

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, October 19, 2020).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. 1st reading of an Ordinance Relating to Animal Boarding Facilities.
- 2. 2nd reading and final adoption of an Ordinance Annexing a Certain Parcel of Land Lying in the North Half of the South Half of the Southeast Quarter of Section 11, Township 139 North, Range 49 West; 1st reading, 10/19/20.
- 3. Applications for Games of Chance:
  - a. United Way of Cass Clay for a raffle on 11/16/20.
  - b. NDSU Sigma Alpha Professional Agriculture Sorority for a raffle on 12/7/20.
- 4. Agreement for Downtown Business Improvement District Services and Materials between City of Fargo and Downtown Community Partnership.
- 5. Leave of absence request for Dawit Ifo.
- 6. 2021 City Commission meeting schedule.
- 7. Sole Source Procurement and Piggyback Contract with AVI Systems, Inc., for audio visual installations (PBC20112-1601).
- 8. Special Construction Proposal with CenturyLink in association with Project No. MP-20-A1.
- 9. Change Order No. 1 in the amount of \$10,607.60 and time extension for Project No. SL-20-A1.
- 10. Change Order No. 4 in the amount of \$9,220.00 for Project No. SL-19-A1.
- 11. Change Order No. 4 in the amount of \$34,269.66 for Project No. TM-19-B1.
- 12. Negative Final Balancing Change Order No. 3 in the amount of -\$52,497.90 for Project No. FM-14-13.
- 13. Right of Way Use Agreement with Great Plains 1001 Holdings, LLC and Bakken Contracting Co., LLC.

15. Agreement for Temporary Ingress and Egress Road, Site Pad and Temporary Liquid Natural Gas Pumping Site Construction with Xcel Energy.
16. Encroachment Agreement with Lofts on Roberts, LLP.
17. ND Department of Commerce Emergency Resilience Grant for the FARGODOME.
18. State Water Commission request for cost reimbursement for the FM Metro Area Flood Risk Management Project for costs totaling \$824,088.63.
19. Grant Agreement with Lutheran Social Services of ND for medical screening/TB follow-up visits.
20. Agreement for Services with Mark Topp.
21. Agreement for Services with Zach Bruns.
22. Agreement for Services with Annie Wood.
23. Agreement for Services with Gia Rassier.
24. Agreement for Services with AE2S Communications.
25. Notice of Grant Award from the ND Department of Health for the Ryan White Part B Program (CFDA #93.917).
26. Notice of Grant Award from the ND Department of Health for COVID-19 Containment and Mitigation (CFDA #93.323).
27. Financial Award from the ND Department of Commerce/DCS for an Emergency Solutions Grant for the Gladys Ray Shelter.
28. Compensation adjustments for Fargo Cass Public Health nursing staff as presented.
29. Resolution Approving Plat of Delta Delta Delta Addition.
30. Contract Amendment with TDA Consulting, Inc. to extend the term of the agreement through 2/28/21.
31. Contract Agreement between City of Fargo and MDM Construction, LLC for construction services for the Gladys Ray COVID-19 Quarantine and Isolation Center (RFP20062).
32. Housing assistance gap funding to be administered by SENDCAA and Presentation Partners in Housing.
33. Bid award for the purchase of one articulated wheel loader (RFP21003).
34. Bid award for the purchase of one motorgrader and wing (RFP21001).
35. Bid award for the purchase/lease of one motorgrader and wing (RFP21002).
36. Service Agreements for Snow Removal Equipment Services (RFP20148).

38. Reimbursement Agreement with West Acres Enterprises for road repairs.
39. Award of the Fargo-Moorhead Transit Operational Services contract to First Transit for operation of transit services for the two-year period January 1, 2021 through December 31, 2022 with the option to extend for three 1-year periods.
40. Change Order No. 2 in the amount of \$28,219.00 for GTC Improvement Project General Contract.
41. Bid award for emergency sanitary sewer repairs.
42. Advertisement for bids for Project WA1910.
43. Bid award for Project WA1863.
44. Task Order No. 36 with AE2S for Project No. WA1863.
45. Bills.
46. Contract and bond for Improvement District No. BN-20-L1.
47. Final Balancing Change Order No. 4 in the amount of \$14,735.05 for Improvement District No. BR-18-F1.
48. Change Order No. 1 in the amount of -\$10,632.50 and Time Extension for Improvement District No. BR-20-B1.

**REGULAR AGENDA:**

49. Fargo-Moorhead Diversion Project Update.
50. **\*Public Input Opportunity\* - PUBLIC HEARINGS - 5:15 pm:**
  - a. Petition filed for exclusion of property located at 5218 68th Street South in part of Government Lot 4 of Section 5, Township 138 North, Range 49 West, of the Fifth Principal Meridian, Cass County, North Dakota; continued from the 10/19/20 Regular Meeting.
    1. Agreement for future annexation.
    2. First reading of exclusion Ordinance.
  - b. Touchmark Addition (1201 35th Avenue South and 1200 Harwood Drive); approval recommended by the Planning Commission on 7/8/20:
    1. Zoning Change from AG, Agricultural and MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development to MR-3 with a PUD, Planned Unit Development.
    2. 1st reading of a rezoning Ordinance.
    3. Planned Unit Development Master Land Use Plan.
    4. Plat of Touchmark Addition.
  - c. Transfer of a Class "FA" Alcoholic Beverage License from Bistro's & More, Inc. d/b/a Old Chicago to 701 OPS, Inc. d/b/a 701 Eateries Prairie Kitchen & Camp Lone Tree at 701 University Drive North.

51. Interim Financing Agreements Series A and Series B for Fargo's portion of the local cost share associated with the Red River Valley Water Supply Project.
52. Request by Mayor for COVID-related request for temporary Moratorium (by Ordinance) allowing occupancy of emergency shelters in non-residential structures.
53. Applications for Property Tax Exemptions for Improvements Made to Buildings:
  - a. Stephen and Alysia Burket, 915 3rd Street North (5 year).
  - b. Eric and Lori Johnson, 1501 20th Avenue South (5 year).
  - c. Norman Leslie Investment Properties, 225 30th Avenue North (5 year).
  - d. Timothy and Melissa Ortez, 2526 Viking Circle South (5 year).
  - e. Haven Homes LLC, 3121 Edgewood Drive North (5 year).
54. COVID-19 Update.
55. **RESIDENT COMMENTS: Suspended until further notice due to the City of Fargo COVID-19 operational status (Orange-High Risk).**

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).

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**MEMORANDUM**

**TO: Board of City Commissioners**

**From: Donald Kress, current planning coordinator** *DK*

**Date: October 29, 2020**

**RE: Exclusion of approximately 2.55 acres of a part of Government Lot 4 of Section 5, Township 138 North, Range 49 West, of the Fifth Principal Meridian, Cass County, North Dakota**

*PROCEDURAL NOTE: "Exclusion" means changing the city limits boundary so that the area proposed to be excluded is no longer in the City of Fargo. It is the opposite process of annexation. Exclusions are very rarely done. The process for exclusion is provided for in North Dakota Century Code.*

*PROJECT HISTORY NOTE: This project was continued from the October 19, 2020 City Commission agenda.*

November 2, 2020 is the date set by the City Commission to confirm petition of protest and take action on an ordinance for exclusion of approximately 2.55 acres of a part of Government Lot 4 of Section 5, Township 138 North, Range 49 West, of the Fifth Principal Meridian, Cass County, North Dakota

The petition for exclusion was brought forward by the land owner. Advertisements were placed in The Forum and notices were sent to Stanley Township and Cass County. Staff has not received any form of protest or concerns from the public.

The property is undeveloped at this time. The boundaries of the exclusion and corresponding legal description, as well as a staff report, are attached.

As this exclusion is from a petition by the property owner, the City Attorney has prepared an ordinance, that is attached to this package. The City Attorney has also prepared an Agreement for Future Annexation, which is also attached and is recommended for approval.

**RECOMMENDED MOTION:**

"To accept the findings and recommendations of staff and hereby waive the requirement to receive the exclusion Ordinance one week prior to the first reading and place the exclusion Ordinance on for first reading, and move to approve 1) the proposed exclusion of approximately 2.55 acres of part of Government Lot 4 of Section 5, Township 138 North, Range 49 West, of the Fifth Principal Meridian, Cass County, North Dakota as depicted in the attached map and legal description, and 2) the attached Agreement for Future Annexation."

City of Fargo Staff Report			
<b>Title:</b>	Exclusion-- Part of Government Lot 4 of Section 5, Township 138 North, Range 49 West	<b>Date:</b> <b>Updated:</b>	10/15/2020 10/29/2020
<b>Location:</b>	5218 68 <sup>th</sup> Street South	<b>Staff Contact:</b>	Donald Kress, planning coordinator
<b>Legal Description:</b>	Part of Government Lot 4 of Section 5, Township 138 North, Range 49 West, of the Fifth Principal Meridian, Cass County, North Dakota		
<b>Owner(s)/Applicant:</b>	Howard and Barbara Gensler	<b>Engineer:</b>	AE2S
<b>Entitlements Requested:</b>	<b>Exclusion</b> of part of Government Lot 4 of Section 5, Township 138 North, Range 49 West, of the Fifth Principal Meridian, Cass County, North Dakota		
<b>Status:</b>	City Commission Hearing: November 2, 2020		
<b>Proposal:</b>			
<p><i>PROCEDURAL NOTE: "Exclusion" means changing the city limits boundary so that the area proposed to be excluded is no longer in the City of Fargo. It is the opposite process of annexation. Exclusions are very rarely done. The process for exclusion is provided for in North Dakota Century Code.</i></p> <p><i>PROJECT HISTORY NOTE: This project was continued from the October 19, 2020 City Commission agenda.</i></p> <p>The applicant has petitioned the City to exclude an area of approximately 2.55 acres from the City of Fargo. This area is undeveloped. A plat of the proposed exclusion area is attached.</p> <p>This project was reviewed by the City's Planning and Development, Engineering, Public Works, and Fire Departments ("staff"), whose comments are included in this report.</p> <p><b>Surrounding Zoning Districts and Land Uses:</b></p> <ul style="list-style-type: none"> <li>• North: City of West Fargo across 52<sup>nd</sup> Avenue South; detached residences</li> <li>• East: AG, Agricultural; undeveloped</li> <li>• South: SR-2, Single-Dwelling Residential; undeveloped and P/I, Public/Institutional; stormwater detention basin</li> <li>• West: In City of Fargo extraterritorial jurisdiction--AG, Agricultural; undeveloped. City of West Fargo across Sheyenne River.</li> </ul>			
<b>Area Plans:</b>			
<p>The 2007 Southwest Tier 1 Growth Plan, part of the 2007 Growth Plan, This property is on the border between an area designated for "Residential Area—Medium to High Density," which is within the city limits, and "Residential Area—Lower to Medium Density" that is outside the city limits. Staff recommends that, if this property is excluded, it be considered in the "Residential Area—Lower to Medium Density" land use designation.</p>			

**Context:**

**Schools:** The subject property is located within the West Fargo School District and is served by Deer Creek Elementary, Heritage Middle and Horace High schools.

**Neighborhood:** The subject property is not located within a designated neighborhood.

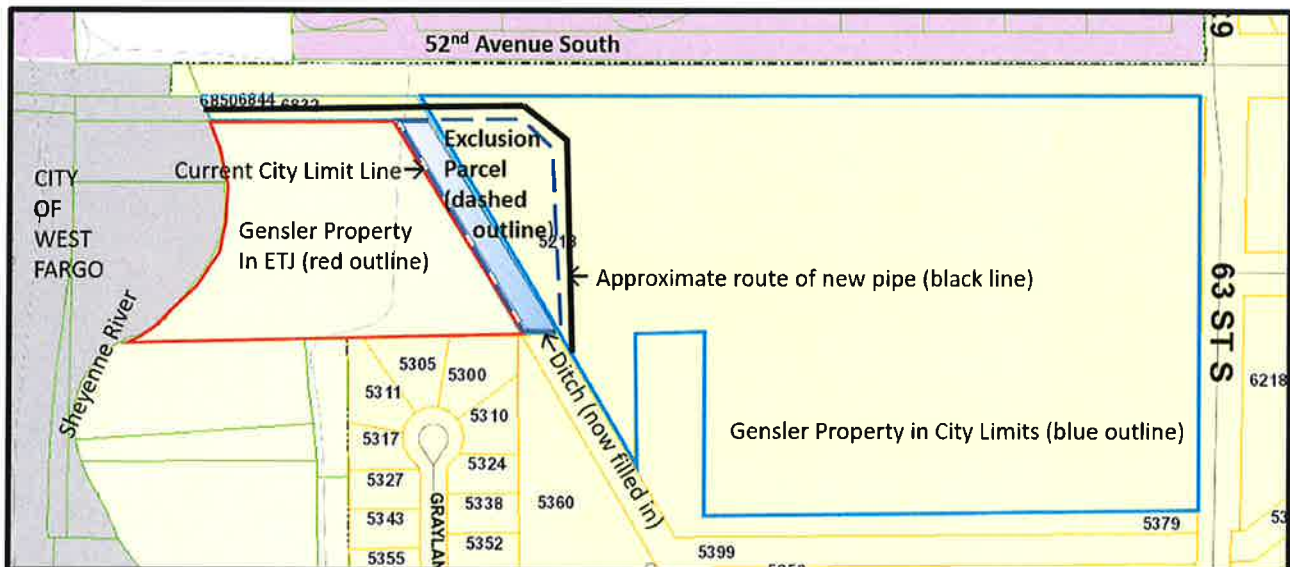
**Parks:** Deer Creek Park (6051 Deer Creek Parkway South) is located approximately one-half mile south of the subject property and provides the amenities of playgrounds - ages 2-5 and 5-12 and a shelter.

**Pedestrian / Bicycle:** There are no shared use trails adjacent to this property at this time, though it is anticipated trails will be located on 52nd Avenue South with future projects.

**Staff Analysis:****HISTORY OF THE PROPOSED EXCLUSION**

The subject property is owned by Howard and Barbara Gensler. The property is undeveloped. The Genslers also own the adjacent property to the west, which is outside of the city limits in Fargo's four-mile extra-territorial jurisdiction (ETJ). These two Gensler properties are separated by a ditch that was originally built to convey water from the Sheyenne River to locations in Fargo. It has not been used for several decades. The ditch creates an oddly-shaped parcel on the west side of the ditch which is difficult to develop.

As part of a larger project relating to this ditch and the Red River Water Supply Project, the City of Fargo agreed to fill in the ditch and relocate a pipe to the east of the ditch, which would "square off" the subject property. The exclusion is for the roughly triangular property between the former ditch and the new pipe location. The graphic below shows the relationship between these parcels:



At the May 28, 2019, Public Works Project Evaluation Committee (PWPEC) meeting, the committee reviewed correspondence from the City Attorney's office regarding this petition for exclusion and an Agreement for Future Annexation. The City Attorney's office recommended the committee support this petition, and the committee concurred with this recommendation.

**ZONING**

The property is zoned AG, Agricultural, and is undeveloped. It has recently been under cultivation. The property will retain this zoning after exclusion.

(continued on next page)

**GROWTH PLAN CONSISTENCY**

This property is within the 2007 Southwest Tier 1 growth plan. That plan does not provide any findings for, nor does it otherwise address, exclusions.

**NOTIFICATION OF HEARING**

The Cass County Finance Director and Stanley Township Clerk were notified, and public notice of the proposed exclusion was published in The Forum, pursuant to North Dakota Century Code requirements.

**AGREEMENT FOR FUTURE ANNEXATION**

As part of the overall exclusion project, the Genslers have agreed to an "Agreement for Future Annexation," which provides that the City can again annex this property if certain triggering events, as described in the agreement, occur. A recommendation to approve this agreement is included in the approval motion.

**Staff Recommendation:**

Suggested Motion: "To accept the findings and recommendations of staff and hereby waive the requirement to receive the exclusion Ordinance one week prior to the first reading and place the exclusion Ordinance on for first reading, and move to approve 1) the proposed exclusion of approximately 2.55 acres of part of Government Lot 4 of Section 5, Township 138 North, Range 49 West, of the Fifth Principal Meridian, Cass County, North Dakota as depicted in the attached plat and legal description, and 2) the attached Agreement for Future Annexation."

