

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, March 12, 2018).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

1. 2nd reading of the following Ordinances; 1st reading, 3/12/18:
  - a. Amending Section 25-1509, of Article 25-15 of Chapter 25 of the Fargo Municipal Code Relating to Alcoholic Beverages.
  - b. Amending Section 18-0202, of Article 18-02 of Chapter 18 of the Fargo Municipal Code Relating to Public Ways and Places.
  - c. Rezoning Certain Parcels of Land Lying in Timber Creek Seventh Addition.
  - d. Repealing and Re-Establishing a Conditional Overlay District on Certain Parcels of Land Lying in PTP Addition.
  - e. Rezoning Certain Parcels of Land Lying in Grayland First Addition.
2. QuitClaim Deed and Release of Deed Restriction with Integra Property Group, LLC, and Release of Lien and Agreement Not to Sell or Encumber Real Property for the Nokomis I Property and Release of Lien and Agreement Not to Sell or Encumber Real Property for the Nokomis II Property.
3. Receive and file General Fund – Budget to Actual through February 28, 2018 (unaudited).
4. Applications for Games of Chance:
  - a. Fargo Metro Baseball Assoc. for a raffle on 6/1/18.
  - b. Homeward Animal Shelter for a raffle on 4/12/18.
  - c. Knights of Columbus #6570 for a calendar raffle from 5/1/18 to 5/31/18.
5. Contract Agreement with Courts Plus to provide a breastfeeding friendly environment for their employees.
6. Third Amendment to Parking Management Agreement with Interstate Parking Company of North Dakota LLC.
7. Loan from the Utility Fund in the amount of \$450,000.00 to the Parking Repair and Replacement Fund to make necessary repairs to the Civic Center Ramp.
8. Agreement with Willard Yellowbird to provide Planner services and duties until 8/1/18.

- Page 29.
9. Transfer of City asset 11424, unit 1224 from Transit Department to the Fargo Police Department effective immediately.
  10. Amendment No. 2 to Agreement with First Transit.
  11. License Agreement for Emergency Siren with the Park District.
  12. Change Orders for the City Hall Project:
    - a. No. 19 for an increase of \$26,725.00 for the general contract.
    - b. No. 20 for an increase of \$8,794.00 for the general contract.
  13. Extension of Lease 2018-2022 Farm Season with Evan Holmen for property in Barnes Township.
  14. Purchase of one used asphalt recycler from Pavement Technologies International Corp. in the total amount of \$62,995.00
  15. Contracts and bonds for Project Nos. SR-18-A1, TM-18-A1 and WA1752.
  16. Bills.
  17. Negative Final Balancing Change Order No. 1 in the amount of -\$834.23 for Improvement District No. AN-17-A1.
  18. Change Order No. 2 for an increase of \$26,752.50 for Improvement District No. TR-17-A1.
  19. Contract Amendment No. 2 for an increase of \$11,114.00 for Improvement District No. MS-17-A0.
  20. Removal of Improvement District No. BR-18-K1 from the 2018 CIP and revise the scope of Improvement District No. BR-18-F1.
  21. Exclusion of an incentive for Improvement District Nos. BR-18-G1 and BR-18-G2.
  22. Grade Crossing Construction and Maintenance Agreement, and Easement Agreement with BNSF Railway Company (Improvement District No. BN-17-A2).
  23. Two Storm Sewer and Street Light permits and the Crossing Surface Installation Agreement with BNSF Railway Company with payment to BNSF in the amount of \$139,212.00 (Improvement District No. BR-18-E1).
  24. Bid awards for Improvement District Nos. BN-18-G1, FM-17-C1, PR-18-A1 and PR-18-E1.
  25. Create Improvement District Nos. BR-18-G and FM-14-8.
  26. Contract and bond for Improvement District No. BR-18-C1.

**REGULAR AGENDA:**

27. Fargo Police Department Update.

- a. CONTINUE to 4/9/18 - Transfer of a Class "A" Alcoholic Beverage License from Classic Foods, LTD d/b/a Ground Round Restaurant to FSB Associates, LLC d/b/a Cowboy Jacks at 506 Broadway North; continued from the 2/26/18 Regular Meeting.
  - b. CONTINUE to 4/9/18 – Transfer of a Class "B" Alcoholic Beverage License from Main Liquors Inc. d/b/a Main Liquors to Dakota Liquors LLC d/b/a Main Liquors at 4000 Main Avenue.
  - c. CONTINUE to 4/9/18 – Transfer of a Class "FA" Alcoholic Beverage License from B.A.B 32nd Avenue South, LLC d/b/a Moe's Southwest Grill to HRP Fargo LLC d/b/a The Tavern Grill at 3233 45th Street South.
  - d. CONTINUE to 4/9/18 – Transfer of a Class "FA-RZ" Alcoholic Beverage License from Mosaic Foods LLC d/b/a Mezzaluna to Snelling Hospitality LLC d/b/a Mezzaluna at 309 Roberts Street North.
  - e. Diamond Willow Addition (622 and 624 10th Avenue North); approval recommended by the Planning Commission on 11/7/17:
    1. Zoning Change from MR-3, Multi-Dwelling Residential to MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development Overlay.
    2. 1st reading of Rezoning Ordinance.
    3. Planned Unit Development Master Land Use Plan.
    4. Plat of Diamond Willow Addition.
  - f. Plat of Fox First Addition, a replat of Lots 1-3, Block 1, Northern Sheyenne Land Second Addition (4900 19th Avenue North, and 1870 and 1890 Sheyenne Loop North); approval recommended by the Planning Commission on 7/6/17.
29. Recommendation to authorize staff to submit a request for tax increment financing for a project to be located at 11 12th Street North to the City's financial advisors for review.
30. Request to continue TapRide Service at NDSU in place of Route 35 for the fall semester.
31. Recommendation for appointments and reappointments to the following Boards and Commissions:
- a. Airport Authority.
  - b. Library Board.
32. Set 7:30 a.m., Tuesday, April 10, 2018 as the date for the Board of Equalization to meet.

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).

100

AN ORDINANCE AMENDING SECTION 25-1509, OF ARTICLE 25-15 OF CHAPTER 25 OF THE FARGO MUNICIPAL CODE RELATING TO 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 25-1509 of Article 25-15 of Chapter 25 of the Fargo Municipal Code is hereby amended to read as follows:

\* \* \*

- I. ~~No licensee, his~~ Licensee, its agent or employee shall not sell or serve, or permit to be sold or served on the licensed premises any food other than prepackaged, confectionery items such as peanuts, potato chips and similar items, ~~and prepackaged sandwiches, pizza and similar food products which are prepared and packaged off the licensed premises;~~ provided, that This prohibition shall not apply to licensed establishments which hold a restaurant license or permit pursuant to the provisions of article 13-04 of the Fargo Municipal Code, or food items prepared by an article 13-04 licensee for immediate personal consumption and not for resale. Further, licensee may participate in nonprofit public spirited events. A nonprofit public spirited



event is one held by an organization not regularly engaged in the business of preparing or selling food who does so for the sale directly to the ultimate consumer at a farmer's market, bake sale, or similar enterprise.

\* \* \* \*

Section 2. 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.

Section 3. Effective Date.

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

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Timothy J. Mahoney, Mayor

Attest:

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Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:  
Publication:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

16

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

AN ORDINANCE AMENDING SECTION 18-0202, OF ARTICLE 18-02 OF CHAPTER 18 OF THE FARGO MUNICIPAL CODE RELATING TO PUBLIC WAYS AND PLACES

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 18-0202 of Article 18-02 of Chapter 18 of the Fargo Municipal Code is hereby amended to read as follows:

18-0202. License necessary to construct, reconstruct, and repair sidewalks and driveways.-- No person shall construct, reconstruct, or repair sidewalks or driveways within the city without first procuring a license from the city auditor to engage in such work. To apply for a license to construct, reconstruct or repair sidewalks and driveways in the City of Fargo, the applicant must have a North Dakota general contractor's license, and be in good standing as a licensed contractor.

Section 2. 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. \_\_\_\_\_

Section 3. Effective Date.

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

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

5 Attest:

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Steven Sprague, City Auditor

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10 First Reading:  
11 Second Reading:  
12 Final Passage:  
13 Publication:  
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OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

10

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

AN ORDINANCE REZONING CERTAIN  
PARCELS OF LAND  
LYING IN TIMBER CREEK SEVENTH ADDITION  
TO THE CITY OF FARGO,  
CASS COUNTY, NORTH DAKOTA

WHEREAS, the Fargo Planning Commission and the Board of City Commissioners of the City of Fargo have held hearings pursuant to published notice to consider the rezoning of certain parcels of land lying in the proposed Timber Creek Seventh Addition to the City of Fargo, Cass County, North Dakota; and,

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

WHEREAS, the rezoning changes were approved by the City Commission on March 12, 2018,

NOW, THEREFORE,

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

Section 1. The following described property:

All of Timber Creek Seventh Addition to the City of Fargo, Cass County, North Dakota; being a replat of Lots Eleven (11) through Thirteen (13), Block One (1), Timber Creek Third Addition, City of Fargo, State of North Dakota,

is hereby rezoned from "SR-2", Single-Dwelling Residential, District, to "SR-4", Single-Dwelling Residential, District,

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

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OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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

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(SEAL)

Attest:

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Steven Sprague, City Auditor

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

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA



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

AN ORDINANCE REPEALING AND RE-ESTABLISHING  
A CONDITIONAL OVERLAY DISTRICT ON CERTAIN  
PARCELS OF LAND LYING IN PTP ADDITION,  
CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

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

WHEREAS, the Fargo Planning Commission recommended approval of the rezoning request on February 6, 2018; and,

WHEREAS, the rezoning changes were approved by the City Commission on March 12, 2018; and,

WHEREAS, it is intended by this ordinance that the base zoning districts applicable to the property described herein shall remain unchanged and that the intended effect hereof is to repeal one or more a "C-O", Conditional Overlay, District and to re-establish a modified version of a "C-O", Conditional Overlay, District;

NOW, THEREFORE,

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

Section 1. The following described property:

Lot One (1), Block One (1) PTP Addition to the City of Fargo, Cass County, North Dakota,

is hereby rezoned to retain the base zoning district for said property and to repeal and re-establish the "C-O", Conditional Overlay, District such that the re-established "C-O", Conditional Overlay, District be, and hereby is, as set forth below:

**Part A): The following requirements apply to all mixed-use and non-residential development:**

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1) Description

This C-O, Conditional Overlay district is primarily intended to encourage high-quality, durable, and long-lasting investments in order to enhance the quality of life and discourage blight. To that end, it is intended that all properties be designed to a human scale and that buildings should have architectural interest and variety through the use of articulated façades. In order to avoid the effect of a single, long, or massive wall with no relation to human scale, it is intended that articulated façades should include elements such as setbacks, change in materials, roof pitch or height variability.

2) Building form and style

- 2.1 Entrances and pedestrian walkway features leading to entrances shall be provided from both the parking areas and the street right-of-way.
- 2.2 All building elevations/façades greater than 150 feet in length, measured horizontally from vertical edge to vertical edge, shall incorporate wall plane projections or recesses. Each projection and/or recess shall have a depth of at least five feet, and the cumulative total horizontal width of all projections and/or recesses within a façade shall equate to at least an accumulated total of 20 percent of the overall horizontal length of the façade. No uninterrupted length of any façade shall exceed 150 horizontal feet.
- 2.3 Ground floor façades of non-residential buildings that face public right-of-way shall have arcades, display windows, entry areas, awnings, or other such features along no less than 60 percent of its horizontal length.
- 2.4 All buildings, regardless of size, shall have clearly-defined, highly-visible, public entrances that connect to public spaces, streets, pedestrian paths and plazas with no fewer than two of the following:
  - i. Canopies, awnings or porticos
  - ii. Recesses/projections varying the façade
  - iii. Raised corniced parapets over the door
  - iv. Peaked roof forms
  - v. Arches or arcades
  - vi. Entry courts

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vii. Raised landscape planters and/or wing walls integrated with the building

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2.5 Principle Materials – Unless otherwise deemed acceptable by the Zoning Administrator, all exterior walls shall be constructed or clad with natural stone, synthetic stone, brick, stucco, integrally-colored and textured concrete masonry units or systems, exterior insulation finishing systems (EIFS), fiber cement, curtain walls, or glass. All materials shall be commercial grade, durable, and have a multi-generational life span.

2.6 Accent Materials – In conjunction with the principle materials listed above, the following accent materials may also be used to construct or clad exterior walls: finished wood, architectural metal panels, and vinyl. Accent materials shall be applied to no greater than 10 percent of each building façade facing public right-of-way or private driveways, and 25 percent for all other building facades.

2.7 Flat roofs and rooftop mechanical equipment, such as HVAC units, shall be concealed from public view at ground level by parapets or other enclosures. The average height of such parapets shall not exceed fifteen percent of the height of the supporting wall.

2.8 Loading/unloading areas, building service entrances, loading docks, overhead doors, and ground level HVAC units shall be located at the side or rear of buildings and shall be visually screened from adjacent public right-of-way by structures and/or landscaping. All structures used for visual screening shall be constructed or clad with the same materials used for the primary building.

2.9 Dumpsters, refuse containers, and outdoor storage areas shall be located at the side or rear of buildings and shall be visually screened from adjacent public right-of-way by permanent walls. The permanent walls shall be constructed or clad with the same materials used for the primary building. Dumpsters and refuse containers shall contain permanent walls on at least three sides with the service opening not directly facing any public right-of-way or residentially zoned property. The fourth side shall incorporate a metal gate to visually screen the dumpsters or refuse containers.

3) Site Design



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1 3.1 A minimum of 5% of the internal surface area of the parking lot shall be landscaped  
2 through the use of planter islands and peninsulas.

3 3.2 Separate vehicular and pedestrian circulation systems shall be provided. An on-site  
4 system of pedestrian walkways shall be provided between building entrances and the  
5 following:

- 6 i. Parking lots or parking structures
- 7 ii. Any public sidewalk or multi-use path along the perimeter of the lot
- 8 iii. Entrances of other buildings on the site
- 9 iv. Any public sidewalk system along the perimeter streets adjacent to the  
10 development
- 11 v. Adjacent pedestrian origins and destinations—including but not limited to transit  
12 stops, residential development, office buildings, and retail shopping buildings—  
13 where deemed practical and appropriate by the Zoning Administrator

14 4) Prohibited Uses

15 For the purposes of this Conditional Overlay, the following uses are prohibited:

16 4.1 Portable advertising signs

17 4.2 Detention facilities

18 4.3 Self-service storage

19 4.4 Vehicle repair

20 4.5 Vehicle service, limited

21 4.6 Industrial uses

22 4.7 Adult entertainment center

23 5) Conditional Uses

For the purposes of this Conditional Overlay, the following uses require approval of a

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

Conditional Use Permit in accordance with Section 20-0909 of the LDC:

1 5.1 Off-premise advertising

2 6) Definitions

3 For the purposes of this Conditional Overlay, the following terms shall have the meanings  
4 ascribed to them:

5 6.1 *Façade*: Any exterior side of a building as viewed from a single direction. Said direction  
6 is typically perpendicular to the exterior side of the building being viewed.

7 6.2 *Depth*: A horizontal distance that is perpendicular to a building façade.

8 6.3 *Elevation*: A horizontal orthographic projection of a building on to a vertical plane, the  
9 vertical plane being parallel to one side of the building

**Part B): The following requirements apply to all residential development:**

10 1) Description

11 This C-O, Conditional Overlay district is primarily intended to encourage high-quality,  
12 durable, and long-lasting investments in order to enhance the quality of life and  
13 discourage blight. To that end, it is intended that all properties be designed to a human  
14 scale and that buildings should have architectural interest and variety through the use of  
15 articulated façades. In order to avoid the effect of a single, long, or massive wall with no  
16 relation to human scale, it is intended that articulated façades should include elements  
17 such as setbacks, change in materials, roof pitch or height variability.

18 2) Building form and style

19 2.1 Principle Materials – Unless otherwise deemed acceptable by the Zoning Administrator,  
20 all exterior walls shall be constructed or clad with natural stone, synthetic stone, brick,  
21 stucco, integrally-colored and textured concrete masonry units or systems, exterior  
22 insulation finishing systems (EIFS), fiber cement, curtain walls, or glass. All materials  
23 shall be commercial grade, durable, and have a multi-generational life span. Horizontal  
metal lap siding and vertical metal batten shall be allowed on residential structures but  
should not exceed 75% of the building elevation.

2.2 Accent Materials – In conjunction with the principle materials listed above, the following  
accent materials may also be used to construct or clad exterior walls: finished wood,

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1 architectural metal panels, and vinyl. Accent materials shall be applied to no greater than  
2 10 percent of each building façade.

3 2.3 Dumpsters, refuse containers, and outdoor storage areas shall be located at the side or rear  
4 of buildings and shall be visually screened from adjacent public right-of-way by walls or  
5 fencing. Dumpsters and refuse containers shall contain walls or fencing on at least three  
6 sides with the service opening not directly facing any public right-of-way or residentially  
7 zoned property. The fourth side shall incorporate a gate to visually screen the dumpsters  
8 or refuse containers.

9 3) Site Design

10 3.1 Separate vehicular and pedestrian circulation systems shall be provided. An on-site  
11 system of pedestrian walkways shall be provided between building entrances and the  
12 following:

- 13 vi. Parking lots or parking structures
- 14 vii. Any public sidewalk or multi-use path along the perimeter of the lot
- 15 viii. Entrances of other buildings on the site
- 16 ix. Any public sidewalk system along the perimeter streets adjacent to the  
17 development
- 18 x. Adjacent pedestrian origins and destinations—including but not limited to transit  
19 stops, residential development, office buildings, and retail shopping buildings—  
20 where deemed practical and appropriate by the Zoning Administrator.

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

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

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Timothy J. Mahoney, Mayor

(SEAL)

Attest:

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Steven Sprague, City Auditor

First Reading:  
Second Reading:  
Final Passage:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

10

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

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

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

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

10 WHEREAS, the rezoning changes were approved by the City Commission on March 12,  
11 2018,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 Lots One (1) through Eighteen (18) and Twenty (20) through Twenty-six (26),  
16 Block One (1); Lots One (1) through Eleven (11), Block Two (2); Lots One (1)  
17 through Nine (9), Block Four (4), Grayland First Addition to the City of Fargo, Cass  
18 County, North Dakota;

19 is hereby rezoned from "AG", Agricultural, District to "SR-2", Single-Dwelling Residential,  
20 District;

21 Section 2. The following described property:

22 Lots Two (2) through Eighteen (18), Block Three (3), Grayland First Addition to the City of  
23 Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "SR-3", Single-Dwelling Residential,  
District;

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Section 3. The following described property:

Lot Nineteen (19), Block One (1); Lot One (1), Block Three (3); Lot Ten (10), Block Four (4), Grayland First Addition to the City of Fargo, Cass County, North Dakota;

is hereby rezoned from "AG", Agricultural, District to "P/I", Public and Institutional, District;

Section 4. The City Auditor is hereby directed to amend the zoning map now on file in his office so as to conform with and carry out the provisions of this ordinance.

Section 5. This ordinance shall be in full force and effect from and after its passage and approval.

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

(SEAL)

Attest:

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

First Reading:  
Second Reading:  
Final Passage:

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## Office of the City Attorney

City Attorney  
Erik R. Johnson

March 22, 2018

Assistant City Attorney  
Nancy J. Morris

Board of City Commissioners  
City Hall  
200 3<sup>rd</sup> Street North  
Fargo, ND 58102

**RE: Release of deed restrictions—Nokomis properties I and II**

Dear Commissioners:

I am writing to request your approval of releases of Community Development Block Grant (CDBG) related use restriction on two south side Nokomis properties. As you may know, the City provided CDBG assistance for the two Nokomis child care centers located in south Fargo—the “Nokomis I” child care center located near Community Homes at 618 23<sup>rd</sup> Street South and the “Nokomis II” child care center located near Lewis and Clark Elementary School, at 1620 16<sup>th</sup> Avenue South. Both centers have been owned and operated by the Village Family Service Center. The Village will be selling the properties to separate owners. This request has been remitted to the Department of Planning & Development, which is responsible for administration of the CDBG grant program.

**Nokomis I Property.** The City provided \$179,545 of CDBG funds for the use of the Nokomis I property in 1993 and, in return, the use of the property was restricted to child-care purposes for low and moderate income families and the restriction was contained within a 1993 deed. At the closing of the sale of the property from the “Village” to the buyer, the original grant money will be returned to the City in return for delivery of the enclosed Quit Claim Deed and Release of Deed Restriction and a Release of Lien and Agreement Not to Sell or Encumber Real Property.

**Nokomis II (Lewis & Clark Property).** The City provided \$31,040 of CDBG funds for the use of the Nokomis II property in 2006 and, in return, a land use restrictive covenant was recorded against the property limiting its use to similar child-care purposes. At the closing of the sale of the property from the “Village” to the buyer, the original grant money will be returned to the City in return for delivery of the enclosed Release of Lien and Agreement Not to Sell or Encumber Real Property.

**SUGGESTED MOTION:** I move to approve the Quit Claim Deed and Release of Deed Restriction and the Release of Lien and Agreement Not to Sell or Encumber Real



Property for the Nokomis I property and the Release of Lien and Agreement Not to Sell or Encumber Real Property for the Nokomis II property as submitted or in substantially similar form, and authorize the execution of said documents and delivery of the same upon return to the City of the CDBG grant money as proposed.

Sincerely,

A handwritten signature in black ink that reads "Erik R. Johnson". The signature is written in a cursive style with a large, looped "E" and "J".

Erik R. Johnson

ERJ/imw

Enclosures

cc: Katrina Turman Lang  
Nicole Crutchfield



**QUITCLAIM DEED  
AND  
RELEASE OF DEED RESTRICTION**

**THIS INDENTURE**, made this \_\_\_\_ day of \_\_\_\_\_, 2018, between the **CITY OF FARGO**, a North Dakota municipal corporation, Grantor, whether one or more, and **INTEGRA PROPERTY GROUP, LLC**, Grantee, whose post office address is 520 Pike Street, Suite 1004, Seattle, WA 98101 of the County of King and State of Washington.

For and in consideration of sum of One Dollar (\$1.00) and other valuable consideration, Grantor does hereby QUITCLAIM to the Grantee, all of the following real property lying and being in the County of Cass, and State of North Dakota, and described as follows, to-wit:

The south 98 feet of the west 6 feet of Lot Ten (10); the south 98 feet of Lots Eleven (11) and Twelve (12); and the North half of vacated Seventh Avenue South adjacent thereto, in Block Two (2), Meehan's Addition to the City of Fargo, Cass County, North Dakota, according to the certified plat thereof on file and of record in the Office of the Register of Deeds in and for said county and state.

The property is commonly described as 618 23<sup>rd</sup> Street South, Fargo, ND 58103.

THIS QUIT CLAIM DEED IS INTENDED TO RELEASE AND QUIT CLAIM ANY AND ALL INTEREST OF THE GRANTOR IN THE COVENANT AND RESTRICTION CONTAINED IN A QUIT CLAIM DEED OF THE ABOVE-DESCRIBED PROPERTY DATED MAY 21, 1993 AND RECORDED MAY 25, 1993, AT THE OFFICE OF THE RECORDER, CASS COUNTY, NORTH DAKOTA AS DOCUMENT NUMBER 782720.

I certify that the requirement for a report or statement of full consideration paid does not apply because this deed is for one of the transactions exempted by subdivision (h) of subsection 6 of N.D.C.C. 11-18-02.2

DATED: \_\_\_\_\_

\_\_\_\_\_  
Grantee or Agent



**RELEASE OF  
LIEN AND AGREEMENT NOT TO SELL  
OR ENCUMBER REAL PROPERTY**

The **CITY OF FARGO**, a North Dakota municipal corporation, Grantor herein, does hereby **RELEASE AND QUITCLAIM** to the **The Village Family Service Center, as successor by merger to Nokomis Child Care Center, Inc.**, its successors and assigns, any and all interest Grantor may have in the property described below as a result of the liens or other encumbrance created by that certain Notice of Lien and Agreement Not to Sell or Encumber Real Property between the City of Fargo and Nokomis Child Care Center, Inc., recorded in the Office of the Recorder, County of Cass and State of North Dakota, on April 28, 1993, as Document #780336; and Notice of Lien and Agreement Not to Sell or Encumber Real Property between the City of Fargo and Nokomis Child Care Center, Inc., recorded in the Office of the Recorder, County of Cass and State of North Dakota, on September 5, 1995, as Document #837998, said property being situate in the County of Cass and State of North Dakota, more fully described as follows:

The south 98 feet of the west 6 feet of Lot Ten (10); the south 98 feet of Lots Eleven (11) and Twelve (12); and the North Half of vacated Seventh Avenue South adjacent thereto, in Block Two (2), Meehan's Addition to the City of Fargo, Cass County, North Dakota, according to the certified plat thereof on file and of record in the Office of the Register of Deeds in and for said county and state.

The property is commonly described as 618 23<sup>rd</sup> Street South, Fargo, ND 58103.

WITNESS my hand this \_\_\_\_\_ day of March, 2018.

CITY OF FARGO  
a North Dakota Municipal Corporation

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

ATTEST:

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

STATE OF NORTH DAKOTA     )  
                                          ) ss  
COUNTY OF CASS             )

On this \_\_\_\_ day of March, 2018, before me, a notary public in and for said county and state, personally appeared Timothy J. Mahoney, M.D. and Steven Sprague, Mayor and City Auditor of the City of Fargo and to me known to be the persons described in and who executed the within and foregoing instrument and acknowledged to me that they executed the same.

(SEAL)

\_\_\_\_\_  
Cass County, North Dakota

**RELEASE OF  
LIEN AND AGREEMENT NOT TO SELL  
OR ENCUMBER REAL PROPERTY**

The **CITY OF FARGO**, a North Dakota municipal corporation, Grantor herein, does hereby **RELEASE AND QUITCLAIM** to the **The Village Family Service Center, as successor by merger to Nokomis Child Care Center, Inc.**, its successors and assigns, any and all interest Grantor may have in the property described below as a result of the lien or other encumbrance created by that certain Notice of Lien and Agreement Not to Sell or Encumber Real Property between the City of Fargo and Nokomis Child Care Center, Inc., recorded in the Office of the Recorder, County of Cass and State of North Dakota, on October 31, 2006, as Document #1186203, said property being situate in the County of Cass and State of North Dakota, more fully described as follows:

The north twenty-four (24) feet of Lot Fourteen (14) and all of Lots Fifteen (15) and Sixteen (16), in Block twenty-three (23), of Morton and Doty's Addition to the City of Fargo, Cass County, North Dakota, according to the certified plat thereof on file and of record in the office of the county Recorder in and for said county and state.

WITNESS my hand this \_\_\_\_\_ day of March, 2018.

CITY OF FARGO  
a North Dakota Municipal Corporation

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

ATTEST:

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



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**CITY OF FARGO  
GENERAL FUND - BUDGET TO ACTUAL  
THROUGH FEBRUARY 28, 2018  
(UNAUDITED)**

	<b>2018 BUDGET</b>	<b>2018 ACTUAL</b>	<b>VARIANCE</b>
<b>REVENUES:</b>			
Taxes	\$ 10,553,289	\$ 12,009,781	\$ 1,456,492
Licenses & Permits	613,322	549,699	(63,623)
Fines & Traffic Tickets	406,080	86,394	(319,686)
Intergovernmental Revenue	1,249,762	522,576	(727,186)
Charges for Services	1,708,410	1,104,722	(603,688)
Interest	986,766	1,250,573	263,807
Miscellaneous Revenue	156,260	61,816	(94,444)
Transfers In	4,233,996	4,001,667	(232,329)
<b>Total Revenues</b>	<b>\$ 19,907,885</b>	<b>\$ 19,587,228</b>	<b>\$ (320,657)</b>
<b>EXPENDITURES:</b>			
City Administrator	\$ 1,389,352	\$ 1,467,596	\$ (78,244)
Finance	1,185,652	881,697	303,955
Planning & Development	484,809	450,095	34,714
Transit	939,952	889,589	50,363
Public Works	2,258,195	2,500,881	(242,686)
Fire Department	2,356,052	2,334,619	21,433
Police	3,450,933	3,383,413	67,520
Health	1,452,159	1,385,722	66,437
Library	638,582	657,750	(19,168)
Commission	108,029	109,150	(1,121)
Civic Center	83,503	58,370	25,133
Social Services	358,400	314,462	43,938
Capital Outlay	90,186	63,258	26,928
Vehicle Replacement/IT	909,861	236,875	672,986
Contingency	165,809	1,592	164,217
Transfers Out	3,076,151	3,180,863	(104,712)
<b>Total Expenditures</b>	<b>\$ 18,947,625</b>	<b>\$ 17,915,932</b>	<b>\$ 1,031,693</b>
<b>Excess of Revenue Over (Under) Expenditures</b>	<b>\$ 960,260</b>	<b>\$ 1,671,296</b>	<b>\$ 711,036</b>



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

4a

\$25.00  
 V#1340  
 3-15-18

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

Name of Non-profit Organization <b>Fargo Metro Baseball Assoc.</b>		Date(s) of Activity <b>6/1/18 to 6/1/18</b>		For a raffle, provide drawing date(s): <b>(701)361-4523</b>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <b>P.O. Box 10131</b>		Title <b>Fargo</b>		Business Phone Number <b>ND 58106</b>	
Business Address <b>1489 Shawna's Place</b>		City <b>Fargo</b>		State <b>ND</b>	
Mailing Address (if different)		City <b>Fargo</b>		State <b>ND</b>	
Name of Site Where Game(s) will be Conducted		Site Address <b>58104</b>		Zip Code <b>58104</b>	
City		State		Zip Code	
City		State		Zip Code	
City		State		Zip Code	
City		State		Zip Code	

Check the Game(s) to be Conducted. \*Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.

Bingo     Raffle     Raffle Board     Calendar Raffle     Sports Pool     Poker \*     Twenty-one \*     Paddlewheels \*

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

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
Raffle	Scheels Gift Card	\$500	Raffle	West Acres Gift Card	\$25
"	Eubank & Gerharts Gift Card	\$20	"	Uncle Maddios Gift Card	\$25
"	Subway Gift Card	\$20	"	Doolittles Gift Card	\$25
"	Cash	\$100	"	Billiards Gift Card	\$25
"	Hornbacher's Gift Card	\$50	"	Old Chicago Gift Card	\$25
"	Family Fare Gift Card	\$50			
"	Buffalo Wild Wings Gift Card	\$50			
"	Bidney Stone Gift Card	\$25			
"	Lucky 13 Gift Card	\$25			
					(Limit \$12,000 per year)
					Total: \$ <b>995</b>

Intended uses of gaming proceeds: Purchase baseball equipment & fund travel, hotel & meal expenses

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

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

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

Signature of Organization's Top Executive Official <i>[Signature]</i>	Date <b>3/12/18</b>	Title <b>President</b>	Business Phone Number <b>701-389-4084</b>
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# APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT

OFFICE OF ATTORNEY GENERAL  
SFN 9338 (08/2016)

25.00 cc  
3/22/18

46

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

Name of Non-profit Organization <u>Homeward Animal Shelter</u>		Date(s) of Activity <u>4/12/18 to 4/12/18</u>		For a raffle, provide drawing date(s): <u>April 12, 2018</u>	
Person Responsible for the Gaming Operation and Disbursement of Net Income		Title		Business Phone Number <u>701-364-9013</u>	
Business Address <u>1201 28th Ave N.</u>		City <u>Fargo</u>		State <u>ND</u>	Zip Code <u>58102</u>
Mailing Address (if different)		City		State	Zip Code
Name of Site Where Game(s) will be Conducted <u>Holiday Inn Fargo</u>		Site Address <u>3803 13th Ave S. Fargo, ND 58103</u>			
City <u>Fargo</u>		State <u>ND</u>	Zip Code <u>58103</u>	County <u>Cass</u>	
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 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	fargo fore tickets	\$ 102	Raffle	Casino package	\$ 125
Raffle	Paintings	\$ 40	Raffle	Valley fair tickets	\$ 216
Raffle	opt card	\$ 100	Raffle	Rail entry	\$ 150
Raffle	Scentsy package	\$ 65	Raffle	marathon entry	\$ 150
Raffle	Scentsy Package	\$ 65	Raffle	Rusica gift card	\$ 100
Raffle	Mall of America <sup>NICKELDEON</sup> passes	\$ 100	Raffle	Rover's <sup>dog</sup> daycare	\$ 197
Raffle	Orange theory <sup>gym</sup> package	\$ 300			
Raffle	Hotel stay	\$ 140			
Raffle	Scheels <sup>gift</sup> card	\$ 150			
Total:					(Limit \$12,000 per year) <b>\$ 2000</b>

Intended uses of gaming proceeds: to assist with our spay/neuter fund for homeless pets.

