

FARGO CITY COMMISSION AGENDA  
Monday, November 4, 2019 - 5:00 p.m.

Executive Session at 4:00 p.m.

Roll call.

**PLEASE NOTE:** The City Commission will meet in Executive Session to discuss ongoing negotiations with the Fargo Municipal Airport Authority. The Executive Session will allow discussion of negotiating strategy and to provide negotiating instructions to the City's negotiator or attorneys with respect to said negotiations and the potential agreement between the City and the Fargo Municipal Airport Authority has financial implications and an open meeting discussion of the negotiations, strategy and direction to the City's negotiator would create an adverse fiscal effect on the bargaining position of the City. This Executive Session is authorized pursuant to ND Century Code § 44-04-19.1(9).

Regular Meeting at 5:00 p.m.

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

- A. Pledge of Allegiance.
- B. Roll Call.
- C. Approve Order of Agenda.
- D. Minutes (Regular Meeting, October 21, 2019).

**CONSENT AGENDA – APPROVE THE FOLLOWING:**

- 1. Receive and file an Ordinance Relating to Recreational Aquatic Facilities.
- 2. Receive and file the Notice of Appeal Richard Nelson vs. Fargo City Commission.
- 3. Applications for Games of Chance:
  - a. Knights of Columbus for a raffle on 2/2/20.
  - b. Davies Theatre Parent Group for a calendar raffle from 11/7/19 to 11/10/19.
  - c. Sts. Anne & Joachim Catholic Church for bingo on 11/10/19.
  - d. Katrina Cichon Benefit for a raffle on 11/23/19.
  - e. Legacy Children's Foundation for a raffle on 12/9/19.
  - f. Nativity Elementary for a raffle on 1/31/20.
  - g. Fargo North High School Spartacas Dance Team for a raffle on 12/7/19.
  - h. ND Society of Professional Land Surveyors Foundation for a raffle on 2/5/20.
- 4. Amended Site Authorization for Fargo Metro Baseball Association at Specks Bar.
- 5. Change Order No. 12 for an increase of \$3,763.65 for Project No. FM-15-K1.

6. Change Order No. 2 for an increase of \$31,342.87 and time extension to 6/30/20 for Project No. SL-19-A1.
7. Change Order No. 1 to move the tree installation and gatewell cover staining final completion dates to 6/1/20 for Project No. FM-14-13.
8. Sole Source Procurement with Richard W. Baird & Company, Inc. for bond underwriter services for the Mercantile Project financing.
9. Receive and file Financial Status Report – Budget to Actual for Quarter ending 9/30/19 for major operating funds (unaudited).
10. Receive and file Investment Report – Quarter ended 9/30/19.
11. Amendment of Solicitation/Modification of Contract with Department of Veterans Affairs exercising option to extend services until 2/29/20.
12. Financial Award from the ND Department of Commerce/DCS for the Gladys Ray Shelter for an Emergency Solutions Grant.
13. Purchase of Service Agreement with ND Department of Human Services, Behavioral Health Division for substance abuse prevention.
14. Resolution approving Plat of West 29 Seventh Addition.
15. Bid award for the purchase of two motor graders with wings (RFP19169).
16. Amendment No. 4 to Agreement with First Transit for revision of fees from 8/1/19 through 12/31/20.
17. RFP for security services at the GTC and Metro Transit Garage.
18. Finalize the contract with GFI GENFARE SPX to provide fare collection systems at MATBUS (SSP19146).
19. Finalize the contract with FASTER Asset Solutions for Fleet Management Software at MATBUS.
20. Bid award for tire replacement and services (RFP19151).
21. Change Order Nos. 1 and 2 in the total amount of \$36,100.00 and time extension to 8/31/20 for Project No. SW 19-01.
22. Change Orders for Project No. SW 16-03 Phase II:
  - a. No. 12 for an increase of \$9,636.58 for mechanical contract.
  - b. No. 13 for an increase of \$46,300.00 for mechanical contract.
  - c. No. 14 for an increase of \$3,361.00 for mechanical contract.
  - d. No. 08 for an increase of \$4,100.24 for the electrical contract.
23. Change Order No. 19 for an increase of \$500,160.68 for the mechanical contract for Project No. WA1301.
24. Bid award for Project No. WA1906.

25. Change Order No. 1 for an increase of \$119,789.13 for Project No. WA1951.
26. Bills.
27. Final Balancing Change Order No. 1 for an increase of \$13,145.00 for Improvement District No. NR-17-B.
28. Change Order No. 7, which modifies the project requirements for payment of incentives for Improvement District No. BR-18-A1.
29. Change Order Nos. 20 – 25 in the amount of \$47,697.82 for Improvement District No. BN-19-A2.
30. Time extension to 11/15/19 for Improvement District No. BN-19-F1.
31. Contract Amendment No. 4 with Houston Engineering in the amount of \$27,000.00 for Improvement District No. BR-18-B2.

**REGULAR AGENDA:**

32. Presentation of the 2045 Fargo Moorhead Area Metropolitan Transportation Plan, Metro Grow.
  - a. Adopt Resolution of Support of the Fargo Moorhead Area Metropolitan Transportation Plan, Metro Grow.
33. Public Hearings - 5:15 pm:
  - a. Zoning Change from SR-2, Single-Dwelling Residential to SR-3, Single-Dwelling Residential on Lots 1-7, Block 1, Timber Creek Third Addition (3431, 3445, 3457, 3469, 3483, 3495 and 3509 47th Avenue South); approval recommended by the Planning Commission on 10/1/19:
    1. 1st reading of rezoning Ordinance.
  - b. Zoning Change from SR-2, Single-Dwelling Residential to P/I, Public and Institutional on Lot 1, Block 12, Bohnsack's Second Addition (1807 16th Street South); approval recommended by the Planning Commission on 10/1/19:
    1. 1st reading of rezoning Ordinance.
34. Applications for property tax exemptions for improvements made to buildings:
  - a. Jeremy W. and Kara M. Magelky, 3101 Peterson Parkway North (3 year).
  - b. Jeremy W. and Kara M. Magelky, 3101 Peterson Parkway North (3 year).
  - c. Neil K. and Kathleen D. Sandness, 2916 38 1/2 Avenue South (3 year).
  - d. Bruce D. Berg and Linda S. Kremer, 3016 38th Avenue South (3 year).
  - e. Gary L. Geller, 2205 8th Street North (5 year).
  - f. Dennis A. and Mary J. O'Briant, 1914 26 1/2 Avenue South (5 year).
  - g. William E. and Marilyn A. Martinson, 42 36th Avenue Northeast (5 year).
  - h. Kurt David and Meredith Cameron, 1702 Plumtree Road North (5 year).
  - i. Travis R. Kapp, 1137 28th Street North (5 year).
  - j. Randall A. and Angela R. Lekander, 1533 8th Street North (5 year).
  - k. Darwin T. and Corine C. Wittmier, 3130 8th Street North (5 year).
  - l. Adam A. and Kristi L. Reich, 82 23rd Avenue North (5 year).
  - m. Duane A. and Korina Hilsendeger, 1525 5th Street North (5 year).
  - n. Christopher B. and Susan M. Langerud, 1707 2nd Street North (5 year).
  - o. Harry W. and Linda R. Bosch, 1413 14 1/2 Street South (5 year).

35. Update on Improvement District No. BN-17-A.
36. Comprehensive overview of the 2020 Ground Transportation Center Improvement Projects and Recommended Actions.
37. Proposal for a Parking Lease Agreement and Easement with T&K Property Management LLC to use the City-owned Mercantile Parking Garage by adjacent condominium residents.
38. Public comment regarding the Municipal Airport Authority.

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).

(32)

**To:** Fargo City Commission  
**From:** Michael Maddox, AICP  
**Date:** October 30, 2019  
**Re:** **Final Draft Metro GROW 2045**

The Metropolitan Transportation Plan (MTP) is one of four federally required documents that are mandated by transportation legislation to be completed by MPO's. It is the core document of the MPO in much the same fashion that a comprehensive plan is the core document to a city. It is required that the MTP be updated every five-years and have a planning horizon of 20-25 years.

Metro COG embarked on updating its LRTP in January of 2018 when the Policy Board authorized a contract with HDR to complete the planning effort. Since then, HDR and Metro COG along with assistance from the Transportation Technical Committee, transportation stakeholders, and the general public, have prepared a draft plan which is entitled Metro GROW.

In order for the document to be approved by NDDOT and FHWA, Metro COG must receive resolutions of support from each of its member jurisdictions to demonstrate regional approval of the planning effort. Attached please find a purposed resolution of support for Metro GROW.

Metro COG asks that you act favorably on the resolution supporting the Metro COG 2045 Metropolitan Transportation Plan entitled Metro GROW.

**RESOLUTION**

WHEREAS, The Fargo City Commission is the duly elected governing body for the City of Fargo, North Dakota and is responsible for the planning and development of a safe and functional transportation system;

WHEREAS, The Fargo Moorhead Metropolitan Council of Governments (Metro COG), is the Metropolitan Planning Organization (MPO) designated by the Governors of North Dakota and Minnesota to maintain the metropolitan area's transportation planning process in accordance with federal regulations;

WHEREAS, Metro COG has undertaken the task of updating its Metropolitan Transportation Plan (MTP), Metro Grow, which is a vital element of this planning process and which documents transportation projects' eligibility for future federal funding;

WHEREAS, The metropolitan transportation planning process was guided by the Metropolitan Transportation Technical Committee (TTC) composed of a wide cross-section of local multimodal technical experts including engineers, planners, transit directors and state and federal transportation officials;

WHEREAS, Public and private organizations representing numerous transportation interests, as well as groups and individuals from socially disadvantaged groups were invited, encouraged, and involved in the Plan's preparation, in full compliance with Metro COG's Public Participation Plan;

WHEREAS, Metro Grow, which covers the time horizon of 2019 to 2045 was prepared using an extensive intermodal planning process;

WHEREAS, Metro Grow provides a comprehensive, coordinated program of projects and strategies that will improve the urban and extraterritorial transportation system of the Fargo Moorhead metropolitan area;

NOW, THEREFORE, BE IT RESOLVED, That the City of Fargo does hereby adopt the Fargo Moorhead Area Metropolitan Transportation Plan, Metro Grow, and agrees to use it as a tool to implement metropolitan transportation goals and objectives, which will complement overall development of the metropolitan transportation system.

Approved and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Attest:

By:

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

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



<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Timber Creek Third Addition	<b>Date: Updated:</b>	8/28/2019 9/26/2019 10/30/2019
<b>Location:</b>	3431, 3445, 3457, 3469, 3483, 3495, and 3509 47th Avenue South	<b>Staff Contact:</b>	Donald Kress, planning coordinator
<b>Legal Description</b>	Lots 1-7, Block 1, Timber Creek Third Addition.		
<b>Owner(s)/Applicant:</b>	Dabbert Custom Homes, LLC/ PLC Investments— Don Dabbert, Jr.	<b>Engineer:</b>	None
<b>Entitlements Requested:</b>	<b>Zone Change</b> (from SR-2, Single Dwelling Residential to SR-3, Single Dwelling Residential )		
<b>Status:</b>	City Commission Public Hearing: November 4th, 2019		

<b>Existing</b>	<b>Proposed</b>
<b>Land Use:</b> Platted, not developed	<b>Land Use:</b> Duplexes
<b>Zoning:</b> SR-2, Single Dwelling Residential	<b>Zoning:</b> SR-3, Single Dwelling Residential
<b>Uses Allowed:</b> SR-2 – detached houses, daycare centers up to 12 children, parks and open space, religious institutions, safety services, schools, and basic utilities'	<b>Uses Allowed:</b> SR-3-- detached houses, daycare centers up to 12 children, attached houses, duplexes, parks and open space, religious institutions, safety services, schools, and basic utilities
<b>Maximum Density</b> 5.7 dwelling units per acre;	<b>Maximum Lot Coverage</b> 8.7 dwelling units per acre

**Proposal:**

*PROJECT HISTORY NOTE: This project was heard at the September 3, 2019 Planning Commission hearing. After hearing all the presentations and testimony, the Planning Commission moved to continue the hearing to the October 1, 2019 Planning Commission agenda. Planning staff held a neighborhood meeting for this project on September 24, 2019, the outcome of which is summarized below.*

The applicant requests one entitlement:

1. A zoning change from SR-2, Single Dwelling Residential to SR-3, Single Dwelling Residential

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: Fargo Park; P/I, Public/Institutional
- East: Detached single-dwelling residence; SR-2
- South: Detached single-dwelling residences and twinhomes; SR-4
- West: Detached single-dwelling residence; SR-2

(continued on next page)

**Area Plans:**

The 2001 Growth Plan as amended in March, 2014 designates the area of this project as "Low to Medium Density Residential." This land use designation includes the proposed SR-3 zone.