**Attachments:**

1. Location Map
2. Zoning Map
3. Exclusion Petition
4. Exclusion Plat
5. Agreement for Future Annexation

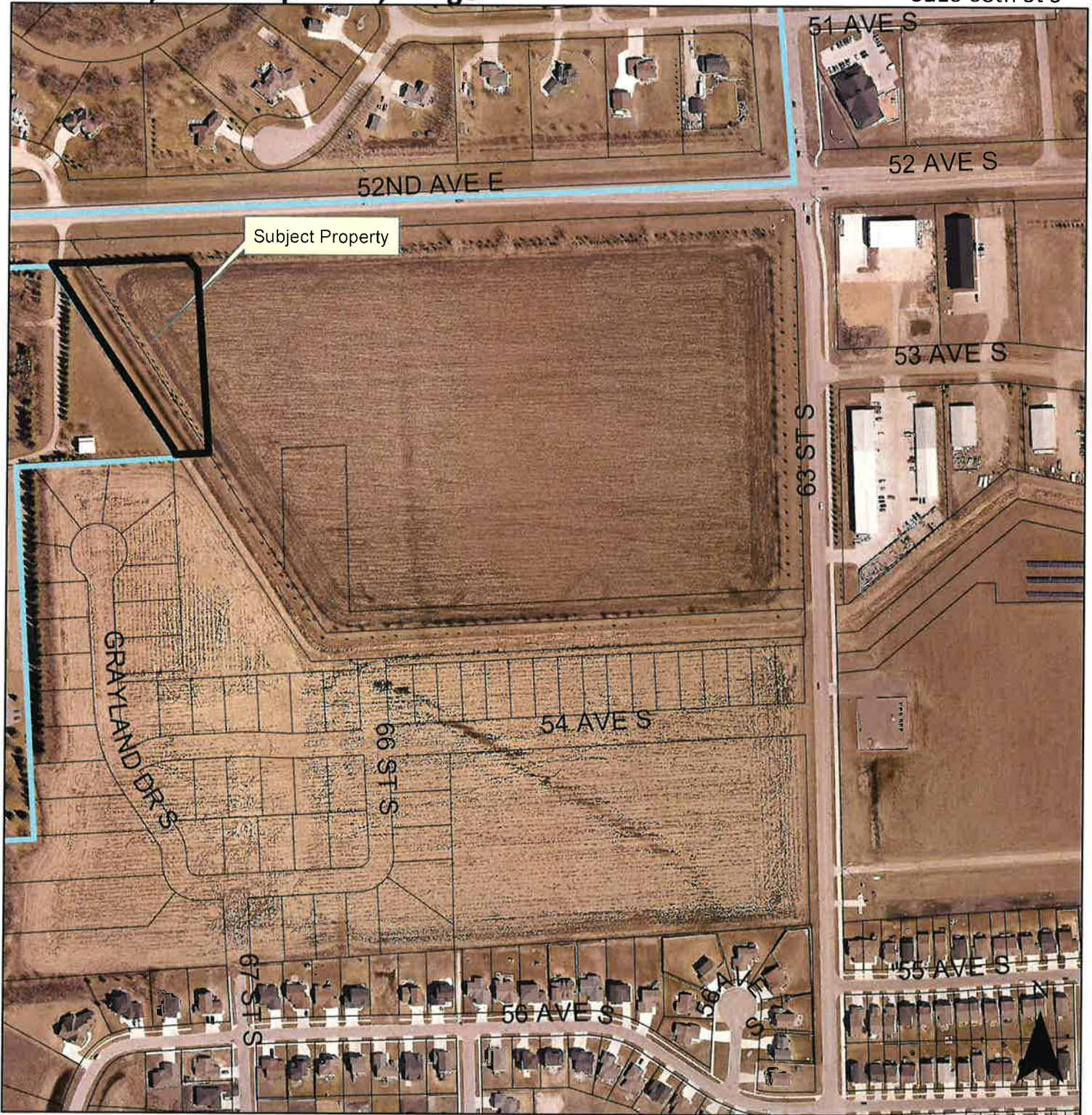


# Exclusion

Part of Government Lot 4

Section 5, Township 138N, Range 49W

5218 68th St S

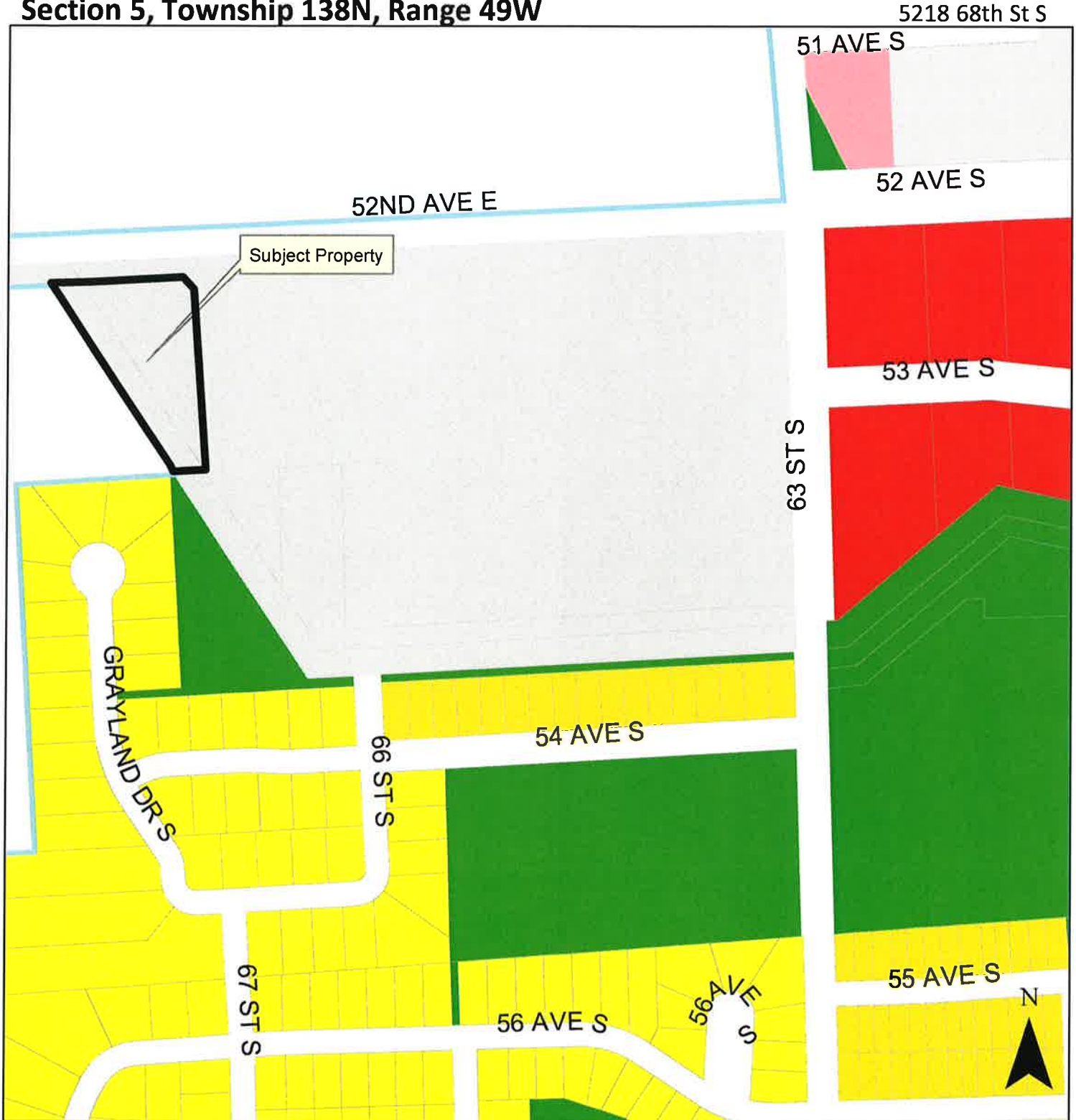




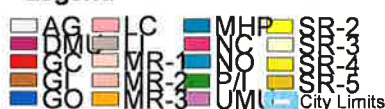
# Exclusion

Part of Government Lot 4

Section 5, Township 138N, Range 49W



Legend



**PETITION FOR EXCLUSION (DE-ANNEXATION)**

HOWARD GENSLER and BARBARA GENSLER, husband and wife, as owners of the property described below, do HEREBY PETITION THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, in accordance with North Dakota Century Code Chapter 40-51.2, for exclusion. The following is a description of the property to be excluded:

See legal description attached hereto as Exhibit A.

See depiction attached hereto as Exhibit B.

PETITIONERS FURTHER AGREE that this Petition shall be binding upon the heirs, executors, administrators, successors and assigns of the undersigned Petitioner insofar as the above-described property is concerned.

Dated this 12 day of Aug, 2019.

PETITIONER/OWNER

  
Howard Gensler

  
Barbara Gensler

**EXHIBIT A**

**LEGAL DESCRIPTION  
OF DE-ANNEXATION AREA**

Part of Government Lot 4 of Section 5, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota further described as follows:

Commencing at the Northwest Corner of Section 5; thence North 87°23'43" East on the north line of said Section 5 a distance of 658.14 feet to the west line of the parcel described as Tract 2 in Doc. No. 451449, records of Cass County; thence South 33°34'45" East on said west line a distance of 151.61 feet to the Point of Beginning; thence North 87°23'43" East parallel with, and 130.00 feet south of, said north line of Section 5 a distance of 339.59 feet; thence South 47°36'17" East a distance of 50.32 feet; thence South 2°36'17" East perpendicular to said north line a distance of 453.42 feet to the intersection of the east line of said Tract 2 with the south line of the North Half (N1/2) of Gov't Lot 4 of said Section 5; thence South 86°21'43" West on said south line a distance of 80.78 feet to said west line of Tract 2; thence North 33°34'45" West on said west line of Tract 2 a distance of 572.03 feet to the Point of Beginning.

Said parcel contains 2.55 acres, more or less.

The legal description was prepared by:

Nick Stattelmann, PLS, PE, CFedS  
Advanced Engineering and  
Environmental Services, Inc. (AE2S)  
4170 28<sup>th</sup> Avenue South  
Fargo, ND 58104  
701-364-9111

This document was prepared by:

Alissa R. Farol  
Assistant City Attorney  
Erik R. Johnson & Associates, Ltd.  
505 Broadway N., Ste. 206  
Fargo, ND 58102  
701-280-1901  
afarol@lawfargo.com

# EXCLUSION (De-Annexation) PLAT

## FROM THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

### DESCRIPTION OF PLAT BOUNDARY

Part of Government Lot 4 of Section 5, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota hereafter described as follows:

Commencing at the Northwest Corner of Block 1, Range North 138° 12' 30" W, on the north line of said section 5 a distance of 654.14 feet to the west line of the parcel described in Trust 2 in Deeds 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 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1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 221

**EXHIBIT A**

**LEGAL DESCRIPTION  
OF DE-ANNEXATION AREA**

Part of Government Lot 4 of Section 5, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota further described as follows:

Commencing at the Northwest Corner of Section 5; thence North 87°23'43" East on the north line of said Section 5 a distance of 658.14 feet to the west line of the parcel described as Tract 2 in Doc. No. 451449, records of Cass County; thence South 33°34'45" East on said west line a distance of 151.61 feet to the Point of Beginning; thence North 87°23'43" East parallel with, and 130.00 feet south of, said north line of Section 5 a distance of 339.59 feet; thence South 47°36'17" East a distance of 50.32 feet; thence South 2°36'17" East perpendicular to said north line a distance of 453.42 feet to the intersection of the east line of said Tract 2 with the south line of the North Half (N1/2) of Gov't Lot 4 of said Section 5; thence South 86°21'43" West on said south line a distance of 80.78 feet to said west line of Tract 2; thence North 33°34'45" West on said west line of Tract 2 a distance of 572.03 feet to the Point of Beginning.

Said parcel contains 2.55 acres, more or less.

**EXHIBIT B**

**PETITION FOR ANNEXATION**

The undersigned, HOWARD GENSLER and BARBARA GENSLER, husband and wife, as owners of the property described below, DO HEREBY PETITION THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA, in accordance with North Dakota Century Code Chapter 40-51.2, for annexation to said City of Fargo immediately or at such future time as said City of Fargo may desire. The following is a description of the property to be annexed:

See Attached Exhibit A.

The undersigned hereby states that this Petition is submitted in accordance with terms of a separated agreement executed between the undersigned, HOWARD GENSLER and BARBARA GENSLER, and the City of Fargo entitled Agreement for Future Annexation, dated the 12 day of Aug, 2019. City of Fargo hereby agrees and stipulates that said agreement governs its rights to take action on this Petition for Annexation and will take no action other than as set forth in said agreement.

PETITIONERS FURTHER AGREE that this Petition shall be binding upon the heirs, executors, administrators, successors and assigns of the undersigned Petitioners insofar as the above-described property is concerned.

Dated this 12 day of Aug, 2019.

PETITIONERS/OWNERS

  
HOWARD GENSLER

  
BARBARA GENSLER

**EXHIBIT A TO  
PETITION FOR ANNEXATION**

**LEGAL DESCRIPTION**

Part of Government Lot 4 of Section 5, Township 138 North, Range 49 West of the 5th Principal Meridian, Cass County, North Dakota further described as follows:

Commencing at the Northwest Corner of Section 5; thence North 87°23'43" East on the north line of said Section 5 a distance of 658.14 feet to the west line of the parcel described as Tract 2 in Doc. No. 451449, records of Cass County; thence South 33°34'45" East on said west line a distance of 151.61 feet to the Point of Beginning; thence North 87°23'43" East parallel with, and 130.00 feet south of, said north line of Section 5 a distance of 339.59 feet; thence South 47°36'17" East a distance of 50.32 feet; thence South 2°36'17" East perpendicular to said north line a distance of 453.42 feet to the intersection of the east line of said Tract 2 with the south line of the North Half (N1/2) of Gov't Lot 4 of said Section 5; thence South 86°21'43" West on said south line a distance of 80.78 feet to said west line of Tract 2; thence North 33°34'45" West on said west line of Tract 2 a distance of 572.03 feet to the Point of Beginning.

Said parcel contains 2.55 acres, more or less.

The legal description was prepared by:

Nick Stattelmann, PLS, PE, CFedS  
Advanced Engineering and  
Environmental Services, Inc. (AE2S)  
4170 28<sup>th</sup> Avenue South  
Fargo, ND 58104  
701-364-9111

This document was prepared by:

Alissa R. Farol  
Assistant City Attorney  
Erik R. Johnson & Associates, Ltd.  
505 Broadway N., Ste. 206  
Fargo, ND 58102  
701-280-1901  
afarol@lawfargo.com



50a1

**AGREEMENT FOR FUTURE ANNEXATION**

**THIS AGREEMENT** is made by and between the **CITY OF FARGO**, a North Dakota a municipal corporation, hereinafter called "City", and **HOWARD GENSLER AND BARBARA GENSLER**, husband and wife, whose address is 5218 - 68th Street South, Fargo, North Dakota 58104, hereinafter called "Property Owner", whether one or more;

**WITNESSETH:**

**WHEREAS**, Property Owner is the owner of the following described tract of land (hereinafter called the "Subject Property") situate in Cass County, North Dakota, to-wit:

That certain real property situate in Section Five (5), Township One Hundred Thirty-eight (138) North, Range Forty-nine (49) West;

and,

**WHEREAS**, the Property Owner desires to exclude certain property (hereinafter "De-Annexation Area") from the City, described as follows:

Legal Description of De-Annexation Area attached as Exhibit A;

and,

**WHEREAS**, the proposed exclusion of the De-Annexation Area must be approved by the board of city commissioners of the city of Fargo in accordance with N.D.C.C. § 40-51.2-04, said De-Annexation Area having never been platted, and containing no municipal improvements;

and,

**WHEREAS**, it is the desire of the City and the Property Owner that the De-Annexation Area become annexed to the City at some time in the future, according to certain terms, and the parties wish to set forth such terms and conditions in writing;

**NOW, THEREFOR**, in consideration of the mutual covenants and agreements contained herein, IT IS AGREED:

1. At such time as the Subject Property has been formally "excluded" from the city of Fargo, as contemplated by N.D.C.C. § 40-51.2-04; then, from and after such event, the City agrees it will not force, compel, or require annexation of the Subject Property into the City at any future time, except upon the terms and conditions set forth in this agreement or upon the mutual written agreement of the parties.

2. The Subject Property may be fully annexed into the City of Fargo after the occurrence of a "triggering event" as described herein.

3. The "triggering event" would be the earlier of either a failing on-site septic system, or improvement to the Subject Property to an extent which exceeds fifty percent (50%) of its current value. Periodic pumping of a septic tank shall not be construed as a failure of an on-site system so long as the connecting drain field is functioning adequately.

4. For purposes of determining property improvements which exceed fifty percent (50%) of value, it shall be determined by the issuance of one or more building permits for the installation, erection, or construction of improvements upon the Subject Property (but not including repairs necessitated by fire, windstorm, or other acts of God), the cumulative true and full assessment value of such improvements being greater than fifty percent (50%) of the true and full assessment value of the property (including land, buildings and improvements) all as determined by the Cass County Assessor for the year in which the first building permit is hereafter issued for improvements to the property.

5. Until the Subject Property is fully annexed into the City of Fargo pursuant to this agreement, the property will remain in Stanley Township outside the city limits of the City of Fargo, but within the extraterritorial area of the City of Fargo.

6. Property Owner has executed a Petition for Annexation, a copy of which is attached hereto as Exhibit B, and the City specifically agrees to forebear taking action on that petition other than in the manner set forth in this agreement, or unless otherwise requested in writing by the Property Owner or Property Owner's successor in interest.

7. The Property Owner agrees to refrain from joining in any petition for annexation to West Fargo or any city other than the City of Fargo.

8. Property Owner agrees that this Agreement for Future Annexation is in recordable form and may be recorded with the Cass County Recorder at any time after the effective date of the aforementioned exclusion.

9. It is understood and agreed that nothing in this agreement shall preclude the City and Property Owner, or their successors and assigns, from reaching further agreements

concerning annexation, or the City's provision of water, sewer, or other utilities to the Subject Property at such times and upon such terms as may be mutually agreed upon in writing.

10. Each of the parties agrees to execute any and all documents to effectuate the purposes of this agreement. In all other respects, this agreement contains all of the terms of the agreement between the parties and supersedes all oral negotiations.

11. In the event any portion of this agreement is determined to be unlawful, invalid, or unenforceable, the parties will enter into good faith negotiations regarding mutually acceptable alternative arrangements regarding annexation.

12. All of the above and foregoing provisions shall be deemed to be covenants running with the land and shall be binding on the heirs, executors, administrators, successors, and assigns of each of the respective parties.

13. Effective Date: This agreement shall take effect the later of (a) the date it is last executed by the parties hereto, or (b) the date of the formal exclusion of the Subject Property by enactment of ordinance to such effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement the day and year first above written.

[Signatures on following page.]

CITY OF FARGO, a North Dakota  
municipal corporation

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

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

ATTEST:

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

DATED: 8-12-19

PROPERTY OWNERS

  
Howard Gensler

  
Barbara Gensler

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Timothy J. Mahoney, M.D., to me known to be the Mayor of the City of Fargo, Cass County, the North Dakota municipal corporation described in and that executed the foregoing agreement, and acknowledged to me that said corporation executed the same.

(SEAL)

\_\_\_\_\_  
Notary Public, Cass County, ND  
My Commission Expires:

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me personally appeared Steven Sprague, to me known to be the City Auditor of the City of Fargo, Cass County, the North Dakota municipal corporation described in and that executed the foregoing agreement, and acknowledged to me that said corporation executed the same.

(SEAL)

\_\_\_\_\_  
Notary Public, Cass County, ND  
My Commission Expires:

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

On this 12 day of August, 2019, before me personally appeared Howard Gensler, to me known to be the person described herein and that executed the foregoing instrument and acknowledged to me that he executed the same.

(SEAL)



Alecs K Larson  
Notary Public, Cass County, ND  
My Commission Expires:

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

On this 12 day of August, 2019, before me personally appeared Barbara Gensler, to me known to be the person described herein and that executed the foregoing instrument and acknowledged to me that she executed the same.

(SEAL)



Alecs K Larson  
Notary Public, Cass County, ND  
My Commission Expires:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

5092

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

1 AN ORDINANCE EXCLUDING A CERTAIN PARCEL OF LAND  
2 LYING IN PART OF GOVERNMENT LOT 4 OF SECTION 5, TOWNSHIP 138 NORTH,  
3 RANGE 49 WEST, IN CASS COUNTY, NORTH DAKOTA

4 WHEREAS, A Petition for Exclusion (De-Annexation) has been submitted by the owners of  
5 not less than three-fourths in assessed value of the property described in said Petition for Exclusion  
6 (De-Annexation) and signed by not less than three-fourths of the qualified electors to the City of  
7 Fargo, Cass County, North Dakota, in accordance with Section 40-51.2-04 N.D.C.C.; and,

8 WHEREAS, Said property has neither been platted nor have any municipal improvements  
9 been made or constructed therein or adjacent thereto in accordance with Section 40-51.2-04 N.D.C.C.;  
10 and,

11 WHEREAS, Public notice of the submission of such Petition has been given by publication  
12 in The Forum as required by Section 40-51.2-05 N.D.C.C.; and,

13 WHEREAS, Section 40-51.2-06 N.D.C.C. requires that such exclusion be accomplished by  
14 ordinance,

15 NOW, THEREFORE,

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

17 Section 1. The following described property located in part of Government Lot 4 of Section  
18 5, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota,  
19 is hereby excluded from the City of Fargo, Cass County, North Dakota:

20 Commencing at the Northwest Corner of Section 5; thence North 87°23'43" East on the  
21 north line of said Section 5 a distance of 658.14 feet to the west line of the parcel described  
22 as Tract 2 in Doc. No. 451449, records of Cass County; thence South 33°34'45" East on  
23 said west line a distance of 151.61 feet to the Point of Beginning; thence North 87°23'43"  
East parallel with, and 130.00 feet south of, said north line of Section 5 a distance of 339.59  
feet; thence South 47°36'17" East a distance of 50.32 feet; thence South 2°36'17" East  
perpendicular to said north line a distance of 453.42 feet to the intersection of the east line  
of said Tract 2 with the south line of the North Half (N1/2) of Gov't Lot 4 of said Section  
5; thence South 86°21'43" West on said south line a distance of 80.78 feet to said west line

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

1 of Tract 2; thence North 33°34'45" West on said west line of Tract 2 a distance of 572.03  
2 feet to the Point of Beginning.

3 Said parcel contains 2.55 acres, more or less.

4 Section 2. Effective Date.

5 This ordinance shall be in full force and effect from and after its passage and approval.  
6

7 CITY OF FARGO, a North Dakota municipal  
8 corporation

9 By \_\_\_\_\_  
10 Timothy J. Mahoney, M.D., Mayor

11 ATTEST

12  
13 By \_\_\_\_\_  
14 Steven Sprague, City Auditor

15 First Reading:  
16 Second Reading:  
17 Final Passage:  
18  
19  
20  
21  
22  
23



506

<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Touchmark Addition	<b>Date: Updated:</b>	4/29/2020 7/1/2020 10/29/2020
<b>Location:</b>	1201 35th Avenue South and 1200 Harwood Drive South	<b>Staff Contact:</b>	Donald Kress, planning coordinator
<b>Legal Description:</b>	Unplatted portion of the Section 25, Township 139 North, Range 49 West and Lots 1, 15, and 16, Block 1, Replat of Waterford Addition, of the Fifth Principal Meridian, Cass County, North Dakota		
<b>Owner(s)/Applicant:</b>	Touchmark LLC/Waterford at Harwood Groves LLC / Houston Engineering	<b>Engineer:</b>	Houston Engineering
<b>Entitlements Requested:</b>	<b>Minor Plat</b> (plat of unplatted portion of the Section 25, Township 139 North, Range 49 West and replat of Lots 1, 15, and 16, Block 1, Replat of Waterford Addition, of the Fifth Principal Meridian, Cass County, North Dakota) <b>Zoning Change</b> (From AG, Agricultural and MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development to MR-3 with a PUD, Planned Unit Development Overlay) and a <b>PUD Master Land Use Plan</b>		
<b>Status:</b>	City Commission Public Hearing: November 2, 2020		

<b>Existing</b>	<b>Proposed</b>
<b>Land Use:</b> Continuing care retirement community	<b>Land Use:</b> Continuing care retirement community
<b>Zoning:</b> MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development Overlay; AG, Agricultural	<b>Zoning:</b> MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development Overlay
<b>Uses Allowed:</b> <u>MR-3</u> allows detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religious institutions, safety services, schools, and basic utilities; <b>plus additional uses noted in the PUD</b> ; <u>AG</u> allows detached houses, parks and open space, safety services, basic utilities, and crop production.	<b>Uses Allowed:</b> Allows detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religious institutions, safety services, schools, and basic utilities. <b>Plus additional uses noted in PUD</b>
<b>Maximum Density Allowed:</b> <u>MR-3</u> : 24 dwelling units per acre (du/ac); <u>AG</u> : 1 dwelling unit per 10 acres	<b>Maximum Density Allowed:</b> 24 dwelling units per acre <b>PUD proposes increased density of 26 du/ac</b>

<b>Proposal:</b>
The applicant requests approval of three entitlements: <ol style="list-style-type: none"> <li>1. A zoning change from AG, Agricultural and MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development Overlay to MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development Overlay; and</li> <li>2. PUD Master Land Use Plan within the boundaries of the proposed Touchmark Addition; and</li> <li>3. A plat of the <b>Touchmark Addition</b>, a plat of an unplatted portion of the Section 25, Township 139 North, Range 49 West and replat of Lots 1, 15, and 16, Block 1, Replat of Waterford Addition, of the Fifth Principal Meridian, Cass County, North Dakota</li> </ol>

Note that the twinhomes that border the north, east, and part of the south sides of the subject property, while included in the retirement community, are not included in this plat, PUD, or zone change.