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 <u>Michael Neudorfer</u>	Date <u>3/19/18</u>	Title <u>Executive Director</u>	Business Phone Number <u>701-364-9013</u>
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**APPLICATION FOR A LOCAL PERMIT OR CHARITY LOCAL PERMIT**  
 OFFICE OF ATTORNEY GENERAL  
 SFN 9338 (08/2016)

\$2500  
 V# 3893  
 3-22-18

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

Name of Non-profit Organization <i>Knights of Columbus #6570</i>		Date(s) of Activity <i>5/1 to 5/31</i>		For a raffle, provide drawing date(s): <i>SAME</i>	
Person Responsible for the Gaming Operation and Disbursement of Net Income <i>Mike O'Leary</i>		Title <i>Raffle Chair</i>		Business Phone Number <i>701-735-2904</i>	
Business Address <i>1825 11th Street South</i>		City <i>Fargo</i>		State <i>ND</i>	Zip Code <i>58103</i>
Mailing Address (if different)		City <i>Fargo</i>		State <i>ND</i>	Zip Code <i>58103</i>
Name of Site Where Game(s) will be Conducted <i>NORTH CHURCH</i>		Site Address <i>1825 11th Street South</i>			
City <i>Fargo, ND</i>		State <i>ND</i>	Zip Code <i>58103</i>	County <i>Cass</i>	
Check the Game(s) to be Conducted: *Poker, Twenty-one, and Paddlewheels may be Conducted only by a Charity Local Permit.					
<input type="checkbox"/> Bingo <input type="checkbox"/> Raffle <input type="checkbox"/> Raffle Board <input checked="" type="checkbox"/> Calendar Raffle <input type="checkbox"/> Sports Pool <input type="checkbox"/> Poker * <input type="checkbox"/> Twenty-one * <input type="checkbox"/> Paddlewheels *					

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

Game Type	Description of Prize	Retail Value of Prize	Game Type	Description of Prize	Retail Value of Prize
<i>Columbus Raffle</i>	<i>1 - 500</i>	<i>500</i>	<i>- Grand Prize</i>		
<i>v</i>	<i>4 - 150</i>	<i>600</i>	<i>- Saturday</i>	<i>v</i>	
<i>v</i>	<i>4 - 50</i>	<i>200</i>	<i>- Saturday</i>	<i>v</i>	
<i>v</i>	<i>22 - 25</i>	<i>550</i>	<i>- Wednesday</i>	<i>v</i>	
	<i>31 days</i>	<i>1,850</i>			

Total: (Limit \$12,000 per year)  
 \$ *4,850*

Intended uses of gaming proceeds: *Purchase video / security cameras*

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: \$ ~~1,850~~ This amount is part of the total prize limit of \$12,000 per year.

Signature of Organization's Top Executive Official <i>[Signature]</i>	Date <i>3/22/2018</i>	Title <i>Chair</i>	Business Phone Number <i>701-735-2904</i>
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**Public Health**  
Prevent. Promote. Protect.  
Fargo Cass Public Health

5

**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: RUTH ROMAN  
DIRECTOR OF PUBLIC HEALTH**

**DATE: MARCH 19, 2018**

**RE0: AGREEMENT FOR SERVICES WITH COURTS PLUS FOR  
\$500.00**

The attached agreement for services is for breastfeeding friendly environment support for Courts Plus.

No budget adjustment is required for this contract.

**Suggested Motion:** Move to approve the contract agreement with Courts Plus.

RR/LA  
Enclosure

CONTRACT AGREEMENT

THIS AGREEMENT, effective the 15<sup>th</sup> day of March 2018, by and between Fargo Cass Public Health ("FCPH"); and Courts Plus ("Grant Partner").

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

- A. **Term of Agreement:** Project plans must be implemented by December 31, 2018 after funds are received.
- B. **Statement of Work:** Support worksites in their efforts to provide a breastfeeding friendly environment for their employees. Provided the activities authorized under the statement of work and contract signed by the Recipient are eligible expenditures of Fargo Cass Public Health, the City agrees to provide an amount not to exceed \$500.00. Funds shall be disbursed upon a presentation of a signed agreement.
- C. **Termination:** This agreement may be terminated by either party upon the giving of thirty (30) days written notice.
- D. **Accounts and Records:** The grant partner shall establish and maintain accurate and complete account and financial or other record in relation to the receipt and expenditure of all grant funds for the project so they adequately show that the grant funds were used exclusively for the purposes described in this agreement.

**Special Considerations:**

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

In Witness thereof, this contract agreement has been executed between the Grant Partner and Fargo Cass Public Health on the date-executed below.

**FARGO CASS PUBLIC HEALTH**

**COURTS PLUS - GRANT PARTNER**

By Ruth Roman  
Ruth Roman, Director of Public Health

By Danna Rademacher  
Danna Rademacher, Sales & Marketing Manager

Date 3-20-18

Date 03/16/2018

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

Date \_\_\_\_\_

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**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**  
**FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR**  
**DATE: MARCH 20, 2018**  
**RE: AMENDMENT TO PARKING AGREEMENT**



Interstate Parking has been managing city parking facilities since January, 2015. There have been two amendments to the agreement, and a third amendment is needed.

Development of the Roberts Commons Parking Garage requires amendments to the agreement. One surface lot was closed when construction started, so it is no longer being operated as a surface parking lot. As part of the Roberts Commons agreement, another lot was sold to the developer. Management of the new parking garage is through another agreement with the developer, so some of the overhead costs of operating the city parking system were transferred to that agreement with DFI Roberts.

The agreement also adds a parking lot on 7th Street, and removes the parking lot on 3rd Avenue when that property is sold for Block 9.

I worked with the City Attorney to prepare an amendment to make these changes. The amendment is attached for your consideration.

**Recommended Motion**

Approve the third amendment to the Parking Management Agreement between Interstate Parking and the City of Fargo.

## THIRD AMENDMENT TO PARKING MANAGEMENT AGREEMENT

This THIRD AMENDMENT TO PARKING MANAGEMENT AGREEMENT is effective the 1<sup>st</sup> day of March, 2017 by **INTERSTATE PARKING COMPANY OF NORTH DAKOTA LLC** (herein called "Interstate"), and **CITY OF FARGO, a North Dakota municipal corporation** (herein called "City").

WHEREAS, Interstate and the City entered into a Parking Management Agreement executed on December 3, 2014, which agreement has been amended twice, with the First Amendment dated August 17, 2015 and the Second Amendment effective the 4<sup>th</sup> day of January, 2016 [said Agreement and amendments referred to cumulatively as the "Agreement"] which agreement sets forth the terms by which Interstate will manage the various surface parking lots and multi-level parking structures as described therein (collectively referred to as the "Properties"); and,

WHEREAS, effective June 1, 2016, the City's 7<sup>th</sup> Street parking lot was added to the lots being managed by Interstate and the "North Lot" of the City's two 2<sup>nd</sup> Avenue North parking lots was eliminated from the parking lots being managed under this Agreement, which change necessitates an adjustment—a reduction—of the monthly management fee to be paid to Interstate, as provided in Section 3 of the Agreement from \$36,985.92 per month to \$36,545.92 per month; and,

WHEREAS, in accordance with the terms of the Agreement, at Paragraph 3.1(a) the CPI adjustment resulted in an increase from \$36,545.92 per month to \$37,096.00 per month of the management fee to be paid to Interstate as of January 1, 2017; and,

WHEREAS, effective June 1, 2017 Interstate began managing the Roberts Commons Garage and, as of said date a portion of costs, including staff time and overhead, to manage the downtown Fargo parking system shifted from management of city-operated lots to management of the Roberts Commons Garage and, therefore, as a result of the re-allocation of said costs, the management fee to be paid to Interstate as of June 1, 2017, was decreased from \$37,096 per month to the \$27,980 per month; and,

WHEREAS, the City has recently removed one lot from the responsibility of Interstate on and after November 30, 2017, in particular, the South Lot of the two 2<sup>nd</sup> Avenue North lots, sometimes referred to as the Kesler lot or the Elm Tree Square lot, as a result of a sale of the lot to a private party, and, from and after November 30, 2017, Interstate will no longer manage that lot and the monthly management fee will be reduced from \$27,980 a month to \$27,590 a month and, further, the City expects to sell and convey its 3<sup>rd</sup> Avenue North Lot in 2018 as part of the Block Nine Project and, at such time, Interstate will no longer manage that lot and, therefore, the monthly management fee will be reduced from \$27,590 a month to \$27,350 a month, to take effect upon the closing of the conveyance of the 3<sup>rd</sup> Avenue North Lot (the "Third Avenue Lot Closing Date"); and,

WHEREAS, the City and Interstate wish to memorialize the foregoing and future events and their corresponding impacts upon the monthly management fee to be paid by the City to Interstate;

**NOW, THEREFORE**, based upon the mutual covenants contained herein and good and valuable consideration, City and Interstate agree to amend the Agreement as follows:

1. The above recitals are incorporated herein as terms of this amendment and, to the extent such terms occurred prior to the effective date of this amendment, said terms are ratified and approved.
2. As a result thereof, the monthly management fee paid by the City to Interstate as of June 1, 2017, is hereby agreed as being \$27,980 per month.
3. The monthly management fee to be paid to Interstate shall be further revised and amended effective as of November 30, 2017, by a reduction of \$390.00 per month to \$27,590 per month.
4. The monthly management fee to be paid to Interstate shall be further revised and amended in the event of the sale and conveyance of the 3<sup>rd</sup> Avenue North lot, effective as of the 1<sup>st</sup> of the month following the Third Avenue Lot Closing Date, by a further reduction of \$240.00 per month to \$27,350 per month.
5. In all other respects, the Agreement shall remain in full force and effect.
6. Effective date. This amendment shall be effective as of the date and year first above written, provided, however, that as to terms that pre-date said effective date, said terms shall be applicable as of the date recited herein.

IN WITNESS WHEREOF, City and Interstate have caused this Agreement to be executed as of the date first set forth above.

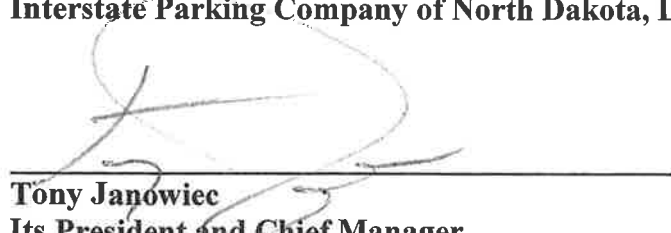
**CITY:**  
**CITY OF FARGO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

**INTERSTATE:**

**Interstate Parking Company of North Dakota, LLC**



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**Tony Janowiec**  
**Its President and Chief Manager**



## THIRD AMENDMENT TO PARKING MANAGEMENT AGREEMENT

This THIRD AMENDMENT TO PARKING MANAGEMENT AGREEMENT is effective the 1<sup>st</sup> day of March, 2017 by **INTERSTATE PARKING COMPANY OF NORTH DAKOTA LLC** (herein called "Interstate"), and **CITY OF FARGO, a North Dakota municipal corporation** (herein called "City").

WHEREAS, Interstate and the City entered into a Parking Management Agreement executed on December 3, 2014, which agreement has been amended twice, with the First Amendment dated August 17, 2015 and the Second Amendment effective the 4<sup>th</sup> day of January, 2016 [said Agreement and amendments referred to cumulatively as the "Agreement"] which agreement sets forth the terms by which Interstate will manage the various surface parking lots and multi-level parking structures as described therein (collectively referred to as the "Properties"); and,

WHEREAS, effective June 1, 2016, the City's 7<sup>th</sup> Street parking lot was added to the lots being managed by Interstate and the "North Lot" of the City's two 2<sup>nd</sup> Avenue North parking lots was eliminated from the parking lots being managed under this Agreement, which change necessitates an adjustment—a reduction—of the monthly management fee to be paid to Interstate, as provided in Section 3 of the Agreement from \$36,985.92 per month to \$36,545.92 per month; and,

WHEREAS, in accordance with the terms of the Agreement, at Paragraph 3.1(a) the CPI adjustment resulted in an increase from \$36,545.92 per month to \$37,096.00 per month of the management fee to be paid to Interstate as of January 1, 2017; and,

WHEREAS, effective June 1, 2017 Interstate began managing the Roberts Commons Garage and, as of said date a portion of costs, including staff time and overhead, to manage the downtown Fargo parking system shifted from management of city-operated lots to management of the Roberts Commons Garage and, therefore, as a result of the re-allocation of said costs, the management fee to be paid to Interstate as of June 1, 2017, was decreased from \$37,096 per month to the \$27,980 per month; and,

WHEREAS, the City has recently removed one lot from the responsibility of Interstate on and after November 30, 2017, in particular, the South Lot of the two 2<sup>nd</sup> Avenue North lots, sometimes referred to as the Kesler lot or the Elm Tree Square lot, as a result of a sale of the lot to a private party, and, from and after November 30, 2017, Interstate will no longer manage that lot and the monthly management fee will be reduced from \$27,980 a month to \$27,590 a month and, further, the City expects to sell and convey its 3<sup>rd</sup> Avenue North Lot in 2018 as part of the Block Nine Project and, at such time, Interstate will no longer manage that lot and, therefore, the monthly management fee will be reduced from \$27,590 a month to \$27,350 a month, to take effect upon the closing of the conveyance of the 3<sup>rd</sup> Avenue North Lot (the "Third Avenue Lot Closing Date"); and,

WHEREAS, the City and Interstate wish to memorialize the foregoing and future events and their corresponding impacts upon the monthly management fee to be paid by the City to Interstate;

**NOW, THEREFORE**, based upon the mutual covenants contained herein and good and valuable consideration, City and Interstate agree to amend the Agreement as follows:

1. The above recitals are incorporated herein as terms of this amendment and, to the extent such terms occurred prior to the effective date of this amendment, said terms are ratified and approved.
2. As a result thereof, the monthly management fee paid by the City to Interstate as of June 1, 2017, is hereby agreed as being \$27,980 per month.
3. The monthly management fee to be paid to Interstate shall be further revised and amended effective as of November 30, 2017, by a reduction of \$390.00 per month to \$27,590 per month.
4. The monthly management fee to be paid to Interstate shall be further revised and amended in the event of the sale and conveyance of the 3<sup>rd</sup> Avenue North lot, effective as of the 1<sup>st</sup> of the month following the Third Avenue Lot Closing Date, by a further reduction of \$240.00 per month to \$27,350 per month.
5. In all other respects, the Agreement shall remain in full force and effect.
6. Effective date. This amendment shall be effective as of the date and year first above written, provided, however, that as to terms that pre-date said effective date, said terms shall be applicable as of the date recited herein.

IN WITNESS WHEREOF, City and Interstate have caused this Agreement to be executed as of the date first set forth above.

**CITY:**  
**CITY OF FARGO**

By: \_\_\_\_\_

Name: \_\_\_\_\_

**INTERSTATE:**

**Interstate Parking Company of North Dakota, LLC**



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**Tony Janowiec**

**Its President and Chief Manager**

⑦

**MEMORANDUM**

**TO: BOARD OF CITY COMMISSIONERS**

**FROM: JIM GILMOUR, STRATEGIC PLANNING DIRECTOR** 

**DATE: MARCH 20, 2018**

**SUBJECT: LOAN FOR CIVIC CENTER RAMP REPAIR**

In 2016, the City hired Carl Walker to perform condition assessments on the Civic Center Parking Ramp and the Island Park Ramp. Those reports identified repairs needed to the facilities.

TIF funds are available to pay for the repairs to the Island Park Ramp. There is not sufficient money in the parking repair and replacement fund to pay for the repairs to the Civic Center Ramp, which are estimated at \$450,000.

I discussed with the Finance Director a loan from another city fund to pay for these improvements, to be paid back over the next four years from parking revenue. The Finance Committee is recommending a \$450,000 loan, at 1.5% interest, from the Utility Funds to be repaid during 2019 to 2021.

**RECOMMENDED MOTION:** Approve a loan from the Utility Funds to the Parking Repair and Replacement Fund of \$450,000.

8

**MEMORANDUM**

TO: Board of City Commissioners

FROM: Nicole Crutchfield, Planning Director 

DATE: March 22, 2018

RE: Contract for Willard Yellow Bird

Willard Yellow Bird retired in December 2017. Based on his retirement and the departure of other key staff in the Community Development division over the past few months, we are seeking support to enter into a contract with Willard to hire him as a temporary part time employee. His work would be to support the planning staff.

Attached is the proposed contract that includes an Exhibit listing specific project tasks. The contract would allow a maximum of 20 hours a week, but most likely will average 8 hours a week. If approved, the contract would begin upon execution and terminate August 1, 2018.

**Recommendation:** Approve the contract and scope of services to hire Willard Yellow Bird as a contract employee.

**AGREEMENT**

Planner

THIS AGREEMENT made and entered into effective the 26th day of March 2018, by and between Willard Yellow Bird, (hereinafter referred to as “Yellow Bird”) and the CITY OF FARGO, a municipal corporation, whose address is 200 Third Street North, Fargo, North Dakota 58102 (hereinafter referred to as “City”).

WITNESSETH:

WHEREAS, the City desires to temporary fill a part-time position of Planner within the City of Fargo Planning and Development Department as a contracted employee; and,

WHEREAS, the City desires to appoint Yellow Bird to perform the duties and services of Planner and for purposes of the City’s budgeting process, to recognize a contract employment relationship for a period beginning March 26, 2018 and ending August 1, 2018, for a maximum of 20 hours per week, but which is still an “at-will” employment relationship, terminable by either party with or without cause,; and,

WHEREAS, Yellow Bird has agreed to accept such appointment to perform the duties and services of Planner on a contract employee basis according to the terms of this agreement; and,

WHEREAS, the parties wish to commit their agreement to writing.

NOW, THEREFORE, the parties hereto do hereby agree as follows:

1. City agrees to appoint Yellow Bird for the purpose of performing the duties and services of Planner as described in Exhibit A attached hereto.

2. Term. The term of this agreement shall be for the period beginning March 26, 2018, extending through August 1, 2018, with a maximum of 20 hours per week, but may be terminated by either party at any time, upon written notice to the other party. This relationship is an "At-will" relationship and may be terminated by either party at any time with or without cause.

3. Compensation. City agrees to compensate Yellow Bird in the amount of \$40.00 per hour for any and all duties and services performed as Planner during the year 2018. If the City Commission awards a 2018 Cost of Living Adjustment (COLA), Yellow Bird is eligible to receive a COLA adjustment.

4. In addition to the terms of compensation listed above, the City shall pay the employer's share of the following:

- (a) Social Security (FICA)
- (b) Workers Compensation
- (c) Unemployment Insurance
- (d) Federal Withholding (income tax)
- (e) State Income Tax
- (f) Medicare

5. Yellow Bird will be considered a variable contract employee and will not be eligible to enroll in Health Insurance unless eligibility is met as determined by the Affordable Care Act, Dental Insurance, Vision Insurance, Life Insurance and Flexible Spending Yellow Bird is eligible for optional participation in the and North Dakota Public Employee Retirement System (NDPERS), in which the employee would pay full contribution. In addition, Yellow Bird will not accrue annual and sick leave.

6. During the term of this agreement, Yellow Bird agrees to comply with all employee policies of the City of Fargo and the Planning and Development Department, including all safety rules and procedures.

7. The parties hereto understand and agree that Yellow Bird shall not be part of the Civil Service of the City of Fargo, but is a contracted employee, as permitted under Fargo Municipal Code section 7.0102(D).

DATED the day and year first above written.

THE CITY OF FARGO, NORTH DAKOTA

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

ATTEST:

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

Planning and Development Department

By:  \_\_\_\_\_

Nicole B. Crutchfield, Planning Director

 \_\_\_\_\_

Willard Yellow Bird



Exhibit "A"

The general duties and services of Planner, Willard Yellow Bird focuses on the following areas:

1. Support the Planning Department and the Native American Commission develop needs assessment and strategy for Sweat Lodge and Native American Center.
2. Support the Native American Commission with events and activities.
3. Support the Native American Commission and city staff with cultural teachings and translations.
4. Support the historical and artifact work related to Native American culture regarding construction and engineering projects related to federal regulations.

(9)

March 26, 2018

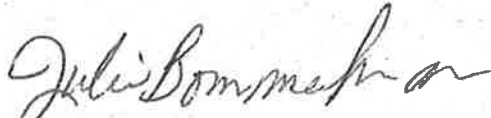
Board of City Commissioners  
City Hall - 200 N 3<sup>rd</sup> Street  
Fargo, ND 58102

Dear Commissioners:

The City of Fargo Transit Department has decommissioned unit 1224, a 2012 Ford E350 utilized in our paratransit fleet. This unit has exhausted its useful life in accordance with the Federal Transit Administration's (FTA) guidelines for medium-size, light-duty transit buses. FTA guidelines state for this classification of a vehicle, it has reached its useful life once it has been in service for five (5) years or has 150,000 miles, whichever occurs first. As FTA interest in unit 1224 no longer apply, the Transit Department would like to donate the vehicle to the Fargo Police Department.

**RECOMMENDED MOTION:** Approve the transfer of city asset 11424, unit 1224 from the Transit Department to the Fargo Police Department effective immediately.

Respectfully Submitted,



Julie Bommelman  
Transit Director  
City of Fargo

(10)

March 20, 2018

Board of City Commissioners  
City Hall - 200 N 3<sup>rd</sup> Street  
Fargo, ND 58102

Dear Commissioners:

The City of Fargo Transit Department respectfully requests approval of the attached Amendment #2 to the Contract with First Transit to revise the Management Fee for the period January 1, 2018, through December 31, 2018, to reflect the changes in revenue hours for the City of Fargo, North Dakota and Moorhead, Minnesota. In December 2017 an Amendment #2 was submitted for approval, however, the management fee identified was for paratransit, which does not change – the attached Amendment #2 changes the management fee for fixed route, which is the correct item.

Fargo has a three-year contract with First Transit to operate the fixed route transit system, including management and drivers for the period January 1, 2016, through December 31, 2018.

On July 1, 2017, the City of Fargo implemented several route changes while the City of Moorhead expanded hours of service due to the receipt of a New Service Expansion Grant from the State of Minnesota. Under the contract with First Transit, the management costs for the transit system are shared between the cities of Fargo and Moorhead based on a percentage of total service hours. The contract allows for a review of the hours for sharing of the management fee at a minimum of annually. With Moorhead's increased hours and Fargo's decreased hours, the management fee percentage split has changed and needs to be amended into the contract for calendar year 2018. There is no change to the total cost for management, only the percentage split between the city contracts. Moorhead amended their contract with First Transit to increase their management fee for 2018.

**Requested motion:** Approve attached Amendment #2 to replace the First Transit and City of Fargo contract to revise the Management Fee for the period January 1, 2018 through December 31, 2018, and nullify the Amendment #2 brought forth for approval December 2017.

Sincerely,



Julie Bommelman, Transit Director  
City of Fargo

/attachment

**AMENDMENT NO. 2  
TO AGREEMENT BETWEEN CITY OF FARGO AND FIRST TRANSIT**

THIS AMENDMENT NO. 2, made this 1st day of January, 2018, by and between the City of Fargo, hereinafter referred to as the "CITY," and First Transit, hereinafter referred to as "CONTRACTOR."

WHEREAS, the CITY and CONTRACTOR previously entered into an Agreement to provide the CITY with management, supervisory and operational services for its fixed route system (attached as Exhibit A and hereinafter referred to as the "AGREEMENT"); and

WHEREAS, the CITY and CONTRACTOR entered into an Amendment to Agreement on January 1, 2016, which is attached as Exhibit B; and

WHEREAS, said AGREEMENT contains Article 8, section 8.2.3 which delineates the fixed monthly rate for management services annually under the AGREEMENT; and

WHEREAS, since the AGREEMENT took effect, the CITY expanded services which has decreased the City's percentage share of the fixed monthly rate and increased the share for the City of Moorhead, Minnesota.

NOW, THEREFORE, the AGREEMENT is hereby amended as follows:

- A. Article 8, section 8.3.2 will be amended for January 1, 2018 through December 31, 2018 as set forth below:
- 8.3.2 A fixed monthly rate for management services as follows:
- |                                            |             |
|--------------------------------------------|-------------|
| January 1, 2016 through December 31, 2016: | \$32,765.80 |
| January 1, 2017 through December 31, 2017: | \$34,763.62 |
| January 1, 2018 through December 31, 2018: | \$33,735.56 |
- B. Attachment A, Section 3.1, Fixed Route, Subsection A, Service Hours - Fargo, is amended to incorporate service changes that became effective July 1, 2017.
- C. Attachment A, Section 3.1, Fixed Route, Subsection B, Service Hours – Moorhead, is amended to incorporate the new service expansion hours that became effective July 1, 2017.
- D. Attachment A, Section 3.2, Paratransit, is amended to expand Sunday Paratransit Service in to Moorhead and Dilworth, Minnesota.
- E. Appendix 7 is amended to reflect the new fixed route schedule effective July 1, 2017.

F. Appendix 13 projected hours for 2018 is amended to incorporate the changes in service hours for Fargo and Moorhead.

To the extent the modifications or amendments set forth in this Second Amendment to Agreement contradict the terms of the AGREEMENT or the First Amendment, the terms of this Second Amendment shall be interpreted to control and govern.

In all other respects, the AGREEMENT and First Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to Agreement to be executed effective the day and year first above written.

CITY OF FARGO

FIRST TRANSIT

BY: \_\_\_\_\_

Timothy J. Mahoney, Mayor

BY: \_\_\_\_\_

*John Mathews*  
\_\_\_\_\_  
Its: SENIOR VICE PRESIDENT

ATTEST

BY: \_\_\_\_\_

Steve Sprague, City Auditor

BY: \_\_\_\_\_

\_\_\_\_\_  
Its: \_\_\_\_\_



MEMORANDUM

To: BOARD OF CITY COMMISSIONERS

From: Leon Schlafmann  
Emergency Services Coordinator

Date: March 23, 2018

RE: License Agreement for Emergency Outdoor Siren Placement

The attached License Agreement with Fargo Park District for the placement of an outdoor warning siren on park district property.

There are no fees regarding this agreement or contract.

Suggested motion: Move to approve the License Agreement with the Fargo Park District.

Enclosure

**LICENSE AGREEMENT for EMERGENCY SIREN**

**THIS LICENSE AGREEMENT** made and entered into this 13 day of March, 2018, by and between **PARK DISTRICT OF THE CITY OF FARGO**, (hereinafter "Park District"), and the **CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, (hereinafter "City"),

**WHEREAS**, City, through its Emergency Management Coordinator, wishes to place an Emergency Siren ("Siren") on Park District property; and

**WHEREAS**, Park District is willing to grant a license to City to place the Siren, and any all facilities incident and necessary to the operation thereto, and provide the necessary ingress and egress to maintain and operate the Siren; and

**WHEREAS**, the parties wish to commit their Agreement to writing.

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

1. License for Placement of Siren. Park District hereby grants to City a license for the right to place a Siren on Park District property described on Exhibit "A", attached hereto and incorporated herein by reference, legally described as follows:

The Southwest corner of Lot: 2 Block: 1 NORTH PARK  
MAINTENANCE ADDN LT 2 BLK 1 to the City of Fargo, Cass County,  
North Dakota

2. Term. The term of this License Agreement shall be for a period of 20 years from the date of this Agreement, automatically renewed for an additional 20 years, unless otherwise terminated in accordance with the terms hereof.

3. Fee. There shall be no fee or other charge to City for the use of said location.

4. Indemnity. City agrees that during the term of this Agreement, City shall be responsible for maintaining its own insurance on any equipment installed. City agrees to indemnify and hold Park District harmless for and against liability for bodily injury, death and property damage that may result from the use of said equipment on its property subject to any limitations and defenses available to City under North Dakota law.

5. Title. Title to the equipment shall at all times remain in City.

6. Termination of Agreement. This license Agreement may be terminated by Fargo's removal of said equipment, or at such other time as the use of the Siren becomes obsolete. In the event of termination by City, City shall remove all equipment and return the property to use consistent with the adjacent space, including leveling the ground and returning it to green space. In addition, Park District may request in writing that said equipment be removed and relocated. The City and Park District will work collaboratively to find a location that maintains the needed spacing requirement to the existing siren.

**IN WITNESS WHEREOF** the parties hereto have executed this License Agreement at Fargo, North Dakota, the day and year first above written.

(Signatures on following pages)





municipal corporation described in and that executed the within and foregoing instrument, and acknowledged to me that said municipal corporation executed the same.

---

Notary Public  
Cass County, ND  
My Commission expires:

(SEAL)

The legal description was prepared by:  
City of Fargo Engineering Department  
200 North Third Street  
Fargo, ND 58102  
701-241-1545

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





Gulfeagle Supp

Fast signs

Valley V

5th Ave N

7th Ave N

15th St N

15th St N

15th St N

5th Ave N

7th Ave N

7th Ave N

7th Ave N

7th Ave N

Dippin' Dots

T J's Wheels & Deals

park





12a-b

OFFICE OF THE CITY ADMINISTRATOR  
Bruce P. Grubb

March 15, 2018

MEMORANDUM

**To:** Board of City Commissioners  
**From:** Bruce P. Grubb, City Administrator *BPG*  
**Re:** City Hall Construction – General Contract Change Order #19 and #20

Attached, please find copies of Change Orders associated with the General Construction Contract for the City Hall construction project. A description of the change orders and associated dollar amounts is shown below:

**General Contract**

***Change Order #19*** ***\$26,725***  

- Subgrade, drain tile and concrete changes for the floatable floodwall.

***Change Order #20*** ***\$8,794***  

- Repair of church driveway access. Fire extinguisher upgrades (2) and cabinet recess modifications.

With approval of the above referenced change orders, an updated summary of the construction contracts would be as follows:

**PROJECT SUMMARY**

<b>Contract</b>	<b>Contractor</b>	<b>Original Bid</b>	<b>Change Orders</b>	<b>Current Amount</b>	<b>% Change</b>
General	Olaf Anderson	\$16,442,900	\$733,666	\$17,176,566	4.46%
Mechanical	Robert Gibb	\$3,447,000	\$106,184	\$3,553,184	3.08%
Electrical	Sun Electric	\$2,607,000	\$48,718	\$2,655,718	1.87%
<b>Total</b>		<b>\$22,496,900</b>	<b>\$888,568</b>	<b>\$23,385,468</b>	<b>3.95%</b>

Similarly, a summary of the overall project budget would be as follows:

<b>BUDGET SUMMARY</b>			
<b>Budget Category</b>	<b>Original Total</b>	<b>Current Total</b>	<b>Paid To-Date</b>
City Hall Construction	\$22,000,000	\$23,385,468	\$20,584,785
FF&E	\$1,775,000	\$1,495,000	\$0
Centennial Hall Demo	\$600,000	\$772,468	\$772,468
Professional Fees	\$1,400,000	\$1,628,640	\$1,628,640
Contingency	\$1,940,767	\$445,951	NA
<b>Total</b>	<b>\$27,715,767</b>	<b>\$27,715,767</b>	<b>\$22,985,893</b>

Your consideration in this matter is greatly appreciated.

