     |                                     |                          | <u>✓</u>         |
| Tim Mahoney, Mayor                       | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> |                  |
| Nicole Crutchfield, Director of Planning | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                  |
| Steve Dirksen, Fire Chief                | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                  |
| Bruce Grubb, City Administrator          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                  |
| Ben Dow, Director of Operations          | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> |                  |
| Steve Sprague, City Auditor              | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/> |                  |
| Brenda Derrig, City Engineer             | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                  |
| Kent Costin, Finance Director            | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |                  |

ATTEST:

  
 Brenda E. Derrig, P.E.  
 City Engineer

C: Kristi Olson

## Memorandum

**To:** Members of PWPEC

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

**Date:** June 5, 2019

**Subject:** Amendment #2 to Consulting Engineering Services Agreement with SRF Consulting Group for Preliminary and Final Design Services for Watermain and Sanitary Sewer related to the Main Avenue Street Reconstruction Project  
City of Fargo Improvement District No. BR-18-A2  
NDDOT Project No. NHU-8-010(041)939

---

### Background

SRF Consulting Group was selected by the NDDOT Selection Committee in April of 2016 and has the NDDOT design contract for the Main Avenue street reconstruction project slated for 2019 and 2020. We entered into a separate contract with them to complete the water and sanitary sewer design associated with this project. The original fee amount was \$215,044.25.

### Update

Last year we split this project into two separate construction projects, one for 2019 and one for 2020 due to design time needed as well as time to secure right of way and easements. In doing so, we required the consultant to create two plan sets instead of one. This is the reason for this contract amendment, as well as some requested modifications by the Fargo Park District as part of their plaza area.

SRF's original contract was \$215,044.25, Amendment #1 was \$54,688.55, and Amendment #2 is for \$104,663.12, making their contract amount \$374,395.92.

### Recommended Motion

Approval of Contract Amendment #2 with SRF Consulting Group for additional design associated with the Main Avenue street reconstruction project.

Attachment



SRF No. 9287,01

May 28, 2019

Mr. Jeremy Gorden, PE, PTOE  
Transportation Division Engineer  
City of Fargo  
200 3rd Street North  
Fargo, ND 58102

SUBJECT: AMENDMENT 2: MAIN AVENUE RECONSTRUCTION, WATER AND SANITARY DESIGN,  
PARK DISTRICT DEPOT REDESIGN

Dear Mr. Gorden:

SRF is requesting an Amendment to our contract for the design of the watermain and sanitary for the Fargo Main Avenue Project as well as some additional changes to the Park Depot Landscaping project as requested by the Park District.

On October 25, 2018, the DOT split the corridor into two separate projects with two separate bid dates.

1. CPU-NHU-8-010(043)940; PCN 22352 – Broadway to 2<sup>nd</sup> Street (Bid Date of March 8, 2019)
2. CPU-NHU-8-010(041)939; PCN 21170 – University Drive to Broadway (Bid Date of November 8, 2019)

This is considered a change in Contract and is considered additional work. The original contract included the NDDOT milestone dates of the following:

1. Phase II: Preliminary Design and Environmental Clearance: February 10, 2017
  - a. Actual Completion: August 20, 2018
2. Phase III: Final Design and Plans: September 22, 2017
  - a. PCN 22352; Actual Completion: February 6, 2019
  - b. PCN 21170; Anticipated Completion: August 23, 2019

The extension of the schedule along with the additional work items, additional plans, estimate, and bidding documents as a result of the NDDOT splitting the project has resulted in the original scoped hours and budget to not be enough to complete all project tasks within the budget remaining.

The Park District has requested additional design changes to the Depot plaza landscaping design and an additional coordination meetings.

Tasks associated with Amendment 2 are shown in Attachment A.

[www.srfconsulting.com](http://www.srfconsulting.com)

Case Plaza, One North Second Street, Suite 226 | Fargo, ND 58102-4801 | 701.237.0010 Fax: 701.237.0017

*An Equal Opportunity Employer*

Mr. Jeremy Gorden, PE, PTOE  
City of Fargo

May 28, 2019  
Page 2

## SCOPE OF SERVICES

We propose to carry out the additional work and out-of-scope items as described in the attached Scope of Services (Attachment A). This work is summarized below:

- **SRF Consulting Group**
  - Project Management
    - General day-to-day project management and administration (4 Months)
    - Work planning schedule and coordination between SRF roadway design and Apex's Utility design (4 Months)
  - Depot Plaza Redesign
    - Adjust schematic design
    - Design Coordination
    - Plan Revisions
    - Update cost estimates
  
- **Apex Engineering Group**
  - Water/Sewer borings and BNSF permits at 4<sup>th</sup> St and 8<sup>th</sup> St
  - Public Involvement
  - Preliminary Engineering (Sewer & Water with Tech Memo)
  - Design changes for addendums for Broadway to 2<sup>nd</sup> St.
  - Impacts of project split into two separate plans/bids
  - Plans, specs, estimate for University Dr to Broadway

## SCHEDULE

We will complete this work within a mutually agreed-upon time schedule that coincides with the NDDOT project milestone schedule.