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

**Surrounding Land Uses and Zoning Districts:**

- North: MR-3 with duplexes; LC, Limited Commercial across Harwood Drive with small strip malls
- East: MR-3 with duplexes
- South: MR-3 with duplexes; AG with single-dwelling residences; MR-3 with multi-dwelling residences and P/I, Public/Institutional with elementary school (Eagles)
- West: GC, General Commercial across University Drive with various commercial establishments

**Plat:**

The plat will replat Lots 1, 15, and 16 of Replat of Waterford Addition together with an adjacent unplatted property into a single lot and block for the expansion of the existing continuing care retirement community currently in place on this lot.

**History of Existing PUD:**

Existing Zoning---PUD:

Lots 1, 14, and 15 of Replat of Waterford Addition are zoned MR-3 with a PUD, Planned Unit Development Overlay. The existing PUD was created and amended in two separate actions:

On August 26, 1996, the City Commission approved a PUD to allow a continuing care retirement community on this location. However, the property remained zoned AG, Agricultural. Note that this action was taken in 1996, before the current Land Development Code (LDC) became effective (1999). In 1996, the 1965 zoning ordinance was still in effect. PUD's under that ordinance differ from the PUD's now in use. Specifically, the 1965 zoning ordinance stated

- "the issuance of a planned unit development permit shall not be deemed to be a change in zoning, and the zoning of the property prior to the planned unit development permit will remain unchanged; " and
- "the board of city commissioners may issue a planned unit development permit allowing substantial variances from the provisions of this ordinance relating to uses, setbacks, height and similar regulations, but not including parking requirements, off-street loading, necessary screening and similar requirements for the protection of adjoining properties." (1965 zoning ordinance Sec. 23-0323.C (2 and 3).

PUD's created under the current LDC require a zone change to go with the PUD. Parking, screening, and similar requirements can be modified with the PUD.

On June 5, 2006, the City Commission approved a zone change from AG, Agricultural to MR-3, Multi-Dwelling Residential with an amendment to the 1996 PUD to allow "uses permitted in an "LC" (Limited Commercial) District so long as those uses are accessory to, or associated with, the use of the property as a continued care retirement facility." (Ord. 4524)

Existing Conditional Use Permit---Alternate Access (parking reduction)

On June 14, 2006, the Planning Commission approved a conditional use permit (CUP) for an alternative access plan for Lot 1, Block 1, replat of Waterford Addition, to

- reduce the number of required parking spaces from 2.25 per dwelling unit to 0.75 spaces per dwelling unit; and
- reduce the number of required parking spaces for the commercial fitness center from one space per 200 square feet to one space per 267 square feet (this commercial fitness center was added in 2006).

#### **Need for a New PUD:**

The applicant is intending to expand the continuing care retirement community by

- demolishing an existing building used for parking;
- building a new building that expands the services provided by the community and the resident capacity and also accommodates parking; and
- expanding the overall size the property by incorporating a property adjacent to the south of the current property (the AG-zoned property) which will be zoned to MR-3 and included in the PUD.

In order to facilitate this expansion, the applicant proposes a new PUD that

- updates the existing PUD to the current PUD style and standards;
- revises the parking ratio established in 2006 into the PUD; and
- requests certain modifications to the general development standards and development standards of the MR-3 zone, so the entire site is required to be brought into compliance with the current Land Development Code (LDC).

If this PUD is approved, it will replace the existing PUD and CUP for this property.

A chart provided by the applicant of the proposed PUD modifications is below. The applicant has submitted a project narrative and PUD Master Land Use Plan, which further describe the proposed development. These documents are attached.

<b>Development Standard</b>	<b>Current LDC development standards for MR-3</b>	<b>PUD modifications to MR-3 development standards</b>	<b>Notes</b>
Allowed Uses	Detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religions institution, safety services, schools, and basic utilities	<i>Include Retail Sales &amp; Services, and Office Uses as accessory uses to, or associate with, the use of the property as a continued care retirement facility</i>	<i>Actually reduces the number of uses allowed—only retail sales and office uses will be allowed, rather than all uses in the LC, Limited Commercial zone.</i>
Residential Density	24 du/acre	26 units/acre	<i>Small increase unit density allows expansion of existing building and reuse of existing facility and infrastructure. Allows for infill on existing open space of site</i>

			<i>and shared use of supporting facilities.</i>
Building Coverage	35% of lot area	<i>Increase to 38%</i>	<i>Allows the expansion of the existing facility at its current location. Allowing increase building coverage for the site allows the new addition to continue to use the existing facility to serve both the existing building and the new additions.</i>
Minimum open space	35% of lot area	<i>Decrease to 32%</i>	<i>Decrease in open space requirements is to accommodate the increased building coverage of the site.</i>
Parking—Residential—Assisted Living	2.25 spaces per unit	<i>0.75 spaces per dwelling unit</i>	<i>Continues the parking ratio approved in 2006 for this facility. Facility records indicate approximately 6% of assisted living residents have vehicles onsite.</i>
Parking—Residential—Memory Care	1.50 spaces per unit	<i>0.25 spaces per unit</i>	<i>Memory care residents generally do not drive and do not have vehicles onsite. Additionally, though memory care units would generally be considered “group living” under the LDC, the way these units are configured and function as efficiency apartments, parking ratio is modified based on the 1.50 spaces per efficiency apartment rather than</i>

			<i>the 1 space per 100 square feet of sleeping area for Group Living.</i>
Parking—Residential—Independent Living	2.50 spaces per unit	<i>0.75 spaces per unit</i>	<i>Facility records indicate that approximately 16% of independent living residents have vehicles onsite.</i>
Parking--Retail	1 space per 200 SF	<i>1 space per 267 SF</i>	<i>Continues the parking ratio approved in 2006 for this facility.</i>
Landscaping—Open Space	3 plant units per 1,000 SF of area; 8 sf per unit,	<i>No Change to plant unit requirements, Reduce requirement of 70% of plant units located in front of building to 50% required in front of the building and redistribute these plant units throughout the site.</i>	<i>Limited open space along University Drive will make placement of 70% of plant units in front of building unfeasible without remove of existing fire access roadway.</i>
Landscaping—Parking Lot Perimeter	Buffers shall be located between adjacent streets rights of way and off-street parking areas and all vehicular circulation areas within the front or streetside setback per Table 20-0705(D)(3)	<i>Modify parking buffer requirements along existing vehicle circulation routes to 1' minimum width with fence and 6 shrubs/perennial grasses per 25 linear feet. New pavement areas along University Drive to have 6' buffer with Decorative metal fence and 1 small tree or 6 shrubs/perennial grasses per 25 linear feet</i>	<i>The existing vehicle circulation located in the setback along the west side of the site is currently approximately one foot from the property line. As the existing pavement serves as both fire access and vehicular circulation, relocation/removal of the existing pavement cannot be done. Thus, modification of the minimum with and buffer requirements is proposed.</i>  <i>New fire access routes constructed as part of the addition</i>

			would have a parking lot buffer meeting the 6' buffer requirements for lots between 1 and 50 spaces.
<p><b>COMMENT ON PARKING RATIOS:</b> As this is a continuing care retirement community, the residential units are more specialized and the range of residents is more limited than for a standard multi-dwelling residential building. Thus, in the chart above, the parking ratios are broken down for assisted living, independent living, and memory care, as the residents who live in these different units have different levels of activity.</p> <p>Based on the proposed parking ratios in the chart above, 189 parking spaces would be required to accommodate the residents of the three different care levels. The site will have a total of 234 spaces, thus providing 45 spaces for staff and visitors.</p>			
<b>Area Plans:</b>			
This subject property is not covered by an adopted growth plan or neighborhood plan.			
<b>Schools and Parks:</b>			
<p><b>Schools:</b> The subject property is located within the Fargo School District and is served by Eagles Elementary, Carl Ben Eielson Middle, and South High schools.</p> <p><b>Parks:</b> Lemke Park (1000 32<sup>nd</sup> Avenue South) is approximately 0.16 mile northeast of the subject property. This park offers the amenities of multipurpose field, outdoor skating rinks, picnic table, playground---ages 5-12, rentals, soccer, warming houses.</p> <p><b>Neighborhood:</b> The subject property is located within the River Drive neighborhood.</p> <p><b>Pedestrian / Bicycle:</b> There is a 10-foot wide off-road multi-use trail located along the west side of the project site along University Drive South that is a component of the metro area bikeways system.</p>			
<b>Staff Analysis:</b>			
<p><b>Zoning</b> Section 20-0906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:</p> <ol style="list-style-type: none"> <li><b>1. Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?</b> Staff is unaware of any error in the zoning map as it relates to this property. Staff finds that the requested zoning change is justified by change in conditions since the previous zoning classification was established. The applicant has added a property, currently zoned AG, to the site that must be rezoned to MR-3 with a PUD to match the rest of the site, and the new PUD requires an accompanying rezone. Note that, other than for the AG-zoned property, MR-3 is the existing zoning. The proposed PUD Overlay zoning district is intended to accommodate the expansion of the facilities on this property. <b>(Criteria Satisfied)</b></li> <li><b>2. Are the City and other agencies able to provide the necessary public services, facilities, and programs to serve the development allowed by the new zoning classifications at the time the property is developed?</b></li> </ol>			

City staff and other applicable review agencies have reviewed this proposal. Staff finds no deficiencies in the ability to provide all of the necessary services to the site. The subject property fronts on existing developed public rights-of-way which provide access and public utilities to serve the property. **(Criteria satisfied)**

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

Staff has no documentation or supporting evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity. In accordance with the notification requirements of the Land Development Code, notice was provided to neighboring property owners within 300 feet of the project site. To date, staff has received and responded to one inquiry. Staff finds that the approval of the zoning change will not adversely affect the condition or value of the property in the vicinity. **(Criteria satisfied)**

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

The purpose of the LDC is to implement Fargo's Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. Redevelopment and expansion of this site, which is already served by public infrastructure, is a form of infill development. Staff finds that the proposed PUD is in keeping with Fargo's Comprehensive Plan. Specifically, the City's Go2030 Comprehensive Plan supports development within areas of the City that are already serviced with utilities. Staff finds this proposal is consistent with the purpose of the LDC, the Go2030 Comprehensive Plan, and other adopted policies of the City. **(Criteria Satisfied)**

**Master Land Use Plan:** The LDC stipulates that the Planning Commission and Board of City Commissioners shall consider the following criteria in the review of any Master Land Use Plan.

**1. The plan represents an improvement over what could have been accomplished through strict application of otherwise applicable base zoning district standards, based on the purpose and intent of this Land Development Code;**

The plan represents an improvement over what could have been accomplished through strict application of the base zoning district. It modifies development standards of the MR-3 zone in order to allow an expansion of the current continuing care retirement community on this site, as the original development of the site was done under an earlier zoning ordinance. **(Criteria Satisfied)**

**2. The PUD Master Land Use Plan complies with the PUD standards of Section 20-0302;**

Staff has reviewed the PUD Master Land Use Plan and found that it complies with the PUD standards of Section 20-0302. The PUD modifies some standards of the MR-3 zone as noted above. All other standards and requirements as set forth in the LDC have been met. **(Criteria Satisfied)**

**3. The City and other agencies will be able to provide necessary public services, facilities, and programs to serve the development proposed, at the time the property is developed;**

City staff and other applicable review agencies have reviewed this proposal. Staff finds no deficiencies in the ability to provide all of the necessary services to the site. The subject property fronts on existing developed public rights-of-way which provide access and public utilities to serve the property. **(Criteria satisfied)**

**4. The development is consistent with and implements the planning goals and objectives contained in the Area Plan, Comprehensive Plan and other adopted policy documents;**

The purpose of the LDC is to implement Fargo's Comprehensive Plan in a way that will protect the general health, safety, and welfare of the citizens. Staff finds that the proposed PUD is in keeping with Fargo's Comprehensive Plan. Staff finds this proposal is consistent with the purpose of the LDC, the Go2030 Comprehensive Plan, and other adopted policies of the City. **(Criteria Satisfied)**

**5. The PUD Master Land Use Plan is consistent with sound planning practice and the development will promote the general welfare of the community.**

The PUD is consistent with sound planning practice and the development will promote the general welfare of the community by allowing the expansion of capacity and services of the existing continuing care retirement community. **(Criteria Satisfied)**

**Minor Plat:** The LDC stipulates that the following criteria are met before a minor plat can be approved:

**1. Section 20-0907.B.3 of the LDC stipulates that the Planning Commission recommend approval or denial of the application, based on whether it complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code. Section 20-0907.B.4 of the LDC further stipulates that a Minor Subdivision Plat shall not be approved unless it is located in a zoning district that allows the proposed development and complies with the adopted Area Plan, the standards of Article 20-06 and all other applicable requirements of the Land Development Code.**

The subject property is not covered by an area plan or neighborhood future land use plan. The subject property is proposed to be rezoned from the existing AG and MR-3 with a PUD to MR-3 with a PUD that has been updated to the style and standards of the current LDC. The PUD proposes to modify certain development standards of the MR-3 zone. In accordance with Section 20-0901.F of the LDC, notices of the proposed plat have been sent out to property owners within 300 feet of the subject property. To date, staff has received and responded to one inquiry. The project has been reviewed by the city's Planning, Engineering, Public Works, Inspections, and Fire Departments and found to meet the standards of Article 20-06 and other applicable requirements of the Land Development Code. **(Criteria Satisfied)**

**2. Section 20-0907.C.4.f of the LDC stipulates that in taking action on a Final Plat, the Board of City Commissioners shall specify the terms for securing installation of public improvements to serve the subdivision.**

While this section of the LDC specifically addresses only major subdivision plats, staff believes it is important to note that any improvements associated with the project (both existing and proposed) are subject to special assessments. Special assessments associated with the costs of the public infrastructure improvements are proposed to be spread by the front footage basis and storm sewer by the square footage basis as is typical with the City of Fargo assessment principles. **(Criteria Satisfied)**

**Staff Recommendation:**

Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and move to approve the 1) zone change from AG, Agricultural and MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development to MR-3 with a PUD, Planned Unit Development Overlay; 2) PUD Master Land Use Plan; and 3) plat of the proposed **Touchmark Addition**; as the proposal complies with the Go2030 Fargo Comprehensive Plan, Standards of Article 20-06, Section 20-0906.F (1-4), Section 20-0908.B (7), and all other applicable requirements of the LDC."

**Planning Commission Recommendation:** July 7, 2020



On July 8\*, 2020, by a vote of 5-0 with four Commissioners absent and two Commission seats vacant, the Planning Commission moved to accept the findings and recommendations of staff and moved to recommend approval to the City Commission of 1) zone change from AG, Agricultural and MR-3, Multi-Dwelling Residential with a PUD, Planned Unit Development to MR-3 with a PUD, Planned Unit Development Overlay; 2) PUD Master Land Use Plan; and 3) plat of the proposed **Touchmark Addition**; as the proposal complies with the Go2030 Fargo Comprehensive Plan, Standards of Article 20-06, Section 20-0906.F (1-4), Section 20-0908.B (7), and all other applicable requirements of the LDC.”  
*(\*Note: Due to technical difficulties, the July 7, 2020 Planning Commission hearing was continued part of the way through the second hearing agenda item to July 8, 2020.)*

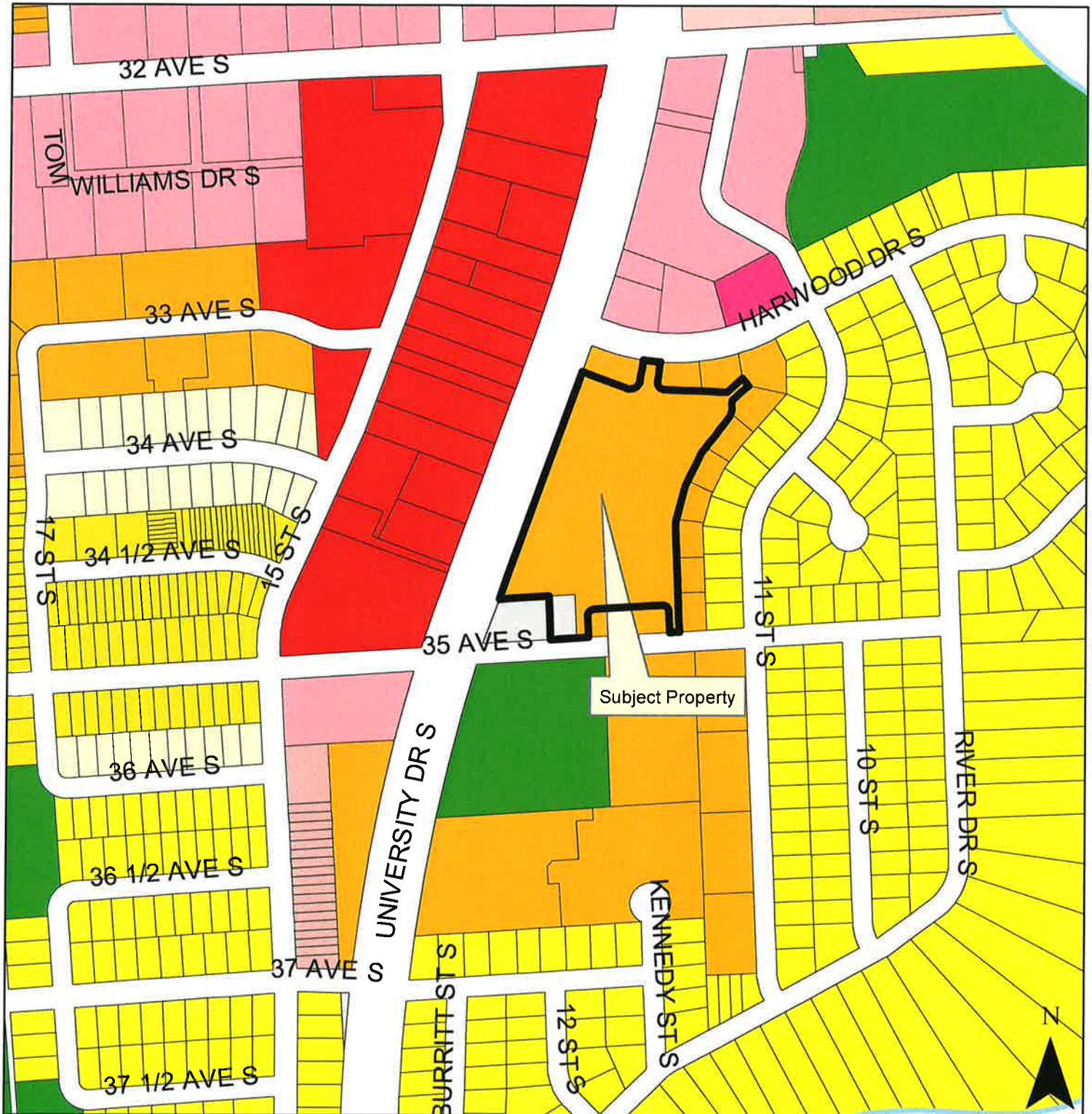
**Attachments:**

1. Zoning Map
2. Location Map
3. Preliminary Plat
4. PUD Master Land Use Plan (site plan)
5. PUD narrative, including Developer’s Statement of Intent and PUD chart

Page 34 **Zone Change (AG to MR-3 with PUD Overlay),  
Planned Unit Development Master Plan & Plat (Minor)**