**Suggested Motion:**

Approve the following change orders associated with the City Hall construction project:

- Olaf Anderson      Change Order #19 in the amount of \$26,725.00
- Change Order #20 in the amount of \$8,794.00

- C: Mike Redlinger, Assistant City Administrator
- Kent Costin, Finance Director
- Erik Johnson, City Attorney
- Terry Stroh, TL Stroh Architects

**City Hall Construction Report - Contractor Progress Payments (3/15/18)**

Contract	Contractor	Bid Amount	Change Orders	Present Amount	Paid To-date	Balance
General	Olaf Anderson	\$ 16,442,900	\$ 733,666	\$ 17,176,566	\$ 15,021,899	\$ 2,154,667
Mechanical	Robert Gibb	\$ 3,447,000	\$ 106,184	\$ 3,553,184	\$ 3,324,652	\$ 228,532
Electrical	Sun Electric	\$ 2,607,000	\$ 48,718	\$ 2,655,718	\$ 2,238,234	\$ 417,484
<b>Total</b>		<b>\$ 22,496,900</b>	<b>\$ 888,568</b>	<b>\$ 23,385,468</b>	<b>\$ 20,584,785</b>	<b>\$ 2,800,683</b>

**PROJECT BUDGET SUMMARY**

Budget Category	Original Total	Current Total	Paid To-Date
City Hall Construction	\$ 22,000,000	\$ 23,385,468	\$ 20,584,785
FF&E	\$ 1,775,000	\$ 1,495,000	\$ -
Centennial Hall Demo	\$ 600,000	\$ 772,468	\$ 772,468
Professional Fees	\$ 1,400,000	\$ 1,628,640	\$ 1,628,640
Contingency	\$ 1,940,767	\$ 434,191	\$ -
<b>Total Budget</b>	<b>\$ 27,715,767</b>	<b>\$ 27,715,767</b>	<b>\$ 22,985,893</b>

**CHANGE ORDER SUMMARY**

General Contract		\$	733,666
#1	Addition of curtain wall windows.	\$	396,565
#2	Revisions to generator building to accommodate mechanical changes.	\$	3,260
#3	Removal of existing foundation that was not known prior to construction. Lower footings to accommodate underground piping. Connection of City Hall & Civic Center roof and sump drainage system to new storm sewer.	\$	26,160
#4	Provide additional point load to three joists per structural engineer.	\$	46,014
#5	Design revisions to third floor.	\$	18,918
#6	Commission chamber revisions to remove windows and replace with Pre-	\$	45,463

#7	Fin metal wall panels for televising clarity and security. Add a new downstream storm sewer defender manhole, water main extension and hydrant, reroute storm sewer to avoid transformer/conduits. Existing 12" and 15" pipes deeper than proposed storm sewer. To connect Civic Center roof drains, the first 5 manholes coming off 66" storm sewer on 3rd Ave. need to be extended. Also extend downstream defender manhole.	\$	61,866
#8	Labor and materials associated with revisions to the interior floor plans. Construct a fire pump room block wall enclosure & door. IS request to install 3/4" CDX plywood backing behind gypsum board. Changes associated with Inspections Department request to add exterior pedestrian ramps to side entrance.	\$	13,774
#9	Geofoam foundation system.	\$	20,801
#10	Floor plan revisions to Commission offices.	\$	5,000
#11	Plywood backing behind gypsum board sheathing in IS Department.	\$	240
#12	Tile work trim change from stainless steel to aluminum with nickel finish.	\$	(23,168)
#13	Delete geo-foam at SE Chambers corner to accommodate wall and ramp. Provide heavier framing at Chambers.	\$	2,350
#14	Provide a 1-hour rating around beam at north Chamber wall.	\$	(2,854)
#15	Eliminate some lockers and one bench in E107.	\$	
#16	Change from single tier lockers to two tier lockers.	\$	6,961
#17	Provide painted drywall access doors in Rooms W118 and Lobby A101. Finish change to bottom side of soffits at Chambers, Admin, IS, HR, etc.	\$	
#18	Install Phantom 5000 low-profile egress window in CW-180.	\$	4,042
#19	Subgrade, drain tile and concrete changes at floatable floodwall.	\$	26,725
#20	Repair of church driveway. Fire extinguisher and cabinet recess changes.	\$	8,794
<b>Mechanical Contract</b>			<b>\$ 106,184</b>
#1	Addition of sump pits and domestic water service.	\$	13,222
#2	Pricing reduction for control dampers.	\$	(4,100)
#3	Design revisions to third floor and HVAC modifications.	\$	36,016
#4	Omit finned tube radiation, add CO/NO2 monitors and VFD	\$	20,956
#5	Revised ductwork routing and sizing associated with floor plan revisions. Revise boiler venting to achieve 4' separation per State inspector. Revise location of fire protection riser, fire pump, jockey pump, dry system	\$	13,072

	valve and air compressor in the added fire pump room.			
#6	Revise air ductwork routing and RA opening locations in IS data center room.	\$	4,930	
#7	Change location of natural gas meter and provide additional piping, etc.	\$	3,023	
#8	Ductwork revisions at W106, W107, W108 and W128.	\$	5,627	
	Additional sprinklers at A/V room and stair 3-STR-D.			
#9	Fuel costs for temporary heating during winter construction.	\$	6,392	
#10	Fuel costs for temporary heating during winter construction.	\$	2,165	
#11	Two additional fire smoke dampers in Data Room E308.	\$	4,881	
	<b>Electrical Contract</b>	\$	<b>48,718</b>	
#1	Relocate emergency generator for City Hall and Civic temporary power.	\$	12,960	
#2	Design revisions to third floor.	\$	2,797	
#3	Revise voltage of UPS to 480V in lieu of 208V.	\$	(3,341)	
#4	Connect exhaust fan EF-8 to 20A/3P circuit breaker at HEM11 in lieu of 15A/3P circuit breaker at switchboard. Connect generator room damper motors to panel LEM11 in lieu of panel LG1.	\$	1,396	
#5	IS requested revisions to training room.	\$	29,075	
	Floor plan revisions for lighting and lighting control.			
#6	Electrical work associated with the added fire pump room.	\$	1,857	
#7	Floor plan revisions to Commission offices.	\$	1,359	
#8	Rough-ins for future panic buttons in reception areas.	\$	1,744	
#9	First floor office revisions for Inspections Department.	\$	2,174	
#10	First floor lighting revisions and third floor power/data revisions.	\$	(1,303)	



# AIA Document G701™ – 2001

## Change Order

<b>PROJECT</b> <i>(Name and address):</i>	<b>CHANGE ORDER NUMBER:</b> Gen#019	<b>OWNER:</b> <input checked="" type="checkbox"/>
Fargo City Hall Fargo, ND	<b>DATE:</b> 1/30/18	<b>ARCHITECT:</b> <input checked="" type="checkbox"/>
<b>TO CONTRACTOR</b> <i>(Name and address):</i>	<b>ARCHITECT'S PROJECT NUMBER:</b> 2015.49	<b>CONTRACTOR:</b> <input checked="" type="checkbox"/>
Olaf Anderson Construction PO Box 2766 Fargo, ND 58108	<b>CONTRACT DATE:</b> 6/7/16	<b>FIELD:</b> <input type="checkbox"/>
	<b>CONTRACT FOR:</b> General Construction	<b>OTHER:</b> <input type="checkbox"/>

**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)*

RFC 022: Changes made to subgrade, drain tile, drainage, and concrete at Floatable flood wall. Changes based on Houston Engineering plans 1 of 1 dated 1/9/18 and C-020-10.  
ADD \$26,725.00

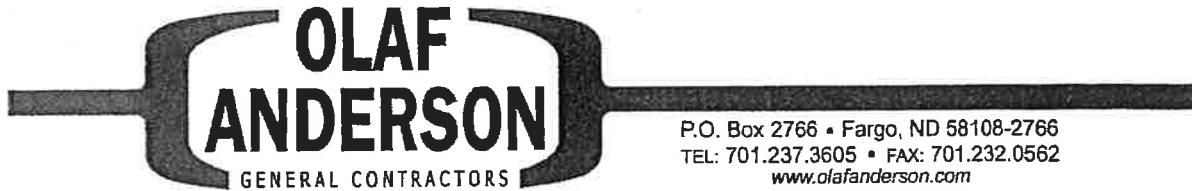
The original Contract Sum was	\$ 16,442,900.00
The net change by previously authorized Change Orders	\$ 698,147.00
The Contract Sum prior to this Change Order was	\$ 17,141,047.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 26,725.00
The new Contract Sum including this Change Order will be	\$ 17,167,772.00

The Contract Time will be increased by Zero (0) days.  
The date of Substantial Completion as of the date of this Change Order therefore is

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

T.L. Stroh Architects, Ltd	Olaf Anderson Construction	City of Fargo
<b>ARCHITECT</b> <i>(Firm name)</i>	<b>CONTRACTOR</b> <i>(Firm name)</i>	<b>OWNER</b> <i>(Firm name)</i>
8 Seventh St. N., Fargo, ND 58102	PO Box 2766, Fargo, ND 58108	200 3rd St. N., Fargo, ND 58102
<b>ADDRESS</b>	<b>ADDRESS</b>	<b>ADDRESS</b>
<b>BY</b> <i>(Signature)</i>	<b>BY</b> <i>(Signature)</i>	<b>BY</b> <i>(Signature)</i>
Terry L. Stroh	Jeff Karstman	
<i>(Typed name)</i>	<i>(Typed name)</i>	<i>(Typed name)</i>
1/30/18	2-13-18	
<b>DATE</b>	<b>DATE</b>	<b>DATE</b>



January 26, 2018

T.L. Stroh Architects, Ltd  
8 Seventh St. N.  
Fargo, ND 58102

Re: Fargo City Hall – RFC 022

Dear: Mr. Stroh,

The following is a proposed change to the original scope of work. Please review and authorize items below.

Accepted  Y  N

1. Changes made to subgrade, drain tile, drainage, and concrete at Floatable flood wall. Changes base on Houston Engineering plans 1 of 1 date 1/9/18 and C-020-10.

Add \$26,725.00 — —

Pricing Breakdown is attached along with the shop drawing/product data for the bentonite cap.

Once again, we thank you for giving us the opportunity to work with you on this project. If you have any questions please do not hesitate to call.

Sincerely,

Lyn Narum  
Construction Manager  
Olaf Anderson Construction, Inc.

Accepted by:

Date: 1.29.18



# VOLTEX DS®

## BENTONITE GEOTEXTILE WATERPROOFING WITH INTEGRATED POLYETHYLENE LINER

### DESCRIPTION

VOLTEX DS is a highly effective waterproofing composite of high strength geotextiles, 1.0 pound of sodium bentonite per square foot, (4.8kg/sqm) and a integrally bonded polyethylene liner. The high swelling, low permeable sodium bentonite is encapsulated between the two geotextiles. A proprietary needlepunch process interlocks the geotextiles together forming an extremely strong composite that maintains the equal coverage of bentonite, as well as, protects it from inclement weather and construction related damage. Once backfilled, VOLTEX DS hydrates and forms a monolithic waterproofing membrane. VOLTEX DS contains zero VOC, can be installed in almost any weather condition to green concrete, and most importantly, has proven effective on both new and remedial waterproofing projects worldwide.

VOLTEX DS works by forming a low permeability membrane upon contact with water. When wetted, unconfined bentonite can swell up to 15 times its dry volume. When confined under pressure the swell is controlled, forming a dense, impervious waterproofing membrane. The swelling action of VOLTEX DS can self-seal small concrete cracks caused by ground settlement, concrete shrinkage, or seismic action. VOLTEX DS forms a strong mechanical bond to concrete when the geotextile fibers are encapsulated into the surface of cast-in-place concrete.

### APPLICATIONS

VOLTEX DS is designed for below-grade structural foundation surfaces. Typical cast-in-place concrete applications include backfilled concrete walls, earth-covered roofs, structural slabs, tunnels, and property line construction. Property line construction applications include soldier pile and lagging, metal sheet piling, shotcrete and stabilized earth retention walls. Applications may include structures under continuous or intermittent hydrostatic pressure.

Where contaminated ground-water conditions exist, use VOLTEX DSCR with contaminant resistant sodium bentonite. VOLTEX DSCR resists higher levels of the following contaminants: nitrates, phosphates, chlorides, sulfates, lime and organic solvents.

### INSTALLATION

**General:** Installation guidelines herein are for cast-in-place concrete applications. For shotcrete, precast concrete, and other applications not covered herein, refer to specific VOLTEX DS literature or contact CETCO for applicable installation guidelines. Install VOLTEX DS in strict accordance with the manufacturer's installation guidelines using accessory products as required. Also, use VOLTEX DSCR as required for contaminated conditions. Install VOLTEX DS with the dark gray (woven) geotextile toward the concrete to be waterproofed. Install Waterstop-RX in all applicable horizontal and vertical concrete construction joints. Schedule waterproofing material installation to permit prompt placement of concrete or compacted backfill. **STORAGE:** Keep VOLTEX DS and all accessory products dry prior to backfill or concrete placement.

**Preparatory Work:** Under Slab: Substrate should be smooth and compacted to a minimum of 85% Modified Proctor density. Concrete Walls: Concrete should be free of voids and projections. Surface irregularities should be removed before installation. Apply Bentoseal to form-tie pockets, construction joints and honeycombs. Tapered form-tie holes extending through the wall should be completely filled with non-shrink grout and a piece of Waterstop-RX centered in the wall. Property Line Shoring Walls: Install VOLTEX DS only after proper substrate preparation has been completed and is suitable to receive the waterproofing.

### UNDER CONCRETE FLOOR SLABS

VOLTEX DS is recommended for use under structural reinforced concrete slabs 4" (100 mm) thick or greater on a compacted earth/gravel substrate. A minimum 6" (150 mm) thick reinforced slab, if installed over a mud slab, Where hydrostatic conditions exist, install VOLTEX DS under footings and grade beams.

Place VOLTEX DS over the properly prepared substrate with the dark gray (woven) geotextile side up. Overlap all adjoining edges a minimum 4" (100 mm) and stagger sheet ends a minimum 12" (300 mm). Staple or nail edges together as required to prevent any displacement before and during concrete placement.

Cut VOLTEX DS to closely fit around penetrations and pile caps. Install Waterstoppage under cut VOLTEX DS edge at detailing and then apply a minimum 3/4" (18 mm) thick fillet of Bentoseal to top of cut VOLTEX DS edge at penetrations, pile caps, grade beams, and other detailing. Extend Bentoseal onto VOLTEX DS and detail a minimum of 2" (50 mm). For hydrostatic conditions, VOLTEX DS should be installed under grade beams and footings. Extend VOLTEX DS onto footing a minimum 6" (150 mm) when required to tie into vertical wall waterproofing.

Where property line retaining walls, such as soldier pile and lagging, are used as the outside concrete form, install a VOLTEX DS transition course at the base of the wall per "Shoring Wall Transition" instructions within the "Property Line Construction" section herein. Continue the underslab VOLTEX DS installation to the retaining wall overlapping the transition course a minimum 12" (300 mm).

### BACKFILLED CAST-IN-PLACE CONSTRUCTION

Before installing the first course of VOLTEX DS, place Hydrobar Tubes<sup>®</sup> at the wall/footing transition corner. Butt the ends of Hydrobar Tubes together to form a continuous line.

Beginning at the bottom corner of the wall, install VOLTEX DS horizontally oriented with 5-ft. (1.5 m) on one wall and the remainder around the corner on the other wall surface. Cut the bottom edge of VOLTEX DS at the corner a minimum of 6" (150 mm) so that VOLTEX DS can be extended onto the footing. Fasten VOLTEX DS into position with washer headed fasteners a maximum of 24" (600 mm) on center. Then cut and install a VOLTEX DS section over the uncovered footing corner area. Apply Bentoseal at the VOLTEX DS section to VOLTEX DS overlap at the corner.

Install adjacent VOLTEX DS rolls of the bottom course horizontally oriented. Each roll should overlap the preceding roll a minimum 4" (100 mm) and should extend onto the footing a minimum 6" (150 mm). At inside wall corners apply a continuous 3/4" (18 mm) fillet of Bentoseal directly in the corner prior to installing VOLTEX DS. Stagger all vertical overlap joints a mini-

## VOLTEX DS

### BENTONITE GEOTEXTILE WATERPROOFING WITH INTEGRATED POLYETHYLENE LINER

ment of 12" (300 mm). For hydrostatic conditions, the vertical wall VOLTEX DS should cover the entire footing and overlap the underslab waterproofing a minimum 6" (150 mm). Tape all VOLTEX DS membrane overlap seams with CETCO Seamtape.

Cut VOLTEX DS to closely fit around penetrations. After installing VOLTEX DS, trowel a minimum 3/4" (18 mm) thick fillet of Bentoseal around the penetrations to completely fill any space between the penetration and the VOLTEX DS edge. Extend Bentoseal onto the penetration and over the VOLTEX DS edge 1-1/2" (38 mm). In areas where multiple penetrations are close together, it may be impractical to cut VOLTEX DS to fit around each penetration. Therefore, apply a 3/4" (18 mm) thick fillet of Bentoseal around base of each penetration and cover the entire area between the penetrations. Extend Bentoseal 1-1/2" (38 mm) onto the penetrations.

Terminate VOLTEX DS membrane 12" (300 mm) below finished grade elevation with washer-head fasteners maximum 12" (300 mm) on center. Install Envirosheet flashing to primed concrete substrate with bottom edge overlapping top edge of VOLTEX DS membrane minimum 4" (100 mm). Overlap all roll ends a minimum 4" (100 mm) to form a continuous flashing. Height of flashing shall be per project details and specifications. Install a rigid termination bar along top edge of Envirosheet; fastened maximum 12" (300 mm) on center. Complete grade termination detail with tooled bead of CETSEAL along the top edge, at all penetrations through the flashing, and all exposed overlap seams. Backfill shall be placed and compacted to minimum 85% Modified Proctor density, promptly after waterproofing installation. Backfill should consist of compactable soil or angular aggregate (3/4" or less) free of debris, sharp objects, and stones larger than 3/4" (18 mm).

**NOTE:** VOLTEX DS is not recommended for masonry block walls. Contact CETCO regarding products and installation guidelines for masonry block foundation walls.

#### PROPERTY LINE CAST-IN-PLACE CONSTRUCTION

Use VOLTEX DS to waterproof various types of cast-in-place property line construction, including: metal sheet piling, soldier pile and lagging, auger cast caisson, and stabilized-earth shoring walls. Following guidelines outline the installation of VOLTEX DS on soldier pile and lagging walls. For other property line shoring wall applications refer to the "VOLTEX DS Cast-In-Place Product Manual" or consult CETCO. For Shotcrete applications refer to the "VOLTEX DS Shotcrete Application Manual" for installation guidelines.

**Lagging Wall Preparation:** Remove all projections and fill all voids in the retaining wall larger than 1" (25 mm) with non-shrink grout or compacted soil. Aquadrain® drainage composite can be installed over lagging gaps up to 2-1/2" (63 mm) to provide a uniform surface to mount the VOLTEX DS. Gaps larger than 2-1/2" (63 mm) should be completely filled with grout, wood, extruded polystyrene (40 psi min.) or compacted soil even if Aquadrain is installed prior to VOLTEX DS. Do not use plywood or other surface treatment that leaves the lagging gaps void.

**Shoring Wall Transition:** At base of shoring wall, install VOLTEX DS sheet horizontally, oriented (dark gray woven geotextile facing installer) with the bottom edge extending out onto the horizontal substrate a minimum 12" (300 mm), and the top edge of the sheet extending a min. 12" (300 mm) above the finished slab elevation. Secure VOLTEX DS sheet to shoring wall with washerhead fasteners maximum 24" (600 mm) on center. Overlap edges of VOLTEX DS sheets a minimum 4" (100 mm). If the slab thickness is greater than 24" (600 mm), install a second full sheet or cut strip of VOLTEX DS on the shoring wall to meet the 12" (300 mm) requirement above of the top slab elevation. Overlap top edge of previous sheet and edges of adjacent sheets a min. 4" (100 mm).

**Shoring Wall Installation:** Starting at the base corner, install course of VOLTEX DS (horizontally oriented) to lagging wall over the pre-

viously installed corner transition sheet with the bottom edge extending down to the wall's slab transition. Secure sheet edges to shoring wall with washer-head fasteners maximum 24" (600 mm) on center. After the bottom horizontal course, VOLTEX DS sheets can be installed either vertically or horizontally oriented. Continue VOLTEX DS installation up wall to finished grade elevation overlapping adjacent VOLTEX DS sheet edges a minimum 4" (100 mm) and staggering all sheet roll ends of adjacent courses a minimum 12" (300 mm). Do not allow VOLTEX DS overlap joints to run at same elevation as the concrete pour lift joints; extend membrane past a minimum 6" (150 mm).

Prior to installing VOLTEX DS at grade, install 1/2" (12 mm) thick cementitious wall board (Durock) centered over metal soldier pile from finished grade elevation to specified depth of soldier pile and lagging removal. Remove cement wall board during excavation to terminate system at grade.

**Tie-Back Heads:** Select appropriate size TB-Boot to fit over tie-back plate and allow proper cast-in-place concrete coverage per project requirements. TB-Boot should fit over entire tie-back head without the tie-back plate or cables in direct contact with the TB-Boot. Prior to TB-Boot installation, fill voids in retention wall substrate and tie-back head assembly with spray foam (min 20 psi) or non-shrink grout. For non-hydrostatic conditions, install and secure Aquadrain drainage composite course per manufacturer's guidelines to soil retention wall prior to installing TB-Boot. For hydrostatic conditions, install TB-Boot prior to VOLTEX DS membrane. With soldier piles, strip piles with waterproofing membrane prior to TB-Boot placement.

Fill pre-formed shape of TB-Boot with 2-part urethane spray foam (min 20 PSI) and place over tie-back head before foam sets up. Secure TB-Boot to soil retention system using washer head fasteners along the outside edge of the flat base. Apply 1/4" (6 mm) thick by minimum 3" (75 mm) wide continuous ring of Bentoseal onto the flat base just outside of the 1/4" (12 mm) raised collar. Install 4-ft by 4-ft piece of



## VOLTEX DS

### BENTONITE GEOTEXTILE WATERPROOFING WITH INTEGRATED POLYETHYLENE LINER

VOLTEX DS (with precut hole in center to fit tight around the 1/2" (12 mm) raised collar) over the entire flat base with outside edges fastened to the retaining wall. Secure inside VOLTEX DS edge around raised collar with washer-head fasteners that pass through the Bentoseal ring; typical fastener spacing 6" (150 mm). Do not install fasteners or puncture TB-Boot inside of the 1/2" (12 mm) raised collar. Apply counter flashing of Bentoseal along VOLTEX DS sheet edge around raised collar. Then install VOLTEX DS field sheet overlapping outer membrane edge minimum 4" (100 mm).

**Penetrations:** Install a cut collar of VOLTEX DS tightly around the penetration; extending a minimum 12" (300 mm) radius. Apply Bentoseal over VOLTEX DS collar around penetration; extending Bentoseal a minimum 3" (75 mm) radius at 1/4" (6 mm) thickness. Then install main course of VOLTEX DS membrane tightly around the penetration. Finally, detail around penetration with 3/4" (18 mm) thick cant of Bentoseal. With sleeved pipes, Division 3 work should include filling the gap between the pipe and the sleeve with non-shrink cementitious grout and install Waterstop-RX to both sides of sleeve.

**Soldier Pile Stripping:** Install a strip of VOLTEX DS over all soldier piles with raised lagging hanger bolts, form tie rods, or other irregular surface. VOLTEX DS strip should extend a minimum 6" (150 mm) to both sides of the piling. Apply Bentoseal 1/4" x 2" (6 mm x 50 mm) to VOLTEX DS strip surface along both edges of each soldier pile.

**Cementitious Board:** Prior to installing VOLTEX DS to finished grade detail, install 1/2" (12 mm) thick cementitious wall board centered over steel soldier pile from finished grade elevation to specified depth that the top of steel soldier pile and lagging will be removed.

**Grade Termination:** Terminate VOLTEX DS membrane 12" (300 mm) below finished grade elevation with washer-head fasteners maximum 12" (300 mm) on center. Install Envirosheet flashing to primed concrete substrate with bottom edge overlapping top edge of VOLTEX DS membrane minimum 4" (100 mm). Overlap all roll ends a minimum 4" (100 mm) to

form a continuous flashing. Height of flashing shall be per project details and specifications. Install a rigid termination bar along top edge of Envirosheet; fastened maximum 12" (300 mm) on center. Complete grade termination detail with tooled bead of CETSEAL along the top edge, at all penetrations through the flashing, and all exposed overlap seams.

Where lagging timbers and the top of steel soldier piles are removed, repair any waterproofing damaged by the excavation and removal of the retention wall system. Secure all excavated VOLTEX DS overlap seams with washer-head fasteners maximum 24" (600 mm) on center and then install Seamtape centered along overlap seams. Backfill shall be placed and compacted to minimum 85% Modified Proctor density promptly after waterproofing installation. Backfill should consist of compactable soil or angular aggregate (3/4" or less) free of debris, sharp objects, and stones larger than 1/4" (15 mm).

#### LIMITATIONS

VOLTEX DS should only be installed after substrate preparation has been properly completed and is suitable to receive the waterproofing system. Concrete work should be cast-in-place with conventional forms that produce a smooth surface. Do not use stay-in-place concrete forming; use removable forming products only.

VOLTEX DS is designed for below-grade waterproofing applications where the product is properly confined. VOLTEX DS should not be installed in standing water or over ice. If ground water contains strong acids, alkalis, or is of a conductivity of 2,500 µmhos/cm or greater, water samples should be submitted to the manufacturer for compatibility testing. Ultraseal may be required if contaminated ground water or saltwater conditions exist.

VOLTEX DS is designed for use under reinforced concrete slabs 4" (100 mm) thick or greater on a compacted earth/gravel substrate. VOLTEX DS requires a minimum 6" (150 mm) thick reinforced concrete slab if installed over a mud slab. VOLTEX DS is not designed for split-slab plaza deck construction.

**VOLTEX DS is not intended to seal expansion joints; contact CETCO for expansion joint applications. Do not use VOLTEX DS on masonry block foundation walls. Consult CETCO for special installation guidelines that apply to shotcrete and precast concrete construction.**

VOLTEX DS installation guidelines contained herein are for cast-in-place concrete applications and do not cover shotcrete or precast concrete applications. Refer to VOLTEX DS Product Manuals for additional property line shoring wall construction technique applications. Consult CETCO for applicable products and installation guidelines for applications not covered herein.

#### SIZE AND PACKAGING

VOLTEX DS is available in 4-ft x 14.5-ft (1.2 x 4.2 m) rolls. Typical roll weight is approximately 68 lbs. (30.8 kg). VOLTEX DS is packaged 35 rolls per pallet (2,030 sq. ft. (188 sq. m.)).

#### ACCESSORY PRODUCTS

Install VOLTEX DS using accessory products in strict accordance with the manufacturer's installation guidelines and details. Primary accessory products include BENTOSEAL<sup>®</sup>, HYDROBAR TUBES<sup>®</sup>, WATERSTOPPAGE<sup>®</sup>, TB-BOOT<sup>®</sup>, CETSEAL, SEAMTAPE and ENVIRO-SHEET grade flashing.

#### ASSOCIATED SYSTEM PRODUCTS

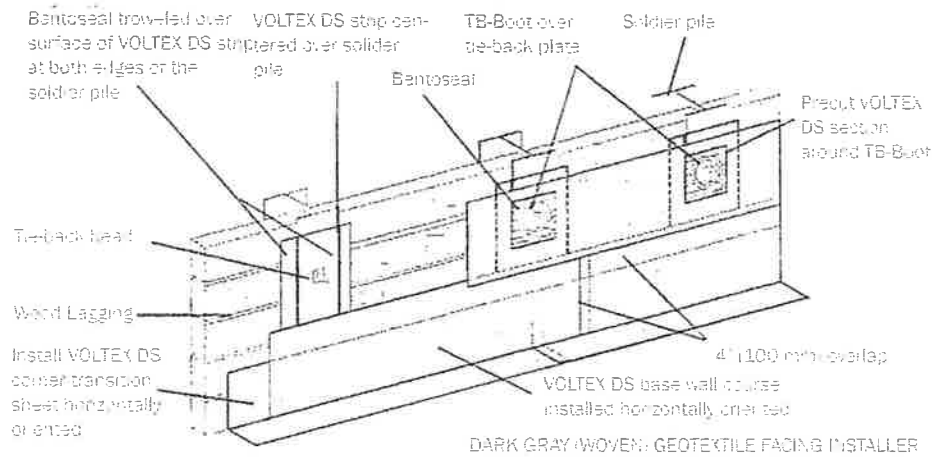
AQUADRAIN<sup>®</sup> subsurface drainage composite and WATERSTOP-RX<sup>®</sup> expanding concrete joint waterstop.

**IMPORTANT NOTICE:** CONTACT CETCO FOR VERIFICATION OF SPECIFICATION AND INSTALLATION REQUIREMENTS TO COMPLY WITH ISSUANCE FOR ELIGIBILITY OF HYDROSHIELD WARRANTY

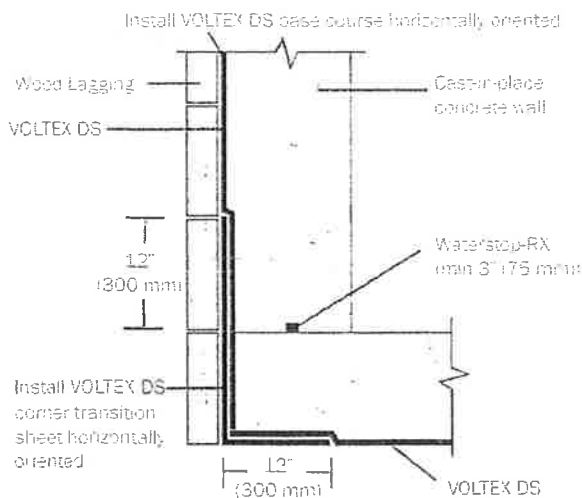
# VOLTEX DS

## BENTONITE GEOTEXTILE WATERPROOFING WITH INTEGRATED POLYETHYLENE LINER

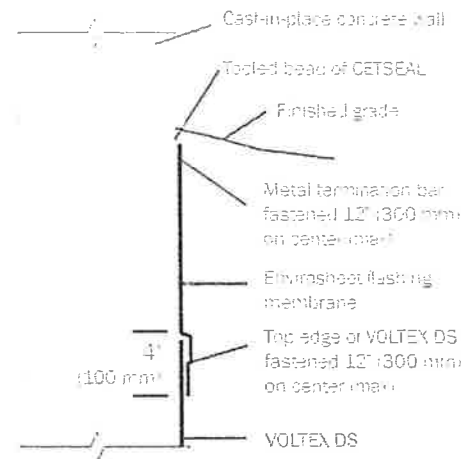
TECHNICAL DATA		
PROPERTY	TEST METHOD	NOMINAL VALUE
Bentonite Mass Per Unit Area	ASTM D 3776 (mod.)	1.0lb/sqft (4.8kg/sqm)
Peel Adhesion to Concrete	ASTM D 903 (mod.)	15 lbs/in (2.6kN/m min)
Hydrostatic Pressure Resistance	ASTM D 5385 (mod.)	231 ft (70 m)
Permeability	ASTM D 5084	$1 \times 10^{-9}$ cm/sec
Grab Tensile Strength	ASTM D 4632	120 lbs (530 N)
Puncture Resistance	ASTM D 4833	140 lbs (620 N)
Low Temperature Flexibility	ASTM D 1970	Unaffected @ -25° F (-32° C)
Water Vapor Transmission Rate	ASTM E 96	0.03 grains per hour/ft <sup>2</sup>



Property Line Soldier Pile & Lagging Wall Detail



Property Line Transition



Grade Termination

North America: 847.851.1800 | 800.527.9948 | www.cetco.com

UPDATED: JUNE 2015

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**CETCO**



# **AIA® Document G701™ – 2001**

## Change Order

<b>PROJECT</b> <i>(Name and address):</i>	<b>CHANGE ORDER NUMBER:</b> Gen#020	<b>OWNER:</b> <input checked="" type="checkbox"/>
Fargo City Hall Fargo, ND	<b>DATE:</b> 1/30/18	<b>ARCHITECT:</b> <input checked="" type="checkbox"/>
<b>TO CONTRACTOR</b> <i>(Name and address):</i>	<b>ARCHITECT'S PROJECT NUMBER:</b> 2015.49	<b>CONTRACTOR:</b> <input checked="" type="checkbox"/>
Olaf Anderson Construction PO Box 2766 Fargo, ND 58108	<b>CONTRACT DATE:</b> 6/7/16	<b>FIELD:</b> <input type="checkbox"/>
	<b>CONTRACT FOR:</b> General Construction	<b>OTHER:</b> <input type="checkbox"/>

**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)*

RFC 023: Saw cut, demo and pour 18'x40'x6" paving at driveway into church parking lot in spring of 2018.

ADD \$7,155.00

RFC 026: Change (2) fire extinguishers from MP-10 to HT-11, added (1) surface mounted cabinet, and change remaining cabinets from fully recessed to semi-recessed.

ADD \$1,639.00

The original Contract Sum was	\$ 16,442,900.00
The net change by previously authorized Change Orders	\$ 724,872.00
The Contract Sum prior to this Change Order was	\$ 17,167,772.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 8,794.00
The new Contract Sum including this Change Order will be	\$ 17,176,566.00

The Contract Time will be increased by Zero (0) days.

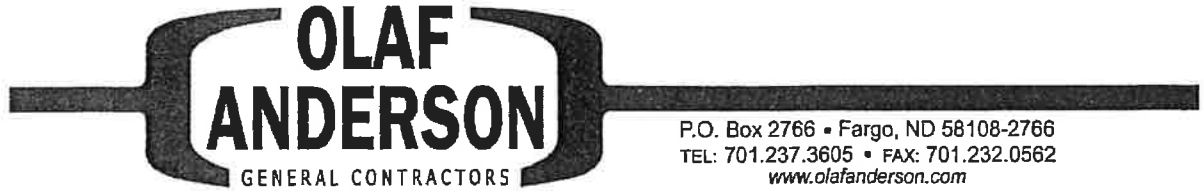
The date of Substantial Completion as of the date of this Change Order therefore is

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change ~~Directive~~ Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

T.L. Stroh Architects, Ltd	Olaf Anderson Construction	City of Fargo
<b>ARCHITECT</b> <i>(Firm name)</i>	<b>CONTRACTOR</b> <i>(Firm name)</i>	<b>OWNER</b> <i>(Firm name)</i>
8 Seventh St. N., Fargo, ND 58102	PO Box 2766, Fargo, ND 58108	200 3rd St. N., Fargo, ND 58102
<b>ADDRESS</b>	<b>ADDRESS</b>	<b>ADDRESS</b>
<b>BY</b> <i>(Signature)</i>	<b>BY</b> <i>(Signature)</i>	<b>BY</b> <i>(Signature)</i>
Terry L. Stroh		
<i>(Typed name)</i>	<i>(Typed name)</i>	<i>(Typed name)</i>
1/30/18	2-13-18	
<b>DATE</b>	<b>DATE</b>	<b>DATE</b>





December 1, 2017

T.L. Stroh Architects, Ltd  
8 Seventh St. N.  
Fargo, ND 58102

Re: Fargo City Hall - RFC 023

Dear: Mr. Stroh,

The following is a proposed change to the original scope of work. Please review and authorize items below.

	Accepted	Y	N
1. Saw cut, demo and pour 18' x 40' x 6" paving at driveway into church parking lot in spring of 2018.			
Add	\$7,155.00	—	—

Pricing Breakdown is attached

Once again, we thank you for giving us the opportunity to work with you on this project. If you have any questions please do not hesitate to call.