**Context:**

**Schools:** The subject property is located within the Fargo School District and is served by Centennial Elementary, Discovery Middle and Davies High schools.

**Neighborhood:** The subject property is located within Centennial neighborhood.

**Parks:** Timberline Park/Fox Run Trail is along the northerly boundary of the project site and provides the amenity of recreational trails.

**Pedestrian / Bicycle:** The Fox Run Trail, adjacent to the northerly boundary of the project site, is an off-road bike facility that is a component of the metro area bikeways system.

**Staff Analysis:**

The lots are currently zoned SR-2, Single-Dwelling Residential. The minimum required lot area is 8,000 square feet. The applicant proposes to rezone the lots to SR-3, which has a minimum required lot of 5,000 square feet and which allows duplexes. Duplexes are defined in Fargo's Land Development Code (LDC) Section 20-1202(54)(c) as "A single structure that contains 2 primary dwelling units on one lot." The applicant proposes to develop these lots with such duplexes in a side-by-side configuration. The applicant has provided site plans and elevations of two potential building styles, referred to as "Sarah" and "Roberta," which are attached, though these are conceptual only to show how a large building would fit on this lot. These are not necessarily styles that would be built here.

**Action at the September 3, 2019 Planning Commission hearing**

At the September 3, 2019 Planning Commission hearing, the Commission heard testimony from neighbors opposing the project and received letters opposing the project. The project developer also make a presentation about the project. After hearing the presentations and testimony, the Commission moved to continue the hearing to the October 1, 2019 Planning Commission agenda.

**September 24, 2019 neighborhood meeting**

On September 24, 2019, the Planning Department held a neighborhood meeting attended by four neighborhood residents (including one by phone), developer Don Dabbert, Jr. and Tanner Brandt of PACES. The residents reiterated concerns they had expressed in their



letters to the Planning Commission about this project; these concerns are summarized below. This meeting was covered by the news media.

**Action at the October 1, 2019 Planning Commission hearing**

At the October 1, 2019 Planning Commission hearing, the Commissioners heard a presentation from staff and testimony from the developer as well as three opponents of the project. The opponents concerns included

- parking issues and increased traffic;
- effect on property values;
- snow removal issues;
- the neighborhood has already made many compromises from the original plan; and
- the neighbors do not want their home values to decrease.

Discussion topics among the Commissioners and between the Commissioners and staff included

- the difference between a duplex and twin home;
- the length of time these lots have been on the market and remained unsold;
- the large buffer and green space to the north of the properties;
- the existing types of homes on the street;
- current utility infrastructure in place for the lots;
- zoning law history; and
- how value is reviewed as related to land use and neighborhood impact.

**Public comment letters**

To date, Planning staff has received comment letter/e-mails in opposition from the owners of 23 surrounding properties, all of whom signed a petition in opposition to this project. Some property owners sent more than one comment letter/e-mail. Copies of these letters/e-mails are attached for the Commission's review. Planning staff evaluated whether the total area of protest comprised 20% of the area adjacent and extending 300 feet from the land area proposed to be changed, excluding width of streets. If this standard, stated in Land Development Code section 20-0906(G)(1)(b) is met, a supermajority vote of the City Commission is required to approve the zone change. As of the protests received as of the morning of Thursday, October 31, 2019 the total protest area comprised 17% of the eligible area. Based on this calculation, a supermajority vote of the City Commission is not required to approve this zone change. Planning staff will provide any updates to this calculation at the November 4, 2019 City Commission meeting.

**Summary of Neighborhood Concerns**

In their letters, testimony at the Planning Commission, and comments at the neighborhood meeting, the neighbors expressed the overall concern that approval of this proposed zone change will change the overall character of the neighborhood. More specific concerns include:

- The increased density that could result from this zone change—having seven two-family residences (duplexes) allowed under the proposed SR-3 zoning instead of only seven single-family residences as allowed by the current SR-2 zoning—exceeds the density that homeowners in this area expected when the built or purchased their homes in this neighborhood.
- This increased density will burden the neighborhood with at least double the number of vehicles one would expect from a single-family residence, adding to on-street

parking and increased traffic congestion as well as complicating wintertime snow removal and increasing traffic noise.

- Duplexes built in this neighborhood will increase the number of renters in the neighborhood.
- Duplexes built in this neighborhood will lower the property values of adjacent single-family properties.
- The seven lots in this proposal could be sold as single-family lots if the developer would just lower the price, which neighborhood residents believe the developer is unwilling to do.
- Neighborhood residents feel that this development proposal is a betrayal of statements made by the developer that this would remain a single-family neighborhood and that no further subdivision of lots or zone changes would be sought (a proposal to subdivide lots on the west end of 47<sup>th</sup> Avenue South was approved by the City Commission in 2018).

A further point made by one of the neighborhood residents is that City does not follow the process stated in the Land Development Code in detail when reviewing zone changes. The attached letter of Matthew and Alyson Bring further describes this concern.

#### **Developer's Points**

In his presentation at the September 3<sup>rd</sup>, 2019 Planning Commission hearing and the September 24, 2019 neighborhood meeting, the developer, Don Dabbert, Jr. made the following points about the proposed zone change:

- The proposed zone change from the current SR-2 zoning to the proposed SR-3 zoning would allow duplexes (two-family residences) to be built on these seven lots.
- The duplexes would provide a more affordable home than a large single-family home.
- Duplexes would use the existing City water and sewer connections and not burden these systems.
- This proposal is in response to local and nationwide market trends, which indicate people are looking for a smaller home with increased amenities as well as homes that make more efficient use of the space for both the residence and the lot than a single large house on a single large lot.
- Duplexes would provide a convenient option for those who are seeking to accommodate additional family members in what is commonly referred to as a "mother-in-law suite" by creating a home where a family could live on one side of the duplex and additional family members could live on the other side.
- Duplexes would provide a housing option where a family could own the entire duplex, live in one side of it, and rent out the other side to offset their cost of housing.
- The duplexes are still a low-density development that would be appropriate in this neighborhood.

- The seven lots included in this zone change proposal, which were platted as part of the Timber Creek 3<sup>rd</sup> Addition in 2014, have never been developed, and leaving these lots undeveloped is an inefficient use of land, especially as these lots are already served with existing city infrastructure.
- Though the proposed SR-3 zoning would allow duplexes, the developer might not build duplexes on each of the seven lots. The developer would evaluate market response to the duplexes.

## Zoning

*NOTE: In response to public comment, finding nos. 1 and 3 below provide more detail than was originally included those findings for the September 3, 2019 staff report.*

Section 20-0906. F (1-4) of the LDC stipulates the following criteria be met before a zone change can be approved:

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

Staff is unaware of any error in the zoning map as it relates to this property. The property is currently zoned SR-2, a low-density residential zone. The proposed zoning of SR-3 is also a low-density residential zone. Both zones are consistent with the 2001 Growth Plan designation of "lower to medium density residential." Planning staff finds no basis to oppose the zone change from one low-density zoning to another. **(Criteria Satisfied)**

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

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 existing lots front on dedicated public streets. These streets will provide access and public utilities to serve the development. **(Criteria satisfied)**

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

The Planning Department is not involved in assigning "value," as in a monetary "property value" for the purpose of taxation, to individual properties; doing so is the job of the city assessor's office. Rather, "value" in this context--the context of a zone change finding--relates to whether the proposed zone change would create zoning-related problems, such as nuisances, to adjacent property, or whether the proposed zone change would affect the health, safety, and welfare of property in the vicinity. Staff has no documentation or evidence to suggest that the approval of this zoning change would adversely affect the condition or value of the property in the vicinity, as:

- the proposed zoning of SR-3 is included in the "low density residential" land use designation of the 2001 Growth Plan that covers this area;
- single dwelling residences and duplexes are allowed by right in the SR-3 zone;
- all structures must meet the development standards of the Land Development Code (LDC) as well as applicable building and fire code requirements and, after construction, the property maintenance code; and
- the 66-foot wide right of way of 47<sup>th</sup> Avenue South meets the LDC requirements for a two-lane local residential street in areas zoned SR-0 to SR-3 and provides for a 30-foot paving width intended to accommodate two lanes of traffic and on-street parking on both sides of the street.

Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, Planning staff has received comment letter/e-mails in opposition from the owners of 23 surrounding properties, all of whom signed a petition in opposition to this project. Some property owners sent more than one comment letter/e-mail. Copies of these letters are attached and the concerns expressed in them are summarized above. 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 LDC states "This Land Development Code is intended to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo." Staff finds this proposal is consistent with the purpose of the LDC, the applicable comprehensive plan, and other adopted policies of the City. **(Criteria satisfied)**

**Staff Recommendation:**

Suggested Motion: To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading and move to approve the proposed zone change from SR-2, Single Dwelling Residential to SR-3, Single-Dwelling Residential as presented, as the proposal complies with the Go2030 Fargo Comprehensive Plan, the 2001 Growth Plan, Section 20-0906.F (1-4) of the LDC, and all other applicable requirements of the LDC."

**Planning Commission Recommendation: October 1, 2019**

At the October 1, 2019 Planning Commission, by a vote of 6-1 with three Commissioners absent and one Commission seat open, the Planning Commission voted to accept the findings and recommendations of staff and recommended to the City Commission approval of the proposed zone change from SR-2, Single Dwelling Residential to SR-3, Single Dwelling Residential, as the proposal complies with the Go2030 Fargo Comprehensive Plan, 2001 Growth Plan, Section 20-0906.F (1-4) of the LDC, and all other applicable requirements of the LDC.