**Touchmark Addition**

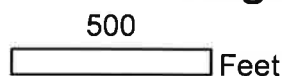
1201 35th Ave S  
1200 Harwood Dr S



**Legend**



**Fargo Planning Commission**  
**May 5, 2020**





# Zone Change (AG to MR-3 with PUD Overlay), Planned Unit Development Master Plan & Plat (Minor)

## Touchmark Addition

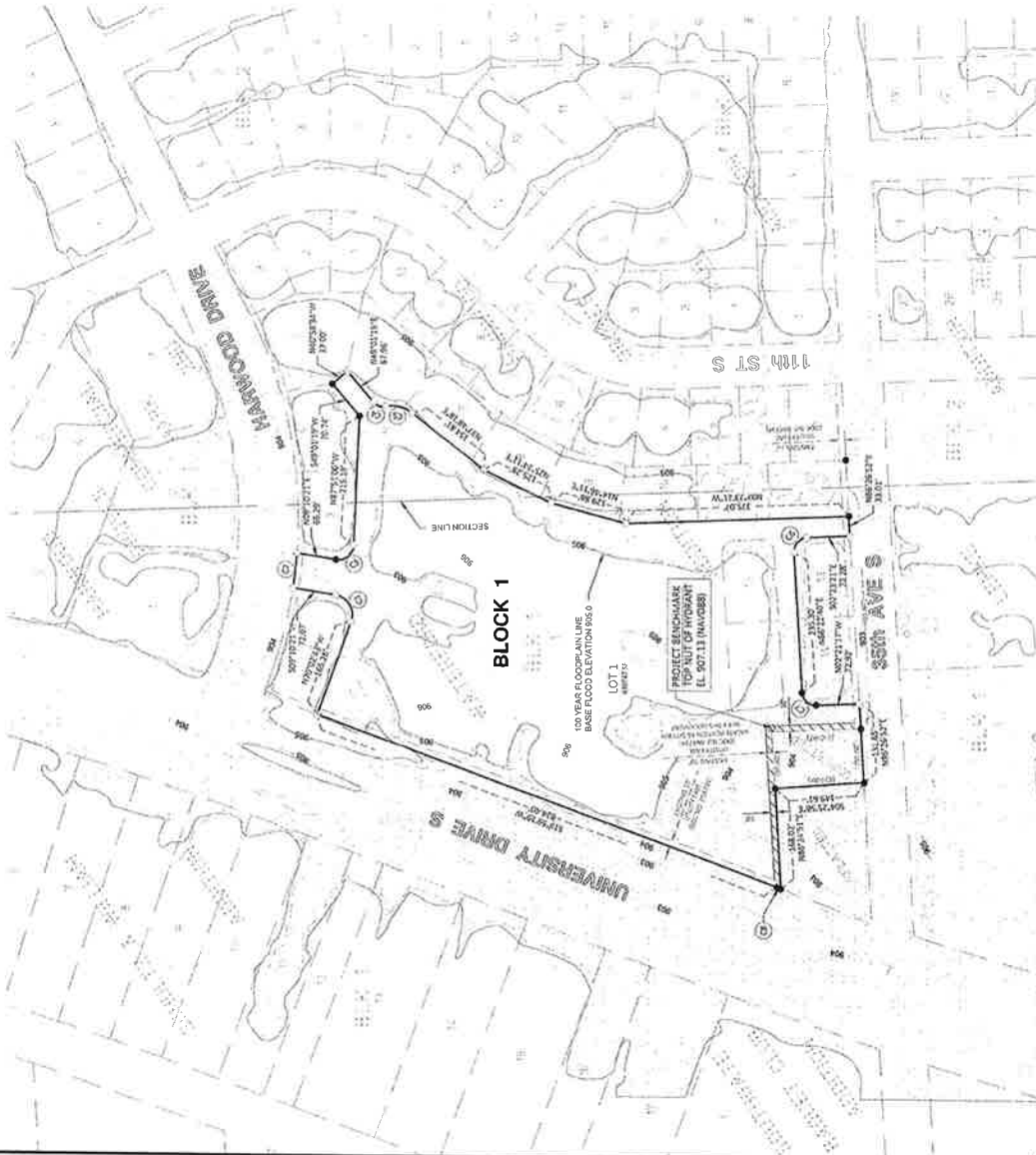
1201 35th Ave S  
1200 Harwood Dr S





# TOUCHMARK ADDITION

A MINOR SUBDIVISION  
 BEING A REPLAT OF LOTS 1, 15 AND 16, BLOCK 1,  
 REPLAT OF WATERFORD ADDITION TO THE CITY OF FARGO  
 AND A PLAT OF PART OF THE SOUTHEAST QUARTER OF THE  
 NORTHEAST QUARTER OF SECTION 25, T139N, R49W, 5th P.M.  
 TO THE CITY OF FARGO,  
 CASS COUNTY, NORTH DAKOTA



Curve Table				
Curve	Length	Radius	Delta	Chord Distance
C1	58.79	33.42	109°45'55"	59°53'09"W
C2	59.15	750.00	4°31'05"	N83°42'42"W
C3	44.03	25.00	57°03'27"	N39°03'23"W
C4	23.07	22.55	56°59'40"	N19°01'24"E
C5	47.25	55.50	46°46'08"	N13°54'47"E
C6	31.61	22.50	87°13'54"	S46°02'27"E
C7	34.83	22.50	87°43'58"	N07°00'47"E
C8	7.77	3629.65	0°03'24"	N00°00'00"W

## LEGEND

- IRON MONUMENT FOUND
- 1/2" TO PIPE SET
- MEASURED BEARING
- MEASURED DISTANCE
- PLAT DISTANCE
- LOT BOUNDARY
- UTILITY EASEMENT
- EXISTING UTILITY EASEMENT
- AREA WITHIN FEMA 100-YEAR FLOODPLAIN
- EXISTING UTILITY EASEMENT VACATED BY THIS PLAT

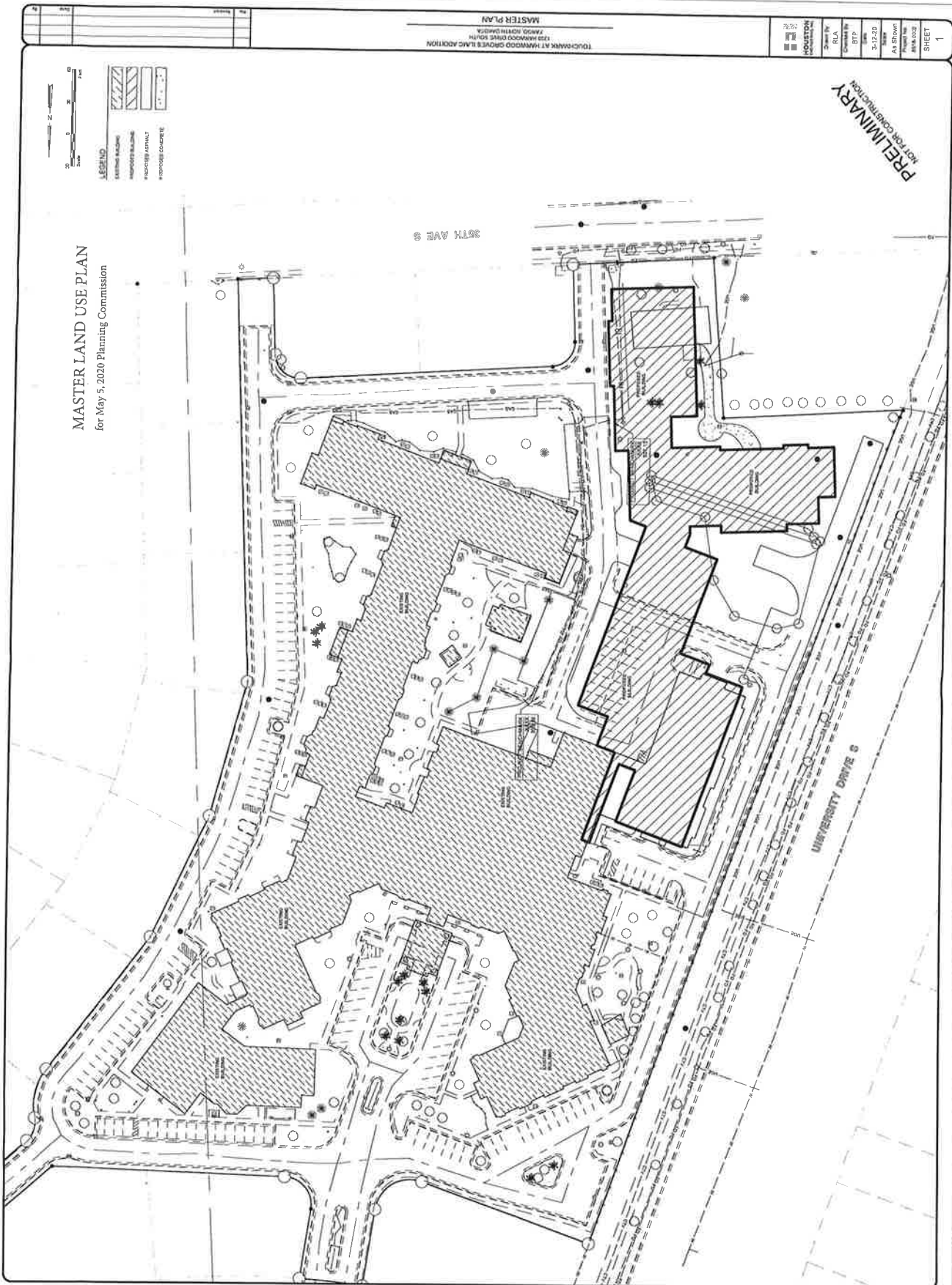
BEARINGS SHOWN ARE BASED ON THE CITY OF FARGO HORIZONTAL DATUM

## NOTES

- THE LEGAL DESCRIPTION INCLUDED IN THE SURVEY CERTIFICATE AND DEDICATION ON THIS PLAT FOR THE UNPLATTED PORTION OF THE PROPERTY WAS OBTAINED FROM THE RECORDS OF THE CITY OF FARGO INSTRUMENT (DOCUMENT NO. 157776).
- PORTIONS OF THE PROPERTY ARE SITUATED IN ZONE AE (100-YEAR FLOODPLAIN) AS DEPICTED ON FEMA FIRM PANEL 46070P02, DATED JANUARY 15, 2015.
- BASE FLOOD ELEVATION = 966.6' (NAVD 1988)



MASTER LAND USE PLAN  
for May 5, 2020 Planning Commission



**LEGEND**

- EXISTING BUILDING
- PROPOSED BUILDING
- PROPOSED ASPHALT
- PROPOSED CONCRETE

Scale: 0 10 20 30 40 Feet

TOUCHMARK AT HUNTERWOOD GROVES L&MC ADDITION  
123 HUNTERWOOD GROVES L&MC ADDITION  
7,000,000 SQUARED FEET  
MASTER PLAN

PROJECT NO.	2019-001
DATE	05/05/2020
BY	RLA
CHECKED BY	BTP
DATE	05/05/2020
AS SHOWN	AS SHOWN
PROJECT NO.	2019-001
SHEET	1

PRELIMINARY  
NOT FOR CONSTRUCTION

**PUD NARRATIVE**  
**Touchmark at Harwood Groves**

**DEVELOPER'S STATEMENT OF INTENT:** An expanding aging and elderly population requires an expansion of existing facilities to provide for the specialized needs and requirements of this population. The existing facility was constructed prior to the current Land Development Code. This PUD allows for the continued use of existing supporting facilities to support the expanded capacity of the facility as the existing site cannot be brought into compliance with the current Land Development Code.

The PUD will include a site plan for the development that is incorporated here by reference. The PUD will, generally, apply the MR-3 development standards, except as otherwise provided below:

	<b>Current LDC development standards for MR-3</b>	<b><i>PUD modifications to MR-3 development standards</i></b>	<b>NOTES</b>
Allowed Uses	Detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religions institution, safety services, schools, and basic utilities	<i>Include Retail Sales &amp; Services, and Office Uses as accessory uses to, or associate with, the use of the property as a continued care retirement facility</i>	See Attached
Minimum Lot Area	5,000 SF	<i>No Change</i>	
Minimum Lot Width	50'	<i>No Change</i>	
Residential Density	24 du/acre	26 units/acre	See Attached
Setbacks	Front: 25' Interior: 10' Street Side: 12.5 Rear: 20'	<i>No Change</i>	
Max. Height	60 feet	<i>No Change</i>	
Building Coverage	35% of lot area	<i>Increase to 38%</i>	See Attached
Minimum open space	35% of lot area	<i>Decrease to 32%</i>	See Attached
Parking-Residential—Multi-dwelling	2.25 spaces per unit	<i>0.75 spaces per dwelling unit</i>	See Attached
Parking--Retail	1 space per 200 SF	<i>1 space per 267 SF</i>	See Attached
Landscaping—Street Trees	1 per every 50 feet on arterials; 1 per every 35 feet on locals	<i>No Change</i>	

Landscaping—Open Space	3 plant units per 1,000 SF of area; 8 sf per unit,	<i>No Change to plant unit requirements, Remove requirement of 70% of plant units located in front of building.</i>	Limited open space along University Drive will make placement of 70% of plant units in front of building unfeasible without remove of existing fire access roadway.
Landscaping—Parking Lot Perimeter	Buffers shall be located between adjacent streets rights of way and off-street parking areas and all vehicular circulation areas within the front or streetside setback per Table 20-0705(D)(3)	<i>Modify parking buffer requirements along existing vehicle circulation routes to 1' minimum width with fence and 6 shrubs/perennial grasses per 25 linear feet. New pavement areas along University Drive to have 6' buffer with Decorative metal fence and 1 small tree or 6 shrubs/perennial grasses per 25 linear feet</i>	See Attached
Paving Setbacks	Parking lots and vehicular circulation areas shall provide a a paving setback per Table 20-0705(D)(4)	<i>No Changes</i>	
Residential Protection Standards (RPS)—Setback from abutting side and rear lot line	Development on lots adjacent to side or rear lines of lots in the SR or MR zoning district must meet the setbacks per Table 20-0704(B)(1)	<i>No Changes</i>	
RPS—Front Setback	For new multi-family or nonresidential development occurs on lots adjacent to the side lot in any SR or MHP district, see 20-0704(B)(2) for setback requirements.	<i>No Changes</i>	
RPS—Visual screening of dumpsters and outdoor storage areas	Required on all dumpsters and storage areas	<i>No Changes</i>	
RPS—building height, 75 feet from residential	35 feet max	<i>No Changes</i>	



RPS—building height 76-100 feet from residential	45 feet max	<i>No Changes</i>	
RPS—building height 101--150 feet from residential	55 feet max	<i>No Changes</i>	
RPS-residential protection buffers	At least 10 feet with 1 tree and 20 shrubs per 50 lineal feet	<i>No Changes</i>	
RPS—operating hours	No garbage or recycling services between 10:00 p.m. and 6:00 a.m.	<i>No Changes</i>	
RPS--lighting	No light more than 0.4 footcandles one foot inside SR-zoned lot	<i>No Changes</i>	
RPS--odor	See 20-0704(H)— <i>usually not a problem on residential and commercial developments</i>	<i>No Changes</i>	

#### Allowed Uses Notes:

The existing PUD for the property Ordinance No 4524 allows additional used in the MR-3 zoning "Said PUD is hereby amended to allow those uses permitted in an "LC" (Limited Commercial) District so long as those uses are accessory to, or associated with, the used of the property as a continued care retirement facility." Based on the current Land Development Code and uses at the facility adding the Office Uses and Retail Sales & Services as permitted accessory uses to the MR-3 zoning allows for the provision of services to the Residents of the facility on site.

#### Residential Density Notes:

Small increase unit density allows expansion of existing building and reuse of existing facility and infrastructure. Allows for infill on existing open space of site and shared use of supporting facilities. Expansion of site allows for centralized location for services.

#### Building Coverage Notes:

The increase in the building coverage allows the expansion of the existing facility at its current location. Allowing increase building coverage for the site allows the new addition to continue to use the existing facility serve both the existing building and the new additions. The existing facility also provides services for the surrounding lots of Replart of Waterford Addition and serves the entire development of surrounding twin homes.

Minimum Open Space Notes:

The decrease in open space requirements is accommodate the increase building coverage of the site. Additionally, this lot of the development serves as access for the surrounding twin homes and due to the existing access roads and lot line places additional burden on this lot from the surrounding lots.

Parking-Residential—Multi-dwelling Notes:

The facility is used as continued care retirement facility. Current PUD for an Alternative Access Plan has a parking lot reduction to 0.75 spaces per dwelling unit. Reduction to 0.75 spaces per dwelling unit is acceptable as current usage for the facility has excess parking capacity based on staff level and visitor parking. Residents of the of the facility typically do not have personal vehicles so parking is primarily used by staff and visitors.

Parking—Retail Notes:

The facility is used as continued care retirement facility. Current PUD for an Alternative Access Plan has a parking lot reduction to 1.00 spaces per 267 square feet for the commercial fitness center. Proposed PUD would maintain this reduced ratio as the fitness center provide services to the Residents of the facility. As the residents are located on site the reduction in parking requirements is justified.

Landscape Parking Lot Perimeter Notes:

Front of parcel is located along University Drive South on the west side of the property. The existing site was constructed before the 1998 adoption of the zoning code. Due to the proposed addition to the existing facility exceeding 10% of the existing building square footage the entire site is required to be brought into compliance with the current Land Development Code (LDC). The existing vehicle circulation located in the front setback along the west side of the site is currently approximately 1' off of the front property line. As the existing pavement serves as both fire access and vehicular circulation relocation/removal of the existing pavement cannot be done. Due to the inability to relocate the vehicle circulation routes modification of the minimum with and buffer requirements is proposed.

New fire access routes constructed as part of the addition would have a parking lot buffer meeting the 6' buffer requirements for lots between 1 and 50 spaces.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

5062

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

1 AN ORDINANCE REZONING CERTAIN PARCELS OF LAND  
2 LYING IN TOUCHMARK 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 a zoning map amendment  
6 of certain parcels of land lying in Touchmark Addition to the City of Fargo, Cass County, North  
7 Dakota; and,

8 WHEREAS, the Fargo Planning Commission recommended approval of the request for the  
9 Planned Unit Development Master Land Use Plan for development of the subject property, on July  
10 8, 2020; and

11 WHEREAS, the Planned Unit Development Overlay and the Master Land Use Plan for  
12 development, were approved by the City Commission on November 2, 2020; and,

13 NOW, THEREFORE,

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

15 Section 1. The following described property:

16 Lot One (1), Block One (1) of Touchmark Addition to the city of Fargo, Cass  
17 County, North Dakota,

18 is hereby rezoned from "AG", Agricultural, District and "MR-3", Multi-Dwelling Residential,  
19 District with a PUD, Planned Unit Development to "MR-3", Multi-Dwelling Residential, District  
20 with a PUD, Planned Unit Development Overlay; extinguishing the existing PUD, Planned Unit  
21 Development and replacing with the following Planned Unit Development Overlay:

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

<b>Development Standard</b>	<b>Current LDC development standards for MR-3, Multi-Dwelling Residential</b>	<b>PUD Modifications to MR-3 development standards</b>
Allowed Uses	Detached houses, attached houses, duplexes, multi-dwelling structures, daycare centers up to 12 children or adults, group living, parks and open space, religions institution, safety services, schools, and basic utilities	<i>Include Retail Sales &amp; Services, and Office Uses as accessory uses to, or associate with, the use of the property as a continued care retirement facility.</i>
Residential Density	24 du/acre	<i>26 units/acre</i>
Building Coverage	35% of lot area	<i>Increase to 38%</i>
Minimum open space	35% of lot area	<i>Decrease to 32%</i>
Parking-Residential-Assisted Living	2.25 spaces per unit	<i>0.75 spaces per dwelling unit</i>
Parking-Residential-Memory Care	1.50 spaces per unit	<i>0.25 spaces per unit</i>
Parking-Residential-Independent Living	2.50 spaces per unit	<i>0.75 spaces per unit</i>
Parking-Retail	1 space per 200 SF	<i>1 space per 267 SF</i>
Landscaping-Open Space	3 plant units per 1,000 SF of area; 8 sf per unit	<i>No Change to plant unit requirements, reduce requirement of 70% of plant units located in front of the building and redistribute these plant units throughout the site.</i>

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

Landscaping- Parking Lot Perimeter	Buffers shall be located between adjacent streets rights of way and off-street parking areas and all vehicular circulation areas within the front or street side setback per Table 20-0705(D)(3)	<i>Modify parking buffer requirements along existing vehicle circulation routes to 1' minimum width with fence and 6 shrubs/perennial grasses per 25 linear feet. New pavement areas along University Drive to have 6' buffer with decorative metal fence and 1 small tree of 6 shrubs/perennial grasses per 25 linear feet</i>
--	--	---

In all other respects, development on said property shall be subject to the development standards for the underlying zoning 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.

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

(SEAL)

Attest:

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

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

First Reading:  
Second Reading:  
Final Passage:

50c

## **MEMORANDUM**

---

TO: Board of City Commissioners  
FROM: Steven Sprague, City Auditor  
SUBJECT: Liquor License Application – 701 Eateries  
DATE: October 27, 2020

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

License Class: FA full alcohol, food sales must exceed alcohol sales  
Business Name: 701 Eateries; Prairie Kitchen & Camp Lone Tree  
Location: 701 University Drive N  
Applicants: Britt Belquist, Shelby Terstriep, Chad Terstriep & Alex Belquist

Being no significant concerns, the Liquor Control Board voted to approve the issuance of a Class FA alcoholic beverage license to 701 OPS Inc. d/b/a 701 Eateries; Prairie Kitchen & Camp Lone Tree. The complete application is available for review in the Auditor's Office.

### **Recommended Motion:**

**Move to approve the issuance of a Class FA alcoholic beverage license to 701 OPS, Inc. d/b/a 701 Eateries; Prairie Kitchen & Camp Lone Tree.**

## MEMORANDUM

**TO:** Chief David Zibolski

**FROM:** Sergeant Matt Christensen

**DATE:** October 8<sup>th</sup>, 2020

**SUBJECT:** Application for a transfer of a Class "FA" Alcoholic Beverage License from Bistro's & More, Inc. d/b/a Old Chicago, to 701 OPS, Inc. d/b/a 701 Eateries Prairie Kitchen & Camp Lone Tree to be located at 701 University Drive N, in Fargo, ND.

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

During this investigation I questioned the applicant's criminal background, credit history, past residence history as well as any interaction they have had with law enforcement through a search of North Dakota and Minnesota court records, as well as local records.

The following information was discovered through this investigation:

**Eric Myhre – Applicant**

Criminal History- No areas of concern

Credit History- No areas of concern

**Shelby Terstriep – Applicant**

Criminal History- No areas of concern

Credit History- No areas of concern

**Alexander Belquist – Applicant/Manager**

Criminal History- August 2010- Pled guilty in Fargo for consuming in Public. Paid fine of \$75.

Credit History- No areas of concern

**Britt Belquist – Applicant/Manager**

Criminal History-	January 2010- Convicted of Driving after Suspension (Petty Misdemeanor) in Polk County, MN. Paid fines of \$285.
	August 2009- Convicted of Open Container in vehicle Violation (Petty Misdemeanor) in Norman County, MN. Paid fines of \$235.
	August 2006- Convicted of Driving While Intoxicated (Gross Misdemeanor) in Clay County, MN. Received 2 years unsupervised probation and paid fines of \$755.