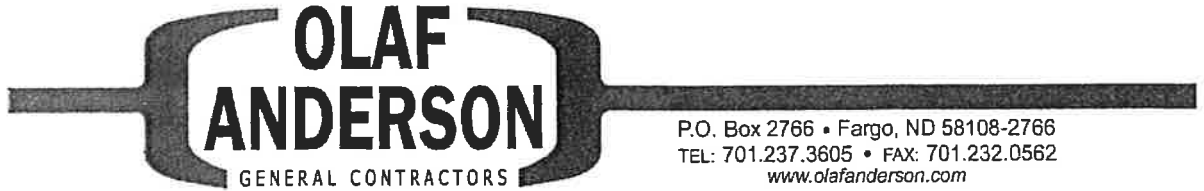
Sincerely,

Lyn Marum  
Construction Manager  
Olaf Anderson Construction, Inc.

Accepted by: \_\_\_\_\_

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





December 27, 2017

T.L. Stroh Architects, Ltd  
8 Seventh St. N.  
Fargo, ND 58102

Re: Fargo City Hall - RFC 026

Dear: Mr. Stroh,

The following is a proposed change to the original scope of work. Please review and authorize items below.

	Accepted	Y	N
1. Changed (2) Fire Extinguishers from MP-10 to HT-11, added (1) surface mounted cabinet, and change remaining cabinets from fully recessed to semi-recessed.			
Add	\$1,639.00	—	—

Pricing Breakdown is attached. Excludes Structural Calculations, field testing and temporary enclosures.

Once again, we thank you for giving us the opportunity to work with you on this project. If you have any questions please do not hesitate to call.

Sincerely,

Lyn Narum  
Construction Manager  
Olaf Anderson Construction, Inc.

Accepted by: \_\_\_\_\_

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



REPORT OF ACTION  
**UTILITY COMMITTEE**

(13)

Project No. \_\_\_\_\_ Type: Extension of Lease – Barnes Township

Location: Solid Waste Division

Date of Hearing: 3/01/18

<u>Routing</u>	<u>Date</u>
City Commission	3/26/17
Project File	

Terry Ludlum, Solid Waste Utility Director, presented the attached memo and the *Extension of Lease 2018 – 2022 Farm Season* with Evan Holmen for the farmable acres of a City-owned 78-acre parcel located in the NW ¼ of Section 4, Township 139, Range 49 West, in Barnes Township, of Cass County, North Dakota.

Following a formal RFP process, a three-year lease was approved by the Commission with Mr. Evan Holmen for the 78-acre parcel as described above. The term of the initial lease was January 1, 2011, through December 31, 2013, extensions have subsequently been approved through December 31, 2017.

The exact farmable acreage for 2018 is unknown due to the installation of mandated landfill groundwater monitoring wells and usage as a snow dump site by Public Works. Due to the changes, the lessee has agreed to provide the exact farmable acreage on an annual basis and pay the original lease agreement price of \$100 per acre for the duration of the lease extension (2018-2022).

**MOTION:**

On a motion by Bruce Grubb, seconded by Troy Hall, the Utility Committee voted to approve the *2018-2022 Farm Season Extension of Lease* with Evan Holmen for the farmable acres of the 78-acre parcel located in the NW ¼ of Section 4, Township 139, Range 49, of Barnes Township, Cass County, North Dakota. In addition, the motion to approve included the lease extension as a sole source procurement.

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

ATTEST:

  
\_\_\_\_\_  
Terry Ludlum  
Solid Waste Utility Director

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

**Division of Solid Waste**


2301 8<sup>th</sup> Avenue North  
Fargo, North Dakota 58102  
Phone: 701-241-1449  
Fax: 701-241-8109

## MEMORANDUM

February 22, 2018

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To: Utility Committee

From: Terry Ludlum, Solid Waste Utility Director 

Re: Extension of Lease – Barnes Township

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The City of Fargo owns a 78-acre parcel of land located in Barnes Township of Cass County, North Dakota described as follows:

Part of the Northwest Quarter (NW ¼) of Section Four (4), Township One Hundred Thirty-nine (139) North of Range Forty-nine (49) West of the 5<sup>th</sup> P.M., all in the County of Cass and the State of North Dakota.

Following a formal advertisement process (two responses of \$100.00/acre verses \$71.00/acre), a three-year farm lease was approved with Mr. Evan Holmen for an initial term of January 1, 2011, through December 31, 2013. Subsequent extensions were approved through December 31, 2017.

In the Spring of 2016, The City of Fargo Engineering Department contacted the Solid Waste Division regarding the potential use of a portion of the property for the purpose of stockpiling soils related to the development of an adjacent parcel. Initial stockpile estimates required approximately 10-acres, with the actual seeded acreage shown as 63.5 acres during spring planting activities. A majority of the stockpiles were hauled off of the site in 2017, with portions remaining. Mr. Holmen was willing to amend the lease on two occasions in 2016 & 2017 and pay only the amount of acreage actually planted.

Recently, Fargo Public Works has discussed the possibility of improving a portion of the land for the development of an engineered snow dump site (potentially 10 acres). The site would contain an engineered pad, designed surface water drainage pattern, and retention area.

In addition, the SWD Division has discussed releasing a portion of the acreage knowing that the property would probably not be able to be used for its initial purchase intention which was the development of future landfill acreage. The area that would be intended to be retained would be the snow dump site and a buffer area, given that the far west edge of the landfill has recently been approved for inert landfill operations over a 30-acre area.

It should be known that the inert site approval also required the installation of two additional groundwater monitoring wells as permit conditions. Given that these wells are designed to be surface accessible for sampling, this could reduce the farmable acreage as provided within the lease.

During discussions with the City of West Fargo Planning Office, it was learned that if the acreage was to be parceled for sale, it would have to go through a full platting process with the potential of owner responsible improvements (i.e. streets, water/wastewater infrastructure, etc.).

Given the complexity of the current land use and the potential cost of platting and selling a portion of the acreage, staff began looking into other potential benefits of retaining the land and continuing to lease the acres that could be planted.

One benefit that has been discussed between Solid Waste staff and Waste Water Treatment Plant staff and consultants has been the field application of biosolids from the WWTP. Currently all WWTP biosolids are hauled to the landfill and buried. Conceptually, under an EPA approved program all properly tested biosolids could be field applied, incorporated, and used as a specific crop fertilizer supplement. The EPA does have specific rules that apply throughout the program including comprehensive testing of the biosolids and soil parameters before, during, and after application. The biosolid application program has been presented to the current lessee and he has agreed to participate in a pilot program aimed at diverting the biosolids from the landfill beginning in the 2019 season.

With the previously described background, Solid Waste staff would respectfully request approval to utilize the Barnes Township 78-acre parcel as follows. Work with Fargo Public Works for the development of an engineered snow dump site and to extend the existing lease with Evan Holmen for the balance of the farmable acreage at \$100/acre over a five-year term.

Your consideration in this matter is greatly appreciated.

**SUGGESTED MOTION:**

Authorize Solid Waste staff to prepare and provide to the City Commission for approval, a five-year Farm Lease extension with lessee (Evan Holmen) for the farmable acres of the 78-acre parcel located in the NW ¼ of Section 4, Township 139, Range 49, in Barnes Township of Cass County, North Dakota.





FEB 2018  
Figure 1



CITY OF FARGO LANDFILL  
Temporary Soil Stockpile Location



**EXTENSION OF LEASE 2018-2022 FARM SEASON**  
**Evan Holmen**

**THIS AGREEMENT**, by and between **THE CITY OF FARGO, NORTH DAKOTA**, a municipal corporation, herinafter called “Lessor”, and **EVAN HOLMEN**, of 17177 50<sup>th</sup> Street South, Horace, North Dakota 58047, hereinafter referred to as “Lessee”.

**WITNESSETH:**

**WHEREAS**, Lessee is a tenant of Lessor under a lease originally entered into and dated October 18, 2010; and under a lease extension entered into and dated September 16, 2013; and under a second lease extension dated February 13, 2017; which expired on December 31, 2017, located in Barnes Township, Cass County, North Dakota, described as follows:

Part of the Northwest Quarter (NW1/4) of Section Four (4), Township One Hundred Thirty-nine (139) North of Range Forty-nine (49) West of the 5<sup>th</sup> P.M., all in the County of Cass and the State of North Dakota. Said parcel contains 78 acres more or less.

**WHEREAS**, the parties had reached an agreement amending the lease from its original farmable acreage of 78 acres to 68 farmable acres, and that lessee was able to show that 63.5 acres of the parcel remained as farmable in 2017, and that an additional unknown acreage will not be farmable by lessee beginning in 2018, lessee agrees to provide lessor the exact annual acreage seeded for the duration of this lease extension,

**WHEREAS**, the parties wish to commit their agreement to writing.

**NOW, THEREFORE**, it is hereby agreed as follows:

1. The parties hereby agree to extend the terms of the Farm Lease, above referenced, from April 2, 2018 through December 31, 2022. Subject to the provisions of the amended farmable acreage, therefore, all the terms of the original Farm Lease shall apply.

2. Lessee agrees to pay Lessor, payable all in cash on or before July 1, for the 2018-2022 years, for the above-described property, the sum of One Hundred (\$100.00) per farmable acre; provided; however, that Lessee agrees that if a rent payment is not made on or before the said due date, Lessee shall pay a late charge of Two Hundred Dollars (\$200.00), as allowed by North Dakota law.
  
3. In all other respects the said Farm Lease, above referenced, is in full force and effect.

DATED this 20<sup>TH</sup> day of MARCH, 2018.

LESSOR:

THE CITY OF FARGO, NORTH DAKOTA  
a municipal corporation

By \_\_\_\_\_

Timothy Mahoney, Mayor

ATTEST:

\_\_\_\_\_

Steven Sprague, City Auditor

LESSEE:

E. Holmen

Evan Holmen, Lessee



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PUBLIC WORKS/OPERATIONS

Fleet Management, Forestry, Streets & Sewers, Watermeters, Watermains & Hydrants 402 23rd STREET NORTH FARGO, NORTH DAKOTA 58102 PHONE: (701) 241-1453 FAX: (701) 241-8100

March 21, 2018

The Honorable Board of City commissioners City of Fargo 200 North Third Street Fargo, ND 58102

RE: RFP for Asphalt Recycler RFP18100

Commissioners:

On March 9, 2018 request for proposals were received for one new or used (1) Asphalt Recycler. A single vendor submitted one proposal.

The results are as follows:

<u>Firm</u>	<u>Price</u>
Pavement Technologies Intl Corp.	\$62,995.00

The review committee consisting of Ben Dow, Lee Anderson, and Allan Erickson determined that the proposal met the specifications required. Price was within expected parameters. Our recommendation is to award the RFP to Pavement Technologies. Funding for this project has been included in the 2018 Replacement budget.

SUGGESTED MOTION:

Approve the recommendation to purchase one (1) Used Asphalt Recycler from Pavement Technologies for the total amount of \$62,995.00.

Respectfully Submitted,

Allan Erickson Fleet Management Specialist



Page 80 - note that all training, service and support will be provided by Swanston Equipment, who is the authorized service support center for Renova. Pavement Technologies will not be involved, in any capacity; with warranty, service and support for this machine.

**Price**

Make: Renova

Model: 4000

Year: 2015

Includes delivery from N.C.

Price per 1 unit

\$ 102,995.

Trade

\$ 40,000.

**Total equipment price**

\$ 62,995.

Total Machine hours

72 hours approximate

**Delivery Date**

Number of days for delivery from date of order: 20 days  
(I expect it will be far less, about 10 days)

Company Pavement Technologies International Corp.

By: Mark Reeves   
(Name)

PRES. 3/7/2018  
(Title) (Date)

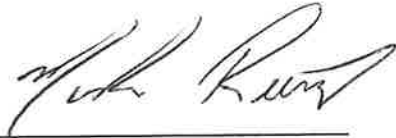
**Pavement Technologies International Corp.**  
1525 Western Avenue, Albany, NY 12203 USA  
(518) 218-7676 (888) 999-2660 Fax (518) 650-6413

March 7, 2018

Renova Industries offers the Renova 4000 with a one-year manufacturer's parts and labor warranty for defects in workmanship

**DISCLAIMER:**

**Pavement Technologies International Corp. (PTIC, PavementGroup, Seller) HEREBY DISCLAIMS ALL WARRANTIES EITHER EXPRESSED OR IMPLIED. PTIC SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, EARNINGS, BUSINESS, GOODWILL, INTERRUPTION OF BUSINESS, NOR FOR INCIDENTAL OR CONSEQUENTIAL MERCHANTABILITY OR FITNESS OF PURPOSE OR DAMAGES RELATED TO THIS AGREEMENT.**



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Mark Reeves - President  
**Pavement Technologies Int'l. Corp.**  
1525 Western Ave, Albany, NY 12203  
518-218-7676 F: 518-650-6413

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PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. AN-17-A1 Type: Negative Final Balancing Change Order #1
Location: Blk 4 Hogan Addn, Blk 1 McDermotts Addn, Date of Hearing: 3/19/2018
2nd St N to 3rd St N (15th Ave N to 16th Ave N)

Routing Date
City Commission 03/26/2018
PWPEC File X
Project File Jeremy Engquist

The Committee reviewed the accompanying correspondence from Project Manager, Jeremy Engquist, for Negative Final Balancing Change Order #1 in the amount of \$-834.23, bringing the total contract amount to \$273,204.77.

Staff is recommending approval of Negative Final Balancing Change Order #1.

On a motion by Bruce Grubb, seconded by Mark Bittner, the Committee voted to recommend approval of Negative Final Balancing Change Order #1.

RECOMMENDED MOTION

Approve Negative Final Balancing Change Order #1 in the amount of \$-834.23 to Adelman Concrete.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments

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

COMMITTEE

Table with 4 columns: Present, Yes, No, Unanimous. Rows list committee members: Tim Mahoney, Mayor; Nicole Crutchfield, Director of Planning; Steve Dirksen, Fire Chief; Mark Bittner, Director of Engineering; Bruce Grubb, City Administrator; Ben Dow, Director of Operations; Steve Sprague, City Auditor; City Engineer; Kent Costin, Finance Director. Includes a signature for Brenda Derrig.

ATTEST:

Brenda E. Derrig, P.E.
Division Engineer

C: Kristi Olson

Negative Change Orders & Engineer Approved Change Orders		PWPEC 3/19/18					
Contractor	Proj. or ID #	Type	Original Contract	Prior CO's	Current CO Amount	CO #	Final or New Contract Amount
		<b>Negative &amp; Engineer Approved Totals</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>		<b>\$0.00</b>
Adelman Concrete	I.D. #AN-17-A1	PC Concrete Alley Paving & Incidentals	\$274,039.00		(\$834.23)	FBCO #1	\$273,204.77
		<b>Negative &amp; Engineer Approved FBCO Totals</b>	<b>\$274,039.00</b>	<b>\$0.00</b>	<b>(\$834.23)</b>		<b>\$273,204.77</b>

<b>Improvement District No</b>	AN-17-A1	<b>Change Order No</b>	1
<b>Project Name</b>	PC Concrete Alley Paving & Incidentals		
<b>Date Entered</b>	1/24/2018	<b>For</b>	Adelman Concrete & Excavating

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

**EXPLANATION OF CHANGE:** Change Order #1 FBCO

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 (\$)
Paving	7	Subgrade Preparation	SY	3,160.00	0.00	3,160.00	-23.00	3,137.00	2.00	-46.00
	8	F&I Pavement 6" Thick Reinf Conc	SY	3,160.00	0.00	3,160.00	-23.00	3,137.00	52.50	-1,207.50
	9	Remove Pavement 6" Thick Conc	SY	325.00	0.00	325.00	-4.00	321.00	10.00	-40.00
	10	Remove Driveway All Thicknesses All Types	SY	25.00	0.00	25.00	-9.00	16.00	20.00	-180.00
	12	Rem & Repl Pavement 9" Thick Asph	SY	60.00	0.00	60.00	-12.50	47.50	80.00	-1,000.00
	13	Mulching Type 1 - Hydro	SY	200.00	0.00	200.00	60.00	260.00	8.00	480.00
	14	Seeding Type B	SY	200.00	0.00	200.00	60.00	260.00	8.00	480.00
	15	Inlet Protection - Existing Inlet	EA	6.00	0.00	6.00	-2.00	4.00	100.00	-200.00
	18	F&I Rock Mulch	TON	10.00	0.00	10.00	-9.00	1.00	50.00	-450.00
	19	* Tree Removal	LS	0.00	0.00	0.00	1.00	1.00	359.95	359.95
								<b>Paving Sub Total (\$)</b>		<b>-1,803.55</b>
Storm Sewer	20	* F&I 8" Flat MH Cover	LS	0.00	0.00	0.00	1.00	1.00	969.32	969.32
									<b>Storm Sewer Sub Total (\$)</b>	
								<b>Grand Total (\$)</b>		<b>-834.23</b>

\* NC Items

**Summary**

**Source Of Funding**

**Net Amount Change Order # 1 (\$)**

-834.23



Previous Change Orders (\$)	0.00
Original Contract Amount (\$)	274,039.00
Total Contract Amount (\$)	273,204.77

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

**CONTRACT TIME**

Current Substantial Completion Date	Current Final Completion Date	Additional Days Substantial Completion	Additional Days Final Completion	New Substantial Completion Date	New Final Completion Date
09/29/2017		0.00	0.00	09/29/2017	

Description

**APPROVED**

For Contractor  
  
 Title Business Manager

**APPROVED DATE**

Department Head  
  
 Mayor  
 Attest  
 3/22/18

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

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Project No. TR-17-A1

Type: Change Order #2

Location: Citywide

Date of Hearing: 3/19/2018

<u>Routing</u>	<u>Date</u>
City Commission	<u>3/26/2018</u>
PWPEC File	<u>X</u>
Project File	<u>Jim Mohr</u>

The Committee reviewed the accompanying correspondence from Project Manager, Jim Mohr, for Change Order #2 in the amount of \$26,752.50, bringing the total contract amount to \$262,066.45.

Staff is recommending approval of Change Order #2.

On a motion by Bruce Grubb, seconded by Mark Bittner, the Committee voted to recommend approval of Change Order #2.

RECOMMENDED MOTION

Approve Change Order #2 in the amount of \$26,752.50 to Moorhead Electric.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Street Rehabilitation & Sales Tax Funds

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

Yes	No
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>
<u>N/A</u>	<u>N/A</u>

COMMITTEE

Tim Mahoney, Mayor  
 Nicole Crutchfield, Director of Planning  
 Steve Dirksen, Fire Chief  
 Mark Bittner, Director of Engineering  
 Bruce Grubb, City Administrator  
 Ben Dow, Director of Operations  
 Steve Sprague, City Auditor  
 City Engineer  
 Kent Costin, Finance Director

<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Unanimous</u>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Brenda Derrig</u>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

  
 Brenda E. Derrig, P.E.  
 Division Engineer

C: Kristi Olson



# Memorandum

*JM*

**To:** Members of PWPEC  
**From:** Jim Mohr, Project Manager  
**Date:** March 19, 2018  
**Re:** Project No. TR-17-A1 – Change Order # 2

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**Background:**

Project No. TR-17-A1 is for the Traffic Signal Rehabilitation and Incidentals at various locations throughout the City of Fargo.

The attached change order #2 includes all costs associated with the new equipment and cabinet modifications for the installation of flashing yellow arrow at two intersections. This change order cost is on par with other projects we've bid over the last 2 years for retrofitting FYA at other locations.

**Recommended Motion:**

Approve Change Order #2 in the amount of \$26,752.50.

JDM/klo  
Attachment

C: Jeremy Gordon  
Tom Knakmuhs



CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT

Project No	TR-17-A1	Change Order No	2
Project Name	Traffic Signal Rehabilitation & Incidentals		
Date Entered	3/16/2018	For	Moorhead Electric


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:** Install FYA on Main Ave  
Install FYA on main ave at 28 st and 32 st intersections

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	14	F&I Traffic Signal System	LS	0.00	0.00	0.00	1.00	1.00	26,752.50	26,752.50
<b>Traffic Signals Sub Total (\$)</b>									<b>26,752.50</b>	<b>26,752.50</b>

<b>Summary</b>	Sales Tax Funds - Infrastructure - 420
<b>Source Of Funding</b>	
<b>Net Amount Change Order # 2 (\$)</b>	26,752.50
<b>Previous Change Orders (\$)</b>	39,597.95
<b>Original Contract Amount (\$)</b>	195,716.00
<b>Total Contract Amount (\$)</b>	262,066.45

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

<b>CONTRACT TIME</b>			
Current Substantial Completion Date	06/01/2018	Additional Days Substantial Completion	0.00
Current Final Completion Date		Additional Days Final Completion	0.00
New Substantial Completion Date	06/01/2018	New Final Completion Date	
<b>APPROVED</b>	<b>APPROVED DATE</b>		
For Contractor	 Department Head  3/22/18		

CITY OF FARGO  
ENGINEERING DEPARTMENT  
CHANGE ORDER REPORT



Title	Project manager 03/16/2018	Mayor
		Attest

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REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. MS-17-A0 (PN-19-B) Type: Contract Amendment #2  
 Location: 52 Ave S – 45 St to Sheyenne St Date of Hearing: 3/19/2018

<u>Routing</u>	<u>Date</u>
City Commission	<u>3/26/2018</u>
PWPEC File	<u>X</u>
Project File	<u>Jeremy Gorden</u>

The Committee reviewed the accompanying correspondence from Division Engineer, Jeremy Gorden, related to a Contract Amendment submitted by Houston Engineering in the amount of \$11,114.00, bringing the total contract amount to \$759,539.63. The additional costs are for appraisal services.

Staff is recommending approval.

On a motion by Bruce Grubb, seconded by Mark Bittner, the Committee voted to recommend approval of Contract Amendment #2.

RECOMMENDED MOTION

Approve Contract Amendment #2 to Houston Engineering in the amount of \$11,114.00.


PROJECT FINANCING INFORMATION:

Recommended source of funding for project:	<u>Sales Tax Funds &amp; Special Assessments</u>	<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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Mark Bittner, Director of Engineering	<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 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"/>	
City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Brenda Derrig</u>
Kent Costin, Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

  
 Brenda E. Derrig, P.E.  
 Division Engineer

C: Kristi Olson

March 14, 2018

To: Members of PWPEC

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

Subject: Request to Approve Contract Amendment #2 with Houston Engineering for Appraisal Services  
City of Fargo Project No. MS-17-A0  
52<sup>nd</sup> Avenue S – 45<sup>th</sup> Street to Sheyenne Street

I've attached Contract Amendment (CA) #2 with Houston Engineering for appraisal services associated with this important street improvement project slated for bid this fall. We're asked Rose Hoefs to complete a Basic Data Book for the corridor so we can use those numbers when negotiating the limited right-of-way that we need for this project. The amendment is for **\$11,114.00**. I support approval of this scope of services and associated fee. The funding source for this work will be a combination of Special Assessments and Sales Tax Funds.

The value of the Metro COG contract is \$149,463.76 (119,571.01 Federal/29,892.75 City), the value of the City of Fargo contract is \$151,565.63, plus CA #1 at 596,860.00 and this proposed CA #2 at 11,114.00.

**Recommended Motion**

Approval of Contract Amendment #2 in the amount of **\$11,114** from Houston Engineering to provide us appraisal services for the 52<sup>nd</sup> Avenue S street reconstruction project whose limits are 45<sup>th</sup> Street to Sheyenne Street, bringing the value of the contract with Houston Engineering from \$748,425.63 to \$759,539.63.

JMG/klo

Attachment

Fargo Corporate Office 701.237.5065 701.237.5101

1401 21st Avenue North Fargo ND 58102



PROFESSIONAL SERVICES

PROPOSAL AND AGREEMENT – AMENDMENT NO. 2

**Project:** HEI Cost Proposal Amendment 1 52nd Ave S  
HE Project No. 6059-145

**Client:** City of Fargo  
200 North 3<sup>rd</sup> Street  
Fargo, ND 58102  
Attn: Jeremy Gorden

**Location of Project:** City of Fargo, Cass County, North Dakota

**Description of Work:** This contract amendment is to provide Appraisal Services related to the 52<sup>nd</sup> Avenue South Design and Plan Preparation as requested by the City of Fargo.

A Basic Data Book and Appraisal Preparation will be performed by RM Hoefs & Associates through subcontract, with additional coordination by HEI.

Houston Engineering, Inc. is pleased to provide this proposal to perform the work as outlined in Attachment 1. Tasks will be performed in accordance with our previously submitted contract hourly rates.

**Fee:** The total estimated fee for the above described tasks is \$11,114.00 as summarized in Attachment 1.

**Conditions:** Services will be invoiced monthly and are due and payable upon receipt.

Limitation of Liability: Houston Engineering, Inc. agrees to indemnify and save the client harmless from any loss, cost, or expense including attorney fees, claimed by third parties for property damage or bodily injury, including death, caused by the negligence of Houston Engineering, Inc. or its employees in connection with Houston Engineering, Inc.'s services. The client agrees to indemnify and save Houston Engineering, Inc. harmless from any loss, cost, or expense, including attorney fees, claimed by third parties for property damage or bodily injury including death, caused by the negligence of the client or its employees in connection with the operations of the client. If the negligence of both Houston Engineering,

Bismarck 701.323.0200 701.323.0300  
Maple Grove 763.493.4522 763.493.5572

Minot 701.852.7931 701.858.5655  
Thief River Falls 218.681.2951 218.681.2987





Page 2

Inc. and the client (or a person identified above for whom each is liable) is the cause of such damage or injury, the loss, cost, or expense shall be shared between Houston Engineering, Inc. and the client in proportion to their relative degrees of negligence and the right of indemnity shall apply for such proportion. Neither party hereto shall be liable to the other for incidental, special or indirect damages nor shall Houston Engineering, Inc. be liable for any cost or expense that provides betterment, upgrade or enhancement of the project.

Houston Engineering, Inc. hereby proposes, and the client hereby authorizes, the above described services to be performed by Houston Engineering, Inc. under the terms and conditions set forth.

Authorization:

Proposal: Houston Engineering, Inc.

Client: City of Fargo

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_ *[Handwritten Signature]*

Timothy J. Mahoney

Title: \_\_\_\_\_ *[Handwritten: VP]*

Title: \_\_\_\_\_ *[Handwritten: Mayor]*

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

Date: \_\_\_\_\_ *[Handwritten: 3/13/14]*



Client: **City of Fargo, ND**  
 Project Name:

**Amendment No. 2 - Additional Services Associated with 52nd Avenue South Design Services - Basic Data Book and Appraisals**

Date: **3/13/2018**

**1. Appraisal Services Coordination**

	<u>Unit</u>	<u>Quantity</u>	<u>Cost</u>
Senior Project Manager	hr	2	\$392.00
Project Manager	hr	4	\$712.00
Task Total=			\$1,104.00

**2. Subconsultant Fees - RM Hoefs & Associates**

	<u>Unit</u>	<u>Quantity</u>	<u>Cost</u>
<u>Basic Data Book</u>	1	LS	\$10,010.00
Task Total=			\$10,010.00

**Total Cost - Amendment No. 1 - Additional Services Associated with 52nd Avenue South Design Services - Basic Data Book and Appraisals** **\$11,114.00**

**Bid Submittal from: RM Hoefs & Associates, Inc; PO Box 3102, Fargo, North Dakota 58108  
Reconstruction of 52nd Avenue South, from 45th Street South to Sheyenne Street**

	Assigned	\$ Each	Hrs	Quantity	Estimated	Subtotal I	Subtotal II	Total
	\$/Hr		Hours	Quantity	Estimated	Subtotal	Subtotal II	Total
<b>Basic Data Book Reporting Compliance USPAP Standard 2 and UASFLA Section D, NDCC 24-.01 thru 24-.10 and 32-15, Appraisal Institute Ethics Provision</b>								
Research sales and verify sales data entry		\$ 15.00	32		\$ 480.00			
Protect and comp inspections		\$ 70.00	3	1	\$ 210.00			
Clerical preparation		\$ 20.00	3		\$ 60.00			
Photo Addenda and Sales		\$ 15.00	2		\$ 30.00	\$ 780		
<b>Basic Data Book Reporting Compliance USPAP Standard 2 and UASFLA Section D, NDCC 24-.01 thru 24-.10 and 32-15, Appraisal Institute Ethics Provision</b>								
Preparation		\$ 70.00	20		\$ 1,400.00	\$ 5,600		
Subtotal Basic Data Book / Labo							\$ 6,380	
<b>Basic Data Book Associated Expenses, Profit</b>								
Estimated Payroll Tax Contribution					\$ 1,316.32			
Office Overhead (rent, machines, supplies, etc.					\$ 1,084.60	\$ 2,401		
Subtotal							\$ 8,781	
Profit Margin					\$ 1,229.33	\$ 1,229		
<b>TOTAL ESTIMATED COST BASIC DATA BOOK</b>							\$ 10,010	

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

20

Improvement District No. BR-18-F1 & BR-18-K1 Type: CIP Revisions

Location: Date of Hearing: 3/5/2018

Routing Date  
 City Commission 3/26/2018  
 PWPEC File X  
 Project File Tom Knakmuhs

The Committee reviewed a communication from Division Engineer, Tom Knakmuhs, regarding changes to the 2018 CIP.

Improvement District BR-18-K1, 8<sup>th</sup> St N from 3<sup>rd</sup> Ave N to 4<sup>th</sup> Ave N, 9<sup>th</sup> St N from 3<sup>rd</sup> Ave N to 4<sup>th</sup> Ave N, and 3<sup>rd</sup> Ave N from 9<sup>th</sup> St N to 7<sup>th</sup> St N, was previously approved for the 2018 CIP. It has been identified that the project would have major impacts to Elim Lutheran Church. Because of these impacts, Elim Lutheran Church has requested we consider delaying the project until 2019.

Improvement District BR-18-F1, Roberts St N from 4<sup>th</sup> Ave N to 1<sup>st</sup> Ave N, was also previously approved for the 2018 CIP. This revision is for the project scope to be modified to reconstructing from 4<sup>th</sup> Ave N to 2<sup>nd</sup> Ave N, reducing project cost by approximately \$1,500,000.

With the potential elimination of BR-18-K1 and the reduced scope of BR-18-F1, we are proposing to add some work on 5<sup>th</sup> St N to the 2018 CIP and for this to be included on Improvement District BR-18-F1. Reconstruction of 5<sup>th</sup> St N, from the south side of 3<sup>rd</sup> Ave N to a point approximately 180 feet to the south, has an estimated construction cost of \$500,000. This would allow the roadway reconstruction to occur prior to the opening of the proposed parking ramp in the southwest corner of the intersection of 3<sup>rd</sup> Ave N and 5<sup>th</sup> St.

Staff is recommending to remove Improvement District BR-18-K1 from the 2018 CIP and to add the reconstruction of approximately 180 feet of 5<sup>th</sup> St N to Improvement District BR-18-F1.

On a motion by Bruce Grubb, seconded by Tim Mahoney, the Committee voted to remove BR-18-K1 from 2018 CIP and revise the scope of BR-18-F1 as described.

RECOMMENDED MOTION

Concur with PWPEC recommendation to remove BR-18-K1 from 2018 CIP and revise the scope of BR-18-F1.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Sales Tax, Utility Funds & 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 checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Nicole Crutchfield, Director of Planning	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Mark Williams</u>
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Mark Bittner, Director of Engineering	<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 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"/>	
City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Brenda Derrig</u>
Kent Costin, Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

Brenda E. Derrig  
 Brenda E. Derrig, P.E.  
 Division Engineer



# Memorandum

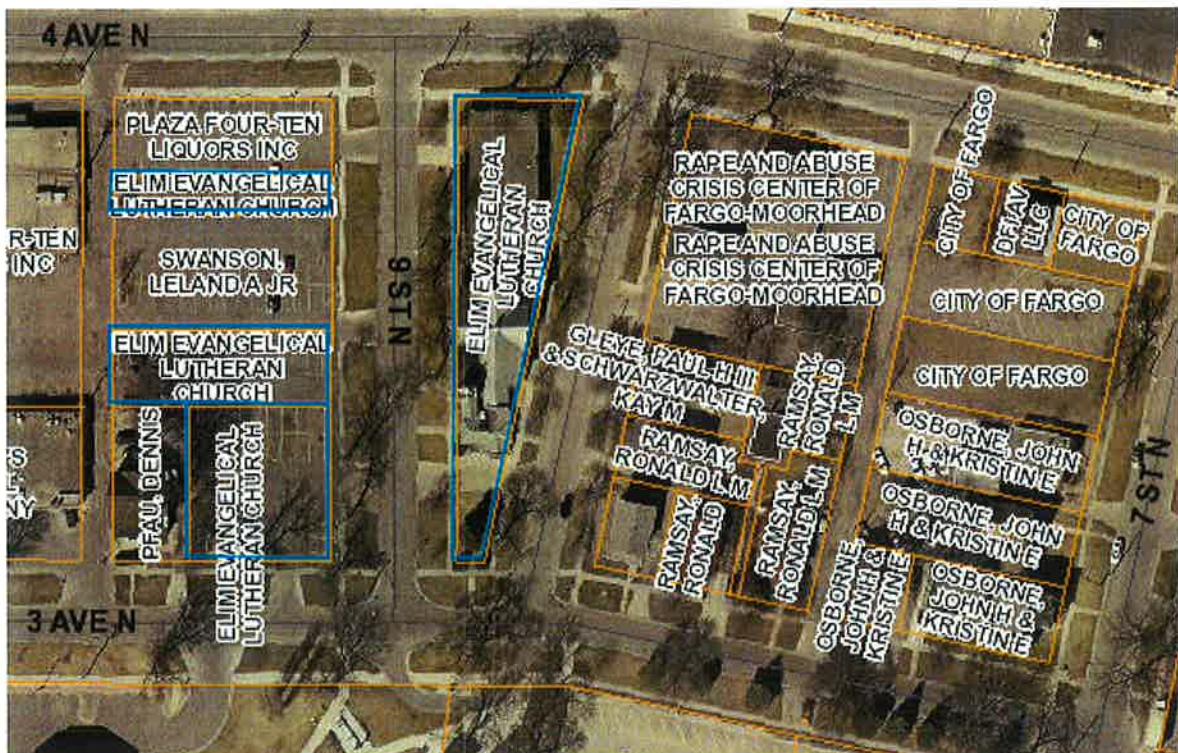
**To:** PWPEC  
**From:** Tom Knakmuhs, Division Engineer  
**Date:** 3/1/2018  
**Re:** CIP Revisions (BR-18-F1 & BR-18-K1)

## BR-18-F1 (Roberts Street)

The approved CIP included a project on Roberts St N from 4<sup>th</sup> Ave N to 1<sup>st</sup> Ave N. Once we started our design, it was determined that the project limits would need to be modified. The project scope was decreased and is now planned to only reconstruct from 4<sup>th</sup> Ave N to 2<sup>nd</sup> Ave N. This reduction in project scope created a considerable decrease in the proposed project cost, approximately \$1,500,000.