## BASIS OF PAYMENT/BUDGET

We propose to be reimbursed for our services on an hourly basis for the actual time expended. Other direct project expenses, such as printing, supplies, reproduction, etc., will be billed at cost, and mileage will be billed at the current allowable IRS rate for business miles. Invoices are submitted on a monthly basis for work performed during the previous month. Payment is due within 30 days.

Based on our understanding of the project and our scope of services, we estimate the cost for Amendment 2 to be the following:

1. SRF Consulting Group - Project Management and Depot Plaza Redesign t: \$15,443.12
2. Apex Engineering Group - Sanitary and Watermain Design: \$89,220.00

Mr. Jeremy Gorden, PE, PTOE  
City of Fargo

May 28, 2019  
Page 3

The current contract amount is \$269,732.80. Total requested increase is \$104,663.12 for a new total contract amount of \$374,395.92.


### CHANGES IN THE SCOPE OF SERVICES

It is understood that if the scope or extent of work changes, the cost will be adjusted accordingly. Before any out-of-scope work is initiated, however, we will submit a budget request for the new work and will not begin work until we receive authorization from you.

We sincerely appreciate your consideration of this proposal and look forward to working with you on this project. Please feel free to contact me if you have any questions or need additional information.

Sincerely,

SRF CONSULTING GROUP, INC.



Jacob Nordick, PE  
Principal

Attachment A – Scope of Services

cc: Tom Knakmuhs – City of Fargo  
Chris Dahl – SRF Consulting Group



This Agreement represents the entire and integrated agreement between the Client and SRF and supersedes and replaces all prior and contemporaneous understandings, agreements, arrangements, negotiations, and representations, whether written or oral. This Agreement may not be altered, changed, or amended except as set forth in a written amendment to this Agreement.

**SRF CONSULTING GROUP, INC.**

Todd Polun  
Signature  
Todd Polun  
Name  
Vice - President  
Title  
6-17-19  
Date

**CITY OF FARGO: MAYOR**

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

**CITY OF FARGO: CITY AUDITOR**

\_\_\_\_\_  
Signature  
\_\_\_\_\_  
Name  
\_\_\_\_\_  
Title  
\_\_\_\_\_  
Date

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**SRF Consulting Group, Inc.**

**CLIENT:** City of Fargo  
**PROJECT:** BR-18-A0, Fargo Main Avenue Reconstruction  
Watermain and Sanitary Sewer Design

**Subconsultants:** Apex Engineering  
**TASK NO.** SUMMARY OF TASKS  
1.0 PROJECT MANAGEMENT (0270-054)  
2.0 DEPOT PLAZA REDESIGN

**Work Tasks and Person-Hour Estimates**



9287.01

**Project Overview:**

Amendment 2 for the extension of the project schedule due to the NDDOT splitting the project into two segments with two separate plans sets, specifications, and bid dates. Includes additional work for Subconsultant Apex Engineering.

Work Tasks and Person-Hour Estimates



SRF Consulting Group, Inc.  
 Client: City of Fargo  
 Project: BR-18-A0, Fargo Main Avenue Reconstruction  
 NDDOT 8-010(041)039; PCN 21170

9287.01

| TASK NO. | TASK DESCRIPTION   | PRINCIPAL | SR.ASSOC. | ASSOCIATE | SR.PROF.  | PROFESSIONAL | TECH     | CLERICAL | TOTAL \$  | EST.FEE           |
|----------|--|-----------|-----------|-----------|-----------|--------------|----------|----------|-----------|-------------------|
| 1.0      | <b>PROJECT MANAGEMENT (0270-054)</b><br>Assumptions:<br>- Project Schedule extension per the NDDOT splitting the project into two segments and two separate bid dates<br>- Assumes an additional 4 months of schedule  | 36        | 16        | 0         | 0         | 0            | 0        | 0        | 52        | \$7,943.70        |
| 1.1      | General day-to-day project management and coordination with the City of Fargo and Sub-Consultant Apex Engineering (4 Months)   |           |           |           |           |              |          |          |           |                   |
|          | <b>SUBTOTAL - TASK 1</b>   | <b>36</b> | <b>16</b> | <b>0</b>  | <b>0</b>  | <b>0</b>     | <b>0</b> | <b>0</b> | <b>52</b> | <b>\$7,943.70</b> |
| 2.0      | <b>DEPOT PLAZA REDESIGN</b><br>Assumptions:<br>- Working from new Park District redlines provided by Tyler<br>- Additional meetings will be in Skype.<br>Client Deliverables:<br>- Timely design direction and review. |           |           |           |           |              |          |          |           |                   |
| 2.1      | Adjust schematic design based on new comments and refine design based on grading adjustments. Assumes schematic grading will be done by hand.  | 0         | 4         | 0         | 20        | 0            | 0        | 0        | 24        | \$2,350.72        |
| 2.2      | Design coordination (assumes two 1.5 hour Skype meetings or three 1 hour meetings)   | 0         | 3         | 0         | 3         | 0            | 0        | 0        | 6         | \$655.20          |
| 2.3      | Revise plan in AutoCAD and update plan rendering   | 0         | 1         | 0         | 8         | 0            | 0        | 0        | 9         | \$864.64          |
| 2.4      | Revise axon rendering. Includes time to update base model enough to provide new base for axon rendering.   | 0         | 1         | 0         | 16        | 8            | 0        | 0        | 25        | \$2,210.30        |
| 2.5      | Update quantities and revise preliminary cost estimate   | 0         | 1         | 0         | 14        | 0            | 0        | 0        | 15        | \$1,418.56        |
|          | <b>SUBTOTAL - TASK 2</b>   | <b>0</b>  | <b>10</b> | <b>0</b>  | <b>61</b> | <b>8</b>     | <b>0</b> | <b>0</b> | <b>79</b> | <b>\$7,499.43</b> |