Credit History-	No areas of concern
	May 2010- Pled guilty to consuming in Public in Fargo, ND. \$100 fine.

## Investigation Notes

This application is for a transfer of an “FA” liquor license (authorizes the licensee to sell “on-sale” only, physical bar is allowed. Requires 50% or more of its annual gross receipts from the sale of prepared meals and not alcoholic beverages) from Old Chicago which closed, to a new business in Fargo.

The operation of the business will follow a restaurant/bar business model with an interior and exterior/roof seating area. The business will be located at the corner of 7<sup>th</sup> Avenue North and University Drive in Fargo, which consists of residential and commercial areas. This particular business will be in rather close proximity to residential structures within the same block. The applicants plan to include live acoustic music on occasion, but are aware of the noise ordinances and have vowed to remain in compliance, and to work with the neighborhood regarding any noise problems. The business will not utilize any type of amplifier for the live music events.

Two of the applicants, Alexander and Britt Belquist, have prior and current experience with managing bars and restaurants in Fargo and Wahpeton, ND and Perham and East Grand Forks, ND. The investigation into this application did not find any issues or concerns for Law Enforcement related to any of these establishments. There was also nothing uncovered which raises concern regarding the planned business outlined in this application.



A criminal background investigation noted a few alcohol related incidents for two of the applicants, however the most recent occurrence was in 2010. There have not been any incidents in the recent past which would raise concern about the integrity or confidence in the ability for the applicants to operate a business involving the sale of alcohol found during this investigation.

**Business Location**

701 Eateries Prairie Kitchen & Camp Lone Tree will be located at 701 University Drive North, Fargo, ND. Other businesses in the area with an alcoholic beverage license include: Chub's Pub and Fargo Brewing Company.

**Conclusion**

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

October 29, 2020

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

(51)

**Subject:** Red River Valley Water Supply Project (RRVWSP) – Interim Financing Agreements

Dear Commissioners:

Attached for your reference, please find two Interim Financing Agreements Series A and Series B related to startup construction of certain strategic components of the RRVWSP. The reason for two separate agreements is because one is subject to a 10% local cost-share (Series A) and the other being subject to a 25% local cost-share (Series B). The parties to the Agreements are the Garrison Diversion Conservancy District (GDGD), the Lake Agassiz Water Authority (LAWA) and the cities of Fargo and Grand Forks.

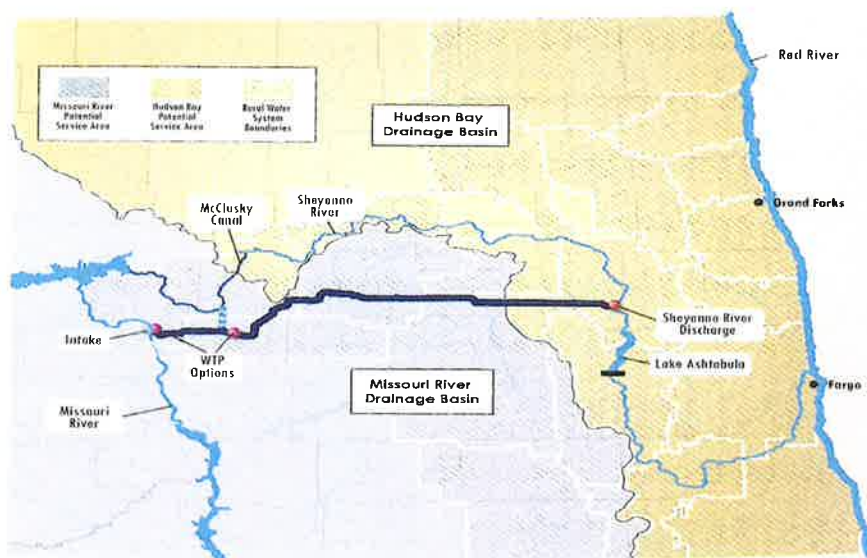
### Background

The RRVWSP is a project to deliver Missouri River water to the Red River Valley and central North Dakota. The project is necessary due to the susceptibility of existing regional water supplies under drought conditions. Thus, the project is critical for our region to establish climate resiliency during periods of drought.



Red River - 1930s Drought

The Red River Valley Water Supply Project is a State and Local project with the GDCD representing the State of North Dakota and LAWA representing the project water users. Fargo, as a member of LAWA and a key sponsor of the RRVWSP, is being asked to approve the two agreements to enable startup construction of three project components. The three components include the Missouri River Intake Wetwell, Transmission Pipeline Segments and the Sheyenne River Discharge Structure. At this point, State and Federal permits have been obtained for the construction and it is important to get the project started in advance of the permits expiring.



**Red River Valley Water Supply Project – Plan Overview**

### Interim Financing Agreements

#### Series A

The Series A Interim Financing Agreement is for local cost-share participation associated with a 2017-2019 State biennial funding allocation of \$13.00 million. The State allocation is subject to a local cost-share match of \$1.44 million. Fargo's share of the local match is \$1,115,327. Cost estimates for the Series A work are summarized below:

Intake Wetwell	\$3.97 million
Pipeline Segments	\$8.58 million
Discharge Structure	<u>\$1.89 million</u>
<b>Total</b>	<b>\$14.44 million</b>

#### Series B

The Series B Interim Financing Agreement is for local cost-share participation associated with a 2019-2021 State biennial funding allocation of \$7.50 million. The State allocation is subject to a local cost-

share match of \$1,875,000. Fargo's share of the local match is \$1,447,781. Cost estimates for the Series B work are summarized below:

Intake Screens and Tunnel Design	\$1.88 million
Marine Geotechnical Investigation	\$0.61 million
Construction Bidding Assistance	\$0.33 million
Transmission Pipeline Design	\$0.48 million
Property and Easement Acquisitions	\$0.65 million
Regulatory Compliance	\$0.35 million
Program Management	\$0.19 million
Financial, Legal, Admin	\$1.40 million
Contingency for Undefined Projects	<u>\$1.36 million</u>
<b>Total</b>	<b>\$7.50 million</b>

#### Plan of Financing – Early Out Construction

Fargo's share of the local cost-share has been included in the annual Water Utility budgets over three budget cycles in 2019, 2020 and 2021.

<b>Budget Year</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
Budget Amount	\$850,000	\$900,000	\$800,000

#### SUGGESTED MOTION

Approve the attached Interim Financing Agreements Series A and Series B for Fargo's portion of the local cost share for early out construction associated with the Red River Valley Water Supply Project.

Your consideration in this matter is greatly appreciated.

Sincerely,



Bruce P. Grubb  
City Administrator

C: Michael Redlinger, Assistant City Administrator  
Troy Hall, Water Utility Director  
Merri Mooridian, Garrison Diversion Conservancy District  
Erik Johnson, City Attorney

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**INTERIM FINANCING AGREEMENT,  
SERIES A**

**BY AND BETWEEN  
GARRISON DIVERSION CONSERVANCY DISTRICT  
AND  
LAKE AGASSIZ WATER AUTHORITY  
AND  
CITY OF FARGO, NORTH DAKOTA  
AND  
CITY OF GRAND FORKS, NORTH DAKOTA**

**Dated as of October\_\_\_\_, 2020**

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## TABLE OF CONTENTS

<b>ARTICLE I. DEFINITIONS AND INTERPRETATION.....</b>	<b>2</b>
<b>SECTION 1.01    DEFINITIONS .....</b>	<b>2</b>
<b>SECTION 1.02    INTERPRETATION .....</b>	<b>2</b>
<b>ARTICLE II. CONSTRUCTION CONTEMPLATED.....</b>	<b>3</b>
<b>SECTION 2.01    INTENT .....</b>	<b>3</b>
<b>SECTION 2.02    MEMBER ENTITY REPRESENTATIVE AND POINT OF CONTACT .....</b>	<b>3</b>
<b>SECTION 2.03    PROJECT GENERALLY .....</b>	<b>4</b>
<b>SECTION 2.04    CONTRACT INPUT.....</b>	<b>4</b>
<b>ARTICLE III. COST SHARE COMPONENTS .....</b>	<b>4</b>
<b>SECTION 3.01    EARLY OUT CONSTRUCTION.....</b>	<b>4</b>
<b>SECTION 3.02    INITIAL COST RESPONSIBILITY.....</b>	<b>4</b>
<b>SECTION 3.03    REFUNDING.....</b>	<b>4</b>
<b>SECTION 3.04    PROJECT RISKS .....</b>	<b>5</b>
<b>SECTION 3.05    ASSIGNMENT.....</b>	<b>5</b>
<b>ARTICLE IV. FINANCING CONTINGENCY.....</b>	<b>5</b>
<b>SECTION 4.01    2019-2021 BIENNIUM FINANCING AGREEMENT.....</b>	<b>5</b>
<b>ARTICLE V. FINANCING AND INVOICING .....</b>	<b>5</b>
<b>SECTION 5.01    FINANCIAL ADMINISTRATION .....</b>	<b>5</b>
<b>SECTION 5.02    SEPARATE PROJECT FUND.....</b>	<b>5</b>
<b>SECTION 5.03    INVOICES AND PAYMENT .....</b>	<b>6</b>
<b>SECTION 5.04    DISPUTE .....</b>	<b>6</b>
<b>ARTICLE VI. OPERATIONS AND MAINTENANCE .....</b>	<b>6</b>
<b>SECTION 6.01    GENERALLY.....</b>	<b>6</b>
<b>SECTION 6.02    DISPUTES.....</b>	<b>6</b>
<b>SECTION 6.03    O&amp;M PLAN AND MANUAL.....</b>	<b>6</b>
<b>ARTICLE VII. INSURANCE AND LIABILITY .....</b>	<b>7</b>
<b>SECTION 7.01    PARTIES' INSURANCE.....</b>	<b>7</b>
<b>SECTION 7.02    INSURANCE CONSULTANT RECOMMENDATION.....</b>	<b>7</b>
<b>SECTION 7.03    LIABILITY .....</b>	<b>7</b>
<b>ARTICLE VIII. TERMINATION AND STAY .....</b>	<b>7</b>
<b>SECTION 8.01    TERM.....</b>	<b>7</b>
<b>SECTION 8.02    TERMINATION BY MUTUAL AGREEMENT .....</b>	<b>7</b>
<b>SECTION 8.03    COST SHARE THRESHOLD .....</b>	<b>7</b>
<b>ARTICLE IX. MISCELLANEOUS.....</b>	<b>7</b>
<b>SECTION 9.01    CONFLICTS.....</b>	<b>7</b>
<b>SECTION 9.02    NOTICE.....</b>	<b>8</b>
<b>SECTION 9.03    GOVERNING LAW .....</b>	<b>8</b>
<b>SECTION 9.04    SEVERABILITY .....</b>	<b>8</b>

<b>SECTION 9.05</b>	<b>MODIFICATIONS .....</b>	<b>8</b>
<b>SECTION 9.06</b>	<b>BINDING EFFECT .....</b>	<b>9</b>
<b>SECTION 9.07</b>	<b>REPRESENTATION .....</b>	<b>9</b>
<b>SECTION 9.08</b>	<b>HEADINGS .....</b>	<b>9</b>
<b>SECTION 9.09</b>	<b>REPRESENTATION OF AUTHORITY.....</b>	<b>9</b>
<b>SECTION 9.10</b>	<b>FORCE MAJEURE.....</b>	<b>9</b>
<b>SECTION 9.11</b>	<b>COUNTERPARTS; ELECTRONIC SIGNATURES.....</b>	<b>9</b>

<b>SIGNATURE PAGES .....</b>	<b>S-1 THROUGH S-4</b>
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**EXHIBIT A – EARLY OUT CONSTRUCTION FEATURES**

**EXHIBIT B – LOCAL COST SHARE DISTRIBUTION**

## **INTERIM FINANCING AGREEMENT, SERIES A**

**THIS INTERIM FINANCING AGREEMENT, SERIES A** (the "Series A Agreement"), is entered this \_\_\_\_ day of \_\_\_\_\_, 2020 (the "Effective Date"), by and between GARRISON DIVERSION CONSERVANCY DISTRICT, a governmental agency, body politic and corporate of the State of North Dakota ("Garrison Diversion"); LAKE AGASSIZ WATER AUTHORITY, a governmental agency, body politic and corporate of the State of North Dakota ("LAWA"); CITY OF FARGO, NORTH DAKOTA, a municipal corporation and political subdivision of the State of North Dakota ("Fargo"); and CITY OF GRAND FORKS, NORTH DAKOTA, a municipal corporation and political subdivision of the State of North Dakota ("Grand Forks"); individually, a "Party," and collectively, the "Parties."

**WHEREAS**, the State of North Dakota, acting through the legislature, created Garrison Diversion in order to, among other things, construct and operate the Garrison Diversion Unit (the "GDU") of the Missouri River basin project, and to develop municipal, rural and industrial water supplies, irrigation and recreation. The legislature also authorized Garrison Diversion to acquire, construct, improve and own the Red River Valley Water Supply Project (the "Project") and sell a bulk water supply to end users; and

**WHEREAS**, the State of North Dakota, acting through the legislature, created LAWA to, among other things, acquire, construct, improve, own, and utilize the Project, to store and distribute water to eastern and central North Dakota, and to provide for the supply and distribution of water to the people of eastern and central North Dakota through the bulk purchase of water from Garrison Diversion for beneficial and public uses; and

**WHEREAS**, the State of North Dakota, acting through the legislature, authorized LAWA to enter one or more contracts to acquire bulk water from Garrison Diversion; and

**WHEREAS**, Garrison Diversion intends to finance, construct, own and operate the Project, and thereafter to sell to LAWA, and LAWA intends to purchase from Garrison Diversion all or a portion of the water derived therefrom as determined in accordance with separate agreements addressing capital repayment through a future project participation agreement ("PPA"), water supply purchase agreement, as well as this and possibly more future interim financing agreements for design, planning, construction and operations before the PPA and water supply purchase agreements are entered into; and

**WHEREAS**, Garrison Diversion and LAWA desire to join together to have Garrison Diversion finance, construct, and operate a water supply and distribution system that will ultimately convey water from the Missouri River and/or the GDU System to LAWA, with initial construction governed by the terms set forth herein; and

**WHEREAS**, the Parties have not completed negotiations of the PPA or a water supply purchase agreement and are still identifying which entities will ultimately participate in the Project. Garrison Diversion, LAWA, Fargo, and Grand Forks wish to proceed with the early out construction contemplated by the 2017-2019 work plan despite not having final agreements in place on the PPA and water supply agreement; and



**WHEREAS**, Fargo and Grand Forks agree to pay the full local share of Project expenses not otherwise covered by the State cost share. Fargo and Grand Forks' pro rata portion of the LAWA local cost share is identified herein and on Exhibit B to fund the early out construction, while continuing to negotiate the PPA and water supply purchase agreement; and

**WHEREAS**, Garrison Diversion and LAWA entered into a Cooperation Agreement dated May 8, 2020, which governs their general relationship.

**NOW THEREFORE**, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, Garrison Diversion, LAWA, Fargo, and Grand Forks agree as follows.

## **ARTICLE I. DEFINITIONS AND INTERPRETATION**

**Section 1.01** DEFINITIONS. All capitalized terms used, and not otherwise defined herein, shall have the meanings given to them in this Series A Agreement and as defined in the Cooperation Agreement unless a different meaning clearly applies from the context.

**"CFS"** shall mean cubic feet per second.

**"Cooperation Agreement"** means an agreement entered into between Garrison Diversion and LAWA dated May 8, 2020, which governs their general relationship.

**"Debt Obligation"** means any loan, note, bond, credit facility or other security instrument issued by a party to this Series A Agreement to provide either temporary or permanent financing of the Project.

**"Early Out Construction Features"** means the features of the Red River Valley Water Supply Project identified in Exhibit A to this Agreement.

**"Project"** means the Red River Valley Supply Project.

**"Series A Agreement"** has the same meaning set forth herein in the Recitals.

### **Section 1.02** INTERPRETATION.

(a) The headings of articles and sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Agreement. Any and all exhibits to Series A Agreement are hereby incorporated by reference. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or

otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (ii) any reference herein to any person shall be construed to include such person's permitted assigns, (iii) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to Series A Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Agreement, and (v) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" mean "to and including."

(b) This Series A Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Series A Agreement or some provision of it or because that Party relies on a provision of this Series A Agreement to protect itself. The Parties acknowledge and agree that the Series A Agreement has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation, that each Party has been given the opportunity to independently review the Series A Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Agreement. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Series A Agreement, the Series A Agreement will not be interpreted or construed against the Party preparing it simply as a consequence of preparing it.

## **ARTICLE II. CONSTRUCTION CONTEMPLATED**

**Section 2.01** INTENT. The intent of this Series A Agreement is to have Fargo and Grand Forks agree to finance the local cost share to allow Garrison Diversion to commence construction of the Early Out Construction Features. The budget for early out construction items is attached at Exhibit B. The specific features contemplated to be constructed as part of the Early Out Construction Features with financing authorized in the 2017-2019 legislature authorization are outlined in the attached Exhibit A.

**Section 2.02** MEMBER ENTITY REPRESENTATIVE AND POINT OF CONTACT. As indicated in the Cooperation Agreement, LAWA will work collaboratively with Garrison Diversion in the planning, construction, and operation and maintenance for the Project. Additionally, LAWA will continue to negotiate an agreement with Garrison Diversion for a PPA that addresses capital repayment and operation and maintenance agreements on the full Project, as well as a water supply agreement outlining the agreement and terms on which LAWA and/or its member entities will purchase a bulk water supply from Garrison Diversion. Regardless of which member entities participate in this Agreement, LAWA will be the point of contact for the users and will represent all LAWA member entities in discussion. Garrison Diversion will apprise LAWA of any LAWA user meetings on the Project and offer LAWA an opportunity to participate. A representative of LAWA will attend all such user meetings.

**Section 2.03** PROJECT GENERALLY. As indicated in the Cooperation Agreement and unless otherwise agreed between the Parties, Garrison Diversion shall finance, design, build, construct, own, maintain, and operate the Project features contemplated by this Series A Agreement. Garrison Diversion, in cooperation with LAWA as identified herein, may choose to use any legally authorized project delivery method to design, construct, own, maintain, and/or operate the early out construction features, as agreed under the terms of this and future agreements.

**Section 2.04** CONTRACT INPUT. As indicated in the Cooperation Agreement, Garrison Diversion will present all draft contracts and consultant task orders to LAWA for review and seek input from LAWA on the terms of the agreements and financial considerations. The provisions governing Garrison Diversion and LAWA engagement provided in the Cooperation Agreement apply to this Series A Agreement and are not restated herein, including those provisions governing contracts, task orders, consultant communication, and decision-making.

### **ARTICLE III. COST SHARE COMPONENTS**

**Section 3.01** EARLY OUT CONSTRUCTION. The North Dakota Legislature provided a grant for the Project during the 2017-2019 Biennium that included \$13 million in State funding for early out construction. These funds will be available upon approval of the Budget Section following the State Engineer and State Water Commission certification that certain criteria are met, as identified in Senate Bill 2020 (2017). The Parties agree that the State funding will be applied to Project costs as if there were a 90% State cost share of eligible expenses. Fargo and Grand Forks will pay the remaining costs, not to exceed \$1,444,444 in local funding needs without agreement of the Parties. After Senate Bill 2020 requirements are met and after obtaining LAWA's approval to proceed, Garrison Diversion may award a notice to proceed with construction. Garrison Diversion will pay the initial cost of construction, subject to ninety percent (90%) reimbursement from the State grant. Subject to the limitations set forth herein, Garrison Diversion will seek reimbursement from LAWA for all costs not covered by the State. Fargo and Grand Forks will each pay its share of the reimbursement to Garrison Diversion in a single lump sum payment following receipt of an invoice from Garrison Diversion pursuant to the following Article. The maximum contribution amounts for Fargo and Grand Forks are included in Exhibit B. Fargo and Grand Forks each has the authority to seek reimbursement from the other LAWA member entities for these funds as set forth in a separate agreement between the LAWA member entities. Garrison Diversion will not seek reimbursement from LAWA or any other LAWA member entities for early out construction items.

**Section 3.02** INITIAL COST RESPONSIBILITY. This Series A Agreement solely addresses Fargo's and Grand Fork's responsibilities for their share of the initial costs associated with and limited to the specific categories identified in Exhibit A through the later of (1) June 30, 2021, if budgeted funds are expended by that date, or (2) thereafter if the completion of the scope of early out construction work extends beyond that date and so long as there are budgeted funds available to complete the approved budget items.

**Section 3.03** REFUNDING. Fargo and Grand Forks agree that the funds they pay pursuant to this Series A Agreement are non-refundable in any and all cases except in the event Garrison Diversion does not award a contract for the construction of the Early Out Construction

Features. If no construction contract is issued or if the Project is otherwise delayed indefinitely, as determined by Garrison Diversion and LAWA, Garrison Diversion will return all remaining unused funds remitted to Fargo and Grand Forks.