## BR-18-K1 (8<sup>th</sup> St N, 9<sup>th</sup> St N, 3<sup>rd</sup> Ave N)

The approved CIP included a project on 8<sup>th</sup> St N from 3<sup>rd</sup> Ave N to 4<sup>th</sup> Ave N, 9<sup>th</sup> St N from 3<sup>rd</sup> Ave N to 4<sup>th</sup> Ave N, and 3<sup>rd</sup> Ave N from 9<sup>th</sup> St N to 7<sup>th</sup> St N. Once we started our design, it was identified that this project would have major impacts to Elim Lutheran Church.





Because of these impacts, we reached out to Elim Lutheran Church and have had a number of productive meetings with the Church to discuss the project, proposed costs, and impacts to their properties. In the end, the Church has asked us to consider delaying the project until 2019. They feel this will give them adequate time to consider and address a number of items prior to a project in 2019. Some of the items they are looking into are potential land swaps and/or sales, potential vacation request of 9<sup>th</sup> St N between 4<sup>th</sup> Ave N and 3<sup>rd</sup> Ave N, and budgeting for the payment of future Special Assessments.

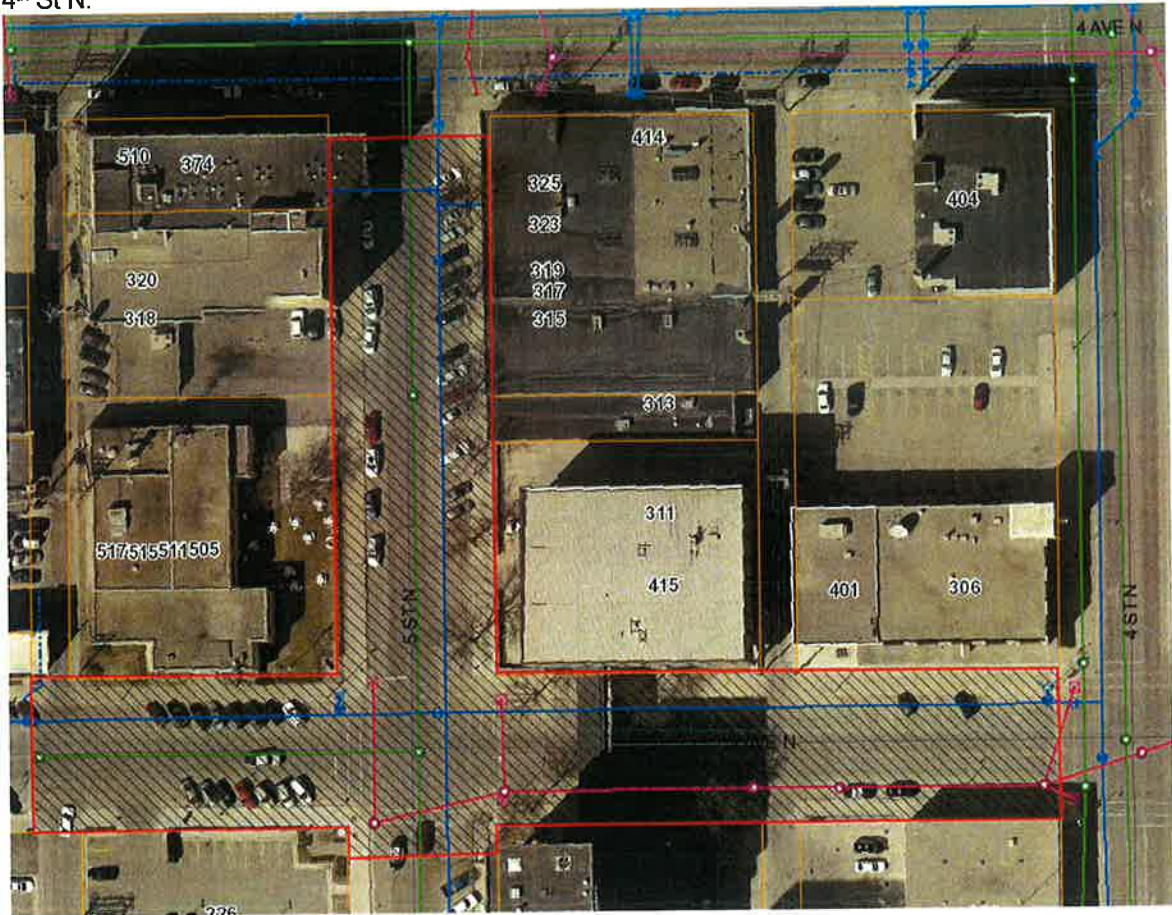
Staff is recommending this project be eliminated from the 2018 CIP and included in the 2019 CIP. The construction cost of this project is estimated at \$1,000,000.

### 5<sup>th</sup> St N

With the potential elimination of BR-18-K1 and the reduced scope of BR-18-F1, we are proposing to add some work on 5<sup>th</sup> St N to the 2018 CIP. We are proposing to reconstruct 5<sup>th</sup> St N from the south side of the 3<sup>rd</sup> Ave N intersection to a point approximately 180 feet to the south. The portion further to the south was reconstructed in the mid-1980's to accommodate the construction of the Radisson Hotel building. The sole entrance for the parking ramp that is to be constructed as part of the Block 9 development will access from this portion of 5<sup>th</sup> St N. We believe this portion of 5<sup>th</sup> St N should be added to the 2018 CIP because it would allow for the reconstruction of 5<sup>th</sup> St N prior to the opening of the proposed parking ramp. Because this is such a small project, we propose the work on 5<sup>th</sup> St N be added to BR-18-F1 (Roberts Street). The addition of 5<sup>th</sup> St N to the Roberts Street project will allow for more competitive bids and will likely aid in the phasing/construction of both projects. The anticipated construction cost of this portion of 5<sup>th</sup> St N is approximately \$500,000.



We would anticipate a future project to reconstruct the remaining portion of 5<sup>th</sup> St N from 4<sup>th</sup> Ave N through the intersection of 5<sup>th</sup> St N/3<sup>rd</sup> Ave N and on 3<sup>rd</sup> Ave N from the alley between Broadway and 5<sup>th</sup> St N to 4<sup>th</sup> St N.



**Recommended Motion**

Remove BR-18-K1 from the 2018 CIP and add the reconstruction of approximately 180 feet of 5<sup>th</sup> St N, as detailed above, to BR-18-F1 and the 2018 CIP.

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

21

Improvement District No. BR-18-G1/BR-18-G2 Type: Incentive/Disincentive

Location: 4<sup>th</sup> St (12<sup>th</sup> Ave S to 6<sup>th</sup> Ave S & 6<sup>th</sup> Ave S to 2<sup>nd</sup> St S) Date of Hearing: 3/19/2018

<u>Routing</u>	<u>Date</u>
City Commission	<u>3/26/2018</u>
PWPEC File	<u>X</u>
Project File	<u>Rick Larson</u>

The Committee reviewed a communication from Project Manager, Rick Larson, regarding incentives/disincentives for Improvement District Nos. BR-18-G1 and BR-18-G2. Because both projects are on 4<sup>th</sup> St, staff is recommending that an incentive not be included. This recommendation is due to each project having different start and completion dates, which could result in paying a contractor an incentive only to have the other project still in construction and not open to the public. There will be penalties associated with how long each intersection may be closed as well as a completion date that will be subject to liquidated damages per the contract.

Staff is recommending that an incentive not be included.

On a motion by Mark Bittner, seconded by Nicole Crutchfield, the Committee voted to recommend excluding the incentive on BR-18-G1 and BR-18-G2.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the exclusion of an incentive for Improvement Districts BR-18-G1 and BR-18-G2.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Water & Wastewater Utility Funds, Sales Tax, & Special Assessments


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

COMMITTEE

- Tim Mahoney, Mayor
- Nicole Crutchfield, Director of Planning
- Steve Dirksen, Fire Chief
- Mark Bittner, Director of Engineering
- Bruce Grubb, City Administrator
- Ben Dow, Director of Operations
- Steve Sprague, City Auditor
- City Engineer
- Kent Costin, Finance Director

Present	Yes	No	Unanimous
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
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ATTEST:

  
 Brenda E. Derrig, P.E.  
 Division Engineer



March 13, 2018

To: Members of PWPEC  
From: Rick Larson, Project Manager *RL*  
Subject: Incentive/Disincentive for Improvement District No. BR-18-G1 & BR-18-G2

In keeping with our commitment to make recommendations regarding incentives/disincentives for projects that impact arterial roadways, I am forwarding the following project recommendation for your consideration.

The projects in question are Water Main Replacement, Street Reconstruction and Incidentals projects on 4<sup>th</sup> Street S. between 12<sup>th</sup> Avenue S. and 2<sup>nd</sup> Street S., 10<sup>th</sup> Avenue S. from 4<sup>th</sup> Street to the east, and 11<sup>th</sup> Avenue S. from 4<sup>th</sup> Street to the east. 4<sup>th</sup> Street will be reconstructed with new water main, storm sewer, sanitary sewer, street pavement, bike lanes, driveways aprons, sidewalks where needed, street lights, and traffic signals.

BR-18-G1 (12<sup>th</sup> Ave. S. to 6<sup>th</sup> Ave. S.) is scheduled for a bid opening of May 2, 2018 with a substantial completion date of October 19<sup>th</sup>, 2018 and a final completion date of November 17<sup>th</sup>, 2018.

BR-18-G2 (6<sup>th</sup> Ave. S. to 2<sup>nd</sup> St. S.) is scheduled for a bid opening of May 16, 2018 with a fall 2018 completion date.

Due to these two projects scheduled to occur on 4<sup>th</sup> Street S., staff is recommending to not have an incentive in place for BR-18-G1 or BR-18-G2. This recommendation is due to each project having different start and completion dates, which could result in paying a contractor an incentive only to have the other project still in construction and not open to the public. There will be penalties associated with how long each intersection may be closed as well as a completion date that will be subject to liquidated damages per the contract.

**Recommended Motion:**

Approve not including an incentive as part of Improvement Districts #BR-18-G1 & BR-18-G2, which is construction on 4<sup>th</sup> Street S. from 12<sup>th</sup> Avenue S. to 2<sup>nd</sup> Street S. and also 10<sup>th</sup> & 11<sup>th</sup> Avenues from 4<sup>th</sup> Street to the east.

RJL/jmg

REPORT OF ACTION

22

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BN-17-A2 Type: Construction and Maintenance Agreement and Easement Agreements with BNSF

Location: 19th Ave N just west of 45th St Date of Hearing: 3/19/2018

Routing Date
City Commission 3/26/2018
PWPEC File X
Project File Jeremy Gorden

The Committee reviewed a communication from Traffic Division Engineer, Jeremy Gorden, regarding approval of three agreements from BNSF for relocation of the 19th Avenue North crossing. The agreements spell out the requirements and conditions to be met to occupy BNSF property for the purposes of construction and eventual permanent use. The cost for temporary construction use is an administration fee of \$2,000. The cost of the permanent crossing easement is \$84,600. The total cost of the easements is \$86,600 being funded by Special Assessments.

Staff is recommending approval of the agreements.

On a motion by Bruce Grubb, seconded by Kent Costin, the Committee voted to recommend approval of the Construction and Maintenance Agreement and Easement Agreements between BNSF and the City of Fargo.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve the Construction and Maintenance Agreement as well as the Easement Agreements between BNSF and the City of Fargo

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Special Assessments

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

Yes No
N/A
N/A
N/A

COMMITTEE

Tim Mahoney, Mayor
Nicole Crutchfield, Director of Planning
Steve Dirksen, Fire Chief
Mark Bittner, Director of Engineering
Bruce Grubb, City Administrator
Ben Dow, Director of Operations
Steve Sprague, City Auditor
City Engineer
Kent Costin, Finance Director

Table with 4 columns: Present, Yes, No, Unanimous. Rows for each committee member with checkboxes.

ATTEST:

C: Kristi Olson

[Handwritten signature]

Brenda E. Derrig, P.E.
Division Engineer

March 6, 2018

To: Members of PWPEC

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

Subject: Construction and Maintenance Agreement and Easement Agreements with Burlington Northern Santa Fe Railroad(BNSF) for the Purpose of Construction of a New Railroad Crossing on 19<sup>th</sup> Avenue North, approximately 1,100 feet west of 45<sup>th</sup> Street  
City of Fargo Improvement District No. BN-17-A2  
NDDOT Project No. RSU-8-984(161)164  
BNSF Crossing No. DOT 071031T

I am requesting the Public Works Projects Evaluation Committee (PWPEC) approve for the Mayor's signature, the following three documents (attached):

1. Grade Crossing Construction and Maintenance Agreement
2. EXHIBIT "B", Easement Agreement
3. EXHIBIT "B-1", Recordable Easement Agreement

I have received the above-noted agreements from BNSF for relocation of the 19<sup>th</sup> Avenue North crossing, to be constructed as part of the realignment of 19<sup>th</sup> Avenue North at 45<sup>th</sup> Street. The Agreements spell out the requirements and conditions to be met to occupy BNSF property for the purposes of construction and eventual permanent use. The cost for temporary construction use is an administration fee of \$2,000. The cost of the permanent crossing easement is \$84,600. The total cost of the easements is \$86,600, 100% of the cost will be paid with local funds. The local funding source for this work will be special assessment funds.

I support the signing of the attached agreements.

Recommended Motion

Approve the Construction and Maintenance Agreement and Easement Agreements between BNSF and the City of Fargo. The Agreements are all for relocation of the 19<sup>th</sup> Avenue North railroad crossing being done as part of the work for the new alignment of 19<sup>th</sup> Avenue North, just west of 45<sup>th</sup> Street.

JMG/jmg

Attachments

- BNSF Grade Crossing Construction and Maintenance Agreement
- BNSF Easement Agreement (EXHIBIT "B")
- BNSF Recordable Easement Agreement (EXHIBIT "B-1")



*BNSF File No. BF10011518  
Fargo, ND DOT 974193R 19th Ave N*

**GRADE CROSSING CONSTRUCTION AND MAINTENANCE  
AGREEMENT**

**BNSF File No.: BF10011518**  
Mile Post 4.208  
Line Segment 34  
U.S. DOT Number 974193R  
Prosper Subdivision

This Agreement ("**Agreement**"), is executed to be effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2017 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the City of Fargo, a political subdivision of the State of North Dakota ("**Agency**").

**RECITALS:**

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Fargo, State of North Dakota;

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is undertaking a project to relocate and improve the existing 19th Avenue North at-grade crossing, to be located at BNSF Line Segment 34 and Milepost 4.208, and designated by D.O.T. No. 974193R, by reconstructing and widening the roadway and installing railroad crossing signals and activation equipment, installing roadway medians, and installing a new crossing surface within the roadway easement across the BNSF right-of-way as indicated on the Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the existing at-grade crossings known as 19th Avenue North, Milepost 4.025, U.S. DOT Number 071031T, Line Segment 34, Prosper Subdivision, Twin Cities Division will be permanently closed, vacated, and abandoned for the crossing to be RELOCATED to Milepost 4.208, Line Segment 34, Prosper Subdivision, Twin Cities Division, upon completion of roadway construction and the placing in service of said new 19th Avenue North at-grade crossing;

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from the installation of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment"); and

WHEREAS, the Agency also desires BNSF to install a new crossing surface at 19th Avenue North with a new concrete and rubber crossing surface;

WHEREAS, the Agency, in partnership with The State of North Dakota Department of Transportation, is paying for the acquisition and installation of crossing signal equipment and the new crossing surface at 19th Avenue North "with State and Federal funds pursuant to 23 U.S.C. § 130".



WHEREAS, the BNSF agrees to purchase and install, at City and State AGENCY'S sole expense, the crossing signal equipment and the new crossing surface described in the scope of work herein, and upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE I) SCOPE OF WORK**

1. The term "**Project**" as used herein includes any and all work related to the reconstruction/widening/construction of the 19th Avenue North by Agency and the relocation and installation of crossing signals/activation equipment/new crossing surfaces at the relocated U.S. D.O.T No. 974193R crossing, (hereinafter referred to as the "**Crossing**") by BNSF, more particularly described on the Exhibit A, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation, and the permanent removal, closure, vacation, and abandonment of the current at-grade 19th Avenue North crossing location, Milepost 4.025, U.S. DOT Number 071031T, Line Segment 34, Prosper Subdivision, Twin Cities Division.

## **ARTICLE II) RAILROAD OBLIGATIONS**

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand and No/100 Dollars (\$2,000), BNSF hereby grants to Agency, its successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Crossing across or upon the portion of BNSF's right-of-way described further on Exhibit A-1, attached hereto and incorporated herein, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;



- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate;
- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate.

The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Structure, or (ii) twelve (12) months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Crossing only and shall not be used by Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Crossing for any other purpose than construction. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

Upon Agency's payment to BNSF of the additional sum of eighty-four thousand six hundred and No/100 Dollars (\$84,600.00), such payment to be made within thirty (30) days of issuing the Notice to Proceed pursuant to Article III, Section 16 of this Agreement, and provided further that Agency is in compliance with the term and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Crossing, substantially in the form of Exhibit B attached to this Agreement. If Agency fails to pay BNSF within the thirty day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:



- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Removal of the existing 19th Avenue North (U.S. D.O.T. No. 071031T) at-grade crossing location, including removal of the warning devices, and obliteration of the crossing between the rails and two feet outside thereof;
- (f) Removal and disposal of the existing crossing surfaces from the Crossing;
- (g) Installation of one 120-foot concrete crossing surface for the one track complete with new rail, ties, ballast, fasteners, along with appropriate surfacing, to carry the improved roadway and sidewalks.
- (h) Installation of Crossing Signal Equipment and Crossing Signal Control House as shown on Exhibit A;
- (i) Make such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of the construction of the Project.

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of



the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section.

### **ARTICLE III) AGENCY OBLIGATIONS**

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

1. Agency must furnish to BNSF plans and specifications for the Project. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.
2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.
3. Agency must acquire all rights of way necessary for the construction of the Project.
4. Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/faqs/pdf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.
5. Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish





all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:

- (a) Design and Reconstruction/Construction of 19th Avenue North;
  - (b) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
  - (c) Installation of advance warning signs in accordance with the MUTCD
  - (d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
  - (e) Provide suitable drainage, both temporary and permanent;
  - (f) Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the installation of the concrete crossing surfaces, and also during the installation of the Crossing Signal Equipment.
  - (g) Construct asphalt/concrete roadway surface on approaches to each track. Roadway surface will match elevation of the Main (and Siding) Track crossing surface(s) and remain level to a point at least thirty (30) feet from nearest rail. Any concrete headers will be constructed no closer than 5'-6" (preferably 6'-0") from centerline of each track to provide for a minimum of 11'-0" (preferably 12'-0") opening for track and railroad crossing surface;
  - (h) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
6. The Agency will approve the location of the signals and signal bungalow prior to the installation by BNSF.
7. The Agency must have advanced railroad crossing signs and standard pavement markings in place at the crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the acceptance of this Project by the Agency.
8. The Agency must give BNSF's Manager Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written Notice to Proceed is received from Agency.



9. The Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

10. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "[www.BNSFContractor.com](http://www.BNSFContractor.com)"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

11. Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

12. Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative Manager of Engineering to stop construction at no cost to the Agency or BNSF until these items are completed.



- (c) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.
- (d) In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

13. Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III and IV; and (ii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 13, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;



- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided; however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.
- (e) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster 60 days advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

15. Agency must advise the appropriate BNSF Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.

**16. TO THE FULLEST EXTENT PERMITTED BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART)**



**(I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

17. Agency must take all necessary actions to permanently close, vacate, and abandon the existing at-grade 19th Avenue North crossing location, Milepost 4.025, U.S. DOT Number 071031T, Line Segment 34, Prosper Subdivision, Twin Cities Division prior to the start of construction and relocation of said new 19th Avenue North at-grade crossing, but in no event later than twelve (12) months after execution of this agreement. Agency shall provide written documentation to BNSF of such actions within (10) days of such vacation and abandonment.

18. Agency must perform all necessary work to obtain the permanent closure, vacation, and removal of the existing at-grade crossing location known as Milepost 4.025, U.S. DOT Number 071031T, Line Segment 34, Prosper Subdivision, Twin Cities Division, across BNSF's right-of-way and must barricade the road approaches within 3 days of opening of the new at-grade crossing to vehicular traffic. BNSF will cooperate with Agency to achieve the closures and vacations and will remove the crossing surface within its right-of-way. If Agency's work for both closures and vacations is not completed after 3 days of opening the new at-grade crossing, Agency authorizes BNSF to complete the necessary closure work, at the Agency's expense. Agency agrees to fully reimburse BNSF for all such work.



## **ARTICLE IV) JOINT OBLIGATIONS**

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.

2. The work hereunder must be done in accordance with the Exhibit A and the detailed plans and specifications approved by BNSF.

3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations of either BNSF or its related railroads, or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits



for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Jeremy M. Gorden, P.E., PTOE  
City of Fargo Traffic Engineer  
200—3rd Street North  
Fargo, ND 58102  
Office: 701-241-1545  
jgorden@cityoffargo.com

5. Agency must supervise and inspect the operations of all Agency contractors to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper supervision and inspection are not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify Agency's Project Representative above for appropriate corrective action.

6. Pursuant to this section and Article II, Section 6 herein, Agency must, "out of funds made available to it for the construction of the Project", reimburse BNSF in full for the **actual costs** of all work performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes).

7. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

8. The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number BF10011518 and D.O.T. Crossing No. 974193R and must state the time that construction activities will begin.

9. In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:

- (a) Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the 19th Avenue North roadway.



- (b) Agency will maintain the elevation of the 19th Avenue North roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.
- (c) Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees to hold harmless and indemnify BNSF for any claims, damages or losses, in whole or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.
- (d) Agency will do nothing and permit nothing to be done in the maintenance of the 19th Avenue North roadway, which will interfere with or endanger facilities of BNSF.
- (e) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (f) BNSF will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment, Crossing Signal Control House, and the new crossing surfaces, from end-of-tie to end-of-tie, in proper condition.
- (g) Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.
- (h) If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.
- (i) If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:
- (j) In the event the BNSF's sole negligence destroys or damages the Crossing Signal Equipment and/or the Crossing Signal House, BNSF





must, at its sole cost and expense, replace or repair such Crossing Signal Equipment and/or Crossing Signal House.

- (k) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, Agency must reimburse BNSF for the costs to replace or repair such Crossing Signal Equipment and/or Crossing Signal House.
- (l) If the Crossing Signal Equipment, Crossing Signal House, and/or crossing surface installed hereunder cannot, through age, be maintained, or by virtue of its obsolescence, requires replacement, the cost of installation of the new crossing signal equipment, new crossing signal house, and/or new crossing surface, will be paid by the Agency.

10. Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection and Maintenance** purposes and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

11. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of North Dakota and the Federal Highway Administration, for a period of three (3) years from the date of final BNSF invoice under this Agreement.

12. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

13. In the event construction of the Project does not commence within twelve (12) months of the Effective Date, this Agreement will become null and void.

14. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

15. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.



**BNSF File No. BF10011518**  
Fargo, ND DOT 974193R 19th Ave N

16. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

17. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

**BNSF:** BNSF's Manager Public Projects  
80—44th Avenue NE  
Minneapolis, MN 55421  
(763) 782-3492

**Agency:** Jeremy M. Gorden, P.E., PTOE  
City of Fargo Traffic Engineer  
200—3rd Street North  
Fargo, ND 58102  
701-241-1545



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

**BNSF RAILWAY COMPANY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

WITNESS:

\_\_\_\_\_

**AGENCY**  
**City of Fargo**

WITNESS:

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Timothy J. Mahoney

Title: Mayor



**EXHIBIT "B"**  
**EASEMENT AGREEMENT**  
**FOR BF10011518**  
(C&M Agreement)

THIS EASEMENT AGREEMENT FOR \_\_\_\_\_ ("**Easement Agreement**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2017 ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), and the City of Fargo, a political subdivision of the State of North Dakota ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of City of Fargo, County of Cass, State of North Dakota, at Mile Post 4.208, [ESI Project #230499], as described or depicted on Exhibit "A-1" attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain C&M Agreement dated as of \_\_\_\_\_ concerning improvements on or near the Premises (the "**C&M Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**Section 1 Granting of Easement.**

- 1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.
- 1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any,



relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

- 1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:
- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
  - (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
  - (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

**Section 2 Term of Easement.** The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

**Section 3 No Warranty of Any Conditions of the Premises.** Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE



PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

**Section 4 Nature of Grantor's Interest in the Premises.** GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

**Section 5 Improvements.** Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible



materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

**Section 6 Taxes and Recording Fees.** Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

**Section 7 Environmental.**

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other



materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

## **Section 8 Default and Termination.**

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of

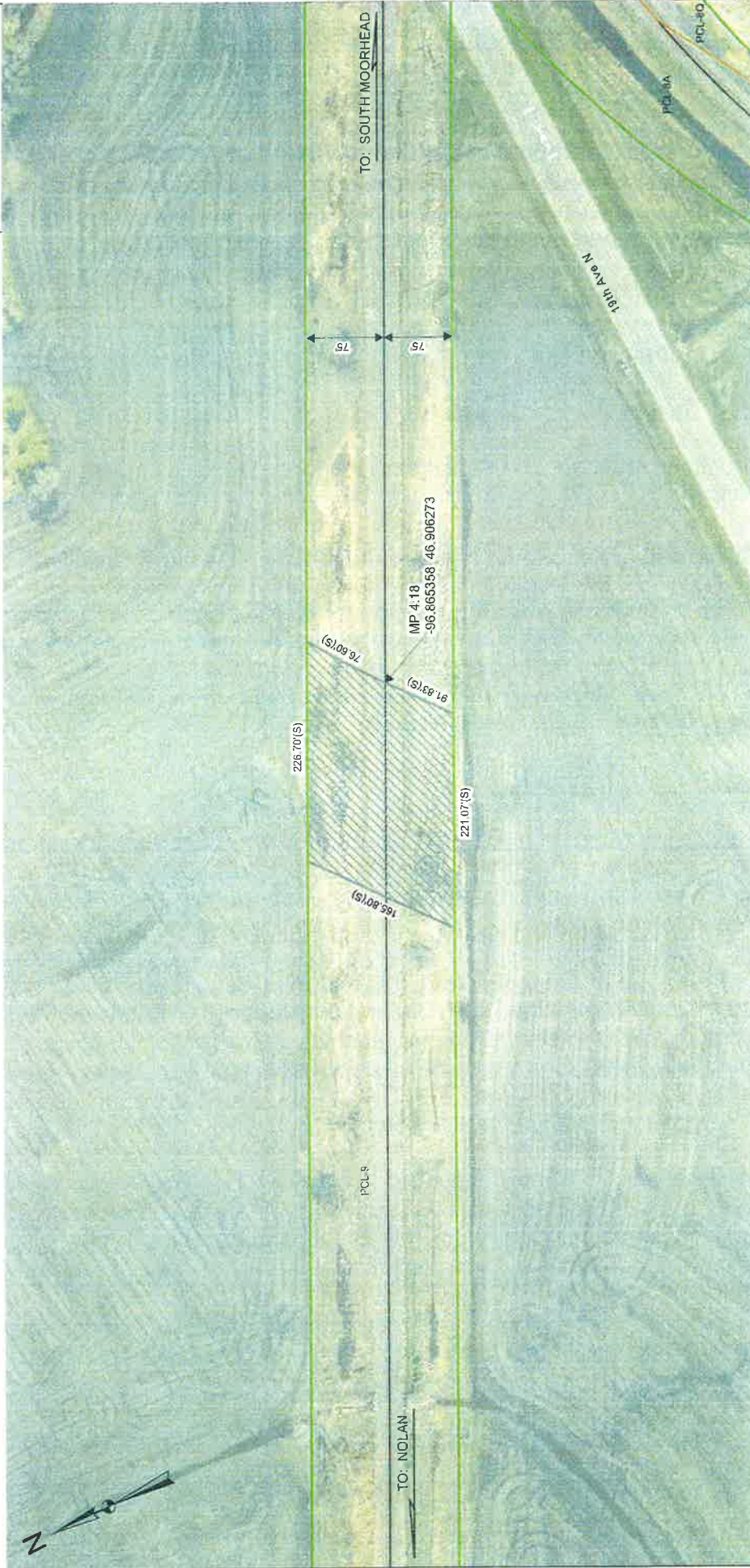


EXHIBIT "A"

COORDINATE SYSTEM: ND\_S

SCALE: 1 IN = 100 FT

JLL 117  
 BW Proj No.: 12193.003  
 MAP REFERENCE:  
 STA = N/A  
 RW = #61331



This map used by BNSF RAILWAY COMPANY in the ordinary course of business, but it is subject to audit and should be used only with the expressed understanding that BNSF makes no representations whatsoever about the quality, accuracy, errors or omissions relating to this map.



**LEGEND:**  
 [Hatched Box] EASEMENT AREA  
 [Green Line] RIGHT OF WAY LINE  
 [Yellow Line] PARCEL LINES  
 [Black Line] TRACK

MEASUREMENTS BASED ON PROVIDED SURVEYS  
 (S) MEASUREMENTS TAKEN OFF SURVEY  
 (M) MEASUREMENT

TWIN CITIES DIVISION  
 PROSPER SUBDIVISION - L.S. 0034-2  
 VAL. SEC. 54009  
 GN RY ND-09, MAP 02  
 SEC. 28, T.140N, R.49W 5PM  
 DATE: 6/30/2017  
 MP 4.18

TO: CITY OF FARGO  
 AT: FARGO  
 CASS COUNTY,  
 ND

DRAWN BY: JNC DRAWING NO. 70159



indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

## **Section 9 Surrender of Premises**

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform **the following**:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

**Section 10 Liens**. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any



other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

**Section 11 Tax Exchange.** Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice.

**Section 12 Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

**Section 13 Recordation.** It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B-1" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. [IF LEGAL DESCRIPTION IS NOT AVAILABLE USE THE FOLLOWING IN PLACE OF THE PRIOR SENTENCE: As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B-1" (the "**Memorandum of Easement**").] The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 60-days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

**Section 14 Miscellaneous.**

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of [Texas] without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants



and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

**Section 15 Administrative Fee.**

15.1 Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of **\$2,000.00** over and above the agreed upon Acquisition Price. Said fee shall be made payable to BNSF Railway Company by a separate check.

C&M

[Signature page follows]



**BNSF File No. BF10011518**  
Fargo, ND DOT 974193R 19th Ave N

Witness the execution of this Easement Agreement as of the date first set forth above.

**GRANTOR:**

BNSF RAILWAY COMPANY, a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GRANTEE:**

City of Fargo, a political subdivision of the State of North Dakota

By: \_\_\_\_\_

Name: Timothy J. Mahoney

Title: Mayor



EXHIBIT "B-1"

Memorandum of Easement

**THIS MEMORANDUM OF EASEMENT** is hereby executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and the City of Fargo, a \_\_\_\_\_ ("**Grantee**"), whose address for purposes of this instrument is 200 3 Street North, Fargo, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

**WITNESSETH:**

**WHEREAS**, Grantor owns or controls certain real property situated in Cass County, ND as described on Exhibit "A-1" attached hereto and incorporated herein by reference (the "**Premises**");

**WHEREAS**, Grantor and Grantee entered into an Easement Agreement, dated \_\_\_\_\_ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

**WHEREAS**, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]



BNSF File No. BF10011518  
Fargo, ND DOT 974193R 19th Ave N

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

**GRANTOR:**  
BNSF RAILWAY COMPANY, a Delaware corporation

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

**GRANTEE:**  
City of Fargo \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: Timothy J. Mahoney  
Title: Mayor

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

§  
§

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

\_\_\_\_\_  
Notary Public  
(Seal)  
My appointment expires: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

§  
§

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ (name) as \_\_\_\_\_ (title) of \_\_\_\_\_, a \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
(Seal)  
My appointment expires: \_\_\_\_\_



23

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. BR-18-E1 Type: Crossing Surface Installation Agreement with BNSF

Location: Great Northern Drive Date of Hearing: 3/19/2018

Routing Date
City Commission 3/26/2018
PWPEC File X
Project File Roger Kluck

The Committee reviewed the accompanying correspondence from Project Manager, Roger Kluck, regarding an agreement with BNSF to replace the crossing pads to accommodate a new roadway and to widen the crossing for the sidewalk. Two additional permits, for street lights and storm sewer, were also walked up to the meeting. Each of these permits cost \$3,700. BNSF is requesting reimbursement of \$131,812 to complete the crossing pad work; this would bring the total payment to \$139,212.