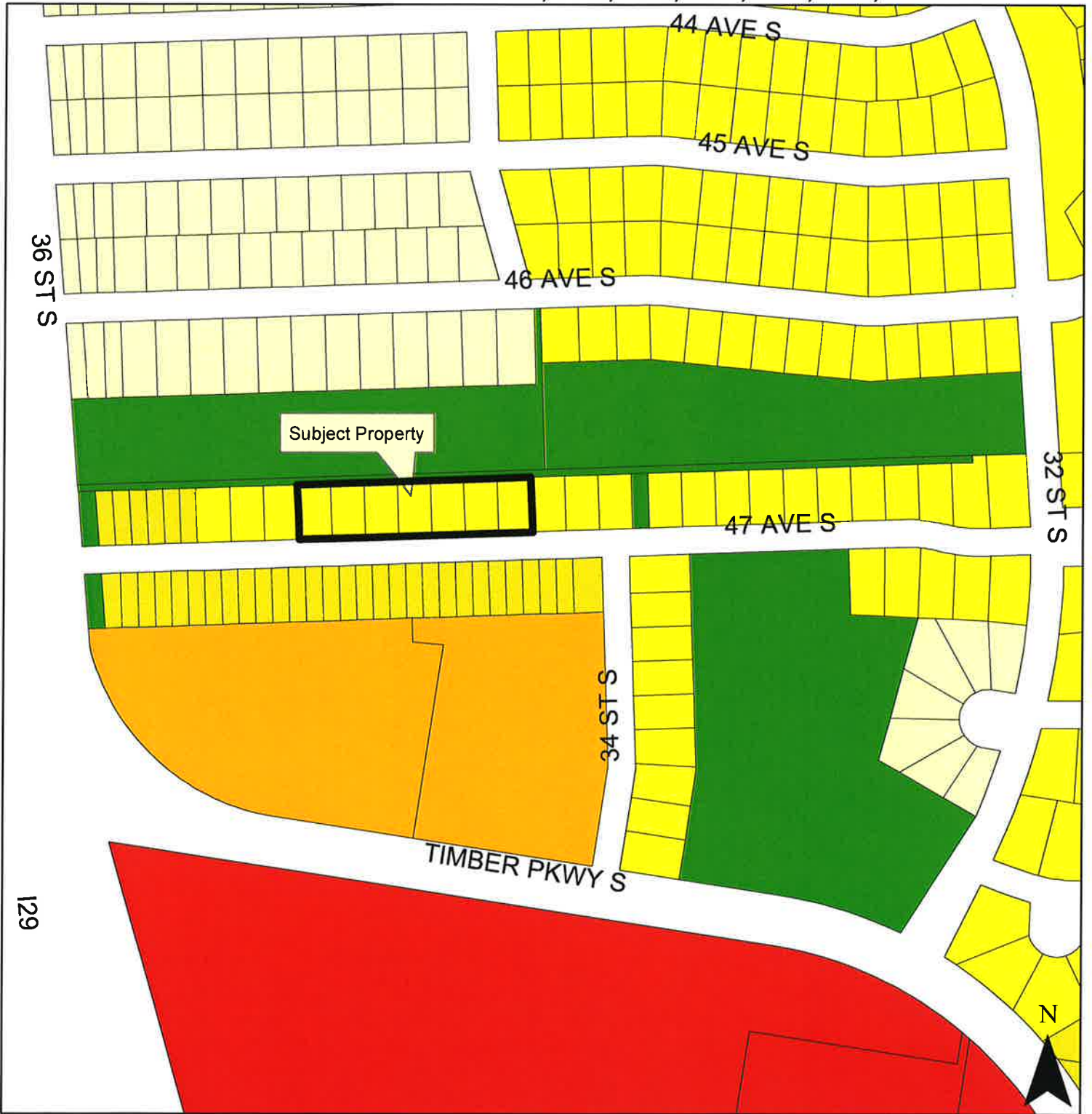
**Attachments:**

1. Zoning Map
2. Location Map
3. Examples of potential building types
4. Comment letters

# Zone Change (SR-2 to SR-3)

## Timber Creek Third Addition

3431, 3445, 3457, 3469, 3483, 3495, & 3509 47th Ave S



# Zone Change (SR-2 to SR-3)

## Timber Creek Third Addition

3431, 3445, 3457, 3469, 3483, 3495, & 3509 47th Ave S





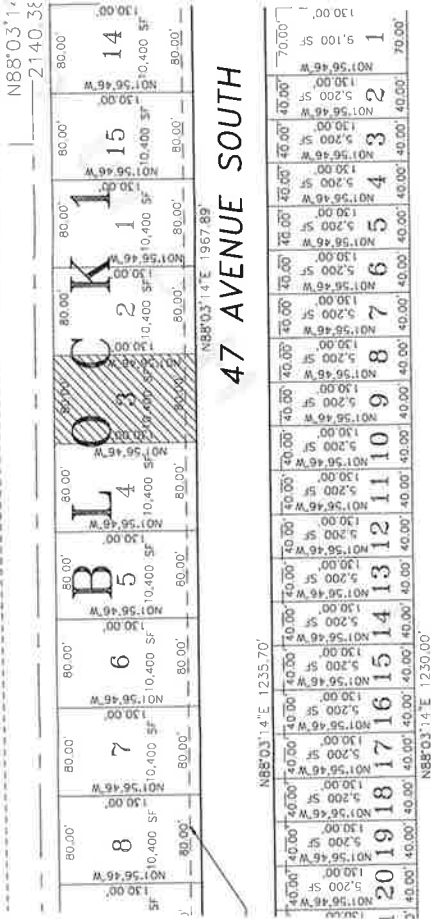
DCH "Roberta 2.5" Model  
3457 47th Ave S  
Fargo, ND  
Lot 3, Block 1  
Timber Creek 3rd Addn

Project: DCH "Roberta 2.5" Model  
3457 47th Ave S  
Fargo, ND  
Lot 3, Block 1  
Timber Creek 3rd Addn  
DCH "Roberta 2.5" Model  
3457 47th Ave S  
Fargo, ND  
Lot 3, Block 1  
Timber Creek 3rd Addn  
DCH "Roberta 2.5" Model  
3457 47th Ave S  
Fargo, ND  
Lot 3, Block 1  
Timber Creek 3rd Addn

ISSUED:	04.19.15
REVISIONS:	
drawn by:	SS

NOT FOR CONSTRUCTION

15



vicinity map

Scale: not to scale

47th Ave S

site plan  
Scale: 1" = 20'

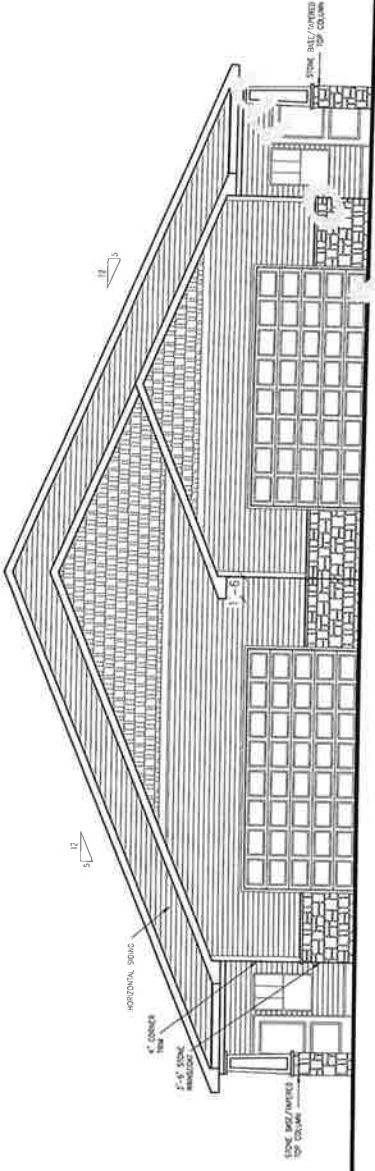


DCH "Roberta 2.5" Model  
 3457 47th Ave S  
 Fargo, ND  
 Lot 3, Block 1  
 Timber Creek, 3rd Addn

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ISSUED: 04.19.11  
 REVISIONS:  
 drawn by: SS

**NOT FOR CONSTRUCTION**



**Front Elevation**  
 SCALE: 1/8" = 1'



DCH "Sarah 2.5 EUL" Model  
 Fargo, ND  
 3457 47th Aves  
 Lot 3, Block 1  
 Timber Creek, 3rd Addn

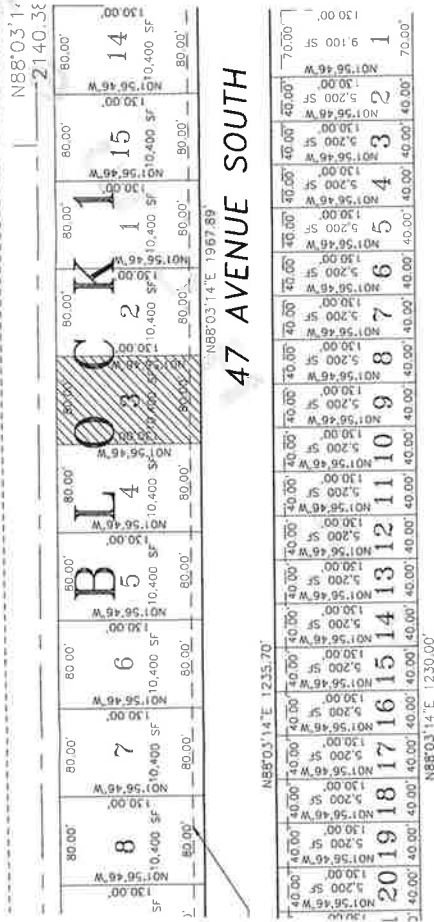
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ISSUED: 04.19.14

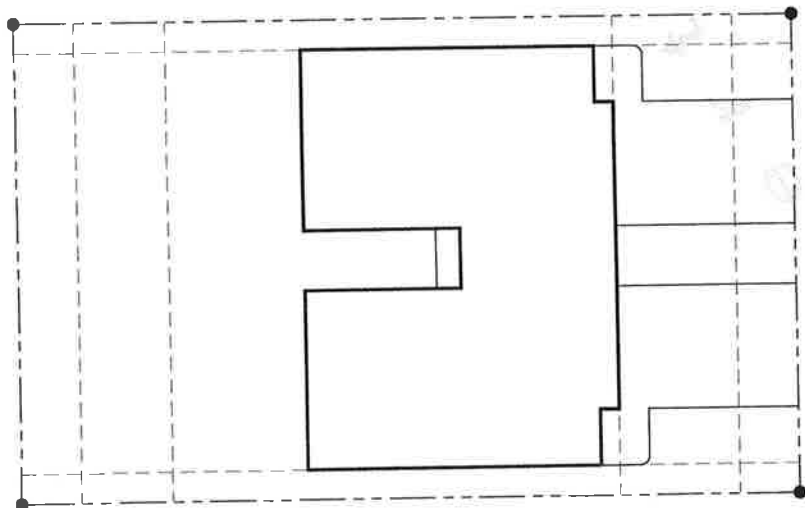
REVISIONS:

drawn by: BS

# NOT FOR CONSTRUCTION



**vicinity map**  
 Scale: not to scale



47th Ave S

**site plan**  
 Scale: 1" = 20'



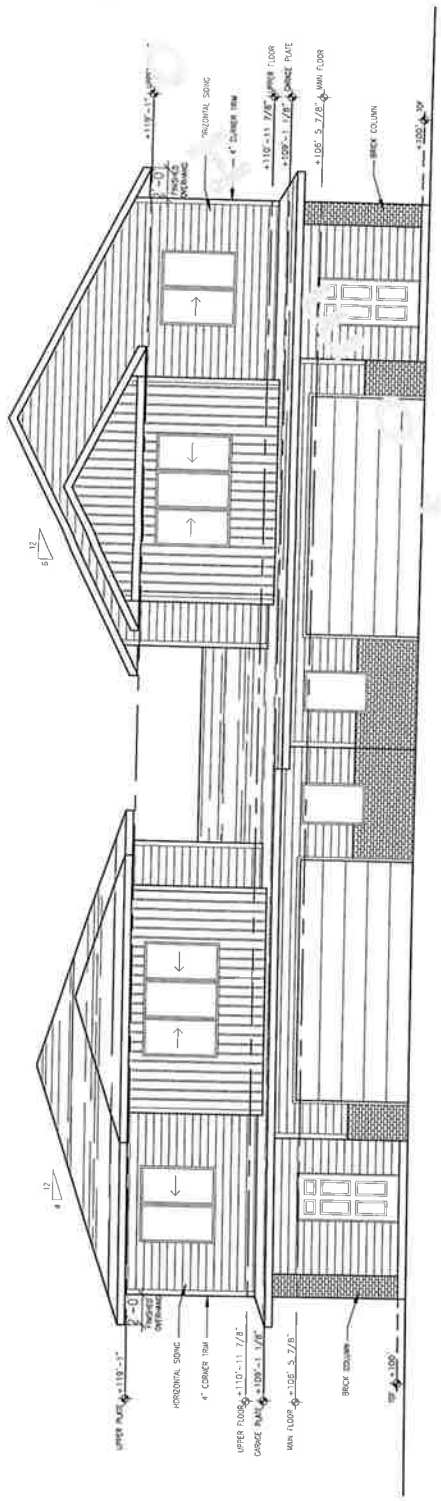
DRAFT

DCH "Sarah 2.5 EUL" Model  
3457 47th Aves  
Fargo, ND  
Lot 3, Block 1  
Timber Creek, 3rd Addn

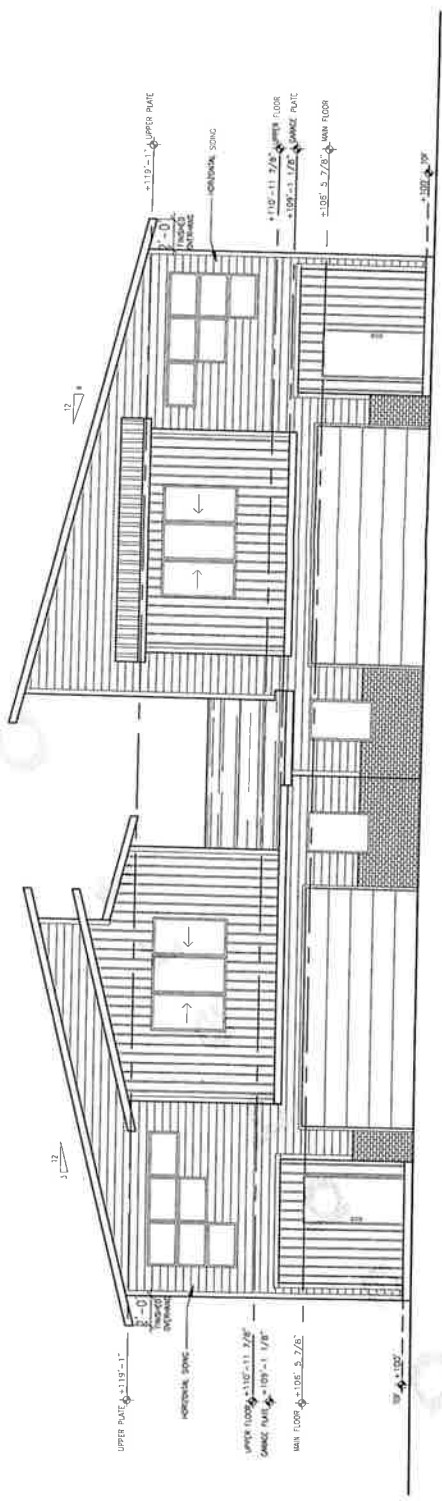
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ISSUED:	04.19.17
REVISIONS:	
drawn by:	SS

**NOT FOR CONSTRUCTION**



**Front Elevation**  
SCALE 1/8" = 1'



**Front Elevation**  
SCALE 1/8" = 1'

## PROTEST TO PROPOSED ZONING CHANGES

This document shall serve as a formal protest petition to the following requested changes currently pending before the Fargo City Commission:

1. The zoning change from SR-2 to SR-3 on Lots 1-7, Block 1, Timber Creek Third Addition.

This proposal is, in effect, similar to previously proposed changes by one of the co-applicants, Paces Lodging Corporation (hereinafter "PLC")<sup>1</sup>. One such proposal involved a replat of the same 7 lots into 9 smaller lots. This, along with another concurrent proposal to replat 7 lots along 34th Street South, were met with opposition from a number of nearby residents. Both proposals were ultimately withdrawn by PLC in early-2019.