Water | Transportation | Municipal | Facilities

701.373.7980  
4733 Amber Valley Parkway  
Fargo, ND 58104

**Engineering Services Agreement**  
**Amendment No. 1 - Request**

**Project:** Main Avenue Reconstruction (University Dr. to 2<sup>nd</sup> Street)City of Fargo Project No. BR-18-A1  
Apex Project No. 16.126.0177  
SRF Project No. 9287.01**Client:** SRF Consulting Group, Inc.**Owner:** City of Fargo (Owner)**Attn:** Jacob Nordick, PE - SRF Project Manager and  
Jeremy Gorden and Thomas Knakmuhs (City of Fargo)**Date:** 5/1/19**Background/Description of Work:**

Apex Engineering Group is a subconsultant to SRF Consulting Group to provide engineering services for the above project. Apex's primary responsibilities on this project includes preliminary engineering thru final design specifically focused on the City of Fargo's water and sanitary sewer utilities within the project corridor. For various reasons including unanticipated changes in design, out of scope work, changes in schedule, etc., Apex has exhausted the original budget established in 2016. Therefore, we are respectfully asking SRF to submit our contract amendment request onto the City of Fargo for consideration of additional fees Apex will need to complete the next phase of the design project for the November 2019 bid opening.

**Apex Fees to Date:**

|  |                     |
|--|---------------------|
| Original Contract Amount =                   | \$185,698.32        |
| Services & Expenses Invoiced as of 3/02/19 = | <u>\$184,071.05</u> |
| Original Budget Remaining =                  | \$ 1,627.27         |

**Amendment Amount Requested:**

|   |                           |
|---|---------------------------|
| Out of Scope/Add. Work (Items 1-6 listed) = | \$ 52,000.00 <sup>1</sup> |
| Out of Scope Expenses (BNSF permits) =      | \$ 20,400.00              |
| Add. Fee to Complete PH 2 Design =          | \$ 18,450.00 <sup>2</sup> |
| Less the Original Budget Remaining =        | <u>-\$ 1,630.00</u>       |
| <b>Amendment No. 1 Request =</b>            | <b>\$89,220.00</b>        |

<sup>1</sup>The \$52,000 total for items 1-6, Includes Approximately \$18,000 of unbilled services that Apex is holding for service between 2/25/19 to 4/27/19.

<sup>2</sup>See Item No. 7 In this Document for Hours & Fee Estimated for Add Fee to Complete Phase 2 Design.

**Amended Contract Summary:**

|                                |                     |
|--------------------------------|---------------------|
| Original Contract Amount =     | \$185,698.32        |
| Amendment No. 1 Request =      | <u>\$ 89,220.00</u> |
| Apex Contract W/Amendment #1 = | <b>\$274,918.32</b> |

The following items (1-6) describe the key contributory factors that account for most of this contract amendment request. These are estimates based on reports from Apex's billing software where time was documented by staff. We also reviewed Apex's original scope & fee from 2016 to compare against actual hours expended. **The Bill Rates shown are Average Rates that includes Direct labor + Overhead Costs + 12% Fixed Fee as per our current contract.**

1. **Water / Sewer Borings and BNSF Permits @ 4<sup>th</sup> St RR Xing** - Apex was directed to look at and prepare design for boring water and sewer force main under the RR tracks at 4<sup>th</sup> Street and 8<sup>th</sup> Street. This effort also required additional topo survey north of the tracks at both locations. Apex also prepared and obtained the necessary permits from BNSF. In order to expedite the permit, Apex paid for the BNSF permits and is seeking reimbursement as part of this addendum request.

|  |   |                 |
|--|---|-----------------|
| ○ Engineering Design & Plan Prep (43hrs X \$78/hr) | = | \$ 3,354        |
| ○ BNSF Coordination & Permits (26 hrsX 161/hr)     | = | \$ 4,186        |
| ○ BNSF Permit Fees (Direct cost)                   | = | <u>\$10,200</u> |
| Subtotal =   |   | \$17,740        |