Staff is recommending approval of the agreements and reimbursement to BNSF.

On a motion by Bruce Grubb, seconded by Mark Bittner, the Committee voted to recommend approval of the Agreement and payment to BNSF.

RECOMMENDED MOTION

Concur with the recommendations of PWPEC and approve two permits for storm sewer and street lights and the Crossing Surface Installation Agreement with payment to BNSF in the amount of \$139,212.

PROJECT FINANCING INFORMATION:

Recommended source of funding for project: Infrastructure, Sales Tax, Street Rehab, & Special Assessments
Developer meets City policy for payment of delinquent specials
Agreement for payment of specials required of developer
Letter of Credit required (per policy approved 5-28-13)

COMMITTEE

Table with 5 columns: Present, Yes, No, Unanimous. Rows list committee members: Tim Mahoney, Mayor; Nicole Crutchfield, Director of Planning; Steve Dirksen, Fire Chief; Mark Bittner, Director of Engineering; Bruce Grubb, City Administrator; Ben Dow, Director of Operations; Steve Sprague, City Auditor; City Engineer; Kent Costin, Finance Director. Brenda Derrig is listed as the City Engineer.

ATTEST:

C: Kristi Olson

Brenda E. Derrig, P.E.
Division Engineer





## Memorandum

**To:** PWPEC *REK*  
**From:** Roger E. Kluck, PE, CFM Civil Engineer II  
**Cc:** Jody Bertrand,  
**Date:** March 14, 2018  
**Re:** Improvement District No. BR-18-E1 – Water Main Replacement, Storm Sewer Replacement, Street Reconstruction & Incidentals

---

Improvement District BR-18-E1 consists of storm sewer relocation on Great Northern Drive from 25<sup>th</sup> Street N to 17<sup>th</sup> Street N and water main relocation on 17<sup>th</sup> Street N from Great Northern Drive/8<sup>th</sup> Avenue N to 7<sup>th</sup> Avenue N. The storm sewer along the north side of Great Northern Drive will be moved from the boulevard into the street. On 17<sup>th</sup> Street, the water main in the west boulevard will be moved into the street. This work is being undertaken to clear a path for XCEL Energy to bring a new high voltage power line to Fargo. XCEL Energy will reimburse the City for the costs relating to clearing the boulevards of utilities. In addition to reconstructing the north half of Great Northern Drive for the storm sewer relocation, the south half of the street will be reconstructed and sidewalk will be added from 25<sup>th</sup> Street to 21<sup>st</sup> Street. The project on Great Northern Drive will be crossing two BNSF spur lines near 21<sup>st</sup> Street.

BNSF will require reconstruction of the crossing pads to accommodate the new roadway and the new sidewalk on Great Northern Drive. BNSF has provided their standard contract to cover the anticipated project work and to allow the City to do the street reconstruction within railroad right of way. The BNSF Contract asks for reimbursement of \$131,812.00 to replace the crossing and widen the crossing for the sidewalk. We have forwarded the agreement to the City Attorney for review.

### Recommended Motion

To approve the contract and payment to BNSF for \$131,812.00 for replacement and extension of the crossing pads on Great Northern Drive and to allow the street reconstruction in their right of way.

REK/klo



BNSF File No. BF10012873  
Fargo, ND DOT 070862A Great Northern Drive N

## CROSSING SURFACE INSTALLATION AGREEMENT

BNSF File No.: BF10012873  
Great Northern Drive N  
U.S. DOT Number 070862A  
LS 34—MP 1.29  
Prosper Subdivision

This Crossing Surface Installation Agreement (hereinafter called, this "Agreement") is entered into effective as of \_\_\_\_\_, 2018, by and between City of Fargo (hereinafter called, "AGENCY") and BNSF Railway Company (hereinafter called, "BNSF").

WHEREAS, BNSF operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, AGENCY desires to replace the existing mainline concrete crossing surfaces at GREAT NORTHERN DRIVE N with a new concrete crossing surface;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **BNSF Work.** The Company will install a new concrete crossing surface for a width of 88-feet across 1 track at the west leg of the wye, and for a width of 64-feet across 1 track on the east leg of the wye by which the road intersect, for a total of 152-feet of new concrete crossing surface, from the edge of the pavement to edge of the pavement for all tracks. The new crossing surface will adequately cover all vehicular driving lanes at GREAT NORTHERN DRIVE N including the sidewalk crossings adjacent to the roadway in the compass southward direction. The Company will perform all necessary track upgrades to accommodate the new crossing surface.

2. **AGENCY Work.** AGENCY must construct the Project at the location as shown on the attached Exhibit A and do all work ("AGENCY's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. AGENCY must furnish all labor, materials, tools and equipment for the performance of AGENCY's Work. The principal elements of AGENCY's Work are as follows:

- (a) Design and Construction of Great Northern Drive N, including pedestrian facilities;
- (b) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
- (c) Installation of advance warning signs in accordance with the MUTCD;
- (d) Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
- (e) Provide suitable drainage, both temporary and permanent;



- (f) Provide all barricades, lights, flagmen or traffic control devices as necessary, during the installation of the concrete crossing surfaces;
- (g) Construct concrete sidewalk surface on approaches to each track, as needed; and
- (h) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF.

3. **Payment; Invoicing.** Upon execution of this Agreement by both parties hereto, Company will send Agency an invoice detailing the total amount owed by Agency for the new crossing surface. Company shall send to Agency a final invoice upon completion and Agency shall pay the final invoice within 30 days of receipt.

Agency's **ESTIMATED** total cost for the new crossing surface will be a not-to-exceed maximum contribution of one hundred thirty one thousand, eight hundred two and No/100 (\$131,812.00) detailed as Exhibit B attached.

4. **Maintenance of the Crossing Surface.** After installation of the new crossing surface is completed, BNSF will maintain, at its own cost and expense, the crossing surface, against normal wear and tear, in a satisfactory manner for the expected life of the crossing surface. Notwithstanding the preceding sentence, BNSF shall be entitled to receive any contribution toward the cost of such maintenance made available by reason of any existing or future laws, ordinances, regulations, orders, grants, or other means or sources.

5. **Vehicular Traffic during Installation.** The AGENCY shall provide, at its own cost and expense, all necessary barricades, lights or traffic control devices for detouring vehicular/pedestrian traffic at the GREAT NORTHERN DRIVE N Street crossing during installation of the new crossing surface.

6. **Drainage.** The AGENCY agrees to allow BNSF to drain water from the GREAT NORTHERN DRIVE N crossing area into existing AGENCY storm sewers, if such storm sewers are available. Drain pipes and filter fabric necessary for such drainage will be furnished and installed by BNSF.

7. **Roadway Surfacing Work.** The AGENCY agrees to provide, at its sole cost and expense, enough asphalt to cover the distance between the existing roadway surface at GREAT NORTHERN DRIVE N and the new crossing surface on both sides of the track as well as the area between the tracks.

8. **Contractor Requirements:** AGENCY must require its contractor to comply with the obligations set forth in this Agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor, the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

No work shall be commenced within BNSF's right of way until the AGENCY's contractor shall have (i) executed and delivered to BNSF an agreement in the form of said Exhibit C-1 and (ii) delivered to and secured BNSF's approval of the required insurance.



BNSF File No. BF10012873  
Fargo, ND DOT 070862A Great Northern Drive N

9. **Term.** This Agreement begins on the effective date set forth above and remains in effect until completion of all work contemplated in this Agreement and AGENCY's payment of the amounts set forth in Section 3 above.

**[SIGNATURE PAGE FOLLOWS]**



BNSF File No. BF10012873  
Fargo, ND DOT 070862A Great Northern Drive N

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first written above.

**BNSF Railway Company:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AGENCY:**

**City of Fargo**

By: \_\_\_\_\_

Printed Name: Timothy J. Mahoney

Title: Mayor

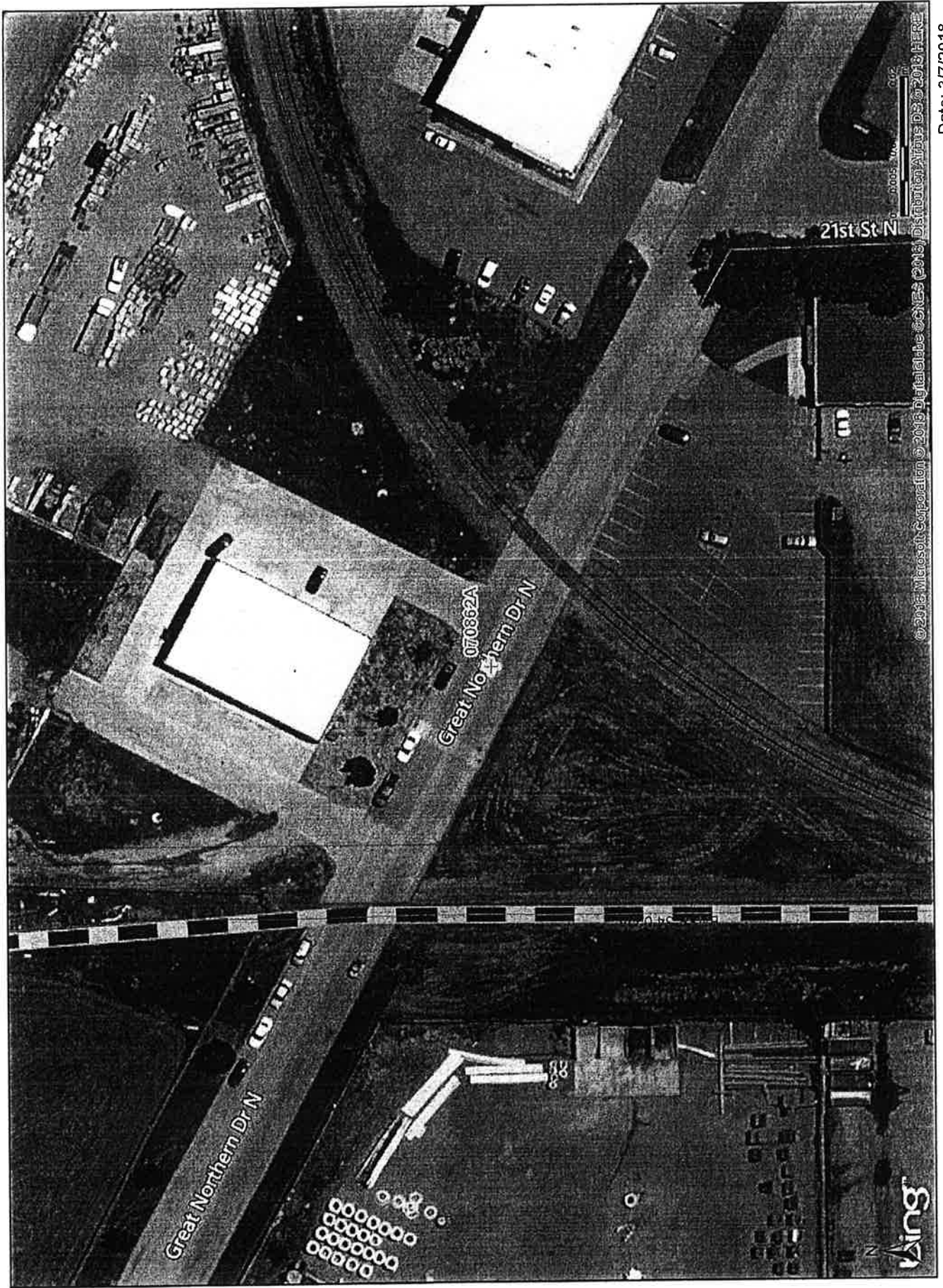


**BNSF File No. BF10012873**  
Fargo, ND DOT 070862A Great Northern Drive N

**EXHIBIT "A"**

**PROJECT LOCATION**

Fargo, ND DOT 070862A Great Northern Dr N





BNSF File No. BF10012873  
Fargo, ND DOT 070862A Great Northern Drive N

**EXHIBIT "B"**

**COST ESTIMATE FOR RAILROAD WORK**



AUTHORITY FOR EXPENDITURE

LOCATION : FARGO YD OFFICE	LINE SEGMENT : 34	AFE NUMBER :
PLANITEM NUMBER : 231968000	MILEPOST : 1.29	RFA NUMBER : 5926418
PROPERTY OF : BNSF RAILWAY COMPANY	DIVISION : TC	CPAR NUMBER : C0000009
OPERATED BY : BNSF RAILWAY COMPANY	SUBDIVISION : PROSPER	BUDGET YEAR : 2018
JOINT FACILITY : CITY OF FARGO	TRACK TYPE : 2	BUDGET CLASS : 6
% BILLABLE (+/-) : 90.0	TAX STATE : ND	REPORTING OFFICE : 718
	SPONSOR : VP ENGINEERING	CENTER/ROLLUP : S3534

PURPOSE, JUSTIFICATION AND DESCRIPTION

PIP - TCW DIV PROSPER SUB LS 34 MP 1.29 - DOT# 070862A - 90% BILLABLE TO CITY OF FARGO - FARGO, ND DOT 070862A GREAT NORTHERN DR N: CITY OF FARGO REHAB AND EXTENSION OF CROSSING TO ACCOMMODATE ROADWAY AND SIDEWALK PROJECT.

PLAN ITEM	LINE SEG	BEG MP	END MP	TRK NBR	BEGIN STATION	END STATION	PROJECT TYPE	BUD YEAR
231968000	34	1.29	1.29	2	FARGO YD	FARGO YD OFFICE	PUBLIC IMPROVEMENT PROJECT	2018

	CASH CAPITAL	NONCASH CAPITAL	OPERATING EXP	REMOVAL COSTS	BILLABLE	TOTALS
LABOR COSTS	4,500	0	2,346	0	61,618	68,464
MATERIAL COSTS	6,549	0	0	0	58,945	65,494
OTHER COSTS	1,227	0	24	0	11,249	12,500
TOTALS	12,276	0	2,370	0	131,812	146,458

SYSTEM MAINTENANCE AND PLANNING  
 ESTIMATE REF. NUMBER: 5926418  
 COSTING DATE: 03/06/2018

PRINTED ON: 03/06/2018  
 ESTIMATED BY: Savard  
 PRINTED BY: Savard





## EXHIBIT "C"

### CONTRACTOR REQUIREMENTS

#### 1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "**Railway Property**", during the construction of work under **AGENCY** agreement **BNSF File No. BF10012873**.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:



**Roger Kluck**  
**City of Fargo, City Engineer**  
**rkluck@FargoND.gov**  
**200 N 3<sup>rd</sup> Street, Fargo, ND 58102**  
**(701) 241-1537**

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify **(City of Fargo)** at (701) 241-1537 and Railway's Manager Public Projects, telephone number (763) 782-3492 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file **BF10012873**.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove



any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

### **1.02 Contractor Safety Orientation**

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site [www.BNSFContractor.com](http://www.BNSFContractor.com). The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

### **1.03 Railway Requirements**

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer Steven Lyne at 701-280-7239 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
  - 15'-0" Horizontally from centerline of nearest track
  - 21'-6" Vertically above top of rail
  - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
  - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to



- 30'-0" 15,000 volts  
Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
  - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
  - 25' Horizontally from centerline of nearest track
  - 23' 6" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City of Fargo and must not be undertaken until approved in writing by the Railway, and until the City of Fargo has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by City of Fargo for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.



- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

**1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:**

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site [www.BNSFContractor.com](http://www.BNSFContractor.com), which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.
- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion a) to be on Railroad's property, or b) that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at [www.eVerifile.com](http://www.eVerifile.com), in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to



deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

### **1.05 Railway Flagger Services:**

- **1.05.01** The Contractor must give Railway's **Roadmaster Jason Randash (telephone 701-541-1727)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
  
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
  - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
  - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
  - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
  - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.





- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway will be borne by **(Agency)**. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- **1.05.03d** The average train traffic on this route is 14 freight trains per 24-hour period at a timetable speed 40 MPH and 0 passenger trains.

### **1.06 Contractor General Safety Requirements**

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the



Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, [www.BNSFContractor.com](http://www.BNSFContractor.com), however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT



**MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**

- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

#### **1.07 Excavation:**

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative David Johnson (763-782-3005)**. All underground and overhead wires will be considered **HIGH VOLTAGE** and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can



be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

#### **1.08 Hazardous Waste, Substances and Material Reporting:**

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

#### **1.09 Personal Injury Reporting**

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



### NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- Passenger on train (C)
- Non-employee (N)  
*(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)*
- Contractor/safety sensitive (F)
- Contractor/non-safety sensitive (G)
- Volunteer/safety sensitive (H)
- Volunteer/other non-safety sensitive (I)
- Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- Non-trespasser (J) - Off railroad property

If train involved, Train ID:

\_\_\_\_\_

Transmit attached information to Accident/Incident Reporting Center by:  
Fax 1-817-352-7595 or by Phone 1-800-697-6736 or email to: [Accident-Reporting.Center@BNSF.com](mailto:Accident-Reporting.Center@BNSF.com)

Officer Providing Information:

\_\_\_\_\_  
(Name) (Employee No.) (Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**



**NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION**

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

I. Accident City/St: \_\_\_\_\_ 2. Date: \_\_\_\_\_ Time: \_\_\_\_\_  
County: \_\_\_\_\_ 3. Temperature: \_\_\_\_\_ 4. Weather: \_\_\_\_\_  
(if non BNSF location)

Mile Post / Line Segment: \_\_\_\_\_

5. Driver's License No (and state) or other ID: \_\_\_\_\_ **SSN (required):** \_\_\_\_\_

6. Name (last, first, mi): \_\_\_\_\_

7. Address: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

8. Date of Birth: \_\_\_\_\_ and/or Age: \_\_\_\_\_ Gender: \_\_\_\_\_  
(if available)

Phone Number: \_\_\_\_\_ Employer: \_\_\_\_\_

9. Injury: \_\_\_\_\_ 10. Body Part: \_\_\_\_\_  
(i.e., Laceration, etc.) (i.e., Hand, etc.)

II. Description of Accident (To include location, action, result, etc.):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Treatment:

- First Aid Only \_\_\_\_\_
- Required Medical Treatment \_\_\_\_\_
- Other Medical Treatment \_\_\_\_\_

13. Dr. Name: \_\_\_\_\_ Date: \_\_\_\_\_

14. Dr. Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

15. Hospital Name: \_\_\_\_\_

16. Hospital Address:  
Street: \_\_\_\_\_ City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

17. Diagnosis: \_\_\_\_\_

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**



**EXHIBIT "C-1"**

**Agreement Between  
BNSF RAILWAY COMPANY and the CONTRACTOR**

**Railway File:** \_\_\_\_\_

**Agency Project:** BF10012873 City of Fargo Surface Replacement Project

< \_\_\_\_\_ > [Insert contractor's legal name here] (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated \_\_\_\_\_, 2017, with City of Fargo for the performance of certain work in connection with the following project: Crossing surface rehabilitation. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for City of Fargo (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

**1) RELEASE OF LIABILITY AND INDEMNITY**

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**



**THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

**2) TERM**

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

**3) INSURANCE**

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of





\$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:



- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
- ◆ Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

**Other Requirements:**

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.



Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company  
c/o CertFocus  
P.O. Box 140528  
Kansas City, MO 64114  
Toll Free: 877-576-2378  
Fax number: 817-840-7487  
Email: [BNSF@certfocus.com](mailto:BNSF@certfocus.com)  
[www.certfocus.com](http://www.certfocus.com)

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance



coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

#### **4) SALES AND OTHER TAXES**

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be



responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

**5) EXHIBIT "C" CONTRACTOR REQUIREMENTS**

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

**6) TRAIN DELAY**

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against



all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative Dave Johnson (763-782-3005) eight (8) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.



IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

< \_\_\_\_\_ >  
Contractor Legal Name

**BNSF Railway Company**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Name: \_\_\_\_\_  
Manager Public Projects

Title: \_\_\_\_\_

Accepted and effective this \_\_\_\_\_ day of 2018.

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip: \_\_\_\_\_

Fax: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_



Jones Lang LaSalle Brokerage, Inc  
4200 Buckingham Rd, Ste 110  
Fort Worth, Texas 76155  
tel +1 817-230-2600, fax +1 817 306-8265

March 15, 2018

Tracking #18-59715

City of Fargo  
Attention: Mr Roger Kluck  
200 3rd St N  
Fargo, ND 58102

Dear Mr Kluck:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please print two (2) copies, **SINGLE SIDED ONLY**, execute and **return both copies with original signature** for completion on part of BNSF Railway Company ("BNSF") to this office, along with the following requirements:

- A check in the amount of **\$3,700.00** payable to BNSF Railway Company which covers the permit fee.
- Please have ready for Risk Management a Certificate of Insurance as required in the agreement.

**\*\*\*If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway\*\*\***

- A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

**In lieu of providing a separate policy for Railroad Protective Liability Insurance**, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional **\$1,266.00** with your check.

**Please note the agreements cannot be executed by BNSF without an approved insurance certificate.**

**DO NOT SEND ANY INSURANCE FORMS to Camille Barbosa as she cannot accept certificates.**

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

**The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.**

Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, an \$800.00 late fee will be incurred.

Sincerely,

A handwritten signature in blue ink that reads "Camille Barbosa".

Camille Barbosa  
Associate Manager Permits

Enclosures



## PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective \_\_\_\_\_, 2018 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF FARGO**, a North Dakota municipality ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

### GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, 24 inches in diameter inside a 36 inch steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Fargo, County of Cass, State of North Dakota, Line Segment 0034, opposite Mile Post 1.60 and opposite Mile Post 1.33 as shown on the attached Drawing No. 72014, dated March 12, 2018, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry stormwater, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

### COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, the sum of Three Thousand Seven Hundred and No/100 Dollars (**\$3,700.00**) as compensation for the use of the Premises.
7. Costs and Expenses.
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
  - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging **costs** shall include, but not be limited to, the following: pay for at least an eight (8) hour

basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

### **LICENSOR'S RESERVED RIGHTS**

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
  - 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
  - 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

### **LICENSEE'S OPERATIONS**

11. **Construction and Maintenance of the Pipeline.**
- 11.1 Licensee shall notify Licensor's Roadmaster at *801 Main Ave, Fargo, ND 58102, telephone (701) 280-7232*, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
  - 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

## 12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.
- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 Any open hole, boring, or well, constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.3.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

## LIABILITY AND INSURANCE

### 13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**
- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 **Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this**

License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. **Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. **Insurance.** Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

- 15.1 **Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

- 15.2 **Business Automobile Insurance.** This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.

- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

*In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.*

I elect to participate in Licensor's Blanket Policy;

I elect not to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation

endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.

- 15.6.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.
- 15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.
- 15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.
- 15.6.10 Failure to provide evidence as required by this Section 15 shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.



- 15.6.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.
- 15.6.13 For purposes of this Section 15, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

### **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

#### **16. Compliance with Laws, Rules, and Regulations.**

- 16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "[www.BNSFcontractor.com](http://www.BNSFcontractor.com)" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

#### **17. Environmental.**

- 17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage

tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

- 17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

#### **DISCLAIMER OF WARRANTIES**

18. **No Warranties.**

- 18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**
20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

### **LIENS AND TAXES**

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.
22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

### **DEFAULT, TERMINATION, AND SURRENDER**

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:
- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the

License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;

24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

**MISCELLANEOUS**

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. Assignment.

26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any

attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. **THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.**
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.
- 26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.
27. **Notices.** Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham Rd, Ste 110  
Fort Worth, TX 76155  
Attn: Permits/Licenses

with a copy to: BNSF Railway Company  
2301 Lou Menk Drive, GOB-3W  
Fort Worth TX 76131  
Attn: Senior Manager Real Estate

If to Licensee: City of Fargo  
200 3rd St N  
Fargo, ND 58102

28. **Survival.** Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.
29. **Recordation.** It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. **Applicable Law.** All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
31. **Severability.** To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. **Integration.** This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.
33. **Joint and Several Liability.** If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. **Waiver.** The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. **Interpretation.**
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. **Counterparts.** This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed

documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

**LICENSOR:**

**BNSF RAILWAY COMPANY** a Delaware corporation

**By:** Jones Lang LaSalle Brokerage, Inc.,  
4200 Buckingham Rd, Ste 110  
Fort Worth, TX 76155

**By:** \_\_\_\_\_  
Shane Krueger  
**Title:** Vice President – Permits & Special Projects  
\_\_\_\_\_  
**Date:** \_\_\_\_\_

**LICENSEE:**

**CITY OF FARGO** a North Dakota municipality

**By:** 200 3rd St N  
Fargo, ND 58102

**By:** \_\_\_\_\_  
Timothy J. Mahoney  
**Title:** Mayor  
\_\_\_\_\_  
**Date:** \_\_\_\_\_



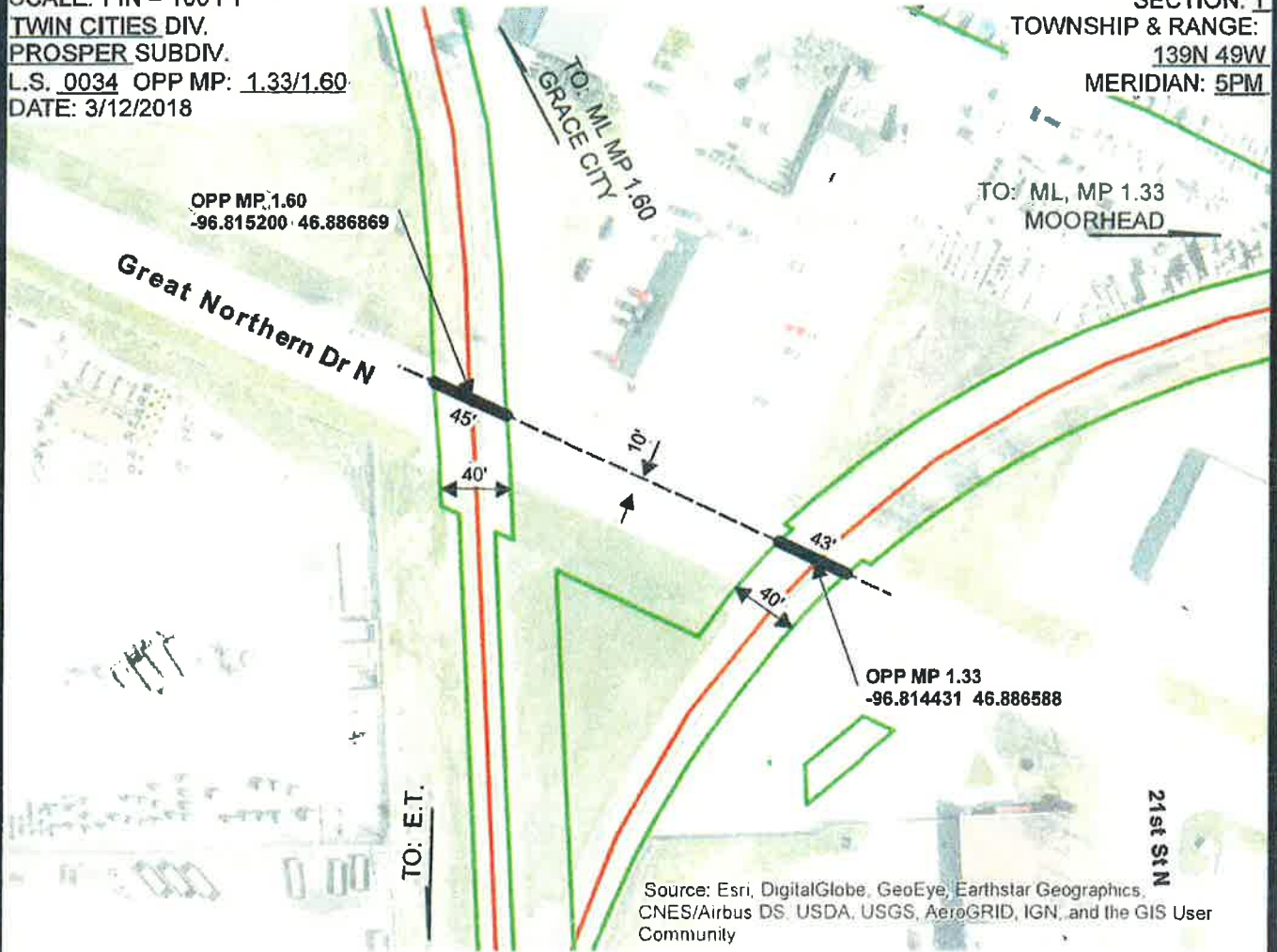
**EXHIBIT "A"**  
 ATTACHED TO CONTRACT BETWEEN  
**BNSF RAILWAY COMPANY**  
 AND

**CITY OF FARGO**



SCALE: 1 IN = 100 FT  
 TWIN CITIES DIV.  
 PROSPER SUBDIV.  
 L.S. 0034 OPP MP: 1.33/1.60  
 DATE: 3/12/2018

SECTION: 1  
 TOWNSHIP & RANGE:  
139N 49W  
 MERIDIAN: 5PM



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**DESCRIPTION OF PIPELINE**  
 PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	<u>24"</u>	<u>36"</u>	LENGTH ON R/W:	<u>88'</u>	<u>88'</u>
CONTENTS:	<u>STORM WATER</u>		WORKING PRESSURE:	<u>GRAVITY</u>	
PIPE MATERIAL:	<u>PVC</u>	<u>STEEL</u>	BURY: BASE/RAIL TO TOP OF CASING		<u>5.5'</u>
SPECIFICATIONS / GRADE:	<u>ASTM F679</u>	<u>35,000 PSI</u>	BURY: NATURAL GROUND		<u>4.5'</u>
WALL THICKNESS:	<u>-</u>	<u>0.531"</u>	BURY: ROADWAY DITCHES		<u>4.5'</u>
COATING:	<u>-</u>	<u>-</u>	CATHODIC PROTECTION		<u>-</u>

VENTS: NUMBER     SIZE     HEIGHT OF VENT ABOVE GROUND     PER UAP ANY ABANDONMENT PIPE WILL NEED TO BE REMOVED FROM PROPERTY EXCEPT THE PORTION UNDER THE TRACK EMBANKMENT AND REQUIRES TO BE FILLED WITH FLOWABLE GROUT

NOTE: CASING TO BE JACKED OR DRY BORED ONLY

**FARGO**  
**COUNTY OF CASS**

**STATE OF ND**

**TR**



Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham Rd., Suite 110  
Fort Worth, Texas 76155  
tel +1 817-230-2600, fax +1 817 306-8265

March 15, 2018

Tracking # 18-59716

City of Fargo  
Attention: Mr Roger Kluck  
200 3rd St N  
Fargo, ND 58102

Dear Mr Kluck:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please print two (2) copies, **SINGLE SIDED ONLY**, execute and **return both copies with original signature** for completion on part of BNSF Railway Company ("BNSF") to this office, along with the following requirements:

- A check in the amount of **\$3,700.00** payable to BNSF Railway Company which covers the contract fee.
  1. Please have ready for Risk Management a Certificate of Insurance as required in the agreement.
  2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

**In lieu of providing a separate policy for Railroad Protective Liability Insurance**, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional **\$506.00** with your check.

**Please note the agreements cannot be executed by BNSF without an approved insurance certificate. DO NOT SEND ANY INSURANCE FORMS to Camille Barbosa**

**\*\*\*If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway\*\*\***

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

**The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.**

Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, an \$800.00 late fee will be incurred.

Sincerely,

A handwritten signature in blue ink that reads "Camille Barbosa".

Camille Barbosa  
Associate Manager Permits

Enclosure

**LICENSE FOR ELECTRIC SUPPLY LINE  
ACROSS OR ALONG RAILWAY PROPERTY**

(Electric Light, Power Supply, Irrespective of Voltage, Overhead or Underground)

THIS LICENSE FOR ELECTRIC SUPPLY LINE ("License") is made to be effective \_\_\_\_\_, 2014, (the "Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **CITY OF FARGO**, a North Dakota municipality ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

**GENERAL**

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), an electric supply line containing a maximum of three (3) conductors, together with its supporting or containing structures (collectively, the "**Electric Supply Line**"), across or along Licensor's rail corridor at or near the station of Fargo, County of Cass, State of North Dakota, Line Segment 0034, opposite Mile Post 1.60 and opposite Mile Post 1.33, as shown on the attached Drawing No. 72015 dated March 12, 2018, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. **Term.** This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. **Existing Improvements.** Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. **Use of the Premises.** Licensee shall use the Premises solely for construction, maintenance, and use of the Electric Supply Line in accordance with the Drawings and Specifications. Licensee shall not use the Premises for any other purpose.
5. **Alterations.** Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

**COMPENSATION**

6. **License Fee.** Licensee shall pay Licensor, prior to the Effective Date, the sum of Three Thousand Seven Hundred and No/100 Dollars (**\$3,700.00**) as compensation for the use of the Premises.
7. **Costs and Expenses.**
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Electric Supply Line, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred. Licensee shall bear the cost of flagger services and other safety measures provided by Licensor, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

8. **Payment Terms.** All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

#### **LICENSOR'S RESERVED RIGHTS**

9. **Reserved Rights of Use.** Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Electric Supply Line) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;

9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or

9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.