### Standing / Interest

This protest is being filed by Alyson Bring and Matthew Bring, owners of the affected property at 4706 34th Street South. (Exhibit 1). The property at 4706 is within 300 feet of the nearest property affected by this proposal.

For purposes of qualifying as a "valid protest" under Land Development Code §20-0906(G), Donald Kress of the City Planning Department has informed the undersigned homeowners that as of the prior City Planning Commission meeting, "13% of the properties within 300ft protested." The undersigned homeowners note that since that time, additional owners have filed objections. Others have also informed the undersigned they will be doing so, but have not done so as of the time of submitting this protest petition.

The undersigned notes that the City Planning Department's interpretation of the Land Development Code reflects a calculation of the area within 300 feet that includes extensive green space, vacate lots, and numerous properties owned by another developer currently used as rental properties. Among the actual unique *owners* within 300 feet of the proposal, 20 of the approximately 34 owners have filed objections to the proposal.<sup>2</sup> (Exhibits 2 to 28). The undersigned asserts that such an application of the Land Development Code is a more equitable interpretation.

### Burden of Proof

Pursuant to Land Development Code §20-0902, the burden of demonstrating that an application meets applicable review and approval criteria is on the *applicant* alone, and not on the city or other affected parties.

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1 For simplicity, the term "PLC" shall hereinafter be interpreted to include Paces Lodging Corporation, PLC Holdings, PLC Investments, Property Resources Group, Dakota Real Estate Investment Trust, Fargo Apartment Homes, Timber Creek Investments, Timber Creek Commercial Property Owners Association, Timber Creek Retail Center, and any other associated or commonly owned entities.

2 An additional 5 nearby homeowners have filed objections who do not live within 300 feet of the proposal.

**Standard of Review**

Pursuant to Land Development Code §20-0906(F), all four of the following criteria must be met before any request can be approved:

1. The requested zoning change is justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map;
2. The City and other agencies will be able to provide necessary public services, facilities, and programs to serve the development allowed by the new zoning classification at the time the property is developed;
3. The approval will not adversely affect the condition or value of property in the vicinity; and
4. The proposed amendment is consistent with the purpose of this Land Development Code, the applicable Growth Plan and other adopted policies of the City.

In the present matter, as with the now-withdrawn proposals from the co-applicant PLC earlier this year, these factors have not been demonstrated. Once again, it is the burden of the requesting party to establish *all* four of these criteria. Absent a showing of doing so, the requests *cannot* be approved.

Change in Conditions / Error in Zoning Map

The undersigned homeowners are unaware of any errors in the zoning map, or of a “change in conditions” that would justify this proposal. It is of particular note that the use of the term “justify” in the §20-0906(F)(1) suggests that even if a change in conditions *was* present, the request must be connected to the change in some way. The simple existence of a change in conditions alone is insufficient. Instead, the change in conditions must *justify* the requested zoning change. Apart from the co-applicants’ desire to maximize their investment in this development, it is unclear what justification exists for such a request.

The undersigned homeowners also note that the vast majority of the property in and around the affected area is (or has been) owned by the co-applicant, PLC. As such, any change in conditions in the surrounding area, has, in effect, been largely created by one of the same entities currently requesting the zoning change. Likewise, co-applicant Dabbert appears to seek these changes largely because the lots have gone unsold, when it is this co-applicant that solely controls the price of such lots. Allowing a party to rely upon its own actions to then justify future actions violates public policy and the public trust.

Also of note is that the PLC has previously requested similar changes to other properties in the same neighborhood. On March 12, 2018, the City Commission considered Timber Creek Seventh Addition, a similar request to replat and rezone three SR-2 lots into six SR-4 lots, which are located less than 250 feet to the West of the current proposal. As noted in the official minutes of this meeting:

“Nate Vollmuth, Paces Lodging Corporation, said their request sounds worse than it is. He said it is a maximum of three twin homes or six split twin homes; it is not an apartment building. He said directly north of the lots there is a landscape buffer which is owned by the City.”

Less than a year later, PLC filed additional requests affecting nearby properties in the same neighborhood. What was then described as “sound[ing] worse than it is” and “a maximum or three twin homes or six split twin homes” had expanded into a request to replat 7 large traditional lots (currently SR-2) into 14 high-density twin home lots (SR-4) along 34th Street, and to replat 7 lots along 47th Avenue into 9 smaller lots. Those proposals were only withdrawn following the homeowners’ submission of a valid protest with the support of numerous affected homeowners. Now, this co-applicant *again* seeks to change Timber Creek into a higher-density development than originally planned.

The totality of circumstances reveals that the co-applicant gained approval to develop the area under the guise of one type of neighborhood (i.e., a mixed development with numerous SR-2 lots), and now once again seeks to change a large section of the area from low-density single family homes to higher-density duplexes.

The Staff Report prepared prior to the Planning Commission meeting on October 1, 2019 indicated, “staff is unaware of any error in the zoning map.” It is noted therein that the “proposed zoning of SR-3 is consistent with the 2001 Growth Plan designation of “lower to medium density residential.” That the SR-3 designation may be classified as “lower to medium density residential” is immaterial to the plain language meaning of this section of the §20-0906(F)(1). There has been no error demonstrated, which is acknowledged by the Planning Department. Moreover, there has been no showing of a change in conditions, apart from the proposal itself. In other words, the Planning Department appears to have taken the position that a zoning change is justified by the proposal itself. Quite simply, this does not meet the criteria of a “change in conditions.”

#### Affect on Necessary Public Services/Facilities

As noted in opposition to the prior proposals, empirical evidence of the extent to which the proposed changes will affect public services is extraordinarily difficult for the undersigned homeowners to obtain. However, it is once again noted that the burden is on the applicants to submit evidence that this provision is met, and they have offered little-or-no evidence to that effect.

Anecdotally, the undersigned homeowners note that parking in the neighborhood is already at or near its capacity. The residents of Timber Creek Apartments<sup>3</sup> frequently park along 47th Avenue near 34th Street. Despite there being only a handful of houses on the North Side of 47th Avenue near the proposal, there was a vast amount of snow on the North side, as there was already no where left to put it on the South side.

Parking and traffic along this 47th Avenue will no doubt increase as the affected lots are sold and

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<sup>3</sup> These apartments are owned by Fargo Apartment Homes LLC, an extension of co-applicant PLC.

additional houses are built. An additional 7 homes (as currently platted) would certainly affect this to some extent, pushing the capacity of this street to its maximum. Increasing from 7 homes to 14 duplexes, which would no longer be anticipated to have large garages, will increase the parking congestion to untenable levels. It is noteworthy that the vast majority of affected homeowners indicated parking and traffic among their primary concerns. (Exhibits 2 to 28).

As noted above, this neighborhood was originally designed as containing a number of SR-2 lots. Given the increased number of lots (and by extension, traffic) sought by the applicants (both currently and in the past), the burden rests upon the applicants to demonstrate that the existing street design in the area is sufficient. At present, the affected homeowners are unaware of any such studies or other evidence showing that the current parking and streets would meet the demands of the increased traffic that would result from rezoning this area. Once again, it is the applicant's burden to do so, not the homeowners', and absent such a showing thereof, the request cannot be approved.

The Planning Department appears to have taken the position that the traffic/parking needs are met because the street is a sufficient width for a specified number of homes. Such a theoretical approach simply ignores the reality faced by the actual homeowners living in the neighborhood, including the effects of nearby apartments not factored into such a calculation.

#### Adverse Affects on Property Value

It is again noted that the burden rests not upon the affected homeowners to demonstrate a potential decrease in property value. Instead, the applicant again bears the burden of *affirmatively demonstrating* that the proposed change will *not* adversely affect the value of the surrounding properties. It is not unreasonable to expect that these properties changing from single homes to duplexes will negatively affect property values. In addition to the fact that the neighborhood simply cannot sustain the parking and traffic such a change will bring, the overall character of the neighborhood will continue to change significantly. In outreach to the neighborhood, one of the points consistently raised by nearby homeowners was that of the potential increase in the number of renters in the area. Beyond the intrinsic value of developing a lasting neighborhood and community, the potential increase in the number of rental properties will also diminish property values.<sup>4</sup> As I noted in my response to the prior, similar proposals, one of the nearby homeowners along 46th Ave has not only expressed his opposition to that proposal, but also offered his opinion as to the negative affect on property values, in light of his professional experience as a realtor. (Exhibit 29).

As currently platted, the properties along 47th Avenue Street are relatively large lots of approximately 10,400 square feet backing to green space. The property at 4706 was purchased by the undersigned homeowners with the understanding that this neighborhood would contain some higher-density twin homes and apartments to the West, but would sit adjacent to a number of higher-end homes backing to a pond and that the lots on the North side of 47th Avenue would be single family detached homes.

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<sup>4</sup> Research performed by Realtor.com suggested that "ZIP codes with a higher-than-average concentration of renters have lower property values compared to the county they are located in...by 14%." Pan, Qyqing (2016, March 28), *The Neighborhood Features That Drag Down Your Home Value – Ranked*. Retrieved from <https://www.realtor.com/news/trends/things-that-affect-your-property-value>

Similarly, many of the owners of the current properties along the South of 47th Avenue (many of whom themselves live in twin homes) purchased their homes with the understanding there would be a number of more expensive homes to the East and North. This, in turn, brings their home values up. This is precisely the mix of high-, medium-, and low-cost homes the vast majority of new developments in Fargo contain. If the requested changes are approved, it appears that many of the medium lots will be changed to allow for two homes per lot. Changing these seven lots to duplexes will also affect the marketability of the other vacant lots on the North side of 47th Avenue, as well as the vacate lots to the South of 47th Avenue along 34th Street. Frankly, it would be incredible to assert that the proposed changes will not adversely affect the surrounding property values; and again, absent such an affirmative showing by the applicant, the proposed changes cannot be approved under §20-0906(F)(3). Put another way, the homeowners objecting to the proposal *do not* need to demonstrate that a loss in property value will occur; instead, the applicants *do* need to demonstrate that a loss will not occur.

In the past, the Planning Department's position with respect to this issue appears to be that no such formal analysis is typically done by the Department or the applicant, and the Department has deemed such an analysis too burdensome or difficult. In the Staff Report prior to the Planning Commission meeting on September 3, 2019, it was noted, "staff has no documentation or evidence to suggest...this zoning change would adversely affection the...value of the property[.]" Again, it is not the affected homeowners that need to demonstrate values will go down, but rather the applicant's burden to demonstrate they will *not* go down. Here, no such analysis has been done.

In the Staff Report prepared prior to the Planning Commission meeting on October 1, 2019, it was noted that "more detail" on this finding was added since the September 3, 2019 Staff Report. The City Planning Department now asserts that "value," for purposes of this provision, does not actually mean "monetary" value, but instead:

"value...relates to whether the proposed zone change would create zoning-related problems, such as nuisances, to adjacent property, or whether the proposed zone change would affect the health, safety, and welfare of property in the vicinity."