**Section 3.04 PROJECT RISKS.** The Parties acknowledge and agree that there are a number of risks, any or all of which could occur, that could have the effect of increasing the cost of the Project and/or delaying and/or terminating the Project. This includes, by way of illustration and not limitation, the following: (i) litigation; (ii) court order; (iii) changes in legislation affecting the Project, LAWA, and/or the Garrison Diversion; (iv) environmental risks; (v) increased labor costs or costs of materials; (vi) the need to obtain Federal approvals, Federal permits, or additional Federal environmental review; (vii) the Federal Government's decision regarding any permitting or approvals required for the Project; (viii) a change in the State of North Dakota's financial ability to fund its portion of the Project; (ix) climate change and variability; and (x) political interference at the local, state, federal, or tribal level. That said, any increase in the identified budgeted costs would require approval of the LAWA Board and Garrison Diversion.

**Section 3.05 ASSIGNMENT.** This Series A Agreement (and any interest herein or hereunder) may not be assigned, transferred, pledged, hypothecated, or encumbered without the prior written consent of the other Parties.

#### **ARTICLE IV. FINANCING CONTINGENCY**

**Section 4.01 2019-2021 BIENNIUM FINANCING AGREEMENT.** This Series A Agreement is valid and enforceable, binding on Fargo and Grand Forks to make the designated payments herein described, only if the interim financing agreement for items authorized by the 2019-2021 Biennium is executed by the parties thereto. If that interim financing agreement is not executed, this Series A Agreement is null and void and without further effect.

#### **ARTICLE V. FINANCING AND INVOICING**

**Section 5.01 FINANCIAL ADMINISTRATION.** Garrison Diversion will lead planning, design, construction, operation, and maintenance of the early out construction items subject to this Agreement. Garrison Diversion will advance funds for the initial work, subject to reimbursement from the State and LAWA through Fargo and Grand Forks. Fargo and Grand Forks will use whatever sources of funds available to them to make payments, with no expectation that they will issue any Debt Obligations.

**Section 5.02 SEPARATE PROJECT FUND.** Garrison Diversion will establish and maintain a Project Fund for the financial administration of the Project. The Project Fund shall be a separate fund used by Garrison Diversion only to pay costs and expenses that, under accepted accounting practices, constitute costs necessarily incurred to construct the Project, including but not limited to land, easements, buildings, structures, administration costs, office space, vehicle costs, and all other costs related to Project implementation, along with machinery and equipment, and the cost of all architectural, engineering, legal and other professional services, printing and publication,

and other costs reasonable, necessary, and incidental thereto, including issuance costs as it relates to the work contemplated under this Agreement.

**Section 5.03 INVOICES AND PAYMENT.** Once Garrison Diversion pays for labor, material, services, or other expenses relating to the work contemplated under this Agreement, Garrison Diversion will submit timely invoices to Fargo and Grand Forks for such service. The amount included in invoices will not exceed the respective maximum amounts included on Exhibit B. Subject to any dispute by Fargo or Grand Forks, each will remit payment on an invoice for any undisputed amount within thirty (30) calendar days after receiving an invoice.

**Section 5.04 DISPUTE.** If Fargo or Grand Forks disputes any portion of a Garrison Diversion invoice, any undisputed portion of the invoice must be paid within thirty (30) calendar days of the receipt of the invoice. For any portion of an invoice in dispute, the disputing party must provide an explanation in writing regarding the specific basis of the dispute. Garrison Diversion will review the explanation and provide a written response within thirty (30) calendar days of the receipt of the disputing party's explanation. If the Parties' staff members are unable to help the Parties' staff members are unable to help the Parties reach consensus, representatives of each Party will follow the dispute resolution process outlined in the Cooperation Agreement.

## **ARTICLE VI. OPERATIONS AND MAINTENANCE**

**Section 6.01 GENERALLY.** While the PPA will govern the responsibility for operation and maintenance (O&M) of the Project when the PPA is executed, Series A Agreement addresses any interim O&M needs that arise relating to the early out construction items constructed pursuant to this Agreement. Garrison Diversion will be responsible for conducting all operation and maintenance required for any portion of the Project constructed prior to the PPA effective date and through the term of this Agreement. The O&M expenses will be presented in an annual work plan and budget, brought to LAWA as provided in the Cooperation Agreement. LAWA may choose to task the Technical Advisory Committee to review the O&M Plan and annual work plan. The annual O&M costs will be invoiced to LAWA as part of the monthly payments after the early out construction infrastructure on Exhibit A is completed. The Parties will enter future interim financing agreements setting forth the structure of these monthly payments.

**Section 6.02 DISPUTES.** If there is a dispute between any parties regarding deferred maintenance or the need to change operation, maintenance, or repairs, the provisions of the Cooperation Agreement at Section 3.05 will govern the resolution of the dispute.

**Section 6.03 O&M PLAN AND MANUAL.** At least six (6) months prior to the first Project Element Service Commencement Date, Garrison Diversion and LAWA shall collaborate to draft a plan and manual for operations and maintenance of the particular items constructed pursuant to this Series A Agreement ("Plan and Manual"). The Technical Advisory Committee will be consulted and provide input on this Plan and Manual. The Plan and Manual will continue to be supplemented as new Project infrastructure comes online. Once a draft Plan and Manual is completed, Garrison Diversion and LAWA will submit the draft Plan and Manual to Garrison Diversion and LAWA for approval using the decision-making protocol in Section 3.05 of the Cooperation Agreement to obtain approval of the Plan and Manual.

## **ARTICLE VII. INSURANCE AND LIABILITY**

**Section 7.01** PARTIES' INSURANCE. Garrison Diversion is in the process of hiring an insurance consultant to recommend insurance coverage for the Project. Until the recommendation of the insurance consultant is obtained and implemented, all Parties will maintain their own adequate political subdivision liability insurance coverage, as well as coverage for officers and directors. Garrison Diversion will require reasonable insurance limits for all contractors working on early out construction infrastructure. Garrison Diversion will also insure the early out construction infrastructure, with the insurance costs classified as an O&M expense to the Project.

**Section 7.02** INSURANCE CONSULTANT RECOMMENDATION. Once the insurance consultant recommends coverages and limits, Garrison Diversion and LAWA will work together to decide coverage limits for early out construction infrastructure, which will be charged as an expense both during and after construction.

**Section 7.03** LIABILITY. The funding provided through this Series A Agreement does not create any liability for LAWA, Fargo and Grand Forks as an owner of the Project. LAWA, Fargo and Grand Forks will be named as additional insureds on the construction contracts that are funded by this Series A Agreement.

## **ARTICLE VIII. TERMINATION AND STAY**

**Section 8.01** TERM. This Series A Agreement will be valid through June 30, 2021, or until the funds authorized and approved hereunder are spent on the identified early out construction expenses, whichever occurs later.

**Section 8.02** TERMINATION BY MUTUAL AGREEMENT. The Parties may mutually agree, in writing, to terminate this Series A Agreement. Any and all payments due and owing by Fargo and Grand Forks at the time of termination of this Series A Agreement must be fully paid before Fargo's or Grand Forks' responsibility to make payments hereunder will terminate.

**Section 8.03** COST SHARE THRESHOLD. The Cost Share Threshold termination provision of the Cooperation Agreement does not apply to this Agreement.

## **ARTICLE IX. MISCELLANEOUS**

**Section 9.01** CONFLICTS. The Parties intend that multiple interim finance agreements may be entered for the Project. An interim finance agreement only applies to that work specifically defined in such interim finance agreement and shall have no impact on work not defined in such agreement. Additionally, earlier executed interim finance agreements will not apply to later executed interim finance agreements unless explicitly set forth in the later agreement. If there is any conflict, ambiguity, or inconsistency between the provisions of this Series A Agreement and the Cooperation Agreement with regard to any early out construction work, this Series A

Agreement will control with respect to finance arrangements for regarding the Early Out Construction Works identified in Exhibit A, all other terms and conditions of the Cooperation Agreement shall govern. This Series A Agreement solely applies to early out construction work and infrastructure identified in Exhibit A and no other work to be performed by Garrison Diversion.

**Section 9.02** NOTICE. All notices under this Series A Agreement will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses:

If to Garrison Diversion:      General Manager  
Garrison Diversion Conservancy District Headquarters  
PO Box 140  
Carrington, ND 58421

If to LAWA:                      Board Chair  
Lake Agassiz Water Authority  
PO Box 140  
Carrington, ND 58421

If to Fargo:                      City Administrator  
Fargo City Hall  
225 4<sup>th</sup> St. N  
Fargo, ND 58102

If to Grand Forks:              City Administrator  
Grand Forks City Hall  
255 N 4<sup>th</sup> St.  
Grand Forks, ND 58203

**Section 9.03** GOVERNING LAW. This Series A Agreement shall be controlled by the laws of the State of North Dakota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this Series A Agreement shall be venued in Cass County in the State of North Dakota, and the Parties waive any objection to personal jurisdiction.

**Section 9.04** SEVERABILITY. Each provision, section, sentence, clause, phrase, and word of this Series A Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Series A Agreement.

**Section 9.05** MODIFICATIONS. Any modifications or amendments to this Series A Agreement must be in writing and signed by all Parties to this Series A Agreement.

**Section 9.06** BINDING EFFECT. This Series A Agreement shall be for the benefit of, and may be enforced only by, the Parties and is not for the benefit of, and may not be enforced by any third party.

**Section 9.07** REPRESENTATION. The Parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Series A Agreement, and agree they have not been influenced by any representations or statements made by any other parties.

**Section 9.08** HEADINGS. Headings in this Series A Agreement are for convenience only and will not be used to interpret or construe its provisions.

**Section 9.09** REPRESENTATION OF AUTHORITY. Each Party signing this Series A Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Series A Agreement and that the Series A Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

**Section 9.10** FORCE MAJEURE. A Party shall not be held responsible for any delay or failure in performance of any part of this Series A Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected Party will notify the other Parties in writing within ten (10) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a Party's performance is delayed for a period exceeding thirty (30) days from the date the other Parties receive notice under this section, the non-affected Parties will have the right, without any liability to the other Parties, to terminate this Series A Agreement. Ongoing litigation and any construction injunction do not qualify as force majeure events.

**Section 9.11** COUNTERPARTS; ELECTRONIC SIGNATURES. This Series A Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

**IN WITNESS WHEREOF**, Garrison Diversion, LAWA, Fargo, and Grand Forks caused this Series A Agreement to be executed.

*(Remainder of page intentionally left blank.)*



*Signature Page for the Garrison Diversion Conservancy District*

The governing body of the Garrison Diversion Conservancy District approved Series A Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

GARRISON DIVERSION  
CONSERVANCY DISTRICT, a  
governmental agency, body politic and  
corporate

By: \_\_\_\_\_  
Ken Royse, Chair

ATTEST:

\_\_\_\_\_  
Secretary

***Signature Page for the Lake Agassiz Water Authority***

The governing body of the Lake Agassiz Water Authority approved Series A Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

LAKE AGASSIZ WATER AUTHORITY, a  
governmental agency, body politic and  
corporate

By: \_\_\_\_\_  
Dr. Timothy Mahoney, Chair

ATTEST:

\_\_\_\_\_  
Secretary

*Signature Page for the City of Fargo*

The governing body of the City of Fargo approved Series A Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

City of Fargo, a governmental agency, body  
politic and corporate

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

ATTEST:

\_\_\_\_\_  
Secretary

*Signature Page for the City of Grand Forks*

The governing body of the City of Grand Forks approved Series A Agreement on the \_\_\_\_\_  
day of \_\_\_\_\_, 2020.

City of Grand Forks, a governmental  
agency, body politic and corporate

By: \_\_\_\_\_  
Brandon Bochenski, Mayor

ATTEST:

\_\_\_\_\_  
Secretary

## **EXHIBIT A**

### **Early Out Construction Features**

- Missouri River Intake Pumping Station, Wet Well and Site Development - Work generally consists of furnishing and installing a new 40-foot diameter concrete wet well roughly 65-feet deep, site and site access improvements, including approximately 5,400 feet of access road improvements with grading, site topsoil removal and replacement, clearing and grubbing, drainage improvements, signage, landscaping, temporary fencing, site restoration, seeding, construction erosion control, and NDPDES storm water monitoring and reporting requirements.
- Transmission Pipeline East, Contract 5a – Work generally consists of furnishing and installing approximately 1-1/2 miles of 72-inch diameter steel raw water pipeline, including one 84-inch diameter tunnel section, combination air valves/vaults, blow off assemblies, pipeline access, parallel 4-inch fiber optic conduit with handholes, and cathodic protection systems. Open cut sections of the pipeline will include strict segregation and stockpiling of soil layers.
- Discharge Structure and Site Development – Work generally consists of furnishing and installing a concrete discharge structure, including concrete mat slab discharge channel, 24-inch drilled concrete piers, a foundation underdrain system, and steel sheet pile wall, concrete impact basin with accessories, 54-inch ductile iron pipe, cathodic protection system, gravel access road, articulated concrete mat, rip-rap, construction erosion control, NDPDES storm water monitoring and reporting requirements, site grading, and site restoration.

**EXHIBIT B****Local Cost Share Distribution**

Early Out Construction Works		
Total Work Plan – \$13,000,000		
Local Cost Share – 10%		
<i>City</i>	<i>Percentage</i>	<i>Local Cost Share</i>
Fargo	77.215%	\$1,115,327
Grand Forks	22.785%	\$329,117
<b>Total</b>	<b>100.00%</b>	<b>\$1,444,444</b>

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**INTERIM FINANCING AGREEMENT,  
SERIES B**

**BY AND BETWEEN  
GARRISON DIVERSION CONSERVANCY DISTRICT  
AND  
LAKE AGASSIZ WATER AUTHORITY  
AND  
CITY OF FARGO, NORTH DAKOTA  
AND  
CITY OF GRAND FORKS, NORTH DAKOTA**

**Dated as of October \_\_\_\_, 2020**

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## TABLE OF CONTENTS

<b>ARTICLE I. DEFINITIONS AND INTERPRETATION.....</b>	<b>2</b>
<b>SECTION 1.01    DEFINITIONS.....</b>	<b>2</b>
<b>SECTION 1.02    INTERPRETATION .....</b>	<b>2</b>
<b>ARTICLE II. CONSTRUCTION CONTEMPLATED.....</b>	<b>3</b>
<b>SECTION 2.01    INTENT .....</b>	<b>3</b>
<b>SECTION 2.02    MEMBER ENTITY REPRESENTATIVE AND POINT OF CONTACT .....</b>	<b>3</b>
<b>SECTION 2.03    PROJECT GENERALLY .....</b>	<b>4</b>
<b>SECTION 2.04    CONTRACT INPUT.....</b>	<b>4</b>
<b>ARTICLE III. COST SHARE COMPONENTS .....</b>	<b>4</b>
<b>SECTION 3.01    COST SHARE FOR 2019-2021 BIENNIUM BUDGET.....</b>	<b>4</b>
<b>SECTION 3.02    INITIAL COST RESPONSIBILITY.....</b>	<b>4</b>
<b>SECTION 3.03    REFUNDING.....</b>	<b>5</b>
<b>SECTION 3.04    PROJECT RISKS .....</b>	<b>5</b>
<b>SECTION 3.05    ASSIGNMENT.....</b>	<b>5</b>
<b>ARTICLE IV. MINIMUM PARTICIPATION CONTINGENCY .....</b>	<b>5</b>
<b>SECTION 4.01    CONTINGENCY.....</b>	<b>5</b>
<b>ARTICLE V. FINANCING AND INVOICING .....</b>	<b>5</b>
<b>SECTION 5.01    FINANCING ADMINISTRATION.....</b>	<b>5</b>
<b>SECTION 5.02    SEPARATE PROJECT FUND.....</b>	<b>6</b>
<b>SECTION 5.03    INVOICES AND PAYMENT .....</b>	<b>6</b>
<b>SECTION 5.04    DISPUTE .....</b>	<b>6</b>
<b>ARTICLE VI. OPERATIONS AND MAINTENANCE .....</b>	<b>6</b>
<b>SECTION 6.01    GENERALLY.....</b>	<b>6</b>
<b>SECTION 6.02    DISPUTES.....</b>	<b>6</b>
<b>SECTION 6.03    O&amp;M PLAN AND MANUAL.....</b>	<b>7</b>
<b>ARTICLE VII. INSURANCE AND LIABILITY .....</b>	<b>7</b>
<b>SECTION 7.01    PARTIES' INSURANCE.....</b>	<b>7</b>
<b>SECTION 7.02    INSURANCE CONSULTANT RECOMMENDATION .....</b>	<b>7</b>
<b>SECTION 7.03    LIABILITY .....</b>	<b>7</b>
<b>ARTICLE VIII. TERMINATION AND STAY .....</b>	<b>7</b>
<b>SECTION 8.01    TERM.....</b>	<b>7</b>
<b>SECTION 8.02    TERMINATION BY MUTUAL AGREEMENT .....</b>	<b>7</b>
<b>SECTION 8.03    COST SHARE THRESHOLD .....</b>	<b>7</b>
<b>ARTICLE IX. MISCELLANEOUS.....</b>	<b>8</b>
<b>SECTION 9.01    ENTIRE AGREEMENT .....</b>	<b>8</b>
<b>SECTION 9.02    NOTICE.....</b>	<b>8</b>
<b>SECTION 9.03    GOVERNING LAW.....</b>	<b>8</b>
<b>SECTION 9.04    SEVERABILITY .....</b>	<b>8</b>

<b>SECTION 9.05</b>	<b>MODIFICATIONS .....</b>	<b>9</b>
<b>SECTION 9.06</b>	<b>BINDING EFFECT .....</b>	<b>9</b>
<b>SECTION 9.07</b>	<b>REPRESENTATION .....</b>	<b>9</b>
<b>SECTION 9.08</b>	<b>HEADINGS .....</b>	<b>9</b>
<b>SECTION 9.09</b>	<b>REPRESENTATION OF AUTHORITY.....</b>	<b>9</b>
<b>SECTION 9.10</b>	<b>FORCE MAJEURE.....</b>	<b>9</b>
<b>SECTION 9.11</b>	<b>COUNTERPARTS; ELECTRONIC SIGNATURES.....</b>	<b>9</b>

<b>SIGNATURE PAGES .....</b>	<b>S-1 THROUGH S-4</b>
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**EXHIBIT A – 2019-2021 BIENNIUM BUDGET FEATURES**

**EXHIBIT B – LOCAL COST SHARE DISTRIBUTION**

## **INTERIM FINANCING AGREEMENT, SERIES B**

**THIS INTERIM FINANCING AGREEMENT, SERIES B** (the “Series B Agreement”), is entered this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”), by and between GARRISON DIVERSION CONSERVANCY DISTRICT, a governmental agency, body politic and corporate of the State of North Dakota (“Garrison Diversion”); LAKE AGASSIZ WATER AUTHORITY, a governmental agency, body politic and corporate of the State of North Dakota (“LAWA”); CITY OF FARGO, NORTH DAKOTA, a municipal corporation and political subdivision of the State of North Dakota (“Fargo”); and CITY OF GRAND FORKS, NORTH DAKOTA, a municipal corporation and political subdivision of the State of North Dakota (“Grand Forks”); individually, a “Party,” and collectively, the “Parties.”

**WHEREAS**, the State of North Dakota, acting through the legislature, created Garrison Diversion in order to, among other things, construct and operate the Garrison Diversion Unit (the “GDU”) of the Missouri River basin project, and to develop municipal, rural and industrial water supplies, irrigation and recreation. The legislature also authorized Garrison Diversion to acquire, construct, improve and own the Red River Valley Water Supply Project (the “Project”) and sell a bulk water supply to end users; and

**WHEREAS**, the State of North Dakota, acting through the legislature, created LAWA to, among other things, acquire, construct, improve, own, and utilize the Project, to store and distribute water to eastern and central North Dakota, and to provide for the supply and distribution of water to the people of eastern and central North Dakota through the bulk purchase of water from Garrison Diversion for beneficial and public uses; and

**WHEREAS**, the State of North Dakota, acting through the legislature, authorized LAWA to enter one or more contracts to acquire bulk water from Garrison Diversion; and

**WHEREAS**, Garrison Diversion intends to finance, construct, own and operate the Project, and thereafter to sell to LAWA, and LAWA intends to purchase from Garrison Diversion all or a portion of the water derived therefrom as determined in accordance with separate agreements addressing capital repayment through a future project participation agreement (PPA), water supply purchase agreement, as well as this and possibly more future interim financing agreements for design, planning, construction and operations before the PPA and water supply purchase agreements are entered into; and

**WHEREAS**, Garrison Diversion and LAWA desire to join together to have Garrison Diversion finance, construct, and operate a water supply and distribution system that will ultimately convey water from the Missouri River and/or the GDU System to LAWA, with initial construction governed by the terms set forth herein; and

**WHEREAS**, the Parties have not completed negotiations of the PPA or a water supply purchase agreement and are still identifying which entities will ultimately participate in the Project. Garrison Diversion, LAWA, Fargo, and Grand Forks wish to proceed with the Project development contemplated in the 2019-2021 revised budget (see Exhibit A) despite not having final agreements in place on the PPA and water supply agreement; and

**WHEREAS**, Fargo and Grand Forks agree to pay the full local share of Project expenses not otherwise covered by the State cost share. Fargo and Grand Forks' pro rata portion of the LAWA local cost share is identified herein and on Exhibit B, subject to reimbursement from other LAWA member entities, to fund the Project development described herein, while continuing to negotiate the PPA and water supply purchase agreement; and

**WHEREAS**, Garrison Diversion and LAWA entered into a Cooperation Agreement dated May 8, 2020, which governs their general relationship. The terms of the Cooperation Agreement are incorporated herein by reference as if the terms are stated herein, and they apply to Fargo and Grand Forks in the same manner they apply to LAWA. If the specific terms of this Series B Agreement are inconsistent with the Cooperation Agreement in any manner, the terms of this Series B Agreement govern; and

**NOW THEREFORE**, in consideration of the mutual covenants made herein and for other valuable consideration, the receipt of which is hereby acknowledged, Garrison Diversion, LAWA, Fargo, and Grand Forks agree as follows:

## **ARTICLE I. DEFINITIONS AND INTERPRETATION**

**Section 1.01** DEFINITIONS. All capitalized terms used, and not otherwise defined herein, shall have the meanings given to them in this Series B Agreement and as defined in the Cooperation Agreement unless a different meaning clearly applies from the context.