10. **Right to Require Relocation.** If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Electric Supply Line, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Electric Supply Line as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Electric Supply Line, or the construction of a new electric line to replace the Electric Supply Line. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Electric Supply Line promptly upon Licensor's request.

**LICENSEE'S OPERATIONS**11. **Construction and Maintenance of the Electric Supply Line.**

- 11.1 Licensee shall notify Licensor's Roadmaster, at *801 Main Ave, Fargo, ND 58102, telephone (701) 280-7232*, at least ten (10) business days prior to installation of the Electric Supply Line and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
- 11.4 Any contractors or subcontractors performing work on the Electric Supply Line or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Electric Supply Line in such a manner and of such material that the Electric Supply Line will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Electric Supply Line shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Electric Supply Line or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers to observe or inspect the construction and/or maintenance of the Electric Supply Line at any time for compliance with the Drawings and

Specifications and Legal Requirements (defined below). If ordered at any time to halt construction or maintenance of the Electric Supply Line by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Electric Supply Line, it being solely Licensee's responsibility to ensure that the Electric Supply Line is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

- 11.8 Licensee shall, at its sole cost and expense, construct and at all times maintain the Electric Supply Line in accordance with the National Electric Safety Code.
- 11.9 If the operation or maintenance of the Electric Supply Line at any time causes interference, including but not limited to physical interference from electromagnetic induction, electrostatic induction, or from stray or other currents, with the facilities of Licensor or of any lessee or licensee of Licensor, or in any manner interfere with the operation, maintenance, or use by Licensor of its right-of-way, tracks, structures, pole lines, signal and communication lines, radio, or other equipment, devices, other property or appurtenances thereto, Licensee agrees immediately to make such changes in the Electric Supply Line and furnish such protective devices and/or replacement equipment to Licensor and its lessees or licensees as shall be necessary, in the judgment of Licensor's representative, to eliminate such interference. The cost of such protective devices and their installations shall be borne solely by Licensee. If any of the interference covered by this **Section 11.9** shall be, in the judgment of Licensor, of such importance to the safety of Licensor's operations as to require immediate corrective action, Licensee, upon notice from Licensor, shall either, at Licensor's election, cease using the Electric Supply Line for any purpose whatsoever and remove same, or reduce the voltage or load on the Electric Supply Line, or take such other interim protective measures as Licensor may deem advisable, until the protective devices and/or replacement equipment required by this **Section 11.9** have been installed, put in operation, tested, and found to be satisfactory to correct the interference.
- 11.10 Licensee shall, at its sole cost and expense, remove all combustible material from around wooden poles on the Premises, if any, and will at all times keep the space around such poles free of such material, and if removal of such combustible material shall not be attended to with fifteen (15) days after having been requested by Licensor to do so, Licensor shall have the right itself to perform the work and Licensee hereby agrees to reimburse Licensor for the expense so incurred.
- 11.11 *For Horizontal Directional Drilling (HDD) the cutting head must travel at 0.0% grade (or downward) beginning 25' (minimum) from centerline of track until it reaches a point 25' (minimum) from the centerline of track. Minimum pressure must be applied to pumping the slurry to the cutting head during drilling. This will deter the bentonite slurry used for lubrication from seeping up and fouling the track roadbed. A BNSF Flagman must be present during installation and will monitor the ballast and roadbed.*



12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Electric Supply Line by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Electric Supply Line. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Electric Supply Line and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.
- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 Any open hole, boring, or well, constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.3.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

**LIABILITY AND INSURANCE**

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees,

employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.

**13.2 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

**13.2.1 THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**

**13.2.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**

**13.2.3 LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**

**13.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**

**13.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**

**13.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**

**13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

**13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM**



**OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**

13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Electric Supply Line. **THE CONSTRUCTION OF THE ELECTRIC SUPPLY LINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Electric Supply Line is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

*In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$506.*

- I elect to participate in Licensor's Blanket Policy;
- I elect not to participate in Licensor's Blanket Policy.

**15.5 Other Requirements:**

- 15.5.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- 15.5.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.
- 15.5.3 Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.5.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.
- 15.5.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.5.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.
- 15.5.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 15.5.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.5.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

- 15.5.10 Failure to provide evidence as required by this **Section 15** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.5.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.5.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.
- 15.5.13 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

#### **COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS**

##### **16. Compliance with Laws, Rules, and Regulations.**

- 16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Electric Supply Line and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "[www.BNSFcontractor.com](http://www.BNSFcontractor.com)" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Electric Supply Line and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.

16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Electric Supply Line in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body on the Premises. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2.**

17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Electric Supply Line which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

**DISCLAIMER OF WARRANTIES**

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR**

WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

18.2 LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE ELECTRIC SUPPLY LINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.

19. Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.
20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

#### LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.
22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Electric Supply Line or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

#### DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:
- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any

other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.

23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. Surrender of the Premises.

24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:

24.1.1 if so directed by Licensor in writing, remove the Improvements, the Electric Supply Line and all appurtenances thereto, or, at the sole discretion of Licensor, appropriately decommission the Electric Supply Line with a method satisfactory to Licensor;

24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;

24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.

24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Electric Supply Line and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Electric Supply Line and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Electric Supply Line and the other

Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Electric Supply Line and the other Improvements to Licensor.

### **MISCELLANEOUS**

25. **Successors and Assigns.** All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. **Assignment.**
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.
- 26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.
27. **Notices.** Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such



party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham Rd, Ste 110  
Fort Worth, TX 76155  
Attn: Permits/Licenses

with a copy to: BNSF Railway Company  
2301 Lou Menk Drive, GOB-3W  
Fort Worth TX 76131  
Attn: Senior Manager Real Estate

If to Licensee: City of Fargo  
200 3rd St N  
Fargo, ND 58102

- 28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Electric Supply Line and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.
- 29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
- 30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
- 31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
- 32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.
- 33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
- 34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
- 35. Interpretation.
  - 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be

subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

**LICENSOR:**

**BNSF RAILWAY COMPANY** a Delaware corporation

**By:** Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham Rd, Ste 110  
Fort Worth, TX 76155

**By:** \_\_\_\_\_  
Shane Krueger  
**Title:** \_\_\_\_\_  
Vice President, Permits & Special Projects  
**Date:** \_\_\_\_\_

**LICENSEE:**

**CITY OF FARGO** a North Dakota municipality

**By:** 200 3rd St N  
Fargo, ND 58102

**By:** \_\_\_\_\_  
Timothy J. Mahoney  
**Title:** \_\_\_\_\_  
Mayor  
**Date:** \_\_\_\_\_

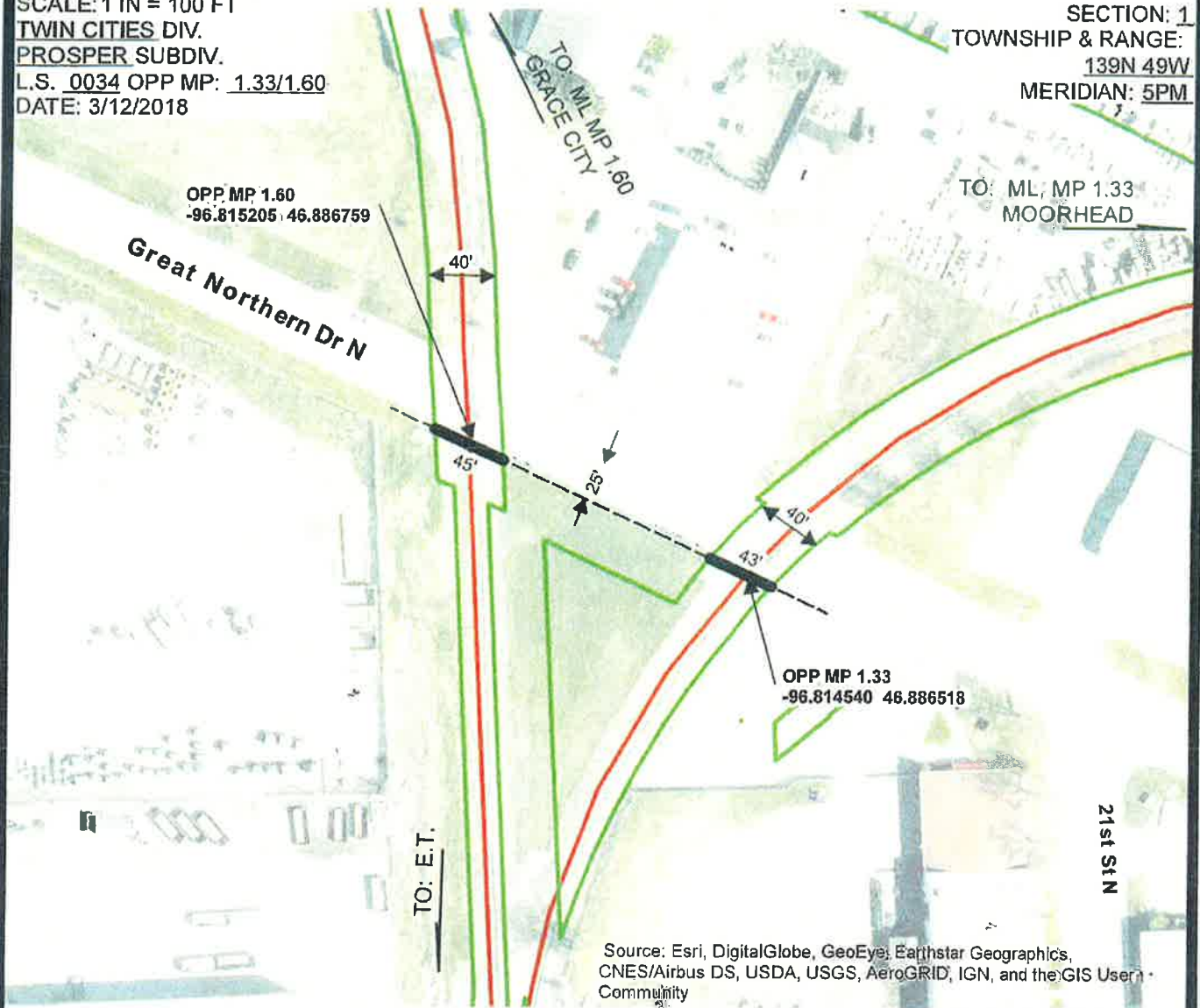
**EXHIBIT "A"**  
 ATTACHED TO CONTRACT BETWEEN  
**BNSF RAILWAY COMPANY**  
 AND

**CITY OF FARGO**



SCALE: 1 IN = 100 FT  
 TWIN CITIES DIV.  
 PROSPER SUBDIV.  
 L.S. 0034 OPP MP: 1.33/1.60  
 DATE: 3/12/2018

SECTION: 1  
 TOWNSHIP & RANGE:  
 139N 49W  
 MERIDIAN: 5PM



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

NOTE:  
 1-1.5" HDPE OCCUPIED CONDUIT W/  
 3 ELECTRIC WIRES  
 0 VACANT

DESCRIPTION OF WIRES UNDER TRACK  
 WIRES LOCATED AS SHOWN BOLD

PER UAP ANY ABANDONMENT PIPE  
 WILL NEED TO BE REMOVED FROM  
 PROPERTY EXCEPT THE PORTION  
 UNDER THE TRACK EMBANKMENT  
 AND REQUIRES TO BE FILLED WITH  
 FLOWABLE GROUT

TYPE	ELECTRIC	SIZE OF CONDUIT	1.5"
NUMBER OF CONDUITS	1	CONDUIT MATERIAL	HDPE SCH40
VOLTAGE	240	WALL THICKNESS	0.145"
		LENGTH ON R/W	88'
		BASE OF RAIL TO TOP OF CONDUIT	10'

NOTE: CASING TO BE INSTALLED BY HORIZONTAL DIRECTIONAL DRILL

FARGO  
 COUNTY OF CASS

STATE OF ND

TR

March 21, 2018

Honorable Board of City  
Commissioners  
City of Fargo  
Fargo, ND

24-1

Re: Improvement District No. BN-18-G1

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, March 21, 2018, for Storm Sewer, PC Concrete Paving & Incidentals, Improvement District No. BN-18-G1, located at 33rd Street North from 40th Avenue North to 46th Avenue North.

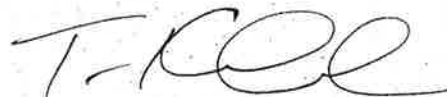
The bids were as follows:

Dakota Underground Co., Inc.	\$2,151,638.10
Border States Paving, Inc.	\$2,156,067.23
Master Construction Co., Inc.	\$2,181,634.75
Northern Improvement Co.	\$2,186,849.28
KPH, Inc.	\$2,324,257.50
Powder River Construction, Inc.	\$2,444,994.20
Sellin Brothers, Inc.	\$2,778,953.55
Engineer's Estimate	\$2,366,596.91

The special assessment escrow is not required.

This office recommends award of the contract to Dakota Underground Co., Inc. in the amount of \$2,151,638.10 as the lowest and best bid. No protests have been received.

Sincerely,



Thomas Knakmuhs  
Division Engineer

TAK/jmg



**ENGINEER'S STATEMENT OF ESTIMATED COST****IMPROVEMENT DISTRICT # BN-18-G1****Storm Sewer, PC Concrete Paving & Incidentals**

This project is for the new construction of underground utilities, concrete pavement and incidentals on 33rd Street North from 40th Avenue North to 46th Avenue North.

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 Division Engineer for the City of Fargo, North Dakota;

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

Storm Sewer, PC Concrete Paving & Incidentals Improvement District # BN-18-G1 of the City of Fargo, North Dakota.

Line Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
<b>Water Main</b>				
1 F&I Pipe w/GB C900 DR 18 - 6" Dia PVC	LF	240.00	35.00	8,400.00
2 F&I Pipe w/GB C900 DR 18 - 8" Dia PVC	LF	40.00	40.00	1,600.00
3 F&I Pipe w/GB C900 DR 18 - 12" Dia PVC	LF	80.00	50.00	4,000.00
4 F&I Fittings C153 Ductile Iron	LB	3,016.00	2.25	6,786.00
			<b>Water Main Total</b>	<b>20,786.00</b>
<b>Storm Sewer</b>				
5 F&I Pipe 12" Dia Reinf Conc	LF	391.00	39.00	15,249.00
6 F&I Pipe 15" Dia Reinf Conc	LF	102.00	41.00	4,182.00
7 F&I Pipe 18" Dia Reinf Conc	LF	71.00	44.00	3,124.00
8 F&I Pipe 30" Dia Reinf Conc	LF	1,123.00	64.00	71,872.00
9 F&I Pipe 36" Dia Reinf Conc	LF	758.00	82.00	62,156.00
10 F&I Pipe 42" Dia Reinf Conc	LF	801.00	115.00	92,115.00
11 F&I Pipe 48" Dia Reinf Conc	LF	578.00	130.00	75,140.00
12 F&I Pipe 54" Dia Reinf Conc	LF	414.00	155.00	64,170.00
13 F&I Pipe w/GB 15" Dia Reinf Conc	LF	78.00	50.00	3,900.00
14 F&I Pipe w/GB 18" Dia Reinf Conc	LF	195.00	52.00	10,140.00
15 F&I Pipe SDR 26 - 30" Dia PVC	LF	112.00	105.00	11,760.00
16 F&I Pipe 48" Dia Steel	LF	90.00	910.00	81,900.00
17 Remove Pipe All Sizes All Types	LF	1,230.00	10.00	12,300.00
18 F&I Rip Rap Rock	CY	28.00	100.00	2,800.00
19 F&I Gatewell	EA	1.00	135,000.00	135,000.00
20 F&I Flared End Section 12" Dia Reinf Conc	EA	10.00	550.00	5,500.00
21 F&I Flared End Section 15" Dia Reinf Conc	EA	3.00	575.00	1,725.00
22 F&I Flared End Section 42" Dia Reinf Conc	EA	1.00	2,500.00	2,500.00
23 F&I Inlet - Round (RDI) Reinf Conc	EA	7.00	1,000.00	7,000.00
24 F&I Inlet - Manhole (MHI) 4' Dia Reinf Conc	EA	10.00	2,600.00	26,000.00
25 F&I Manhole 5' Dia Reinf Conc	EA	5.00	3,400.00	17,000.00
26 F&I Manhole 6' Dia Reinf Conc	EA	3.00	4,100.00	12,300.00
27 F&I Manhole 7' Dia Reinf Conc	EA	4.00	6,400.00	25,600.00
28 F&I Manhole 8' Dia Reinf Conc	EA	3.00	8,400.00	25,200.00
29 Plug Pipe 42" thru 54" Dia	EA	1.00	250.00	250.00
30 F&I Pipe 24" Dia Reinf Conc	LF	255.00	50.00	12,750.00
31 F&I Flared End Section 24" Dia Reinf Conc	EA	1.00	900.00	900.00
32 F&I Manhole 4' Dia Reinf Conc	EA	1.00	2,500.00	2,500.00
33 Bore Pipe 42" Dia Reinf Conc	LF	30.00	200.00	6,000.00
			<b>Storm Sewer Total</b>	<b>791,033.00</b>

**ENGINEER'S STATEMENT OF ESTIMATED COST****IMPROVEMENT DISTRICT # BN-18-G1****Storm Sewer, PC Concrete Paving & Incidentals****Paving**

34 F&I Hydrant Ext. 6" High	EA	2.00	700.00	1,400.00
35 F&I Hydrant Ext. 12" High	EA	2.00	800.00	1,600.00
36 F&I Hydrant Ext. 18" High	EA	2.00	900.00	1,800.00
37 Clear & Grub	LS	1.00	1,000.00	1,000.00
38 Remove Pavement 9" Thick All Types	SY	1,155.00	8.00	9,240.00
39 Topsoil - Strip & Spread	LS	1.00	47,000.00	47,000.00
40 Excavation	CY	5,800.00	3.00	17,400.00
41 Fill - Contractor Supply	CY	8,000.00	4.00	32,000.00
42 Subgrade Preparation	SY	16,865.00	1.00	16,865.00
43 F&I Woven Geotextile	SY	16,865.00	1.65	27,827.25
44 F&I Class 5 Agg - 7" Thick	SY	455.00	6.00	2,730.00
45 F&I Class 5 Agg - 10" Thick	SY	12,050.00	7.25	87,362.50
46 F&I Edge Drain 4" Dia PVC	LF	5,044.00	6.00	30,264.00
47 F&I Curb & Gutter Standard (Type II)	LF	5,044.00	15.00	75,660.00
48 F&I Pavement 10" Thick Doweled Conc	SY	10,088.00	55.00	554,840.00
49 Subcut	CY	8,685.00	5.00	43,425.00
50 F&I Driveway 7" Thick Reinf Conc	SY	1,337.00	48.00	64,176.00
51 F&I Aggregate for Asph Pavement FAA 43	TON	1,755.00	38.00	66,690.00
52 F&I Asphalt Cement PG 58-34	GAL	24,445.00	2.20	53,779.00
53 Casting to Grade - Blvd	EA	29.00	250.00	7,250.00
54 GV Box to Grade - no Conc	EA	20.00	150.00	3,000.00
55 Mulching Type 1 - Hydro	SY	28,000.00	0.30	8,400.00
56 Mulching Type 2 - Straw	SY	6,670.00	0.10	667.00
57 Seeding Type B	SY	28,000.00	0.25	7,000.00
58 Inlet Protection - Existing Inlet	EA	6.00	150.00	900.00
59 Inlet Protection - New Inlet	EA	10.00	250.00	2,500.00
60 Traffic Control - Type 1	LS	1.00	2,725.00	2,725.00
61 Install Salvaged Gravel 10" Thick	SY	3,975.00	15.00	59,625.00
62 Flagging	MHR	750.00	27.00	20,250.00
63 Remove Fence	LF	100.00	7.00	700.00
64 Salvage & Install Fence	LF	100.00	26.00	2,600.00
65 F&I Pipe w/GB SDR 26 - 6" Dia PVC	LF	200.00	55.00	11,000.00
66 F&I Pipe w/GB SDR 26 - 8" Dia PVC	LF	100.00	0.01	1.00
67 F&I Class 5 Agg - 12" Thick	SY	4,362.00	11.00	47,982.00
			<b>Paving Total</b>	<b>1,309,658.75</b>

**Signing**

68 F&I Sign Assembly & Anchor	EA	14.00	75.00	1,050.00
69 F&I Engineering Grade	SF	15.30	16.00	244.80
70 F&I Diamond Grade Cubed	SF	17.60	21.00	369.60
71 F&I Barricade Type III	EA	5.00	500.00	2,500.00
72 F&I High Intensity Prismatic	SF	16.30	18.00	293.40
			<b>Signing Total</b>	<b>4,457.80</b>

**Pavement Marking**

73 Paint Epoxy Line 4" Wide	LF	2,891.00	2.25	6,504.75
74 Paint Epoxy Line 6" Wide	LF	2,772.00	3.35	9,286.20
75 Paint Epoxy Line 8" Wide	LF	1,322.00	4.60	6,081.20
76 Paint Epoxy Message	SF	224.00	17.10	3,830.40
			<b>Pavement Marking Total</b>	<b>25,702.55</b>

**Total Construction in \$ 2,151,638.10**

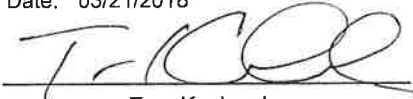
**ENGINEER'S STATEMENT OF ESTIMATED COST**  
**IMPROVEMENT DISTRICT # BN-18-G1**  
**Storm Sewer, PC Concrete Paving & Incidentals**

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Engineering	11.00 %	236,680.19
Legal & Misc	3.00 %	64,549.14
Contingencies	10.00 %	215,163.81
Administration	6.00 %	129,098.29
Interest	4.00 %	86,065.52
<b>Total Estimated Costs</b>		<b>2,883,195.05</b>
Special Assessments		2,883,195.05
<b>Unfunded Costs</b>		<b>0.00</b>

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

Date: 03/21/2018



Tom Knakmuhs  
Division Engineer





242

March 21, 2018

**ENGINEERING DEPARTMENT**

200 3rd Street North  
Fargo, North Dakota 58102  
Phone: (701) 241-1545  
Fax: (701) 241-8101  
E-Mail: feng@cityoffargo.com

Honorable Board of City  
Commissioners  
City of Fargo  
Fargo, ND

Re: Improvement District No. FM-17-C1

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, March 21, 2018, for Bison Meadows Levee & Pond Project, Improvement District No. FM-17-C1, located at Bison Meadows housing development

The bids were as follows:

KPH, Inc.	\$1,070,655.00
R.J. Zavoral & Sons, Inc.	\$1,196,738.00
R L Larson Excavating, Inc.	\$1,361,357.00
Excavating, Inc.	\$1,379,258.60
Industrial Builders, Inc.	\$1,489,660.00
Griffin Construction Co., Inc.	\$1,561,504.50
Quam Construction Co., Inc.	\$1,913,210.00
Sellin Brothers, Inc.	\$1,970,727.00
Park Construction Co.	\$2,395,082.00
Central Specialties, Inc.	\$2,472,911.50
Engineer's Estimate	\$2,541,760.00

The special assessment escrow is not required.

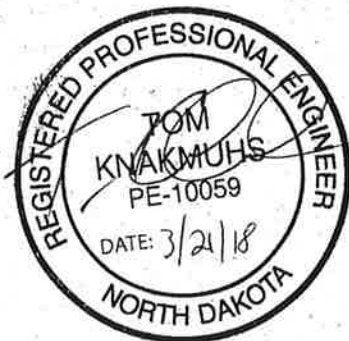
This office recommends award of the contract to KPH, Inc. in the amount of \$1,070,655.00 as the lowest and best bid. No protests have been received.

Sincerely,



Thomas Knakmuhs  
Division Engineer

TAK/klb



Street Lighting  
Sidewalks

Design & Construction  
Traffic Engineering

Truck Regulatory  
Flood Plain Mgmt.

Mapping & GIS  
Utility Locations

**ENGINEER'S STATEMENT OF ESTIMATED COST****IMPROVEMENT DISTRICT # FM-17-C1****Bison Meadows Levee and Pond Project**

This project is planned to build the flood control levee for the Bison Meadows housing development. This project will complete excavation of the regional storm water detention ponds north of Bison Meadows, create a park area with a recreation path, trees, and native grasses around the regional detention ponds, and build a recreation path across the Park Land that the new levee will be built upon, along the west side of University Drive.

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 Division Engineer for the City of Fargo, North Dakota;

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

Bison Meadows Levee and Pond Project Improvement District # FM-17-C1 of the City of Fargo, North Dakota.

Line Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
<b>Miscellaneous</b>				
1 Mobilization	LS	1.00	5,000.00	5,000.00
2 Topsoil - Strip	CY	15,000.00	1.25	18,750.00
3 Topsoil - Spread	CY	21,700.00	1.75	37,975.00
4 Topsoil - Import	CY	20,500.00	0.01	205.00
5 Traffic Control - Minor	LS	1.00	1,100.00	1,100.00
6 F&I Gate	EA	1.00	2,500.00	2,500.00
7 Temp Pumping	LS	1.00	10,000.00	10,000.00
8 Repair Outfall	EA	1.00	12,250.00	12,250.00
			<b>Miscellaneous Total</b>	<b>87,780.00</b>
<b>Removals</b>				
9 Clear & Grub	LS	1.00	2,125.00	2,125.00
10 Remove Pavement All Thicknesses All Types	SY	5,000.00	4.50	22,500.00
11 Remove Tree	EA	26.00	210.00	5,460.00
			<b>Removals Total</b>	<b>30,085.00</b>
<b>Pond Area Path Paving</b>				
12 F&I Shared Use Path 5" Thick Reinf Conc	SY	9,850.00	35.00	344,750.00
			<b>Pond Area Path Paving Total</b>	<b>344,750.00</b>
<b>Park District Path Paving</b>				
13 F&I Shared Use Path 5" Thick Reinf Conc	SY	2,300.00	35.00	80,500.00
			<b>Park District Path Paving Total</b>	<b>80,500.00</b>
<b>Erosion &amp; Sediment Control</b>				
14 Stormwater Management	LS	1.00	500.00	500.00
15 Sediment Control Log 6" to 8" Dia	LF	200.00	2.10	420.00
16 Silt Fence - Standard	LF	3,200.00	1.60	5,120.00
17 Temp Construction Entrance	EA	2.00	1,000.00	2,000.00
18 Concrete Washout Area	EA	1.00	1,150.00	1,150.00
19 F&I Rip Rap Rock	CY	125.00	64.00	8,000.00
20 Inlet Protection - New Inlet	EA	9.00	130.00	1,170.00
			<b>Erosion &amp; Sediment Control Total</b>	<b>18,360.00</b>
<b>Flood Mitigation</b>				
21 Fill - Haul	CY	19,000.00	4.10	77,900.00
22 Fill - Impervious	CY	19,000.00	2.00	38,000.00
23 Inspection Trench	CY	7,000.00	3.00	21,000.00
			<b>Flood Mitigation Total</b>	<b>136,900.00</b>
<b>Site Restoration</b>				
24 Seeding Type A	SY	27,000.00	0.20	5,400.00

**ENGINEER'S STATEMENT OF ESTIMATED COST**

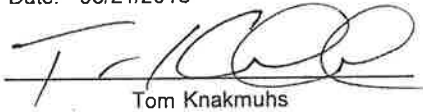
**IMPROVEMENT DISTRICT # FM-17-C1**

**Bison Meadows Levee and Pond Project**

25 Mulching Type 1 - Hydro	SY	27,000.00	0.30	8,100.00
26 F&I Decid Tree 2" Dia	EA	98.00	400.00	39,200.00
			<b>Site Restoration Total</b>	<b>52,700.00</b>
<b>Bison Meadows District</b>				
27 Topsoil - Strip	CY	15,000.00	0.01	150.00
28 Fill - Haul	CY	77,400.00	2.95	228,330.00
29 Topsoil - Spread	CY	15,000.00	0.01	150.00
30 Seeding Type A	SY	25,000.00	0.01	250.00
31 Mulching Type 1 - Hydro	SY	25,000.00	0.01	250.00
32 F&I Flared End Section 15" Dia Reinf Conc	EA	1.00	1,165.00	1,165.00
33 F&I Flared End Section 12" Dia Reinf Conc	EA	2.00	1,100.00	2,200.00
34 F&I Manhole 8' Dia Reinf Conc	EA	1.00	9,700.00	9,700.00
35 F&I Manhole 4' Dia Reinf Conc	EA	3.00	2,260.00	6,780.00
36 F&I Inlet - Round (RDI) Reinf Conc	EA	5.00	2,075.00	10,375.00
37 F&I Rip Rap Rock	CY	150.00	64.00	9,600.00
38 F&I Pipe 12" Dia	LF	485.00	38.00	18,430.00
39 F&I Pipe 15" Dia	LF	805.00	40.00	32,200.00
			<b>Bison Meadows District Total</b>	<b>319,580.00</b>
			<b>Total Construction in \$</b>	<b>1,070,655.00</b>
			Engineering	7.87 % 84,260.55
			Legal & Misc	3.00 % 32,119.65
			Contingencies	10.00 % 107,065.50
			Administration	2.24 % 23,982.67
			Interest	4.00 % 42,826.20
			<b>Total Estimated Costs</b>	<b>1,360,909.57</b>
			Special Assessments	536,107.00
			Sales Tax Funds - Flood Control - 460	824,802.57
			<b>Unfunded Costs</b>	<b>0.00</b>

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

Date: 03/21/2018

  
Tom Knakmuhs

Division Engineer



24-3

March 21, 2018

**ENGINEERING DEPARTMENT**

200 3rd Street North  
Fargo, North Dakota 58102  
Phone: (701) 241-1545  
Fax: (701) 241-8101  
E-Mail: [feng@cityoffargo.com](mailto:feng@cityoffargo.com)

Honorable Board of City  
Commissioners  
City of Fargo  
Fargo, ND

Re: Project No. PR-18-A1

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, March 21, 2018, for Street Rehabilitation & Incidentals, Project No. PR-18-A1, located at various areas of the City.

The bids were as follows:

Asphalt Surface Technologies Corp.	\$62,610.00
Roadway Services, Inc.	\$72,400.00
Engineer's Estimate	\$75,000.00

The special assessment escrow is not required.

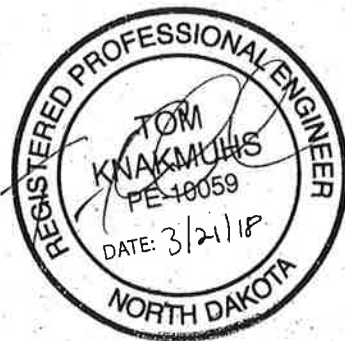
This office recommends award of the contract to Asphalt Surface Technologies Corp. in the amount of \$62,610.00 as the lowest and best bid.

Sincerely,



Tom Knakmuhs  
Division Engineer

TAK/klb



**ENGINEER'S STATEMENT OF ESTIMATED COST**

**PROJECT # PR-18-A1**

**Street Rehabilitation & Incidentals**

Various areas of the city.

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 Division Engineer for the City of Fargo, North Dakota;


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

Street Rehabilitation & Incidentals Project # PR-18-A1 of the City of Fargo, North Dakota.

Line Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
<b>crack seal</b>				
1 Mobilization	LS	1.00	1,500.00	1,500.00
2 Repair Crack - Fill	LB	33,000.00	1.44	47,520.00
3 Repair Crack - Level	LF	3,000.00	4.03	12,090.00
4 Traffic Control - Minor	LS	1.00	1,500.00	1,500.00
			<b>crack seal Total</b>	<b>62,610.00</b>
			<b>Total Construction in \$</b>	<b>62,610.00</b>
			Engineering 6.00 %	3,756.60
			Legal & Misc 3.00 %	1,878.30
			Contingencies 10.00 %	6,261.00
			Interest 4.00 %	2,504.40
			<b>Total Estimated Costs</b>	<b>77,010.30</b>
			Street Rehabilitation Funds - 401	77,010.30
			<b>Unfunded Costs</b>	<b>0.00</b>

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

Date: 03/21/2018

  
 Tom Knakmuhs  
 Division Engineer



March 21, 2018

Honorable Board of City  
Commissioners  
City of Fargo  
Fargo, ND

244

Re: Improvement District No. PR-18-E1

Dear Commissioners:

Bids were opened at 11:30 AM on Wednesday, March 21, 2018, for Seal Coat & Incidentals, Improvement District No. PR-18-E1, located at various streets and avenues throughout the City.

The bids were as follows:

Asphalt Surface Technologies Corp.                      \$952,007.90

Engineer's Estimate                                              \$923,609.00

The special assessment escrow is not required.

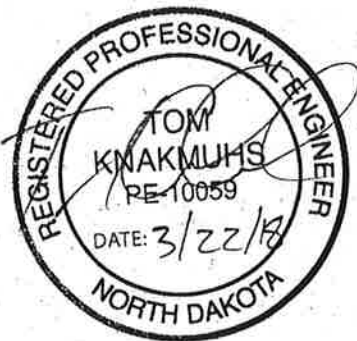
This office recommends award of the contract to Asphalt Surface Technologies Corp. in the amount of \$952,007.90 as the lowest and best bid. No protests have been received.