The undersigned was unable to find any instance of such a definition used in prior Staff Reports filed with the Planning Commission or City Commission, and *appears to have created in direct response to the objections now brought by the undersigned.*

The Planning Department cites no further rationale for the applicability of such an interpretation, which seeks to redefine the plain language of the Land Development Code. The undersigned asserts that such a reading is neither correct nor support by any legal precedent. Instead, case law actually supports the use of the term "value" as pertaining to monetary value.<sup>5</sup>

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<sup>5</sup> At Planning Commission meeting on October 1, 2019, City staff raised concerns that applying a monetary standard to this provision would raise constitutional issues. However, the undersigned is similarly unaware of any support for such an assertion. In *City of Renton v. Playtime Theatres*, 475 US 41, 48 (1986), the United States Supreme Court noted that city zoning ordinances are designed, in part, to "to maintain property values." In *City of Fargo v. Harwood Township*, 256 N.W.2d 694, 697 (ND 1977), the North Dakota Supreme Court noted that an essential purpose of zoning is the "preservation of property values," and upheld the trial court's findings, including that the proposal in question would "depress home values." The *Harwood* decision was cited by the

### Other Relevant Considerations

As noted above, the requested changes are likely to increase traffic, strain available parking, and decrease surrounding property values. Moreover, it is against the public's interest to allow a property developer to gain approval for a development based upon one representation of a neighborhood, only to later drastically change the overall character of the neighborhood, as PLC has done here. Quite simply, the undersigned homeowners would have not have purchased the home at 4706 if the lots along 34th Street had been zoned SR-4, as previously proposed; or if the vacate lots along 47th Avenue had been zoned for duplexes. The undersigned homeowners detrimentally relied on the existing plat and zoning when purchasing their home. For the City to approve the requested changes would not only violate the requirements of §20-0906(F), but also expose the City to potential legal action.

As noted above, co-applicant PLC sought a similar change in early-2018 with respect to three (now six) lots along 47th Avenue, which was ultimately approved by the Fargo City Commission on March 12, 2018. As part of the discussion, Mr. Vollmuth (representing the applicant) was specifically questioned by Mayor Timothy Mahoney as to whether the applicant was going to stop at that request, or "come back piece by piece" with further similar requests.<sup>6</sup> Mr. Vollmuth replied, "we are only looking at these three lots" and "we're not gonna try to fit anything else in there other than hopefully three twin homes." Among Mr. Vollmuth's other stated rationale for the request was that these three lots would act as a "buffer" between the interstate and the rest of the lots along that street. These rationales were subsequently relied on by the Fargo City Commission when approving the request at that time. Then, less than a year later, PLC sought to do precisely what its representative previously asserted it would not do when arguing in favor of the requested changes in early-2018. While the three proposals considered by the Planning Department earlier this year were ultimately withdrawn, it is hard to believe they would have been withdrawn had it not been for public opposition. Now, the same applicant is back approximately 6 months later with yet another request to change the nature of the neighborhood. Quite simply, at what point does the City finally say "*enough is enough*" to the applicant, and put the wishes of residents ahead of the profits of builders and developers?

The undersigned homeowners engaged much of the local neighborhood concerning the applicant's prior proposals in early-2019. In speaking with these individuals, their sentiment toward the proposals was overwhelmingly negative. The owners of at least 16 nearby homes returned signed statements expressing their opposition to the previously proposed changes.

Additional statements in opposition to the current proposals have since been received from the owners of 25 nearby homes in addition to the undersigned homeowners. (Exhibits 2 to 28). Maps showing the addresses and locations of each of these individuals' homes have also been attached. (Exhibits 30 and 31). As noted above, many of the nearby properties are already rental homes.

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North Dakota Supreme Court in *Gullickson v. Stark County*, 474 N.W.2d 890 (ND 1991), which included a lengthy analysis of the effect of certain zoning variances on property values. The *Gullickson* court explicitly evaluated the proposal from the perspective of monetary value. *Id.* at 893. In *Eck v. City of Bismarck*, 302 N.W.2d 739, 742 (ND 1981), the North Dakota Supreme cited extensively from a Minnesota decision that evaluated the effect of zoning regulations on "market value."

<sup>6</sup> This discussion can be found at approximately 34 minutes into the meeting. Retrieved from: <http://download.fargond.gov/k/151-1.mp4>



(Exhibit 32). Among the unique owners near the proposal, more than half are opposed.

Overall, the position of those actually living in the neighborhood is quite clear – the proposed changes are not in the best interests of the neighborhood. The undersigned homeowners respectfully request the members of the Fargo Planning Commission consider the views and opinions of the residents who actually live in the area.

It is also important to recognize that, as the primary developer of this neighborhood, co-applicant PLC assumes not only the opportunity for profit, but also the risk of loss. Likewise, co-applicant Dabbert has owned many of the other nearby lots. In the event it has struggled to sell the lots in question, the fair and logical solution would be to lower the price of the lots, rather than to rezone/replat much of the neighborhood. Whether a developer requires a change in zoning to make money on a project is simply immaterial to this consideration. To approve such a change essentially absolves the applicants of the risks assumed in such a project. Those living the neighborhood are not responsible for ensuring developers and builders make money.

### Conclusion

The relevant criteria is *not* whether the applicants assert that they want or need the requested changes. It is also not whether the applicants have struggled to sell the lots in question or whether their business interests are served by such a change. It is not whether a specific percentage of people have objected. Instead, the relevant criteria are found at §20-0906(F), which the *applicants* bear the burden of establishing.

The applicants – and *not* the other affected homeowners – must demonstrate that the change is justified by a change in conditions, will not unduly stress public services, and will not adversely affect the value of surrounding properties. Absent a showing of *all* these criteria, the request cannot be approved. The applicants have not made such a showing. As such, the Fargo City Commission must decline to approve the requested rezoning.

Matthew and Alyson Bring  
4706 34th St S  
Fargo, ND 58104



City of Fargo, ND

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Location of the undersigned homeowners.

1:4,179

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.




**EXHIBIT**  
**1**

### OPPOSITION TO PROPOSED ZONING CHANGE

I, MASROOR AYUB, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: Too many rental houses negatively impact neighborhood

Signature:   
Name: MASROOR AYUB  
Address: 3470 47th AVE S.  
Phone: (918) 521-0901  
Email: MASROOR420@GMAIL.COM  
Date: 09/23/2019



OPPOSITION TO PROPOSED ZONING CHANGE

I, Cyle Cavett, am submitting this document to express my opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- Checked boxes for: The project will negatively affect my property value, The project will change the character of the neighborhood, I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes, The project will increase traffic, The project will decrease parking, The developer gained approval of prior changes based on assurances they are now going back on. Other: Da bbout already agreed, in March 2013, to stop requesting zoning changes. Is that not a verbal contract?

Signature: [Handwritten Signature]
Name: Cyle Cavett
Address: 3552 47th Ave. S.
Phone: 218-790-5851
Email: Cyle.Cavett@ghcavett.com
Date: 9/23/2019




**OPPOSITION TO PROPOSED ZONING CHANGE**

I, BRIAN DASCOLL, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: 

Name: BRIAN DASCOLL

Address: 3340 46<sup>TH</sup> AV SW

Phone: 701-367-6380

Email: BRIAN@ALLCITYAUTO.COM

Date: 9-18-19



OPPOSITION TO PROPOSED ZONING CHANGE

I, Jeff E. Greenheck, am submitting this document to express my opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: They sold these lots as being in a up scale neighborhood with covenants which stated contain size homes, with other restrictions, now after we build they want to Lower the standards, no wonder no one is building here, they can't even keep the lots mowed!

They sold us a Vision of this Timber Creek Sub division and now they want to change that Vision!

Signature: [Signature]  
 Name: Jeff E. Greenheck  
 Address: 3299 47th Ave S.  
 Phone: 201-371-7817  
 Email: rvelusty71@Cableone.net  
 Date: 9-22-19



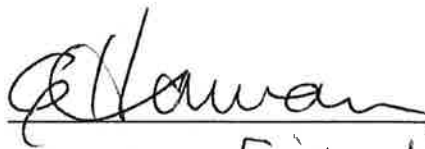
OPPOSITION TO PROPOSED ZONING CHANGE

I, Erika Hanson & Chris Hanson, am submitting this document to express my opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: \_\_\_\_\_

Chris: 

Erika Signature: 

Name: Chris + Erika Hanson

Address: 3510 46<sup>th</sup> Ave S Fargo

Phone: 701.361.0639

Email: buckhousept@yahoo.com

Date: 701.361.0639



**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Joshua Hengel (print name(s)), am submitting this document to express my opposition to the proposed re-zoning in Timber Creek Third Addition

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

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

Joshua Hengel  
Joshua Hengel  
3412 47th Ave S  
701-388-5362  
jhengels7@gmail.com  
9/17/2019





### OPPOSITION TO PROPOSED ZONING CHANGE

1. Joseph & Emily Heehne  
print name(s), am submitting this document to express my opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: *Joseph Heehne*  
 Name: JOSEPH HEEHNE EMILY HEEHNE  
 Address: 3528 4TH AVE S FORT COCKE  
 Phone: 701-404-9189  
 Email: EMJOEHEEHNE@GMAIL.COM  
 Date: 18 SEP 2019



OPPOSITION TO PROPOSED ZONING CHANGE

I, PEGGY HOLUM, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: Peggy Holum  
Name: PEGGY HOLUM  
Address: 3550 46<sup>th</sup> Ave S  
Phone: 701.200.7961  
Email: holump@hotmail.com  
Date: 9.22.19



**OPPOSITION TO PROPOSED ZONING CHANGE**

I, OSMAN AND MURISA KERIC  
print name(s), am submitting this document to express my  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: *Osman J Keric*  
Name: OSMAN AND MURISA KERIC  
Address: 3528 47<sup>th</sup> AVE S FARGO  
Phone: 701 729-2697  
Email: OKERIC@HOTMAIL.COM  
Date: 9/15/19



OPPOSITION TO PROPOSED ZONING CHANGE

I, Heidi Kvistad, am submitting this document to express my opposition to the proposed rezoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: I have rental houses on both sides of the home I own. The one house has 4 cars there, and they park on the street. In the winter, the plows would go around those cars, making it a nightmare for me to get out of my driveway.

Signature: Heidi Kvistad  
 Name: Heidi Kvistad  
 Address: 3432 47th Ave S,  
 Phone: 701-741-4723  
 Email: hkvistad@hotmail.com  
 Date: 9-18-19



# OPPOSITION TO PROPOSED ZONING CHANGE

Patrick LaDouceur, am submitting this document to express my  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: If the city hasn't realized by adding the extra lots and the problems it's already created by adding all the extra parked cars on the road and the increased traffic problems are only going to become worse. I feel like I won't be able to back out of my own driveway because of the size of the lot for parking.

Signature: [Handwritten Signature]

Name: Patrick LaDouceur

Address: 3482 47th Ave S.

Phone: 218-791-5145

Email: Patrick.Ladouceur@2nd@gmail.com

Date: 9/2/19



**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Jerry Leier, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: *Jerry Leier*  
Name: Jerry A. Leier  
Address: 3502 46th Ave. South  
Phone: 1-701-388-0230  
Email: jerry.leier@agrowth.com  
Date: 9-15-2019



### OPPOSITION TO PROPOSED ZONING CHANGE

I, Gerald Manley, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: *GM*  
Name: Gerald Manley  
Address: 3304-46<sup>th</sup> Ave. S. - Fargo, ND  
Phone: 701-238-6236  
Email: ND\_MUSTANG@HOTMAIL.COM  
Date: 9/15/19



### OPPOSITION TO PROPOSED ZONING CHANGE

I, Cody Mathiason, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: 

Name: Cody Mathiason

Address: 3310 46<sup>th</sup> Avenue South Fargo ND  
58104

Phone: 701-595-3931

Email: Cmathiason@bmanninterter.com

Date: 9-14-2019





### OPPOSITION TO PROPOSED ZONING CHANGE

I, Georgia Meyer  
(print name(s)), am submitting this document to express my opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: *Georgia Meyer*  
Name: Georgia Meyer  
Address: 3464 47th Ave S Fargo  
Phone: 701-846-0005  
Email: gmeyer0875@yahoo.com  
Date: 9/21/19




**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Greg Miller, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: While I can appreciate the investment made by the developers,  
including getting the LOMA completed pre-construction, I don't think it  
is fair for the current homeowners to have the make-up of their neighborhood  
changed.