2. **Water / Sewer Borings and BNSF Permits anticipated @ 8<sup>th</sup> Street RR Xing:**

We are anticipating some of the same challenges and additional coordination will be needed at the 8<sup>th</sup> Street RR crossing like we had at 4<sup>th</sup> Street in relation to extending the water and sewer under the RR Tracks. The engineering and design might be a bit more complicated with utilities, but the details should be similar. We will need more Topographic survey as well, but it should only take about 4 hours. We are going to assume the BNSF permit fees will be paid again by Apex (to save time).

|                                     |                 |
|-------------------------------------|-----------------|
| ○ Engineering Design & Plan Prep =  | \$ 3,900        |
| ○ BNSF Coord & Permits Submittals = | \$ 3,900        |
| ○ BNSF Permit Fees (Direct cost) =  | <u>\$10,200</u> |
| Subtotal =                          | \$18,000 (est.) |

3. **Public Involvement** – Apex's original scope and fee did not have any time dedicated to public involvement. SRF and the City did not see much need for this effort originally as the assumption was that most of the design decisions were made from the original SRF corridor study. As preliminary plans developed, and project design alternatives were added, the City and NDDOT staff agreed that more public input meetings were needed. Apex was asked to participate in these meetings. Based on Review of our billing reports and documentation of time entries Apex's Project Manager and staff accrued the following costs to the project:

|   |                 |
|---|-----------------|
| ○ Project Management (33 hrs X \$210/hr) =      | \$ 6,930        |
| ○ Engineering & Tech Staff (22 hrs X \$100/hr)= | <u>\$ 2,200</u> |
| Subtotal =                                      | \$ 9,130        |

4. **Preliminary Engineering (Sewer & Water W/Tech Memo)** – After reviewing our original Scope of Services, Apex did not have hours allocated for the requested Tech Memo that was developed by our staff. This was done at the request of the City (April Walker) in case it was needed for presentation to PWPEC or Commissioners. The Memo did provide value as it summarized our review of trenchless alternatives, preliminary layouts, costs, and review of sewer videos. **Apex allocated 508 hours of engineering and technician time in our original scope for the Preliminary Engineering Phase.** It took about 560 hours with the added Tech Memo.

- Engineering Staff (Avg. Bill Rate) (\$75/hr X 50 hrs) = \$3,750

5. **Design Changes and Addendums for Phase I** – To the best of our ability Apex tracked additional time related to changes in plans that came after PS&E plan comments, most of the time is related to Addendums A & B in late January and February. While these changes were at the City’s request and in the best interest of the project, they did require additional time to modify plan sheets (+30 sheets).

- Sr. Engineer (Avg Bill Rate) \$161/hr X 21 hrs = \$ 3,381
- Engineering & Tech. Staff (Avg. Bill Rate) \$75/hr X 127 hrs = \$ 9,525
- Subtotal = \$12,906

6. **Impacts to Budget by Splitting the Project into 2-Yrs/Two Bids** – The effort related to this item is difficult to quantify in terms of the actual hours documented as it is ongoing. We agree, it was a good decision for everyone to split the project into two years. It allowed the project to keep moving forward as we all realized it would be difficult to build this project in one construction season. However, separating the design into two separate plan sets does create some inefficiencies for our design team and redundancy that we didn’t really anticipate in 2016 when we originally scoped this work. (i.e. Title Block Changes, End of Project/Begin Project Tie-ins, Misc. Plan Note changes, Additional Design Coordination Meetings, etc.).

- Project Management Time (16 hrs X \$210/hr) = \$ 3,360
- Engineering / Tech Time (100 hrs X \$75/hr) = \$ 7,500
- \$ 10,860

**7. Estimated Hours & Fee Required To Complete Phase 2**

|   |                    |
|---|--------------------|
| Apex’s Actual Final Design Hours for PH I (as of 3/02/19) = | 1,076 hours        |
| - Estimated Hours for Items (1 thru 6) =                    | <u>- 408 hours</u> |
| Hours Expended with no Out of Scope Work (1 thru 6) =       | 668 hours          |

|  |                   |
|--|-------------------|
| Apex’s Original (2016) Final Design Hours for Entire Project = | 914 hours         |
| Original Remaining Hours Needed to Complete PH 2=              | <u>-668 hours</u> |
|  | 246 Hours         |

- 246 Hours X \$75/Hour Average Bill Rate = \$18,450



**Contract Terms & Conditions:**

Apex Engineering Group, Inc. ("Subconsultant") hereby proposes to SRF Consulting Group ("SRF"), and the City of Fargo (SRF's "Client") the above described Amendment No. 1 and the services described herein, to be completed under the same Terms & Conditions of the Original Subconsultant Agreement between SRF and Apex and all applicable provisions of the Prime Agreement between SRF and the City of Fargo approved by the City of Fargo on November 21, 2016.