**"CFS"** shall mean cubic feet per second.

**"Cooperation Agreement"** means an agreement entered into between Garrison Diversion and LAWA dated May 8, 2020, which governs their general relationship.

**"Debt Obligation"** means any loan, note, bond, credit facility or other security instrument issued by a party to this Series B Agreement to provide either temporary or permanent financing of the Project.

**"Early Out Construction Features"** means the features of the Red River Valley Water Supply Project identified in Exhibit A to this Series B Agreement.

**"Project"** means the Red River Valley Supply Project.

**"Series B Agreement"** has the same meaning set forth herein in the Recitals.

### **Section 1.02** INTERPRETATION.

(a) The headings of articles and sections are provided for convenience of reference only and will not affect the construction, meaning, or interpretation of this Series B Agreement. Any and all exhibits to this Series B Agreement are hereby incorporated by reference. The definition of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine,

feminine, and neuter forms. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, supplemented, or otherwise modified (subject to any restrictions on such amendments, supplements, or modifications as set forth herein), (ii) any reference herein to any person shall be construed to include such person’s permitted assigns, (iii) the words “herein,” “hereof,” and “hereunder,” and words of similar import, shall be construed to refer to this Series B Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to articles, sections, exhibits, and schedules shall be construed to refer to articles and sections of, and exhibits and schedules to, this Series B Agreement, and (v) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to and including.”

(b) This Series B Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Series B Agreement or some provision of it or because that Party relies on a provision of this Series B Agreement to protect itself. The Parties acknowledge and agree that this Series B Agreement has been prepared jointly by the Parties and has been the subject of arm’s length and careful negotiation, that each Party has been given the opportunity to independently review this Series B Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret, and agree to the particular language of the provisions of this Series B Agreement. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Series B Agreement, this Series B Agreement will not be interpreted or construed against the Party preparing it simply as a consequence of preparing it.

## **ARTICLE II. CONSTRUCTION CONTEMPLATED**

**Section 2.01** INTENT. Throughout this Series B Agreement, Fargo and Grand Forks, subject to reimbursement from other LAWA member entities, agree to finance the local cost share to allow Garrison Diversion to continue the development of the 2019-2021 Biennium work plan items. The budget for the 2019-2021 Biennium work plan items is attached as Exhibit B, and the items to be financed through this Series B Agreement from the 2019-2021 Biennium are identified in detail in Exhibit A.

**Section 2.02** MEMBER ENTITY REPRESENTATIVE AND POINT OF CONTACT. As indicated in the Cooperation Agreement, LAWA will work collaboratively with Garrison Diversion in the planning, construction, and operation and maintenance for the Project. Additionally, LAWA will continue to negotiate an agreement with Garrison Diversion for a PPA that addresses capital repayment and operation and maintenance agreements on the full Project, as well as a water supply agreement outlining the agreement and terms on which LAWA and/or its member entities will purchase a bulk water supply from Garrison Diversion. Regardless of which member entities participate in this Series B Agreement, LAWA will be the point of contact for the users and will

represent all LAWA member entities in discussion. Garrison Diversion will apprise LAWA of any LAWA user meetings on the Project and offer LAWA an opportunity to participate. A representative of LAWA will attend all such user meetings.

**Section 2.03** PROJECT GENERALLY. As indicated in the Cooperation Agreement and unless otherwise agreed between the Parties, Garrison Diversion shall finance, design, build, construct, own, maintain, and operate the features contemplated by this Series B Agreement. Garrison Diversion, in cooperation with LAWA as identified herein, may choose to use any legally authorized project delivery method to design, construct, own, maintain, and/or operate the early out construction features, as agreed under the terms of this and future agreements.

**Section 2.04** CONTRACT INPUT. As indicated in the Cooperation Agreement, Garrison Diversion will present all draft contracts and consultant task orders to LAWA for review and seek input from LAWA on the terms of the agreements and financial considerations. The provisions governing Garrison Diversion and LAWA engagement provided in the Cooperation Agreement apply to this Series B Agreement and are not restated herein, including those provisions governing contracts, task orders, consultant communication, and decision-making.

### **ARTICLE III. COST SHARE COMPONENTS**

**Section 3.01** COST SHARE FOR 2019-2021 BIENNIUM BUDGET. The North Dakota Legislature provided a grant for the Project during the 2019-2021 Biennium that authorized a budget of \$30 million in State funding, subject to a seventy-five percent (75%) cost share of eligible costs, with the remainder paid by local entities. After analyzing affordability for local entities, Garrison Diversion and LAWA have developed a 2019-2021 revised budget, which contemplates spending up to \$7,500,000, with the State responsible for \$5,625,000 and the local cost share responsible for up to \$1,875,000. Of the \$7,500,000, Garrison Diversion and LAWA have approved spending up to \$4,500,000 initially. In the event expected expenses will exceed the approved \$4,500,000, Garrison Diversion will notify LAWA. The work contemplated in the 2019-2021 revised budget includes additional support for early out construction, permit support, design services, financial planning, and other assistance to continue advancing the Project, as detailed on the attached Exhibit A. Garrison Diversion will obtain LAWA's approval of task orders that will obligate local cost share payments under this Section. After obtaining LAWA's approval of task orders, Garrison Diversion will diligently pursue the work contemplated thereunder. Garrison Diversion will manage contracts and consultants. Garrison Diversion will initially pay all related costs, subject to seventy five percent (75%) reimbursement from the State. Subject to the limitations set forth herein, Garrison Diversion will seek reimbursement from LAWA for all costs not covered by the State, up to the maximum amounts identified for each entity on Exhibit B. Fargo and Grand Forks each has the authority to seek reimbursement from the other LAWA member entities for these funds as set forth in a separate agreement between the LAWA member entities. Garrison Diversion will not seek reimbursement from LAWA or any other LAWA member entities for works included in the 2019-2021 revised budget.

**Section 3.02** INITIAL COST RESPONSIBILITY. This Series B Agreement solely addresses Fargo's and Grand Forks' responsibilities for their share of the initial costs associated with and limited to the specific categories identified in Exhibit A through the later of (1) June 30, 2021 if

budgeted funds are expended by that date or (2) thereafter if the completion of the scope of work extends beyond that date and so long as there are budgeted funds available to complete the approved budget items.

**Section 3.03 REFUNDING.** Fargo and Grand Forks agree that the funds they pay pursuant to this Series B Agreement are non-refundable in any and all cases except in the event Garrison Diversion does not award a contract for the construction of the infrastructure described in Exhibit A. If no construction contract is issued or if the Project is delayed indefinitely, as determined by Garrison Diversion and LAWA, Garrison Diversion will return all remaining unused funds remitted to Fargo and Grand Forks.

**Section 3.04 PROJECT RISKS.** The Parties acknowledge and agree that there are a number of risks, any or all of which could occur, that could have the effect of increasing the cost of the Project and/or delaying and/or terminating the Project. This includes, by way of illustration and not limitation, the following: (i) litigation; (ii) court order; (iii) changes in legislation affecting the Project, LAWA, and/or the Garrison Diversion; (iv) environmental risks; (v) increased labor costs or costs of materials; (vi) the need to obtain Federal approvals, Federal permits, or additional Federal environmental review; (vii) the Federal Government's decision regarding any permitting or approvals required for the Project; (viii) a change in the State of North Dakota's financial ability to fund its portion of the Project; (ix) climate change and variability; and (x) political interference at the local, state, federal, or tribal level. That said, any increase in the identified budgeted costs would require approval of the LAWA Board and Garrison Diversion.

**Section 3.05 ASSIGNMENT.** This Series B Agreement (and any interest herein or hereunder) may not be assigned, transferred, pledged, hypothecated, or encumbered without the prior written consent of the other Parties.

#### **ARTICLE IV. MINIMUM PARTICIPATION CONTINGENCY**

**Section 4.01 CONTINGENCY.** This Series B Agreement is valid and enforceable, binding all Fargo and Grand Forks to make the designated payments only if LAWA is able to gather signed agreements from LAWA member entities that represent nominations of at least ninety-nine (99) cfs in the aggregate. If LAWA does not secure agreements from LAWA member entities amounting to ninety-nine (99) cfs, this Series B Agreement is null and void and without further effect.

#### **ARTICLE V. FINANCING AND INVOICING**

**Section 5.01 FINANCING ADMINISTRATION.** Garrison Diversion will lead planning, design, construction, operation and maintenance of the items that are subject to this Series B Agreement. Garrison Diversion will advance funds for the initial work, subject to reimbursement from the State and LAWA through Fargo and Grand Forks. Fargo and Grand Forks will use whatever sources of funds available to them to make payments, with no expectation that they will issue Debt Obligations.



**Section 5.02** SEPARATE PROJECT FUND. Garrison Diversion will establish and maintain a Project Fund for the financial administration of the Project. The Project Fund shall be a separate fund used by Garrison Diversion only to pay costs and expenses that, under accepted accounting practices, constitute costs necessarily incurred to construct the Project, including but not limited to land, easements, buildings, structures, administration costs, office space, vehicle costs, and all other costs related to Project implementation, along with machinery and equipment, and the cost of all architectural, engineering, legal and other professional services, printing and publication, and other costs reasonable, necessary, and incidental thereto, including issuance costs as it relates to the work contemplated under this Series B Agreement.

**Section 5.03** INVOICES AND PAYMENT. Once Garrison Diversion pays for labor, material, services, or other expenses relating to the work contemplated under this Series B Agreement, Garrison Diversion will submit timely invoices to Fargo and Grand Forks for such service. The amount included in invoices will not exceed the respective maximum amounts included on Exhibit B. Subject to any dispute by Fargo or Grand Forks, each will remit payment on an invoice for any undisputed balance within thirty (30) calendar days after receiving an invoice.

**Section 5.04** DISPUTE. If Fargo or Grand Forks disputes any portion of a Garrison Diversion invoice, any undisputed portion of the invoice must be paid within thirty (30) days of the receipt of invoice. For any portion of an invoice in dispute, the disputing party must provide an explanation in writing regarding the specific basis of the dispute. Garrison Diversion will review the explanation and provide a written response within thirty (30) days of the receipt of the disputing party's explanation. If the Parties' staff members are unable to help the Parties reach consensus, representatives of each Party will follow the dispute resolution process outlined in the Cooperation Agreement.

## **ARTICLE VI. OPERATIONS AND MAINTENANCE**

**Section 6.01** GENERALLY. While the PPA will govern the responsibility for operation and maintenance (O&M) of the Project when the PPA is executed, this Series B Agreement addresses any interim O&M needs that arise relating to the projects constructed pursuant to this Series B Agreement. Garrison Diversion will be responsible for conducting all operation and maintenance required for any portion of the Project constructed prior to the PPA effective date and through the term of this Series B Agreement. The O&M expenses will be presented in an annual work plan and budget, brought to LAWA as provided in the Cooperation Agreement. LAWA may choose to task the Technical Advisory Committee to review the O&M Plan and annual work plan. The annual O&M costs will be invoiced to LAWA as part of the monthly payments after the infrastructure on Exhibit A is completed. The Parties will enter future interim financing agreements setting forth the structure of these monthly payments.

**Section 6.02** DISPUTES. If there is a dispute between any Parties regarding deferred maintenance or the need for changes to operation, maintenance or repairs, the provisions of the Cooperation Agreement at Section 3.05 will govern the resolution of the dispute.

**Section 6.03 O&M PLAN AND MANUAL.** At least six (6) months prior to the first Project Element Service Commencement Date, Garrison Diversion and LAWA shall collaborate to draft a plan and manual for operations and maintenance of the particular items constructed pursuant to this Series B Agreement ("Plan and Manual"). The Technical Advisory Committee will be consulted and provide input on this Plan and Manual. The Plan and Manual will continue to be supplemented as new Project infrastructure comes online. Once a draft Plan and Manual is completed, Garrison Diversion and LAWA will submit the draft Plan and Manual to Garrison Diversion and LAWA for approval using the decision-making protocol in Section 3.05 of the Cooperation Agreement to obtain approval of the Plan and Manual.

## **ARTICLE VII. INSURANCE AND LIABILITY**

**Section 7.01 PARTIES' INSURANCE.** Garrison Diversion is in the process of hiring an insurance consultant to recommend insurance coverage for the Project. Until the recommendation of the insurance consultant is obtained and implemented, all Parties will maintain their own adequate political subdivision liability insurance coverage, as well as coverage for officer and directors. Garrison Diversion will require reasonable insurance limits for all contractors working on the infrastructure described herein. Garrison Diversion will also insure the herein described infrastructure, with the insurance costs classified as an O&M expense to the Project.

**Section 7.02 INSURANCE CONSULTANT RECOMMENDATION.** Once the insurance consultant recommends coverages and limits, Garrison Diversion and LAWA will work together to decide coverage limits for the infrastructure herein described, which will be charged as an expense both during and after construction.

**Section 7.03 LIABILITY.** The funding provided through this Series B Agreement does not create any liability for LAWA, Fargo and Grand Forks as an owner of the Project. LAWA, Fargo and Grand Forks will be named as additional insureds on the construction contracts that are funded by this Series B Agreement.

## **ARTICLE VIII. TERMINATION AND STAY**

**Section 8.01 TERM.** This Series B Agreement will be valid through June 30, 2021, or until the funds authorized and approved hereunder are spent on the identified construction expenses, whichever occurs later.

**Section 8.02 TERMINATION BY MUTUAL AGREEMENT.** The Parties may mutually agree, in writing, to terminate this Series B Agreement. Any and all payments due and owing by Fargo and Grand Forks at the time of termination of this Series B Agreement must be fully paid before Fargo's and Grand Forks' responsibility to make payments hereunder will terminate.

**Section 8.03 COST SHARE THRESHOLD.** The Cost Share Threshold termination provision of the Cooperation Agreement does not apply to this Series B Agreement.

**ARTICLE IX.  
MISCELLANEOUS**

**Section 9.01** ENTIRE AGREEMENT. This Series B Agreement contains the entire and exclusive understanding of the Parties with respect to the subject matter thereof, and this Series B Agreement supersedes all prior agreements, understandings, statements, representations, and negotiations, in each case oral or written, between the Parties with respect to the subject matter. This Series B Agreement includes all provisions of the Cooperation Agreement between LAWA and Garrison Diversion, as if all provisions were included herein unless a contrary provision is included herein.

**Section 9.02** NOTICE. All notices under this Series B Agreement will be in writing and: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (d) sent by facsimile or email communication followed by a hard copy and with receipt confirmed by telephone or return receipt (in the case of email communication), to the following addresses:

If to Garrison Diversion:      General Manager  
   Garrison Diversion Conservancy District Headquarters  
   PO Box 140  
   Carrington, ND 58421

If to LAWA:                      LAWA Board Chair  
   Lake Agassiz Water Authority  
   PO Box 140  
   Carrington, ND 58421

If to Fargo:                      City Administrator  
   Fargo City Hall  
   225 4<sup>th</sup> St. N  
   Fargo, ND 58102

If to Grand Forks:              City Administrator  
   Grand Forks City Hall  
   255 N 4<sup>th</sup> St.  
   Grand Forks, ND 58203

**Section 9.03** GOVERNING LAW. This Series B Agreement shall be controlled by the laws of the State of North Dakota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this Series B Agreement shall be venued in Cass County in the State of North Dakota, and the Parties waive any objection to personal jurisdiction.

**Section 9.04** SEVERABILITY. Each provision, section, sentence, clause, phrase, and word of this Series B Agreement is intended to be severable. If any provision, section, sentence, clause, phrase, and word hereof is held by a court with jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Series B Agreement.

**Section 9.05** MODIFICATIONS. Any modifications or amendments to this Series B Agreement must be in writing and signed by all Parties to this Series B Agreement.

**Section 9.06** BINDING EFFECT. This Series B Agreement shall be for the benefit of, and may be enforced only by, the Parties and is not for the benefit of, and may not be enforced by any third party.

**Section 9.07** REPRESENTATION. The Parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Series B Agreement, and agree they have not been influenced by any representations or statements made by any other parties.

**Section 9.08** HEADINGS. Headings in this Series B Agreement are for convenience only and will not be used to interpret or construe its provisions.

**Section 9.09** REPRESENTATION OF AUTHORITY. Each Party signing this Series B Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Series B Agreement and that the Series B Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

**Section 9.10** FORCE MAJEURE. A Party shall not be held responsible for any delay or failure in performance of any part of this Series B Agreement to the extent such delay or failure is caused by fire, flood, explosion, war, embargo, government requirement, civil or military authority, act of God, or other similar causes beyond its control and without the fault or negligence of the delayed or non-performing party. The affected Party will notify the other Parties in writing within ten (10) days after the beginning of any such cause that would affect its performance. Notwithstanding, if a Party's performance is delayed for a period exceeding thirty (30) days from the date the other Parties receive notice under this section, the non-affected Parties will have the right, without any liability to the other Parties, to terminate this Series B Agreement. Ongoing litigation and any construction injunction do not qualify as force majeure events.

**Section 9.11** COUNTERPARTS; ELECTRONIC SIGNATURES. This Series B Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

**IN WITNESS WHEREOF**, Garrison Diversion, LAWA, Fargo, and Grand Forks caused this Series B Agreement to be executed.

*(Remainder of page intentionally left blank.)*

*Signature Page for the Garrison Diversion Conservancy District*

The governing body of the Garrison Diversion Conservancy District approved this Series B Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

GARRISON DIVERSION  
CONSERVANCY DISTRICT, a  
governmental agency, body politic and  
corporate

By: \_\_\_\_\_  
Ken Royse, Chair

ATTEST:

\_\_\_\_\_  
Secretary

*Signature Page for the Lake Agassiz Water Authority*

The governing body of the Lake Agassiz Water Authority approved this Series B Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

LAKE AGASSIZ WATER AUTHORITY, a  
governmental agency, body politic and  
corporate

By: \_\_\_\_\_  
Dr. Timothy Mahoney, Chair

ATTEST:

\_\_\_\_\_  
Secretary

*Signature Page for the City of Fargo*

The governing body of the City of Fargo approved this Series B Agreement on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2020.

City of Fargo, a governmental agency, body  
politic and corporate

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

ATTEST:

\_\_\_\_\_  
Secretary



*Signature Page for the City of Grand Forks*

The governing body of the City of Grand Forks approved this Series B Agreement on the \_\_\_\_\_  
day of \_\_\_\_\_, 2020.