Sincerely,



Thomas Knakmuhs  
Division Engineer

TAK/klb



**ENGINEER'S STATEMENT OF ESTIMATED COST****IMPROVEMENT DISTRICT # PR-18-E1****Seal Coat & Incidentals**

Various streets and avenues through out the city.

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 Division Engineer for the City of Fargo, North Dakota;

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

Seal Coat & Incidentals Improvement District # PR-18-E1 of the City of Fargo, North Dakota.

Line Description	Unit	Quantity	Unit Price (\$)	Amount (\$)
<b>Section 1</b>				
1 Mobilization	LS	1.00	600.00	600.00
2 F&I Seal Aggregate A	SY	3,054.00	0.90	2,748.60
3 F&I Seal Oil - CRS-2P	GAL	825.00	0.90	742.50
4 Traffic Control - Minor	LS	1.00	250.00	250.00
			<b>Section 1 Total</b>	<b>4,341.10</b>
<b>Section 2</b>				
5 Mobilization	LS	1.00	6,500.00	6,500.00
6 F&I Seal Aggregate A	SY	12,019.00	0.90	10,817.10
7 F&I Seal Aggregate B	SY	21,759.00	1.08	23,499.72
8 F&I Seal Oil - CRS-2P	GAL	11,078.00	0.90	9,970.20
9 Traffic Control - Minor	LS	1.00	400.00	400.00
			<b>Section 2 Total</b>	<b>51,187.02</b>
<b>Section 3</b>				
10 Mobilization	LS	1.00	1,500.00	1,500.00
11 F&I Seal Aggregate A	SY	8,872.00	0.90	7,984.80
12 F&I Seal Oil - CRS-2P	GAL	2,395.00	0.90	2,155.50
13 Traffic Control - Minor	LS	1.00	225.00	225.00
			<b>Section 3 Total</b>	<b>11,865.30</b>
<b>Section 4</b>				
14 Mobilization	LS	1.00	4,000.00	4,000.00
15 F&I Seal Aggregate B	SY	14,577.00	1.08	15,743.16
16 F&I Seal Oil - CRS-2P	GAL	5,248.00	0.90	4,723.20
17 Paint Epoxy Line 4" Wide	LF	752.00	2.05	1,541.60
18 Paint Epoxy Line 8" Wide	LF	151.00	4.35	656.85
19 Paint Epoxy Message	SF	86.00	17.85	1,535.10
20 Traffic Control - Minor	LS	1.00	350.00	350.00
			<b>Section 4 Total</b>	<b>28,549.91</b>
<b>Section 5</b>				
21 Mobilization	LS	1.00	3,400.00	3,400.00
22 F&I Seal Aggregate A	SY	19,105.00	0.90	17,194.50
23 F&I Seal Oil - CRS-2P	GAL	5,158.00	0.90	4,642.20
24 Traffic Control - Minor	LS	1.00	250.00	250.00
			<b>Section 5 Total</b>	<b>25,486.70</b>
<b>Section 6</b>				
25 Mobilization	LS	1.00	6,000.00	6,000.00
26 F&I Seal Aggregate B	SY	25,459.00	1.08	27,495.72
27 F&I Seal Oil - CRS-2P	GAL	9,165.00	0.90	8,248.50
28 Paint Epoxy Line 4" Wide	LF	300.00	2.05	615.00
29 Paint Epoxy Line 8" Wide	LF	100.00	4.35	435.00

**ENGINEER'S STATEMENT OF ESTIMATED COST****IMPROVEMENT DISTRICT # PR-18-E1****Seal Coat & Incidentals**

30	Paint Epoxy Message	SF	32.00	17.85	571.20
31	Traffic Control - Minor	LS	1.00	300.00	300.00
				<b>Section 6 Total</b>	43,665.42
<b>Section 7</b>					
32	Mobilization	LS	1.00	3,200.00	3,200.00
33	F&I Seal Aggregate A	SY	17,189.00	0.90	15,470.10
34	F&I Seal Oil - CRS-2P	GAL	4,641.00	0.90	4,176.90
35	Traffic Control - Minor	LS	1.00	300.00	300.00
				<b>Section 7 Total</b>	23,147.00
<b>Section 8</b>					
36	Mobilization	LS	1.00	6,500.00	6,500.00
37	F&I Seal Aggregate A	SY	8,385.00	0.90	7,546.50
38	F&I Seal Aggregate B	SY	10,019.00	1.08	10,820.52
39	F&I Seal Oil - CRS-2P	GAL	5,871.00	0.90	5,283.90
40	Paint Epoxy Line 4" Wide	LF	2,562.00	2.05	5,252.10
41	Paint Epoxy Line 8" Wide	LF	75.00	4.35	326.25
42	Paint Epoxy Line 16" Wide	LF	35.50	16.30	578.65
43	Paint Epoxy Line 24" Wide	LF	48.00	18.80	902.40
44	Paint Epoxy Message	SF	112.00	17.85	1,999.20
45	Traffic Control - Minor	LS	1.00	700.00	700.00
				<b>Section 8 Total</b>	39,909.52
<b>Section 9</b>					
46	Mobilization	LS	1.00	5,200.00	5,200.00
47	F&I Seal Aggregate A	SY	12,931.00	0.90	11,637.90
48	F&I Seal Aggregate B	SY	4,866.00	1.08	5,255.28
49	F&I Seal Oil - CRS-2P	GAL	5,243.00	0.90	4,718.70
50	Paint Epoxy Line 24" Wide	LF	126.00	18.80	2,368.80
51	Traffic Control - Minor	LS	1.00	700.00	700.00
				<b>Section 9 Total</b>	29,880.68
<b>Section 10</b>					
52	Mobilization	LS	1.00	3,000.00	3,000.00
53	F&I Seal Aggregate A	SY	8,439.00	0.90	7,595.10
54	F&I Seal Oil - CRS-2P	GAL	2,278.00	0.90	2,050.20
55	Traffic Control - Minor	LS	1.00	300.00	300.00
				<b>Section 10 Total</b>	12,945.30
<b>Section 11</b>					
56	Mobilization	LS	1.00	24,000.00	24,000.00
57	F&I Seal Aggregate B	SY	95,525.00	1.08	103,167.00
58	F&I Seal Oil - CRS-2P	GAL	34,389.00	0.90	30,950.10
59	Paint Epoxy Line 4" Wide	LF	17,773.00	2.05	36,434.65
60	Paint Epoxy Line 8" Wide	LF	1,179.00	4.35	5,128.65
61	Paint Epoxy Line 16" Wide	LF	247.50	16.30	4,034.25
62	Paint Epoxy Line 24" Wide	LF	390.00	18.80	7,332.00
63	Paint Epoxy Message	SF	545.00	17.85	9,728.25
64	Traffic Control - Minor	LS	1.00	700.00	700.00
				<b>Section 11 Total</b>	221,474.90
<b>Section 12</b>					
65	Mobilization	LS	1.00	13,000.00	13,000.00
66	F&I Seal Aggregate B	SY	29,072.00	1.08	31,397.76
67	F&I Seal Oil - CRS-2P	GAL	10,466.00	0.90	9,419.40
68	Paint Epoxy Line 4" Wide	LF	9,911.00	2.05	20,317.55
69	Paint Epoxy Line 8" Wide	LF	2,142.00	4.35	9,317.70



**ENGINEER'S STATEMENT OF ESTIMATED COST****IMPROVEMENT DISTRICT # PR-18-E1****Seal Coat & Incidentals**

70 Paint Epoxy Line 16" Wide	LF	211.00	16.30	3,439.30
71 Paint Epoxy Line 24" Wide	LF	1,010.00	18.80	18,988.00
72 Paint Epoxy Message	SF	608.00	17.85	10,852.80
73 Traffic Control - Type 1	LS	1.00	300.00	300.00
			<b>Section 12 Total</b>	<b>117,032.51</b>
<b>Section 13</b>				
74 Mobilization	LS	1.00	12,000.00	12,000.00
75 F&I Seal Aggregate A	SY	62,560.00	0.90	56,304.00
76 F&I Seal Oil - CRS-2P	GAL	16,892.00	0.90	15,202.80
77 Paint Epoxy Line 4" Wide	LF	484.00	2.05	992.20
78 Traffic Control - Minor	LS	1.00	500.00	500.00
			<b>Section 13 Total</b>	<b>84,999.00</b>
<b>Section 14</b>				
79 Mobilization	LS	1.00	5,800.00	5,800.00
80 F&I Seal Aggregate A	SY	17,349.00	0.90	15,614.10
81 F&I Seal Aggregate B	SY	12,669.00	1.08	13,682.52
82 F&I Seal Oil - CRS-2P	GAL	9,419.00	0.90	8,477.10
83 Traffic Control - Minor	LS	1.00	250.00	250.00
			<b>Section 14 Total</b>	<b>43,823.72</b>
<b>Section 15</b>				
84 Mobilization	LS	1.00	8,000.00	8,000.00
85 F&I Seal Aggregate B	SY	33,492.00	1.08	36,171.36
86 F&I Seal Oil - CRS-2P	GAL	12,058.00	0.90	10,852.20
87 Paint Epoxy Line 4" Wide	LF	512.00	2.05	1,049.60
88 Paint Epoxy Line 8" Wide	LF	139.00	4.35	604.65
89 Paint Epoxy Message	SF	112.00	17.85	1,999.20
90 Traffic Control - Minor	LS	1.00	700.00	700.00
			<b>Section 15 Total</b>	<b>59,377.01</b>
<b>Section 16</b>				
91 Mobilization	LS	1.00	8,000.00	8,000.00
92 F&I Seal Aggregate A	SY	20,804.00	0.90	18,723.60
93 F&I Seal Aggregate B	SY	12,975.00	1.08	14,013.00
94 F&I Seal Oil - CRS-2P	GAL	10,496.00	0.90	9,446.40
95 Paint Epoxy Line 4" Wide	LF	1,518.00	2.05	3,111.90
96 Paint Epoxy Line 8" Wide	LF	175.00	4.35	761.25
97 Paint Epoxy Line 16" Wide	LF	23.00	16.30	374.90
98 Paint Epoxy Line 24" Wide	LF	72.00	18.80	1,353.60
99 Paint Epoxy Message	SF	48.00	17.85	856.80
100 Traffic Control - Minor	LS	1.00	700.00	700.00
			<b>Section 16 Total</b>	<b>57,341.45</b>
<b>Section 17</b>				
101 Mobilization	LS	1.00	1,400.00	1,400.00
102 F&I Seal Aggregate A	SY	8,069.00	0.90	7,262.10
103 F&I Seal Oil - CRS-2P	GAL	2,260.00	0.90	2,034.00
104 Traffic Control - Minor	LS	1.00	250.00	250.00
			<b>Section 17 Total</b>	<b>10,946.10</b>
<b>Section 18</b>				
105 Mobilization	LS	1.00	7,500.00	7,500.00
106 F&I Seal Aggregate A	SY	23,414.00	0.90	21,072.60
107 F&I Seal Aggregate B	SY	10,032.00	1.08	10,834.56
108 F&I Seal Oil - CRS-2P	GAL	9,933.00	0.90	8,939.70
109 Paint Epoxy Line 16" Wide	LF	20.00	16.30	326.00

**ENGINEER'S STATEMENT OF ESTIMATED COST**

**IMPROVEMENT DISTRICT # PR-18-E1**

**Seal Coat & Incidentals**

110 Paint Epoxy Line 24" Wide	LF	78.00	18.80	1,466.40
111 Traffic Control - Minor	LS	1.00	250.00	250.00
			<b>Section 18 Total</b>	50,389.26
<b>Section 19</b>				
112 Mobilization	LS	1.00	4,800.00	4,800.00
113 F&I Seal Aggregate A	SY	24,172.00	0.90	21,754.80
114 F&I Seal Oil - CRS-2P	GAL	6,768.00	0.90	6,091.20
115 Traffic Control - Minor	LS	1.00	3,000.00	3,000.00
			<b>Section 19 Total</b>	35,646.00
			<b>Total Construction in \$</b>	<b>952,007.90</b>
			Engineering	6.99 % 66,545.35
			Legal & Misc	3.00 % 28,560.24
			Contingencies	10.00 % 95,200.79
			Administration	1.19 % 11,328.89
			Interest	4.00 % 38,080.32
			<b>Total Estimated Costs</b>	<b>1,191,723.49</b>
			Special Assessments	252,245.00
			Street Rehabilitation Funds - 401	939,478.49
			<b>Unfunded Costs</b>	<b>0.00</b>

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

Date: 03/22/2018



Tom Knakmuhs  
Division Engineer



COVER SHEET  
CITY OF FARGO PROJECTS

25-1

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:

Water Main Replacement, Street Reconstruction & Incidentals

Improvement District No. BR-18-G

Call For Bids March 26, 2018

Advertise Dates April 2 & 9, 2018

Bid Opening Date May 2, 2018

Substantial Completion Date October 19, 2018

Final Completion Date November 17, 2018

N/A PWPEC Report (Attach Copy) (**Part of 2018 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 Rick Larson

Phone No. 476-6634

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

X 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  
 WATER MAIN REPLACEMENT, STREET RECONSTRUCTION,  
 & INCIDENTALS  
 IMPROVEMENT DISTRICT NO. BR-18-G

**Nature & Scope**

This project is for the replacement of the water main and street reconstruction including street lighting and traffic signals on 4<sup>th</sup> Street South from 13<sup>th</sup> Avenue to 2<sup>nd</sup> Street, 10<sup>th</sup> Avenue South from 4<sup>th</sup> Street to the east and 11<sup>th</sup> Avenue South from 4<sup>th</sup> Street South to the east.

**Purpose**

The existing water main to be replaced is 8" cast iron pipe (CIP), which was installed over 90 years ago and is being replaced to minimize impacts and costs associated with breaks. Replacement of the water main with DR-18 PVC pipe will correct the situation.

The existing concrete pavement was installed in 1952 with street patching done throughout the years and is currently overlaid with asphalt. The reconstruction will include new doweled concrete pavement with bike lanes along the curbs.

Aging streetlights will be replaced with new LED street lights on the entire project area.

New traffic signals will replace the existing ones at the intersection of 4<sup>th</sup> Street South and 8<sup>th</sup> Avenue.

The project will be funded by a combination of Sales Tax, Water Main, Sanitary Sewer, Street Rehabilitation, and Special Assessments. Assessments will be applied per City policy for the water main replacement, sanitary sewer replacement, street reconstruction, streetlights and traffic signals.

**Feasibility**

The estimated cost of construction is \$3,050,051. The cost breakdown is as follows:

<b><u>Sanitary Sewer Costs</u></b>	<b>\$ 257,700</b>
Assessed Costs:	\$ 41,100
Plus 11% Engineering Fees:	\$ 4,521
Plus 6% Administration Fees:	\$ 2,466
Plus 4% Interest Fees:	\$ 1,644
Plus 3% Legal Fees:	<u>\$ 1,233</u>
Total Assessed Costs:	\$ 50,964
City Funded Costs:	\$ 216,600
Plus 6% Engineering Fees:	\$ 12,996
Plus 4% Interest Fees:	\$ 8,664
Plus 3% Legal Fees:	<u>\$ 6,498</u>
Total City Funded Costs:	\$ 244,758
<b>Total Estimated Sanitary Sewer Costs:</b>	<b>\$ 295,722</b>

<b><u>Water Main Costs</u></b>	<b>\$ 495,860</b>
Assessed Costs:	\$ 243,315
Plus 11% Engineering Fees:	\$ 26,765
Plus 6% Administration Fees:	\$ 14,599
Plus 4% Interest Fees:	\$ 9,733
Plus 3% Legal Fees:	\$ 7,299
Total Assessed Costs:	\$ 301,711
City Funded Costs:	\$ 252,546
Plus 6% Engineering Fees:	\$ 15,153
Plus 4% Interest Fees:	\$ 10,102
Plus 3% Legal Fees:	\$ 7,576
Total City Funded Costs:	\$ 285,377
<b>Total Estimated Water Main Costs:</b>	<b>\$ 587,088</b>
<b><u>Flood Sales Tax Storm Sewer Costs</u></b>	<b>\$ 56,300</b>
City Funded Costs:	\$ 56,300
Plus 6% Engineering Fees:	\$ 3,378
Plus 4% Interest Fees:	\$ 2,252
Plus 3% Legal Fees:	\$ 1,689
Total City Funded Costs:	\$ 63,619
<b>Total Estimates Flood Sales Tax Storm Sewer Costs:</b>	<b>\$ 63,619</b>
<b><u>Street Lights Costs</u></b>	<b>\$ 168,000</b>
Assessed Costs:	\$ 82,680
Plus 11% Engineering Fees:	\$ 9,095
Plus 6% Administration Fees:	\$ 4,961
Plus 4% Interest Fees:	\$ 3,307
Plus 3% Legal Fees:	\$ 2,480
Total Assessed Costs:	\$ 102,523
City Funded Costs:	\$ 85,320
Plus 6% Engineering Fees:	\$ 5,119
Plus 4% Interest Fees:	\$ 3,413
Plus 3% Legal Fees:	\$ 2,560
Total City Funded Costs:	\$ 96,412
<b>Total Estimated Street Lights Costs:</b>	<b>\$ 198,935</b>

<b><u>Traffic Signal Costs</u></b>	<b>\$ 233,689</b>
Assessed Costs:	\$ 116,844
Plus 11% Engineering Fees:	\$ 12,853
Plus 6% Administration Fees:	\$ 7,011
Plus 4% Interest Fees:	\$ 4,674
Plus 3% Legal Fees:	<u>\$ 3,505</u>
Total Assessed Costs:	\$ 144,887
City Funded Costs:	\$ 116,844
Plus 6% Engineering Fees:	\$ 7,011
Plus 4% Interest Fees:	\$ 4,674
Plus 3% Legal Fees:	<u>\$ 3,505</u>
Total City Funded Costs:	\$ 132,034
<b>Total Estimated Traffic Signals Costs:</b>	<b>\$ 276,920</b>
<b><u>Street Reconstruction Costs</u></b>	<b>\$ 1,838,502</b>
Assessed Costs:	\$ 1,421,473
Plus 11% Engineering Fees:	\$ 156,362
Plus 6% Administration Fees:	\$ 85,288
Plus 4% Interest Fees:	\$ 56,859
Plus 3% Legal Fees:	<u>\$ 42,644</u>
Total Assessed Costs:	\$ 1,762,627
City Funded Costs:	\$ 417,029
Plus 6% Engineering Fees:	\$ 25,022
Plus 4% Interest Fees:	\$ 16,681
Plus 3% Legal Fees:	<u>\$ 12,511</u>
Total City Funded Costs:	\$ 471,243
<b>Total Estimated Street Reconstruction Costs:</b>	<b>\$ 2,233,869</b>

**Project Funding Summary:**

Sanitary Sewer Funds (521)	6.69%	\$ 244,758
Water Main Funds (501)	7.81%	\$ 285,377
Infrastructure Sales Tax (420)	19.14%	\$ 699,688
Infrastructure Sales Tax - Flood (460)	1.74%	\$ 63,619
Special Assessments	64.62%	<u>\$ 2,362,711</u>
<b>Total Estimated Project Cost</b>		<b>\$ 3,656,153</b>

The cost to property owners will be per City policy.

We believe this project to be cost effective.



  
Jody Bertrand, P.E.  
Division Engineer

CITY OF FARGO  
ENGINEERING DEPARTMENT

LOCATION & COMPRISING

WATER MAIN REPLACEMENT,  
STREET RECONSTRUCTION & INCIDENTALS

IMPROVEMENT DISTRICT NO. BR-18-G

LOCATION:

On 4<sup>th</sup> Street South from 2<sup>nd</sup> Street South to 13<sup>th</sup> Avenue South.

On 10<sup>th</sup> Avenue South from 4<sup>th</sup> Street South to the east.

On 11<sup>th</sup> Avenue South from 4<sup>th</sup> Street South to the east.

COMPRISING:

Lots 1 thru 12, inclusive, Block 23.

Lots 1 thru 12, inclusive, Block 34.

All in Original Townsite.

Lots 1 thru 12, inclusive, Block 35.

Lots 1 thru 3, inclusive, Block 44.

All in Northern Pacific Addition.

Fred C. Hagen Addition

Lot 1, inclusive, Block 1.

All in St. John's Addition.

Lots 1 thru 22, inclusive, Block G.

Lots 1 thru 26, inclusive, Block H.

All of Block Tt.

Lots 1 thru 12, inclusive, Block I.

Lots 1 thru 24, inclusive, Block K.

Lots 1 thru 24, inclusive, Block L.

Lots 1 thru 24, inclusive, Block U.

Lots 1 thru 24, inclusive, Block V.

Lots 1 thru 12, inclusive, Block W.

All in Charles A. Roberts' Addition.

Lots 1 thru 12, inclusive, Block X.

Lots 1 thru 24, inclusive, Block Y.

Lots 1 thru 24, inclusive, Block Z.

Lots 1 thru 12, inclusive, Block LL.



Lots 1 thru 24, inclusive, Block KK.  
Lots 1 thru 24, inclusive, Block II.  
Lots 1 thru 24, inclusive, Block OO.  
Lots 1 thru 24, inclusive, Block NN.  
Lots 1 thru 12, inclusive, Block MM.  
All in Erskine's Addition.

Lots 1 thru 16, inclusive, Block 1.  
Lots 1 thru 10 and Lots 15 thru 26, inclusive, Block 2.  
Lots 1 thru 17, inclusive, Block 3.  
Lots 1 thru 26, inclusive, Block 4.  
Lots 1 thru 18, inclusive, Block 5.  
Lots 1 thru 18, inclusive, Block 6.  
Lots 1 thru 15, inclusive, Block 7.  
Lots 1 thru 18, inclusive, Block 8.  
Lots 1 thru 10, inclusive, Block 9.  
Lots 1 thru 8, inclusive, Block 10.  
All in Woodruff's Addition.

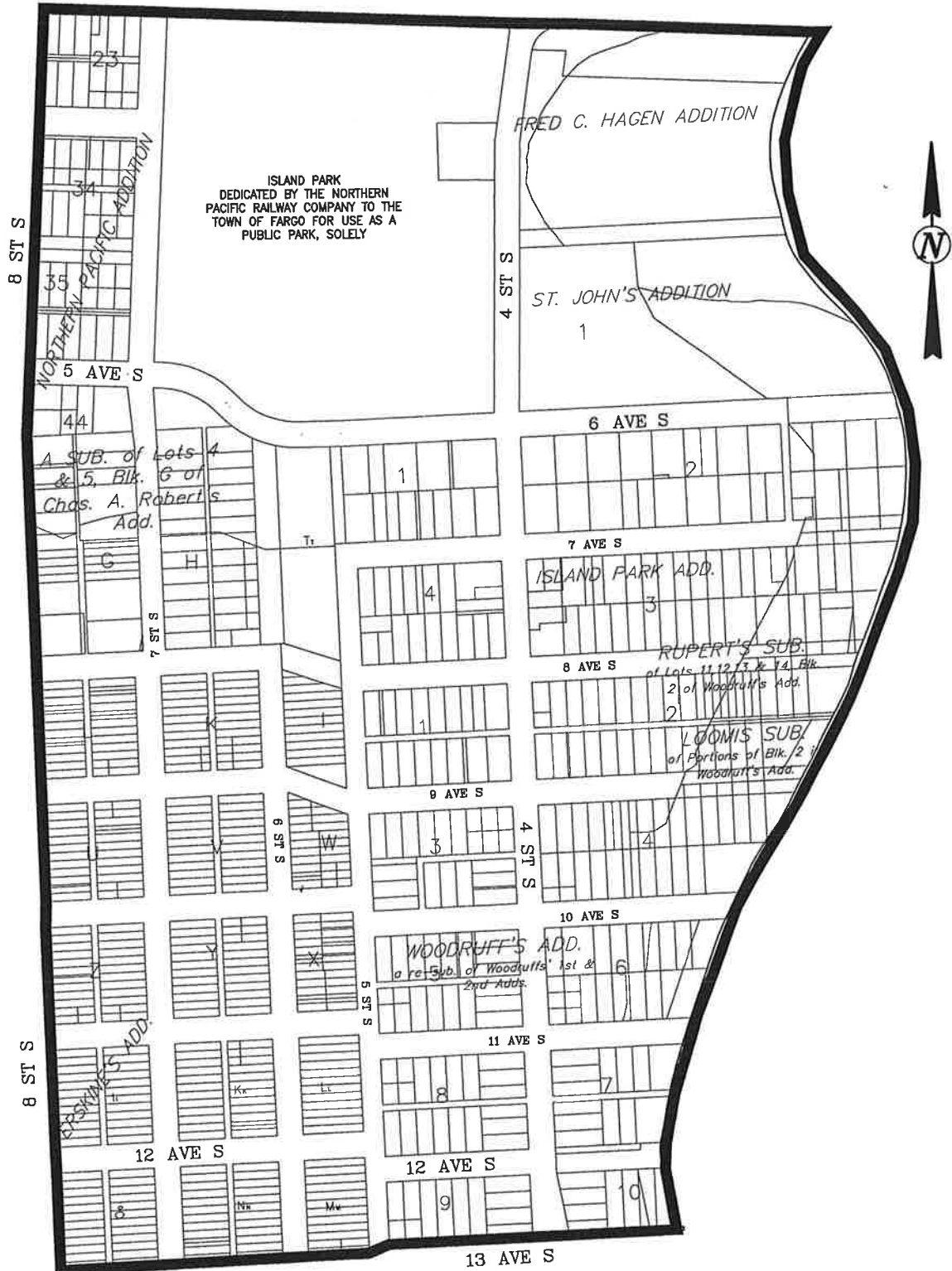
Lots A thru H, inclusive, Block 2 of Woodruff's Addition.  
All in Rupert's Subdivision.

Lots 1 thru 6, inclusive, Block 2 of Woodruff's Addition.  
All in Loomis Subdivision.

Lots 1 thru 8, inclusive, Block 1.  
Lots 1 thru 24, inclusive, Block 2.  
Lots 1 thru 22, inclusive, Block 3.  
Lots 1 thru 8, inclusive, Block 4.  
All in Island Park Addition.

All of the unplatted land laying in the north half of Section 7, Township 139, Range 48, bound on the north by 2<sup>nd</sup> Avenue South, bound on the south by 6<sup>th</sup> Avenue South, bound on the west by 8<sup>th</sup> Street South, and bound on the east by the Red River of the North.

All of the foregoing located in the City of Fargo, Cass County, North Dakota.



CITY OF FARGO  
ENGINEERING DEPARTMENT

LOCATION & ASSESSMENT AREA

WATER MAIN REPLACEMENT, STREET  
RECONSTRUCTION & INCIDENTALS

IMPROVEMENT DISTRICT NO. BR-18-G

COVER SHEET  
CITY OF FARGO PROJECTS

25.2

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:

Flood Mitigation, Street Reconstruction & Incidentals

Improvement District No. FM-14-8

Call For Bids March 26, 2018

Advertise Dates April 2 & 9, 2018

Bid Opening Date (Diversion Authority) April 24, 2018

Substantial Completion Date June 12, 2020

Final Completion Date July 1, 2020

X PWPEC Report (Attach Copy)

X Engineer's Report (Attach Copy)

N/A Direct City Auditor to Advertise for Bids **(to be bid by Diversion Authority)**

N/A Bid Quantities – Diversion Authority Led

X Notice to Property Owners (Dan Eberhardt)

Project Engineer Nathan Boerboom

Phone No. 476-6743

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)

N/A Order Plans & Specifications – Diversion Authority Led

N/A Approve Plans & Specifications – Diversion Authority Led

X 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)

REPORT OF ACTION

PUBLIC WORKS PROJECTS EVALUATION COMMITTEE

Improvement District No. FM-14-83 Type: Project Creation & CIP Revision

Location: 2<sup>nd</sup> Street South Date of Hearing: 2/20/2018

<u>Routing</u>	<u>Date</u>
City Commission	2/26/2018
PWPEC File	X
Project File	Nathan Boerboom

The Committee reviewed a communication from Division Engineer, Nathan Boerboom, regarding a recommendation to create and add a project to the 2018 CIP.

This is the last phase of the 2<sup>nd</sup> Street South Flood Mitigation Project. This phase is located directly south of the Main Avenue intersection and includes the reconstruction of storm sewer lift station #1, construction of a removable floodwall across 2<sup>nd</sup> Street South and reconstruction of the floodwall east of 2<sup>nd</sup> Street South to U.S. Army Corps of Engineers specifications. Due to the condition and age of the pavement on 2<sup>nd</sup> Street South, staff is recommended it be added to the Diversion Authority's project. The additional pavement will be the City's responsibility and will be funded according to the City's Infrastructure Funding Policy. Preliminary estimates have determined that \$212,887.58 will be special assessed with the remaining \$227,663.37 being funded by City Infrastructure Sales Tax.

Staff is recommending creation of Improvement District #FM-14-83 and its addition to the 2018 CIP.

On a motion by Bruce Grubb, seconded by Ben Dow, the Committee voted to create and add Improvement District #FM-14-83 to the 2018 CIP.

RECOMMENDED MOTION

Concur with Committee recommendation to create and add Improvement District #FM-14-83 to the 2018 CIP.

PROJECT FINANCING INFORMATION:


Recommended source of funding for project: Sales Tax & Special Assessments

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

COMMITTEE

	Present	Yes	No	Unanimous
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"/>	Mark Williams
Steve Dirksen, Fire Chief	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Mark Bittner, Director of Engineering	<input type="checkbox"/>	<input 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 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"/>	
City Engineer	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Brenda Derrig
Kent Costin, Finance Director	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

ATTEST:

  
 Brenda E. Derrig, P.E.  
 Division Engineer

## ENGINEER'S REPORT

## FLOOD MITIGATION, STREET RECONSTRUCTION &amp; INCIDENTALS

## IMPROVEMENT DISTRICT NO. FM-14-8

**Nature and Scope**

The FM Diversion Authority (DA) has created a flood mitigation project on 2<sup>nd</sup> Street South that is scheduled to be constructed in 2018 and 2019. The work associated with this project includes the reconstruction of Fargo's storm sewer lift station #1, construction of a removable floodwall across 2<sup>nd</sup> Street South (near Main Avenue) and reconstruction of the floodwall east of 2<sup>nd</sup> Street South to U.S. Army Corps of Engineers specifications. Also included in the DA project is reconstruction of 2<sup>nd</sup> Street South where the flood mitigation project will be impacting the roadway.

The City will be taking this opportunity to have the DA include the reconstruction of the remaining portions of 2<sup>nd</sup> Street South, where previous years construction has not replaced the pavement. The City is responsible for paying for this additional pavement reconstruction.

**Purpose**

2<sup>nd</sup> Street South is an arterial street that services the downtown area. The existing street section is deteriorated and in need of replacement. The new roadway will be reduced in width to match the current traffic needs.

**Feasibility**

The DA will be paying for all costs related to replacement, reconstruction or relocation of City infrastructure that is necessary due to the proposed flood mitigation project that is part of the overall FM Metro Diversion Project. The costs included within this Engineer's Report are only for items that are the City's responsibility and are not authorized within the DA project WP42E.

The estimated construction cost for the City's responsibility is approximately \$440,551. Funding for the project will be in accordance to the infrastructure funding policy utilizing Infrastructure Sales Tax Funds and Special Assessments. The cost breakdown is as follows:

<b><u>Street Reconstruction Cost</u></b>	
<u>Assessed Construction Cost</u>	\$ 212,888
Plus Fees:	
4% Engineering:	\$ 8,516
6% Administration:	\$ 12,773
4% Interest:	\$ 8,516
3% Legal:	\$ 6,387
<u>Total Estimated Assessed Cost</u>	<u>\$ 249,080</u>
<u>City Funded Construction Cost</u>	\$ 227,663
Plus Fees:	
4% Engineering:	\$ 9,107
4% Interest:	\$ 9,107
3% Legal:	\$ 6,830
<u>Total Estimated City Funded Cost (Infrastructure Sales Tax)</u>	<u>\$ 252,707</u>
 Total Estimated Street Reconstruction Cost:	 \$ 501,787


Project Funding Summary

Infrastructure Sales Tax	\$	252,707
Special Assessments – Street Reconstruction	\$	249,080
<b>Total Fargo Estimated Project Cost</b>	<b>\$</b>	<b>501,787</b>

Costs will be special assessed according to City policy.

We believe this project to be cost effective.



  
Nathan Boerbeom, PE, CFM  
Division Engineer

CITY OF FARGO  
ENGINEERING DEPARTMENT  
LOCATION & COMPRISING  
IMPROVEMENT DISTRICT FM-14-8

LOCATION:

On 2<sup>nd</sup> Street South from Main Avenue to 4<sup>th</sup> Street South.

COMPRISING:

Lots 2 and 3, Block 4.

Block 3, less ded r/w desc as foll: beg at a pt on n ln of sd blk, sd pt bg 565 ft more or less w of w bank of red river of the n, then s 84 deg 53 min 55 sec w & alg nly ln of sd blk 3114.09 ft, then alg a curve to left, sd curve bg nwly ln of sd blk & having a radius of 140 ft a dist of 110.45 ft, then s 39 deg 41 min 45 sec w & alg nwly ln of sd blk a dist of 356.48 ft, then n 52 deg 32 min 45 sec e 549.98 ft, more or less to pt of beg.

All in North Dakota Urban Renewal 2nd Addition

All of the foregoing located in the City of Fargo, Cass County, North Dakota.