SRF Consulting Group, Inc:

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

Apex Engineering Group, Inc.:

Signature: \_\_\_\_\_

Dain L. Miller

Title: Sr. Vice President / COO

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

38

June 26, 2019

Honorable Board of City  
Commissioners  
City of Fargo  
Fargo, ND

Re: Improvement District No. AN-19-G1

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, June 26, 2019, for PC Concrete Alley Paving & Incidentals, Improvement District No. AN-19-G1, located at Robert's East Alley from 1st Avenue North and 2nd Avenue North between Robert's Street North and Broadway North.

The bids were as follows:

|                           |               |
|---------------------------|---------------|
| Key Contracting, Inc.     | \$ 477,507.50 |
| All Finish Concrete, Inc. | \$ 499,996.00 |

|                     |               |
|---------------------|---------------|
| Engineer's Estimate | \$ 404,728.00 |
|---------------------|---------------|

The special assessment escrow is not required.

This office recommends award of the contract to Key Contracting, Inc. in the amount of \$477,507.50 as the lowest and best bid. No protests have been received.

Sincerely,



Tom Knakmuhs  
Assistant City Engineer

TAK/klb

**ENGINEER'S STATEMENT OF ESTIMATED COST**

**IMPROVEMENT DISTRICT # AN-19-G1**

**PC Concrete Alley Paving & Incidentals**

Robert's East Alley from 1st Avenue N and 2nd Avenue N between Robert's Street N and Broadway N

WHEREAS, bids have been opened and filed for the above described Improvement District for City of Fargo, North Dakota; and WHEREAS, an estimate of the cost of work is required by the engineer for the City of Fargo, North Dakota;

NOW THEREFORE Tom Knakmuhs, do hereby certify as follows:

That I am the Assistant City Engineer for the City of Fargo, North Dakota;

That the following is detailed statement of the estimated cost of the job described as:

PC Concrete Alley Paving & Incidentals Improvement District # AN-19-G1 of the City of Fargo, North Dakota.

| Line Description                            | Unit | Quantity | Unit Price (\$) | Amount (\$)       |
|---|------|----------|-----------------|-------------------|
| <b>Alley Paving</b>                         |      |          |                 |                   |
| 1 Remove Pavement All Thicknesses All Types | SY   | 670.00   | 36.00           | 24,120.00         |
| 2 Subgrade Preparation                      | SY   | 670.00   | 18.00           | 12,060.00         |
| 3 F&I Crushed Conc - 6" Thick               | SY   | 670.00   | 18.00           | 12,060.00         |
| 4 F&I Pavement 7" Thick Reinf Conc          | SY   | 670.00   | 155.00          | 103,850.00        |
| 5 Casting to Grade - w/Conc                 | EA   | 3.00     | 1,200.00        | 3,600.00          |
| 6 GV Box to Grade - w/Conc                  | EA   | 1.00     | 650.00          | 650.00            |
| 7 Remove Wall                               | LF   | 167.00   | 155.00          | 25,885.00         |
| 8 Fill - Import                             | CY   | 30.00    | 400.00          | 12,000.00         |
| 9 Inlet Protection - Existing Inlet         | EA   | 4.00     | 400.00          | 1,600.00          |
| 10 Traffic Control - Type 1                 | LS   | 1.00     | 4,800.00        | 4,800.00          |
| 11 Clean Site                               | LS   | 1.00     | 18,000.00       | 18,000.00         |
| 12 Remove Base                              | EA   | 1.00     | 900.00          | 900.00            |
| <b>Alley Paving Total</b>                   |      |          |                 | <b>219,525.00</b> |
| <b>Utility Conduit System</b>               |      |          |                 |                   |
| 13 Rem & Repl Pavement 9" Thick Reinf Conc  | SY   | 196.00   | 173.00          | 33,908.00         |
| 14 Rem & Repl Driveway 7" Thick Reinf Conc  | SY   | 66.00    | 165.00          | 10,890.00         |
| 15 Rem & Repl Curb & Gutter                 | LF   | 70.00    | 90.00           | 6,300.00          |
| 16 Rem & Repl Pavement 6" Thick Asph        | SY   | 54.00    | 155.00          | 8,370.00          |
| 17 Rem & Repl Sidewalk 4" Thick Reinf Conc  | SY   | 35.00    | 110.00          | 3,850.00          |
| 18 F&I Woven Geotextile                     | SY   | 196.00   | 6.00            | 1,176.00          |
| 19 F&I Class 5 Agg - 12" Thick              | SY   | 196.00   | 18.00           | 3,528.00          |
| 20 F&I Edge Drain 4" Dia PVC                | LF   | 70.00    | 35.00           | 2,450.00          |
| 21 Casting to Grade - w/Conc                | EA   | 1.00     | 1,200.00        | 1,200.00          |
| 22 F&I Pull Box Polymer Conc                | EA   | 7.00     | 5,760.00        | 40,320.00         |
| 23 F&I MicroDuct                            | LF   | 2,420.00 | 5.10            | 12,342.00         |
| 24 F&I Conduit 2" Dia                       | LF   | 4,000.00 | 9.60            | 38,400.00         |
| 25 F&I Conduit 4" Dia                       | LF   | 1,700.00 | 14.00           | 23,800.00         |
| 26 F&I Conduit 6" Dia                       | LF   | 1,185.00 | 38.10           | 45,148.50         |
| 27 F&I Equipment Pad                        | EA   | 3.00     | 6,600.00        | 19,800.00         |
| 28 Traffic Control - Type 1                 | LS   | 1.00     | 6,500.00        | 6,500.00          |
| <b>Utility Conduit System Total</b>         |      |          |                 | <b>257,982.50</b> |
| <b>Total Construction in \$</b>             |      |          |                 | <b>477,507.50</b> |
| Engineering                                 |      | 6.00 %   |                 | 28,650.45         |
| Legal & Misc                                |      | 3.00 %   |                 | 14,325.22         |
| Contingencies                               |      | 10.00 %  |                 | 47,750.75         |
| Administration                              |      | 2.76 %   |                 | 13,179.21         |
| Interest                                    |      | 4.00 %   |                 | 19,100.30         |
| <b>Total Estimated Costs</b>                |      |          |                 | <b>600,513.43</b> |
| Utility Funds - Wastewater - 521            |      |          |                 | 317,325.43        |
| Special Assessments                         |      |          |                 | 283,188.00        |
| <b>Unfunded Costs</b>                       |      |          |                 | <b>0.00</b>       |