Signature: 

Name: Greg Miller

Address: 3322 46<sup>th</sup> Ave S, Fargo

Phone: 701-421-3417

Email: gregandtahnee@gmail.com

Date: 9/13/19



**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Kelly Marchouse, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: SNOW removal will be an issue -  
there is limited space as it stands - with  
these changes it will be next to impossible  
to push snow, park, get to work etc.

Signature: Kelly Marchouse  
Name: Kelly Marchouse  
Address: 3558 47<sup>th</sup> Ave S  
Phone: 701-936-5017  
Email: kel-rock@hotmail.com  
Date: 9-18-19

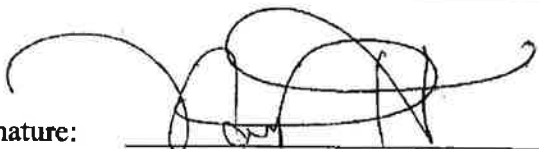


**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Valerie Parvett, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature:   
Name: Valerie Parvett  
Address: 3404-46 Ave S Fargo  
Phone: 701-361-1397  
Email: vparvett@cableone.net  
Date: 9-17-19



**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Grant Richardson, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: *Grant Richardson*  
Name: Grant Richardson  
Address: 3458 47<sup>th</sup> Ave S Fargo, ND 58104  
Phone: (712) 579-4681  
Email: grant-richardson-20@hotmail.com  
Date: 9/15/19



**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Kelly Rott, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes

- The project will increase traffic
- The project will decrease parking

The developer gained approval of prior changes based on assurances they are now going back on.

Other: We have fought with the developers from the beginning. Now they are going back on the negotiated deal by trying to add more rentals.

Signature: *K Kelly*

Name: Kelly Rott

Address: 3334 46<sup>th</sup> Ave S

Phone: 701-269-1280

Email: kellyrott@yahoo.com

Date: 9/17/19



**OPPOSITION TO PROPOSED ZONING CHANGE**

I, MINH TRAN (print name), am submitting this document to express my opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: *Minh Tran*  
Name: MINH TRAN  
Address: 3488 47<sup>th</sup> AVE S  
Phone: 832-660-1011  
Email: tonytran19821999@yahoo.com  
Date: sep-22-2019



### OPPOSITION TO PROPOSED ZONING CHANGE

I, KENDALL RADKE, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: Kendall Radke

Name: KENDALL RADKE

Address: 3564 47<sup>TH</sup> AVE S.

Phone: 701-371-5399

Email: KENDALL581@YAHOO.COM

Date: 9/30/2019





**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Chris Kraft, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

The project will negatively affect my property value

The project will change the character of the neighborhood

I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes

The project will increase traffic

The project will decrease parking

The developer gained approval of prior changes based on assurances they are now going back on.

Other: The profits of the developer are not and should not be the problem of the community/existing home owners. Maybe instead the developer should lower the lot cost and see if that makes a difference in how many they sell. Our neighbor hood shouldn't have to keep fighting crooked developers trying to save their profits. Enough is Enough!

Signature: 

Name: Chris Kraft

Address: 3416 46<sup>th</sup> Ave S Fargo 58104

Phone: 701-799-0937

Email: kraft414@yahoo.com

Date: 10/26/19



### OPPOSITION TO PROPOSED ZONING CHANGE

I, Angie Schwab, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: Angie Schwab  
Name: Angie Schwab  
Address: 3432 46th ave S. Fargo  
Phone: 218-790-7577  
Email: schwabie@yahoo.com  
Date: 10-28-19



**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Joe Schwab, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: We built our home 20 years ago. At that time the property behind us was supposed to be Davies High School & that is why we chose the location. Now we have a major commercial development with large apartment complex. I feel like the City is more concerned with pleasing developers rather than the existing residents. Placing duplexes or twin homes in between single family homes makes no sense and will negatively change the character of the neighborhood.

Signature: Joe Schwab

Name: Joe Schwab

Address: 3432 46th AVE. S, Fargo, ND 58104

Phone: 218-790-6204

Email: jseusedabit.com

Date: 10/20/2019



**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Ethan + Kelsey Norstog, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: *Ethan B. Norstog*  
 Name: Ethan B Norstog  
 Address: 3520 47th Ave S  
 Phone: 701-893-8650  
 Email: ethan.norstog@gmail.com  
 Date: 10/29/2019



**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Kelsey Norstog  
print name(s), am submitting this document to express my  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: 

Name: Kelsey Norstog

Address: 3520 47th Ave. S.

Phone: 701-799-6262

Location of proposed change: Kelsey.Norstog@gmail.com  
along with locations of existing rental properties.

Date: 10/29/2019





Matthew Bring <mbring@gmail.com>

---

**FW: replat and zoning of Timber Creek**

---

**Kelly Rott** <kellyrott@yahoo.com>  
To: mbring@gmail.com

Mon, Feb 25, 2019 at 9:06 AM

**From:** Kelly Rott <kellyrott@yahoo.com>  
**Sent:** Monday, February 04, 2019 4:13 PM  
**To:** 'Donald Kress' <dkress@FargoND.gov>  
**Subject:** replat and zoning of Timber Creek

Mr. Kress

I live in the neighborhood of the proposed zone change of Timber Creek Ninth and Tenth Addition.

I am a co-owner of a Real Estate Company that has both Residential and Commercial Agents. Personally I am a Commercial Realtor.

After much discussion it is my professional opinion that changing the density of a proposed neighborhood in the middle of the sales and building of the said neighborhood could change **the value to the negative of existing single family homes already built** in the 9<sup>th</sup> and 10<sup>th</sup> addition and could change the value of lots that have yet to be sold for building of single family homes. **It is 100% not going to raise the value** of existing home already built.

When this project was first proposed it met with much public outcry from surrounding neighbors and was changed several times to come up with the compromise that is being built now. Making changes to the density now better be investigated before approval because if you change the 9<sup>th</sup> addition request it will only be time before the 10<sup>th</sup> addition request will be before you again and others.

Other factors that need to be addressed along with density change is sewer and water capacities. Street parking is always an issue with Twin Homes, Townhomes, Condo's, and Apartments. Another issue could be traffic flow changes with higher density.

**Kelly Rott**

Commercial Realtor

kellyrott@yahoo.com

701-269-1280 cell



### OPPOSITION TO PROPOSED ZONING CHANGE

I, Ann-Marie Zahn  
print name(s), am submitting this document to express my  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.
- Other: Concerned with safety if this project were to move forward

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: Ann-Marie Zahn  
Name: Ann-Marie Zahn  
Address: 3500 47th Ave. S.  
Phone: 4065796500  
Email: az242623@gmail.com  
Date: 10 / 30 / 2019



**EXHIBIT**  
**30**

City of Fargo, ND

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

House numbers of homeowners objecting to proposed changes.

1:4,179

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.







These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Locations of homeowners objecting to proposed changes.

1:4,179

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.





**EXHIBIT**  
**32**

City of Fargo, ND

These data are provided on an "AS-IS" basis, without warranty of any type, expressed or implied, including but not limited to any warranty as to their performance, merchantability, or fitness for any particular purpose.

Locations of homeowners objecting to proposed changes, along with locations of existing rental properties.

1:4,179

This map is not a substitute for accurate field surveys or for locating actual property lines and any adjacent features.



## OPPOSITION TO PROPOSED ZONING CHANGES

We, Joseph & Emily Hoehne, are submitting this document to express our opposition to the proposed "Timber Creek Third Addition".

We object to this project for the following reasons:

- This project will negatively affect our property value
- This project will change the character of the neighborhood
- We purchased our home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking

Name: Joseph & Emily Hoehne

Address: 3508 47<sup>th</sup> Ave. S

Phone: 701-404-9869

**From:** Erika Hanson <buckhousept@yahoo.com>  
**Sent:** Saturday, September 14, 2019 11:01 AM  
**To:** Donald Kress <dkress@FargoND.gov>  
**Subject:** Opposition to Timbercreek

I would like to voice my opposition to the proposed zoning change on 47th Ave South between 3510 and 3419. It is currently zoned for single family homes, and Paces Lodging and Dabbert Homes are seeking permission to build duplexes on the vacant lots. My main opposition to this is because of the traffic noise. We are already dealing with noise from the interstate, which I realize was there when we purchased our home. However, when we purchased our home and planned to have single family homes to the south, we thought the noise of the interstate was worth the location. I don't see us getting a sound wall any time soon to counteract the interstate noise.

Erika Hanson  
3510 46th Ave S  
Fargo ND 58104

Dear Donald,

I am sending this email to you to express our (my wife's Murisa and mine) strong opposition to proposed zoning change in Timber Greek planning on the North side of the 47th Avenue South that are between 3521 and 3419.

The reasons to our opposition you can find in the attached PDF Document.

Thanks,

Osman Keric

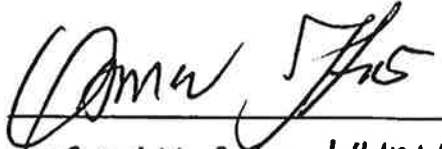
**OPPOSITION TO PROPOSED ZONING CHANGE**

I, OSMAN AND MURISA KERIC, am submitting this document to express my  
print name(s)  
opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature:   
Name: OSMAN AND MURISA KERIC  
Address: 3526 47<sup>th</sup> AVE S FARAD  
Phone: 701 729-2697  
Email: OKERIC@HOTMAIL.COM  
Date: 9/15/19

**From:** [jay@dakotaskyhook.com](mailto:jay@dakotaskyhook.com) <[jay@dakotaskyhook.com](mailto:jay@dakotaskyhook.com)>  
**Sent:** Tuesday, September 17, 2019 9:30 AM  
**To:** Donald Kress <[dkress@FargoND.gov](mailto:dkress@FargoND.gov)>  
**Subject:** Proposed Re-zoning of Timber Creek Third Addition

I am sending this email to express my opposition to the rezoning proposal in Timber Creek Third Addition.

Once again, I am getting tired of builders and developers, who have been previously been rejected, to keep coming back and hoping that we don't notice the third, fourth, fifth time that they try to pass these kinds of changes, especially when they SPECIFICALLY said that they were not going to do this again.

Once again, this will change the neighborhood for the worse – their inability to sell their lots because of the inflated prices they are asking is not **\*MY\*** issue and destroying the PLANNED layout to help them sell them by subdividing them is NOT acceptable.

- It will affect my property values adversely, much like the townhomes on 47<sup>th</sup> Ave did
- It will increase traffic all over the neighborhood
- It will make the neighborhood feel much more crowded and greatly cheapen it

Please, reject this re-zone yet again, and please, tell the developers that multiple well-dipping has to stop.

Gerald "Jay" Manley, Jr.  
3304 46<sup>th</sup> Ave South  
Fargo, ND 58104

**OPPOSITION TO PROPOSED ZONING CHANGE**

I, Jeff E. Greenheck, am submitting this document to express my opposition to the proposed re-zoning in Timber Creek Third Addition.

I object to this project for the following reasons:

- The project will negatively affect my property value
- The project will change the character of the neighborhood
- I purchased my home with the understanding that the Timber Creek neighborhood would contain a variety of home types/sizes
- The project will increase traffic
- The project will decrease parking
- The developer gained approval of prior changes based on assurances they are now going back on.

Other: They sold these lots as being in a up scale neighborhood with covenants which stated contain size homes, with other restrictions, now after we build they want to Lower the standards, no wonder no one is building here, they can't even keep the lots mowed!

They sold us a Vision of this Timber Creek Sub division and now they want to change that Vision!

Signature: [Handwritten Signature]  
 Name: Jeff E. Greenheck  
 Address: 3299 47th Ave S.  
 Phone: 701-371-7817  
 Email: rvelusty71@comcast.net  
 Date: 9-22-19



**From:** Cyle Cavett <cyle.cavett@gmcavett.com>  
**Sent:** Wednesday, September 25, 2019 8:54 AM  
**To:** Donald Kress <dkress@FargoND.gov>  
**Subject:** Rezoning 47th Ave. S. in South Fargo  
**Sensitivity:** Confidential

Good morning,

I and my wife, Tarah, would like to formally protest the attempts by Dabbert Custom Homes to rezone vacant lots on 47<sup>th</sup> Avenue south. We do not want townhomes in our neighborhood. We would definitely rather look at dirt than see townhomes constructed in an already congested neighborhood. I would suggest having Dabbert lower the \$50,000 lot asking price.