City of Grand Forks, a governmental  
agency, body politic and corporate




By: \_\_\_\_\_  
Brandon Bochenski, Mayor

ATTEST:

\_\_\_\_\_  
Secretary

## EXHIBIT A

## 2019-2021 Biennium Budget Features

											
2019 to 2021 Biennium Budget (Early-Out Projects with Minimum Additional Spend)											
April 3, 2020											
No.	Scope of Work	Feature	Task Order Auth.	20/21 Biennium Project Development Budget (mil \$)			Construction Budget per Biennium (mil \$) <sup>1,2,3</sup>				
				Total	State 75%	Local 25%	Total	State 60%	Local 40%	22/23	Future
1.	Financial, Administration, Legal, Insurance, Etc. Scope: Admin information, legal, and financial modeling/funding. Need: Annual Garrison Division budget for program admin.	Administration of programs, including financial, legal, public communication, administrative, insurance advising, etc. <i>unanticipated</i>	Apr-20 Jan-23	\$ 0.19 \$ 0.20	\$ 0.13 \$ 0.13	\$ 0.17 \$ 0.17	\$ - \$ -	\$ - \$ -	\$ - \$ -	\$ - \$ -	TBD
2.	Early-Out Missouri River Intake Pumping Station Wetland Scope: Bidding assistance and construction of intake wetwell. Need: Early-out project to meet legislative intent.	40" diameter x 65' deep concrete wetwell and intake line development for a 16.5-cfs pumping station at the Missouri River near Washburn, ND.	Mar-20 Jan-20	\$ 0.06 \$ -	\$ 0.04 \$ -	\$ 0.02 \$ -	\$ - \$ 1.37	\$ - \$ 1.54	\$ 0.07 \$ 0.17	\$ - \$ -	\$ -
3.	Early-Out Transmission Pipeline Cost - Contract 3a Scope: Bidding assistance, contract rights, incentives, & equity. Need: Early-out project to meet legislative intent.	1.56 miles of 72" open-cut pipeline, including 96" diameter tunnel under Affleck Railroad and U.S. Highway 381 south of Carrington, ND.	Mar-20 Jul-20	\$ 0.09 \$ -	\$ 0.07 \$ -	\$ 0.02 \$ -	\$ - \$ 1.18	\$ - \$ 7.72	\$ 0.46 \$ 0.68	\$ - \$ -	\$ -
4.	Early-Out Exchange Structure on the Sheyenne River Scope: Bidding assistance and construction of steel structure. Need: Early-out project to meet legislative intent.	1.45-cfs energy exchange structure and outfall channel to Sheyenne River near Cooperstown, ND, including intake line development.	Mar-20 Jan-20	\$ 0.06 \$ -	\$ 0.05 \$ -	\$ 0.01 \$ -	\$ - \$ 3.85	\$ - \$ 1.70	\$ 0.16 \$ 0.18	\$ - \$ -	\$ -
5.	Missouri River Intake Orb and Tunnel Scope: Marine borings, final design review, and bidding assist. Need: Design facility as it can be built by design/bid/build.	Marine geotechnical investigation, design of 36" dia T-crown and orb in Missouri River and a 1,500' long 72" diameter tunnel from orb to wetwell.	Mar-20 Jul-20 Jan-21	\$ 0.03 \$ 1.10 \$ 0.11	\$ 0.02 \$ 1.04 \$ 0.09	\$ 0.15 \$ 0.06 \$ 0.03	\$ - \$ - \$ -	\$ - \$ - \$ -	\$ - \$ - \$ -	\$ 25 \$ 49	\$ -
6.	Moist Water Plant and Main Pumping Station Scope: MWDPS discharge permitting support services. Need: Critical services for permit acquisition support.	125-cfs water treatment facility, 165-cfs main pumping station and associated surge control building.	Oct-20	\$ 0.29	\$ 0.19	\$ 0.06	\$ -	\$ -	\$ -	\$ -	\$ 111
7.	Land Services <sup>4</sup> Scope: Easement and release/interchange and other acquisition. Need: Convert remaining Segment 2 options to easements.	Conversion of existing corridors to easements; and intake and discharge real estate costs and legal support.	Mar-20 Jan-21	\$ 0.20 \$ 0.45	\$ 0.15 \$ 0.14	\$ 0.05 \$ 0.11	\$ - \$ -	\$ - \$ -	\$ - \$ -	\$ - \$ -	\$ 19
8.	Environmental Consulting Scope: Assistance with wetlands and other permitting issues. Need: Identify and address environmental issues as they arise.	Provide on-call consulting for wetlands, environmental, cultural, and archeological aspects during the biennium.	Jan-21	\$ 0.10	\$ 0.08	\$ 0.02	\$ -	\$ -	\$ -	\$ -	\$ -
9.	Transmission Pipeline Cost - Contract 3b Scope: Design wrap-up and bidding assistance. Need: Keep program on track for 2025 completion.	25.52 miles of 72" open-cut pipeline, including associated 96" diameter tunnels under wetlands, highways, railroads, etc.	Oct-20 Jan-21	\$ 0.18 \$ 0.10	\$ 0.19 \$ 0.08	\$ 0.03 \$ 0.02	\$ - \$ -	\$ - \$ -	\$ - \$ -	\$ 153	\$ -
10.	Program Management Scope: Overall program management, planning, and support. Need: Consulting services not covered by individual task orders.	Overall project planning, management, scheduling, coordination, meeting organization, regulatory interface, etc. not included in individual TOS.	20-May	\$ 0.44	\$ 0.15	\$ 0.11	\$ -	\$ -	\$ -	\$ -	\$ -
11.	Reserve for Expected but Yet Undefined Projects Scope: Reserve budget to accommodate work contingencies. Need: Prudent reserve.	A reserve providing flexibility to adapt to work plan changes during the biennium and for dealing with construction change orders.	TBD	\$ 1.14	\$ 0.85	\$ 0.19	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL PROGRAM BUDGET				\$7.56	\$5.85	\$1.84	\$14.64	\$13.00	\$1.84	\$ 189	\$ 178
<b>Notes:</b>											
1. Construction costs include management, engineering services during construction, inspection, field quality control, and construction.											
2. Projects indicated for construction funding in a given biennium will be <i>above ready</i> for construction at the start of the biennium.											
3. Future capital costs are estimated to an anticipated midpoint of construction at 3 percent per annum for the respective component with the RRWSP expected to be obtained by 2029. All future RRWSP construction projects and costs are <i>not shown</i> .											
4. Future land services costs are the amount likely to be paid to land owners for real estate, easements, crop damage and flood obstructions. Costs for Segment 3 (McClary Canal to Break Tanks) options to easement conversions and easements from scratch are <i>not</i> included in the estimates.											

**EXHIBIT B****Local Cost Share Distribution\***

2019-2021 Biennium Local Cost of Work Plan		
Total Work Plan – \$7,500,000		
Local Cost Share – 25%		
<i>City</i>	<i>Percentage</i>	<i>Local Cost Share</i>
Fargo	77.215%	\$1,447,781
Grand Forks	22.785%	\$427,219
<b>Total</b>	<b>100.00%</b>	<b>\$1,875,000</b>

\*Fargo and Grand Forks reserve the right to seek reimbursement from other LAWA member entities for their contributions under separate agreement.

52

**MEMORANDUM**

**TO: FARGO CITY COMMISSION**

**FROM: MAYOR DR. TIMOTHY MAHONEY**



**DATE: OCTOBER 27, 2020**

**SUBJECT: AN ORDINANCE ENACTING AND ESTABLISHING A TEMPORARY MORATORIUM DURING THE STATE OF COVID-19 EMERGENCY PERTAINING TO OCCUPANCY OF EMERGENCY SHELTERS IN CERTAIN NON-RESIDENTIAL STRUCTURES**

The current COVID-19 pandemic situation has stretched our community. There are a number of shelters in our community committed to providing services to the homeless. The shelters have plans to handle additional people in the shelters under normal winter conditions. The plans currently in place do not account for the need for physical distancing required as a result of COVID-19.

I have reached out to the Planning, Building and Fire departments to help find a path forward in this time of emergency. The plan that has come forward is to allow for emergency shelters in certain non-residential structures.

I have directed the City Attorney to work with these departments heads to develop an Ordinance that will allow emergency shelters in certain non-residential structures. The Ordinance has minimum provisions that will need to be in place to allow the occupancy of these structures.

**Suggested motion:** I move (a) to receive and file "An Ordinance Enacting and Establishing a Temporary Moratorium during the State of COVID-19 Emergency Pertaining to Occupancy of Emergency Shelters in Certain Non-Residential Structures;" (b) to waive the requirement of receipt and filing of said Ordinance one week prior to first reading; (c) to waive first reading, at length, of said Ordinance; and (d) to direct that said Ordinance be placed on the agenda for the next regular City Commission for second reading and final passage.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

AN ORDINANCE ENACTING AND ESTABLISHING  
A TEMPORARY MORATORIUM DURING THE STATE OF COVID-19  
EMERGENCY PERTAINING TO THE OCCUPANCY OF EMERGENCY SHELTERS  
IN CERTAIN NON-RESIDENTIAL STRUCTURES

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

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

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

WHEREAS, Article 9-07 of the Fargo Municipal Code incorporates, by reference, the provisions of the International Fire Code (the "IFC"), and Chapter 21 of the Fargo Municipal Code incorporates, by reference, the provisions of the International Building Code (the "IBC") and the International Existing Building Code (the "IEBC"); and,

WHEREAS, there exists a state of emergency, declared and established by proclamation of the mayor of the city of Fargo on March 16, 2020, as a result of the COVID-19 pandemic, which state of emergency has been approved and extended by the board of city commissioners; and,

WHEREAS, the board of city commissioners hereby finds that appropriate COVID-19 health measures dictates the need for social distancing between individuals staying in emergency shelters within the community, therefore causing such shelters to drastically limit the number of individuals being able to use emergency shelters; that interim use of tents and other similar facilities is not sufficient during winter and winter-like weather; and, therefore, that there is a need for additional facilities to be adapted for use on a temporary basis for emergency shelter use; and,

WHEREAS, while Section 102.4 of the IFC, and Section 102.6 and 111.1 of the IBC and 101.2 and 101.4 of the IEBC, prohibit use of a commercial structure for residential use without conformance with the change-of-use requirements of Section 102.3 of the IFC and Section 101.2 of the IBC and Section 101.2 of the IEBC; however, the board of city

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

1 commission finds that a temporary suspension of said requirements is necessary and  
2 appropriate, upon certain stated conditions providing for the safety of occupants so long as  
3 the COVID-19 state of emergency is in place; and,

4 WHEREAS, the Board of City Commissioners deems it necessary and appropriate  
5 to approve a temporary moratorium on the enforcement of certain aspects of the said  
6 "change-of-use" requirements so long as certain matters of safety are otherwise provided;

7 NOW, THEREFORE,

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

9 Section 1. Enactment.

10 1. Moratorium. To the extent that an emergency shelter is being  
11 established for occupancy in a building or structure permitted for use or  
12 occupancy but not for residential use or occupancy, but which building or  
13 structure is being proposed for use as an emergency shelter on an interim or  
14 temporary basis, such use may be allowed provided that the following  
15 conditions are met as approved by both the fire chief and the building  
16 official, said conditions being as follows:

- 17 A. The facilities must meet minimum egress and safety guidelines.
- 18 B. Fire watch is required. Awake and alert staff shall be present at all times.
- 19 C. A telephone or means of communication is required to be within 50ft. of  
20 area used as shelter.
- 21 D. The owner or building manager shall notify the fire department when the  
22 shelter is in use.
- 23 E. No smoking, cooking, candles or other open flames shall be allowed.
- F. An evacuation map shall be posted in all rooms where sleeping could occur.
- G. Listed and approved single station smoke alarms are required in all rooms and in the path of egress.

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

H. Listed and approved single station Carbon Monoxide alarms are required on each level containing sleeping areas.

I. The area or rooms used for sleeping shall be on the level of exit discharge. Where it is not possible to locate sleeping rooms on the level of exit discharge the sleeping areas shall comply with IFC Section 1030.

J. The area used for sleeping shall have access to two or more egress doors to the exterior.

K. The maximum occupancy, established by the approval of the fire chief and building official, shall not be exceeded at any time.

2. Definition -- emergency shelter. For purposes of this ordinance, "emergency shelter" means any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless and which does not require occupants to sign leases or occupancy agreements.

3. Effect of Moratorium -- Limitation of Enforcement. This moratorium as to the enforcement of certain regulations or ordinances of the City and to instruct, order and limit building code and fire code enforcement officials and officers, police officers and prosecutors of the City or any other law enforcement officers or agents to refrain from enforcing City ordinances contrary to the terms hereof and to refrain from charging or citing persons, firms or other entities accordingly and, furthermore, said instruction, order and limitation in enforcement shall survive the termination of this moratorium, whether such termination occurs by lapse of time or by affirmative act.

Section 2. Expiration Date.

This ordinance is effective through December 31, 2021, and shall thereafter be of no further force or effect, unless it is either extended or is sooner terminated by resolution of the board of city commissioners.



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

Section 3. Effective Date.

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

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

(SEAL)

Attest:

First Reading:  
Second Reading:  
Final Passage:

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



53a

October 14, 2020

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 915 3 St N as submitted by Stephan & Alysia Burket. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2021, 2022, 2023, 2024 & 2025.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$110 with the City of Fargo's share being \$20.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Splonskowski".

Mike Splonskowski  
City Assessor

bsb  
attachment

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

**Property Identification**

1. Name of Property Owner	<u>Stephen &amp; Alysia Burket</u>			Phone No.	_____
2. Address of Property	<u>915 3<sup>rd</sup> St. N.</u>				
City	<u>FARGO</u>	State	<u>ND</u>	Zip Code	<u>58102</u>
3. Legal description of the property for which the exemption is being claimed.	<u>Lot 3 Block 1 Triesdells Add'n</u>				
4. Parcel Number	<u>01-3260-0030-000</u>	Residential	<input checked="" type="checkbox"/>	Commercial	<input type="checkbox"/>
				Central Business District	<input type="checkbox"/>
5. Mailing Address of Property Owner	<u>Same</u>				
City	_____	State	_____	Zip Code	_____

**Description Of Improvements For Exemption**

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary).	<u>Reside Dwelling</u>
7. Building Permit No.	<u>20030581</u>
8. Year Built	<u>1894</u>
9. Date of Commencement of making the improvement	<u>3/26/20</u>
10. Estimated market value of property before improvement	\$ <u>173,800</u>
11. Cost of making the improvement (all labor, material and overhead)	\$ <u>12,000</u>
12. Estimated market value of property after improvement	\$ <u>182,100</u>

**Applicant's Certification and Signature**

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.	
Applicant's Signature	<u>Alysia Burket</u>
Date	<u>10/15/2020</u>

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has <input type="checkbox"/> has not <input type="checkbox"/> met the qualifications for exemption for the following reason(s):
Assessor's Signature _____ Date _____

**Action of Governing Body**

15. Action taken on this application by local governing board of the county or city: Denied <input type="checkbox"/> Approved <input type="checkbox"/>
Approval subject to the following conditions:
Chairman of Governing Body _____ Date _____



536

October 14, 2020

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1501 20 Ave S as submitted by Eric & Lori Johnson. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2021, 2022, 2023, 2024 & 2025.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$240 with the City of Fargo's share being \$40.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Splonskowski".

Mike Splonskowski  
City Assessor

bsb  
attachment

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

**Property Identification**

1. Name of Property Owner Erik & Lori Johnson Phone No. 701-371-6930

2. Address of Property 1501 20 Ave S  
City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed. Lt 6, Blk 19, Bohnsacks 3rd

4. Parcel Number 01-0163-02810-000 Residential ☒ Commercial ☐ Central Business District ☐

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

**Description Of Improvements For Exemption**

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary). Basement remodel-move laundry to main, convert basement laundry to bathroom, add ducted a/c to main level

7. Building Permit No. 20040689 8. Year Built 1967

9. Date of Commencement of making the improvement April 2020

10. Estimated market value of property before improvement \$ 231,900

11. Cost of making the improvement (all labor, material and overhead) \$ 60,000

12. Estimated market value of property after improvement \$ 250,400

**Applicant's Certification and Signature**

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

Applicant's Signature [Signature] Date 10/13/2020

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has ☐ has not ☐ met the qualifications for exemption for the following reason(s): \_\_\_\_\_

Assessor's Signature \_\_\_\_\_ Date \_\_\_\_\_

**Action of Governing Body**

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

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

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



530

October 15, 2020

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 225 30 Ave N as submitted by Norman Leslie Investment Properties. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2021, 2022, 2023, 2024 & 2025.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Splonskowski".

Mike Splonskowski  
City Assessor

bsb  
attachment

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

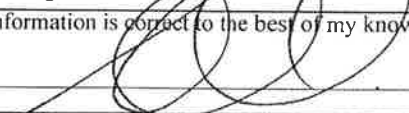
**Property Identification**

1. Name of Property Owner	<u>Norman Leslie Investment Properties</u>		701/ Phone No. <u>532-2832</u>
2. Address of Property	<u>225 30<sup>th</sup> Ave. N.</u>		
City	<u>FARGO</u>	State	<u>ND</u> Zip Code <u>58102</u>
3. Legal description of the property for which the exemption is being claimed.	<u>Lot 15 Block 10 Edgewood 2nd Addn</u>		
4. Parcel Number	<u>01-6730-01090-00</u>	Residential <input checked="" type="checkbox"/> Commercial <input type="checkbox"/> Central Business District <input type="checkbox"/>	
5. Mailing Address of Property Owner	<u>1635 43<sup>rd</sup> St. S., Suite 305</u>		<u>58103</u>
City	<u>Fargo</u>	State	<u>ND</u> Zip Code <u>58103</u>

**Description Of Improvements For Exemption**

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary).	<u>Remodel Kitchen + bathrooms. Work includes new flooring, cabinets, + electrical throughout</u>	
7. Building Permit No.	<u>19070494</u>	8. Year Built <u>1969</u>
9. Date of Commencement of making the improvement	<u>7/15/20</u>	
10. Estimated market value of property before improvement	<u>\$ 214,700</u>	
11. Cost of making the improvement (all labor, material and overhead)	<u>\$ 80,000.</u>	
12. Estimated market value of property after improvement	<u>\$ 226,900</u>	

**Applicant's Certification and Signature**

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.	
Applicant's Signature 	Date <u>10/14/2020</u>

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has <input type="checkbox"/> has not <input type="checkbox"/> met the qualifications for exemption for the following reason(s):
Assessor's Signature _____ Date _____

**Action of Governing Body**

15. Action taken on this application by local governing board of the county or city: Denied <input type="checkbox"/> Approved <input type="checkbox"/>
Approval subject to the following conditions: _____
Chairman of Governing Body _____ Date _____



531

October 14, 2020

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 2526 Viking Cir S as submitted by Timothy & Melissa Ortez. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2021, 2022, 2023, 2024 & 2025.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Splonskowski".

Mike Splonskowski  
City Assessor

bsb  
attachment



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

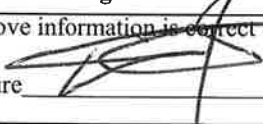
**Property Identification**

1. Name of Property Owner	TIMOTHY & MELISSA ORTEZ			Phone No.	
2. Address of Property	2526 VIKING CIR S				
City	FARGO	State	ND	Zip Code	58103
3. Legal description of the property for which the exemption is being claimed.	LOT 19 BLK 4 ARROWHEAD ADDN				
4. Parcel Number	01-0065-00490-000	Residential	<input checked="" type="checkbox"/>	Commercial	<input type="checkbox"/>
		Central Business District	<input type="checkbox"/>		
5. Mailing Address of Property Owner	2526 VIKING CIR S				
City	FARGO	State	ND	Zip Code	58103

**Description Of Improvements For Exemption**

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary).	RESIDE DWELLING	
7. Building Permit No.	1912-0251-SIDG	8. Year Built
		1973
9. Date of Commencement of making the improvement	12/26/2019	
10. Estimated market value of property before improvement	\$ 253,800	
11. Cost of making the improvement (all labor, material and overhead)	\$ 24,647.04	
12. Estimated market value of property after improvement	\$	

**Applicant's Certification and Signature**

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.	
Applicant's Signature 	Date 10/5/2020

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has <input type="checkbox"/> has not <input type="checkbox"/> met the qualifications for exemption for the following reason(s):
Assessor's Signature _____ Date _____

**Action of Governing Body**

15. Action taken on this application by local governing board of the county or city: Denied <input type="checkbox"/> Approved <input type="checkbox"/>
Approval subject to the following conditions:
Chairman of Governing Body _____ Date _____



53e

October 15, 2020

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 3121 Edgewood Dr N as submitted by Haven Homes LLC. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

It is my opinion that the value of some of the improvements, referred to in the application, qualifies for the exemption. This exemption would be for the years 2021, 2022, 2023, 2024 & 2025.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$1,840 with the City of Fargo's share being \$310.

Sincerely,

A handwritten signature in cursive script that reads "Mike Splonskowski".

Mike Splonskowski  
City Assessor

bsb  
attachment

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

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

**Property Identification**

1. Name of Property Owner	<u>Haven Homes LLC</u>		Phone No.	<u>218-779-5410</u>
2. Address of Property	<u>3121 Edgewood Dr N</u>			
City	<u>FARGO</u>	State	<u>ND</u>	Zip Code <u>58102</u>
3. Legal description of the property for which the exemption is being claimed.	<u>Lot 11 72 ft of 14 + E 9 ft of 15 Block 6 of Edgewood 2<sup>nd</sup> Addition</u>			
4. Parcel Number	<u>01-0730-00470-000</u>	Residential <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Central Business District <input type="checkbox"/>		
5. Mailing Address of Property Owner	<u>1022 1<sup>st</sup> Ave N</u>			
City	<u>Fargo</u>	State	<u>ND</u>	Zip Code <u>58102</u>

**Description Of Improvements For Exemption**

6. Describe the type of renovating, remodeling or alteration made to the building for which the exemption is being claimed (attach additional sheets if necessary).	<u>Foundation + Paint exterior, all interior components renovated - Kitchen, baths, flooring, paint, trim, doors etc.</u>
7. Building Permit No.	<u>2002-0389-REN</u>
8. Year Built	<u>1972</u>
9. Date of Commencement of making the improvement	<u>2/15/2020</u>
10. Estimated market value of property before improvement	\$ <u>143,500</u>
11. Cost of making the improvement (all labor, material and overhead)	\$ <u>140,000</u>
12. Estimated market value of property after improvement	\$ <u>325,000</u>

**Applicant's Certification and Signature**

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.	
Applicant's Signature	<u>[Signature]</u> Date <u>10/15/2020</u>

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has <input type="checkbox"/> has not <input type="checkbox"/> met the qualifications for exemption for the following reason(s):
Assessor's Signature _____ Date _____

**Action of Governing Body**

15. Action taken on this application by local governing board of the county or city: Denied <input type="checkbox"/> Approved <input type="checkbox"/>
Approval subject to the following conditions: _____
Chairman of Governing Body _____ Date _____

**Submit Via Email**