ENGINEER'S STATEMENT OF ESTIMATED COST

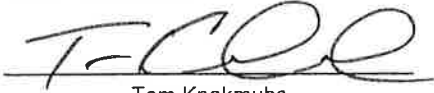
IMPROVEMENT DISTRICT # AN-19-G1

PC Concrete Alley Paving & Incidentals

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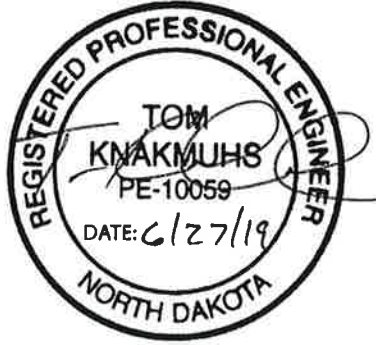
IN WITNESS THEREOF, I have hereunto set my hand and seal

Date: 06/27/2019



Tom Knakmuhs

Assistant City Engineer



COVER SHEET  
CITY OF FARGO PROJECTS

39

This sheet must be completed and turned in with all City of Fargo projects. NO items will be accepted by either the City Commission Office or the City Auditor's Office without this cover sheet attached and properly filled out.

Exact, full name of Improvement District as it will appear in the Contract:

Storm Sewer Lift Station Modifications & Incidentals

Improvement District No. NR-19-A

|                             |  |             |
|-----------------------------|--|-------------|
| Call for Bids               | <u>July 1<sup>st</sup></u>                       | <u>2019</u> |
| Advertise Dates             | <u>July 8<sup>th</sup> &amp; 15<sup>th</sup></u> | <u>2019</u> |
| Bid Opening Date            | <u>August 7<sup>th</sup></u>                     | <u>2019</u> |
| Substantial Completion Date | <u>August 15<sup>th</sup></u>                    | <u>2020</u> |
| Final Completion Date       | <u>September 15<sup>th</sup></u>                 | <u>2020</u> |

- N/A PWPEC Report (**Part of the 2019 CIP**)
- X Engineer's Report (Attach Copy)
- X Direct City Auditor to Advertise for Bids
- X Bid Quantities (Attach Copy for Auditor's Office Only)
- X Notice to Property Owners (Dan Eberhardt)

Project Engineer Rob Hasey

Phone No. (701) 476-4041

The items listed above are for use on all City projects. The additional items listed below are to be checked only when all or part of a project is to be special assessed:

- X Create District (Attach Copy of Legal Description)
- X Order Plans & Specifications
- X Approve Plans & Specifications
- N/A Adopt Resolution of Necessity
- N/A Approve Escrow Agreement (Attach Copy for Commission Office Only)
- X Assessment Map (Attach Copy for Auditor's Office Only)

ENGINEER'S REPORT  
 STORM SEWER LIFT STATION MODIFICATIONS & INCIDENTALS  
 IMPROVEMENT DISTRICT NR-19-A

**Nature & Scope**

The Fargo Street Department has identified several storm sewer lift stations that are in need of repair and safety upgrades. The lift stations on this project include #3, #36 & #50.

**Purpose**

The purpose of this project is to make the necessary repairs to the lift stations which include pump replacement, control panel replacement, adding safety features such as piping that the City vacator trucks can connect onto for yearly cleaning operations, adding catwalks for safety & adding SCADA capability for remote monitoring.

This project will be funded by special assessments, capital funds used for SCADA integration and the Storm Sewer Utility Fund 524 as identified in the 2019 Capital Improvement Plan.