I have one question: Did Dabbert promise, in March of 2018, to quit requesting zoning changes in our neighborhood after he was granted a zoning change on 3 other lots?

Take care,  
Cyle Cavett



4133 30<sup>th</sup> Avenue South  
Fargo, ND 58104  
Phone: (701) 235-1124  
Fax: (701) 235-1854  
Web site: [www.gmcavett.com](http://www.gmcavett.com)

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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



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

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

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning  
9 request on October 1, 2019; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on November 4,  
11 2019,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 Lots One (1) through Seven (7), Block One (1) of Timber Creek Third Addition to  
16 the City of Fargo, Cass County, North Dakota;

17 is hereby rezoned from "SR-2", Single-Dwelling Residential, District to "SR-3", Single-Dwelling  
18 Residential, District;

19 Section 3. The City Auditor is hereby directed to amend the zoning map now on file in his  
20 office so as to conform with and carry out the provisions of this ordinance.  
21  
22  
23

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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Section 4. This ordinance shall be in full force and effect from and after its passage and approval.

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

(SEAL)

Attest:

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

First Reading:  
Second Reading:  
Final Passage:

336

<b>City of Fargo Staff Report</b>			
<b>Title:</b>	Bohnsack's Second Addition	<b>Date: Updated:</b>	9/25/2019 10/29/2019
<b>Location:</b>	1807 16 <sup>th</sup> Street South	<b>Staff Contact:</b>	Maggie Squyer
<b>Legal Description:</b>	Lot 1, Block 12, Bohnsack's Second Addition		
<b>Owner(s)/Applicant:</b>	Fargo Public School District	<b>Engineer:</b>	N/A
<b>Entitlements Requested:</b>	<b>Zoning Change</b> (from SR-2, Single-Dwelling Residential to P/I Public and Institutional)		
<b>Status:</b>	City Commission Public Hearing: November 4, 2019		

<b>Existing</b>	<b>Proposed</b>
<b>Land Use:</b> Parks and Open Space	<b>Land Use:</b> Parks and Open Space
<b>Zoning:</b> SR-2, Single-Dwelling Residential	<b>Zoning:</b> P/I, Public and Institutional
<b>Uses Allowed:</b> Detached housing, group living restricted residency, day care facilities of limited size, parks and open space, religious institutions, safety services, schools, basic utilities and limited telecommunications facilities	<b>Uses Allowed:</b> Colleges, community service, day care facilities of unlimited size, detention facilities, health care facilities, parks and open space, religious institutions, safety services, schools, basic utilities, offices, commercial parking, outdoor recreation and entertainment, industrial service, manufacturing and production, warehouse and freight movement, waste-related use, agriculture, aviation, surface transportation, major entertainment event, and limited telecommunications facilities
<b>Maximum Density Allowed:</b> 5.4 units per acre	<b>Maximum Density Allowed:</b> N/A

**Proposal:**

The applicant is seeking a zoning change from SR-2, Single-Dwelling Residential to P/I, Public and Institutional. The property, located at 1807 16<sup>th</sup> Street South, is owned by Fargo Public School District and is currently used as a park on the south side of Lewis & Clark Elementary School.

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:**

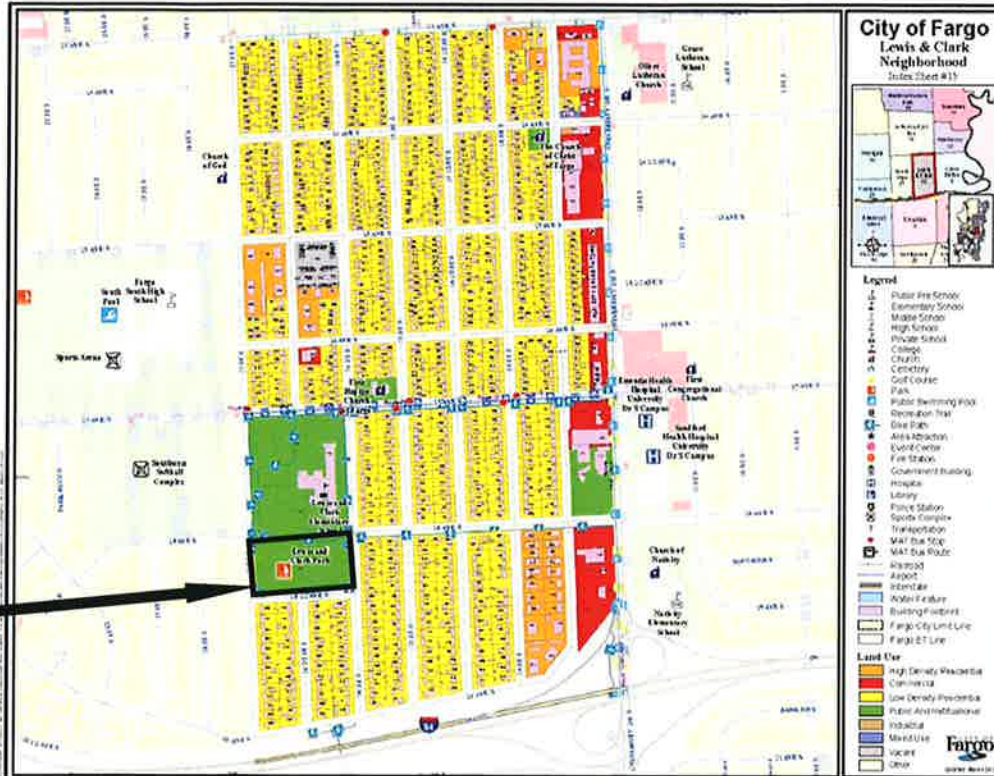
- North: P/I, Public and Institutional with Lewis & Clark Elementary
- East: SR-2, Single-Dwelling Residential with residential use
- South: SR-2, Single-Dwelling Residential with residential use
- West: SR-2, Single-Dwelling Residential with residential use

Continued on next page.

**Area Plans:**

The subject property is located in the Lewis & Clark Neighborhood land use map. On this map, the subject property is already classified as Public and Institutional.

**Subject Property**



**Schools and Parks:**

**Neighborhood:** Lewis & Clark

**Schools:** The subject property is located within the Fargo School District, specifically Lewis & Clark Elementary, Carl Ben Eielson Middle, and South High schools.

**Parks:** The subject property is Lewis & Clark park, which offers baseball/softball fields, basketball court, a multipurpose field, an outdoor ice rink, and a playground. The subject property is also located within a quarter-mile of Tharaldson Little League Complex (1804 17<sup>th</sup> Avenue South), which offers baseball/softball fields, picnic tables, concessions, and a playground.

**Pedestrian / Bicycle:** An off-road shared use path is located north of the subject property and a bike route is located along 16<sup>th</sup> Street South and 18 ½ Avenue South.

**Staff Analysis:**

**Zoning**

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

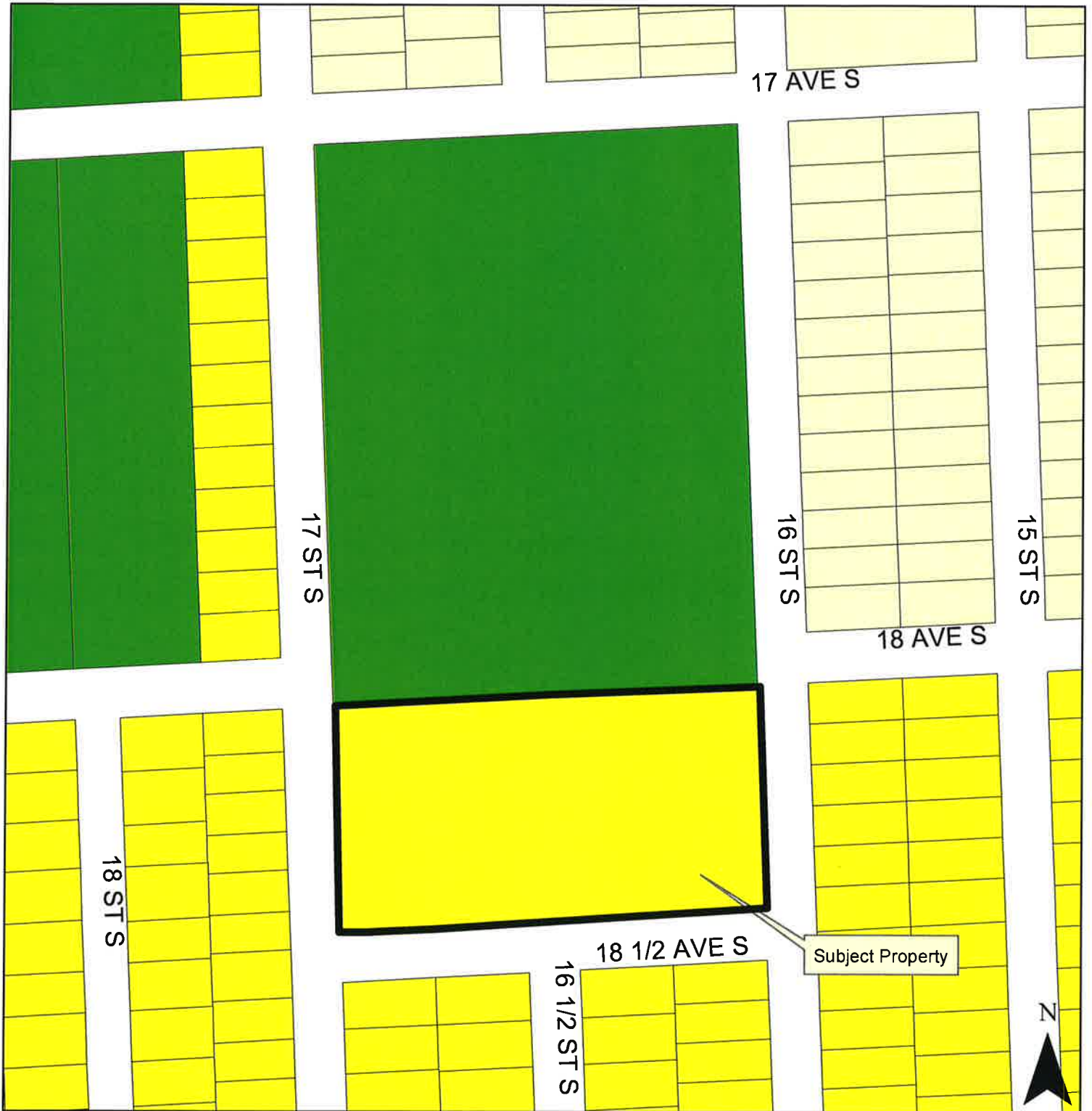
1. **Is the requested zoning change justified by a change in conditions since the previous zoning classification was established or by an error in the zoning map?**  
 Staff is unaware of any zoning map error in regard to the subject property. The zone change is requested to bring the subject property into conformance with the adjacent property to the north, which is also owned by Fargo Public School District and zoned P/I. While parks and schools may exist in SR-2, the P/I zoning district is intended to accommodate public services, such as schools.  
**(Criteria Satisfied)**

<p><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>          The subject property has access to city services (water, sewer, streets, police/fire protection, etc.) as well as other utility services as needed. The City Engineer and other applicable review agencies have reviewed this proposal. No deficiencies to provide the necessary public services, facilities, and programs to this development have been identified.  <b>(Criteria Satisfied)</b></p> <p><b>3. Will the approval of the zoning change adversely affect the condition or value of the property in the vicinity?</b>          The Planning Department is not involved in assigning "value", as in a monetary "property value" for the purpose of taxation, to individual properties; doing so is the job of the city assessor's office. Rather, "value" in this context—the context of a zone change finding—relates to whether the proposed zone change would create zoning-related problems, such as nuisances, to adjacent property, or whether the proposed zone change would affect the health, safety, and welfare of property in the vicinity. Staff has no evidence to suggest this proposal would adversely affect the condition or value of the property in the vicinity. Written notice of the proposal was sent to all property owners within 300 feet of the subject property. To date, staff has received several inquiries about the proposed zone change and one note of opposition, which has been included in this packet.  <b>(Criteria Satisfied)</b></p> <p><b>4. Is the proposed amendment consistent with the purpose of this LDC, the Growth Plan, and other adopted policies of the City?</b>          The purpose of the LDC is to implement Fargo's Comprehensive Plan and related policies in a manner that protects the health, safety, and general welfare of the citizens of Fargo. According to the Land Development Code, P/I offers an alternative to residential zoning districts for public and institutional uses, thereby increasing development predictability within residential neighborhoods. Staff finds the proposal is consistent with the purposes of the LDC, the Growth Plan, and other adopted policies of the City, including the Lewis and Clark Neighborhood land use map.  <b>(Criteria Satisfied)</b></p>
<p><b>Staff Recommendation:</b></p>
<p>Suggested Motion: "To accept the findings and recommendations of the Planning Commission and staff and hereby waive the requirement to receive the Ordinance one week prior to the first reading and place the rezoning Ordinance on for first reading, and move to approve the proposed zoning change from SR-2, Single-Dwelling Residential, to P/I, Public and Institutional, on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC."</p>
<p><b>Planning Commission Recommendation:</b> October 1, 2019</p>
<p>On October 1, 2019, with a vote of 7 to 0, with three Commissioners absent, the Planning Commission accepted the findings and recommendations of staff and recommended approval to the City Commission of the proposed zoning change from SR-2, Single-Dwelling Residential, to P/I, Public and Institutional, on the basis that it satisfactorily complies with the Go2030 Fargo Comprehensive Plan, Standards of Section 20-0906.F (1-4) and all other applicable requirements of the LDC.</p>
<p><b>Attachments:</b></p>
<ol style="list-style-type: none"> <li>1. Zoning Map</li> <li>2. Location Map</li> <li>3. Letter of Opposition</li> </ol>