**Feasibility**

The costs of these improvements are estimated as follows:

**Site 1:**

|                              |               |
|------------------------------|---------------|
| Estimated Construction Cost: | \$ 270,475.00 |
|------------------------------|---------------|

|                                     |               |
|-------------------------------------|---------------|
| Assessed Portion:                   | \$ 135,237.50 |
| Plus 6% Engineering Fees:           | \$ 8,114.25   |
| Plus 6% Administration Fees:        | \$ 8,114.25   |
| Plus 4% Interest Fees:              | \$ 5,409.50   |
| Plus 3% Legal/Misc. Fees:           | \$ 4,057.13   |
| Consulting Engineering Design Fees: | \$ 3,125.00   |
| Total Assessed:                     | \$ 164,057.63 |

|   |               |
|---|---------------|
| City Portion:                             | \$ 135,237.50 |
| Plus 6% Engineering Fees:                 | \$ 8,114.25   |
| Plus 4% Interest Fees:                    | \$ 5,409.50   |
| Plus 3% Legal/Misc. Fees:                 | \$ 4,057.13   |
| Consulting Engineering Design Fees:       | \$ 3,125.00   |
| Total City (Storm Sewer Utility Fund 524) | \$ 155,943.38 |

**Site 2:**

|                              |               |
|------------------------------|---------------|
| Estimated Construction Cost: | \$ 100,225.00 |
| Plus 6% Engineering Fees:    | \$ 6,013.50   |
| Plus 4% Interest Fees:       | \$ 4,009.00   |



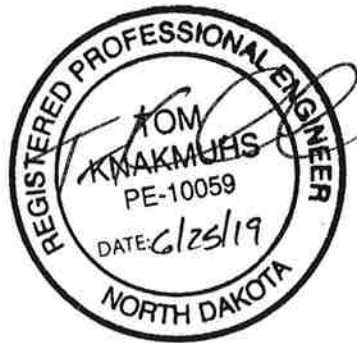
|  |                    |
|--|--------------------|
| Plus 3% Legal/Misc. Fees:              | \$ 3,006.75        |
| Consulting Engineering Design Fees:    | \$ <u>6,250.00</u> |
| Total:                                 | \$ 119,504.25      |
| <u>100% City Funds:</u>                |                    |
| Capital Funds for SCADA upgrades       | \$ 30,000.00       |
| Storm Sewer Utility Fund 524 - Balance | \$ 89,504.25       |

**Site 3:**

|  |                    |
|--|--------------------|
| Estimated Construction Cost:           | \$ 52,225.00       |
| Plus 6% Engineering Fees:              | \$ 3,133.50        |
| Plus 4% Interest Fees:                 | \$ 2,089.00        |
| Plus 3% Legal/Misc. Fees:              | \$ 1,566.75        |
| Consulting Engineering Design Fees:    | \$ <u>6,250.00</u> |
| Total:                                 | \$ 65,264.25       |
| <u>100% City Funds:</u>                |                    |
| Capital Funds for SCADA upgrades       | \$ 30,000.00       |
| Storm Sewer Utility Fund 524 - Balance | \$ 35,264.25       |

**Funding**

|   |               |
|---|---------------|
| Special Assessments (32.50%)              | \$ 164,057.63 |
| Capital Funds for SCADA upgrades (11.89%) | \$ 60,000.00  |
| Storm Sewer Utility Fund 524 (55.61%)     | \$ 280,711.88 |



  
 Thomas Knakmuhs, P.E.  
 Division Engineer

CITY OF FARGO  
ENGINEERING DEPARTMENT

LOCATION & COMPRISING

STORM SEWER LIFT STATION  
MODIFICATIONS & INCIDENTALS

IMPROVEMENT DISTRICT NO. NR-19-A

**LOCATION (Site 1):**

Storm Sewer Lift Station #36 located on 16<sup>th</sup> Avenue North and west of 45<sup>th</sup> Street.

**COMPRISING (Site 1):**

Lots 1 through 4, Inclusive, Block 1.  
Lot 1, Block 2.  
Located in Sheyenne Industrial Center Second Addition.

Lots 1 and 2, Block 1.  
Lots 6 & 7, Block 1.  
Lots 1 through 3, Inclusive, Block 2.  
Lots 1 through 4, Inclusive, Block 3.  
Located in Sheyenne Industrial Center Third Addition.

Lots 1 and 4, Block 1.  
Located in Sheyenne Industrial Center Fourth Addition.

Lots 1 and 2, Block 1.  
Located in the Sheyenne Industrial Center Fifth Addition.

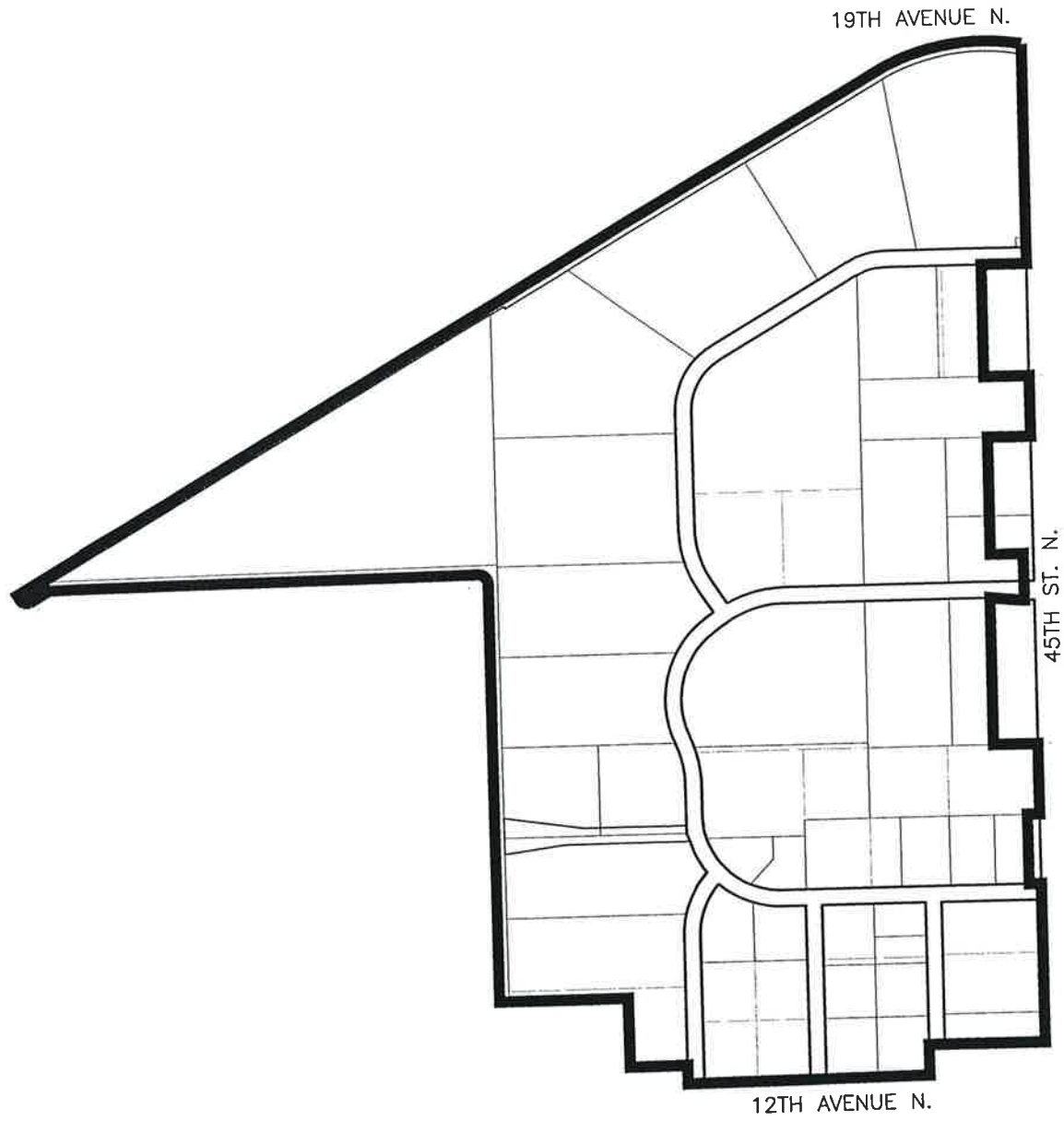
Lot 1, Block 1.  
Located in the 47<sup>th</sup> Street North Addition.

Lots 1 through 3, Inclusive, Block 1.  
Lots 5 through 7, Inclusive, Block 1.  
Lots 1 through 3, Inclusive, Block 2.  
Lots 1 through 6, Inclusive, Block 3.  
Lots 1 through 6, Inclusive, Block 4.  
Lots 1 through 3, Inclusive, Block 5.  
Located in Fayland Industrial First Addition.

Lots 1 and 2, Block 1.  
Located in Stollenwerk Wilm Addition.

All unplatted land in the southeast quarter of Section 33, T. 140 N, R. 49 W, 5<sup>th</sup> Principal Meridian.  
All unplatted land in the southwest quarter of Section 33, T. 140 N, R. 49 W, 5<sup>th</sup> Principal Meridian.  
All unplatted land in the northeast quarter of Section 33, T. 140 N, R. 49 W, 5<sup>th</sup> Principal Meridian.  
All unplatted land in the northwest quarter of Section 33, T. 140 N, R. 49 W, 5<sup>th</sup> Principal Meridian.

All of the foregoing located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO  
ENGINEERING DEPARTMENT  
LOCATION & ASSESSMENT AREA  
STORM SEWER LIFT STATION  
MODIFICATIONS & INCIDENTALS  
IMPROVEMENT DISTRICT NO. NR-19-A