# Zone Change (SR-2 to P/I)

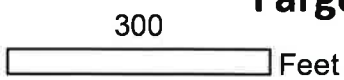
## Bohnsack's Second Addition

1807 16th St S



**Legend**

AG	DMU	GC	GO	LC	MGR-1	MGR-2	MGR-3	MHP	NC	NO	P/I	UML	City Limits
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Fargo Planning Commission  
 October 1, 2019

# Zone Change (SR-2 to P/I)

## Bohnsack's Second Addition

1807 16th St S





Planning & Development

In Think the Bohnsacks

second addition should

stay as is, Single Dwelling

residential,

1807 - 16<sup>th</sup> St. South



OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

3361

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

1 AN ORDINANCE REZONING CERTAIN PARCELS  
2 OF LAND LYING IN BOHNSACK'S SECOND ADDITION  
3 TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

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

8 WHEREAS, the Fargo Planning Commission recommended approval of the rezoning  
9 request on October 1, 2019; and,

10 WHEREAS, the rezoning changes were approved by the City Commission on November 4,  
11 2019,

12 NOW, THEREFORE,

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

14 Section 1. The following described property:

15 Lot One (1), Block Twelve (12) of Bohnsack's Second Addition to the City of  
16 Fargo, Cass County, North Dakota;

17 is hereby rezoned from "SR-2", Single-Dwelling Residential, District to "P/I", Public and  
18 Institutional, District;

19 Section 3. The City Auditor is hereby directed to amend the zoning map now on file in his  
20 office so as to conform with and carry out the provisions of this ordinance.  
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23

OFFICE OF THE CITY ATTORNEY  
FARGO, NORTH DAKOTA

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

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Section 4. This ordinance shall be in full force and effect from and after its passage and approval.

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

(SEAL)

Attest:

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

First Reading:  
Second Reading:  
Final Passage:

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 16, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:


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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 3101 Peterson Pkwy. N as submitted by Jeremy W. & Kara M. Magelky. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$250 with the City of Fargo's share being \$40.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment

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

**Property Identification**

1.	Name of Property Owner <u>Jeremy &amp; Kara Magelky</u>	Phone No. _____
2.	Address of Property <u>3101 Peterson Pkwy 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>Lt 5, Blk 4, Edgewood Farms</u>	
4.	Parcel Number <u>01-0735-00620-000</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>New siding, soffits, fascia &amp; gutters</u>	
7.	Building Permit No. <u>19060859</u>	8. Year Built <u>1981</u>
9.	Date of Commencement of making the improvement <u>June 2019</u>	
10.	Estimated market value of property before improvement	\$ <u>394,800</u>
11.	Cost of making the improvement (all labor, material and overhead)	\$ <del>60000</del> <u>38000</u>
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 <u>[Signature]</u>	Date <u>10/4/19</u>

**Assessor's Determination**

14.	The local assessor finds that the improvements in this application has <input checked="" type="checkbox"/> has not <input type="checkbox"/> met the qualifications for exemption for the following reason(s): <u>3 YEARS FOR QUALIFYING WORK</u>	
	Assessor's Signature <u>[Signature]</u>	Date <u>10/21/19</u>

**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 _____

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT

346

October 16, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

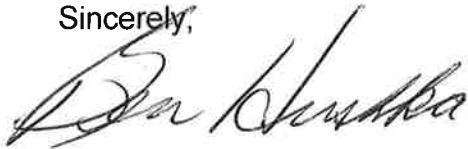
Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 3101 Peterson Pkwy. N as submitted by Jeremy W. & Kara M. Magelky. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$1625 with the City of Fargo's share being \$275.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment

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

**Property Identification**

1. Name of Property Owner	<u>Jeremy &amp; Kara Magelky</u>	Phone No.	<u>701-371-9399</u>
2. Address of Property	<u>3101 Peterson Pkwy 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>Lt 5, Blk 4</u> <u>Edgewood Farms</u>		
4. Parcel Number	<u>01-0735-00620-000</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>Remodel kitchen</u>		
7. Building Permit No.	<u>19050494</u>	8. Year Built	<u>1981</u>
9. Date of Commencement of making the improvement	<u>May 2019</u>		
10. Estimated market value of property before improvement	\$	<u>394,800</u>	
11. Cost of making the improvement (all labor, material and overhead)	\$	<u>125,000</u>	
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 <u>[Signature]</u> Date <u>10/4/19</u>

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has <input checked="" type="checkbox"/> has not <input type="checkbox"/> met the qualifications for exemption for the following reason(s): <u>3 YEARS FOR QUALIFYING WORK</u>
Assessor's Signature <u>[Signature]</u> Date <u>10/21/19</u>

**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 _____

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 24, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 2916 38 ½ Ave. S as submitted by Neil K. & Kathleen D. Sandness. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$235 with the City of Fargo's share being \$40.

Sincerely,

Handwritten signature of Ben Hushka.

Ben Hushka  
City Assessor

hah  
attachment



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

**Property Identification**

1. Name of Property Owner NEIL & KATHLEEN SANDNESS Phone No. \_\_\_\_\_

2. Address of Property 2916 38 1/2 AVE S  
City FARGO State ND Zip Code 58104

3. Legal description of the property for which the exemption is being claimed. \_\_\_\_\_  
LT 19 BLK 6 STONEBRIDGE FARMS

4. Parcel Number 01-2920-01070-000 Residential  Commercial  Central Business District

5. Mailing Address of Property Owner 2916 38 1/2 AVE S  
City FARGO State ND Zip Code 58104

**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). FINISH LOWER LEVEL

7. Building Permit No. 180324 8. Year Built 1992

9. Date of Commencement of making the improvement 6-20-19

10. Estimated market value of property before improvement \$ 357,700

11. Cost of making the improvement (all labor, material and overhead) \$ 8,500

12. Estimated market value of property after improvement \$ 375,900

**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 *Neil Sandness* Date 10-16-19

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has  has not  met the qualifications for exemption for the following reason(s): 3 YEARS FOR QUALIFYING WORK

Assessor's Signature *Dea Quake* Date 10/21/19

**Action of Governing Body**

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

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

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

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 24, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 3016 38 Ave. S as submitted by Bruce D. Berg & Linda S. Kremer. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$185 with the City of Fargo's share being \$30.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment

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

**Property Identification**

1. Name of Property Owner Bruce D. Berg & Linda S. Kremer Phone No. \_\_\_\_\_

2. Address of Property 3016 38 Ave. S  
City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed. Lot 11 Blk 8 Stonebridge Farms

4. Parcel Number 01-2920-01530-000 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). Remodel existing 2nd lvl bath. Work incl flooring, fixtures, vent, pl and elec.

7. Building Permit No. 19050894 8. Year Built 1992

9. Date of Commencement of making the improvement 05/28/2019

10. Estimated market value of property before improvement \$ 295,100

11. Cost of making the improvement (all labor, material and overhead) \$ 14000

12. Estimated market value of property after improvement \$ 309,400

**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 10/18/19

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has  has not  met the qualifications for exemption for the following reason(s): 3 YEARS FOR QUALIFYING WORK

Assessor's Signature [Signature] Date 10/21/19

**Action of Governing Body**

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

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

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

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 24, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 2205 8 St. N as submitted by Gary L. Geller. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$80 with the City of Fargo's share being \$15.

Sincerely,

Handwritten signature of Ben Hushka in cursive.

Ben Hushka  
City Assessor

hah  
attachment

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

**Property Identification**

1. Name of Property Owner Gary Geller Phone No. 701-388-7622

2. Address of Property 2205 8 St N  
City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed. Lt 11, Blk 2, Peter Sway 2nd

4. Parcel Number 01-3040-00280-000 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). Remodel lower level bath

7. Building Permit No. 190084 8. Year Built 1955

9. Date of Commencement of making the improvement February 2019

10. Estimated market value of property before improvement \$ 178,500

11. Cost of making the improvement (all labor, material and overhead) \$ 8500

12. Estimated market value of property after improvement \$ 184,800

**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 Gary Geller Date 10-18-19

**Assessor's Determination**

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

Assessor's Signature [Signature] Date 10/25/19

**Action of Governing Body**

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

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

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

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 24, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1914 26 ½ Ave. S as submitted by Dennis A. & Mary J. O'Briant. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$190 with the City of Fargo's share being \$30.

Sincerely,

Handwritten signature of Ben Hushka in cursive.

Ben Hushka  
City Assessor

hah  
attachment

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

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

**Property Identification**

1. Name of Property Owner Dennis & Mary O'Briant Phone No. 701-235 4570  
2. Address of Property 1914 26 1/2 Ave S  
City FARGO State ND Zip Code 58103  
3. Legal description of the property for which the exemption is being claimed. Lot 7, Block 6  
Crarys 1st  
4. Parcel Number 01-0505-00810-000 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). New siding  
7. Building Permit No. 190041 8. Year Built 1979  
9. Date of Commencement of making the improvement January 2019  
10. Estimated market value of property before improvement \$ 286,800  
11. Cost of making the improvement (all labor, material and overhead) \$ 13,600  
12. Estimated market value of property after improvement \$ 272,200

**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 Dennis O. O'Briant Date 14 Oct 2019

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has  has not  met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK  
Assessor's Signature [Signature] Date 10/25/19

**Action of Governing Body**

15. Action taken on this application by local governing board of the county or city: Denied  Approved   
Approval subject to the following conditions: \_\_\_\_\_  
Chairman of Governing Body \_\_\_\_\_ Date \_\_\_\_\_

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 24, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 42 36 Ave. NE as submitted by William E. & Marilyn A. Martinson. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$105 with the City of Fargo's share being \$15.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment



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

**Property Identification**

1. Name of Property Owner William & Marilyn Martinson Phone No. 701-238-1143  
701-235-1043

2. Address of Property 42 36 Ave NE  
City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed. Lt 3, Blk 5, Golf Course  
2nd

4. Parcel Number 01-1002-00270-000 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). Replace sheathing/roofing on dwelling

7. Building Permit No. 19051011 8. Year Built 1974

9. Date of Commencement of making the improvement June 2019

10. Estimated market value of property before improvement \$ 339,200

11. Cost of making the improvement (all labor, material and overhead) \$ 49,285

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 William Martinson Date 10-15-2019

**Assessor's Determination**

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

Assessor's Signature [Signature] Date 10/25/19

**Action of Governing Body**

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

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

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

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 24, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1702 Plumtree Rd. N as submitted by Kurt David & Meredith Cameron. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$280 with the City of Fargo's share being \$45.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment

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

**Property Identification**

1. Name of Property Owner Kurt & Meredith Cameron Phone No. 701 541 1362

2. Address of Property 1702 Plumtree Rd N  
City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed. Lt 22, Blk 3 Ridgewood

4. Parcel Number 01-2360-00580-000 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). Remodel basement & add egress window

7. Building Permit No. 19070093 8. Year Built 1957

9. Date of Commencement of making the improvement July 2019

10. Estimated market value of property before improvement \$ 219,400

11. Cost of making the improvement (all labor, material and overhead) \$ 35,000

12. Estimated market value of property after improvement \$ 240,900

**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 Meredith Cameron Date 10-24-19

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has  has not  met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK  
Assessor's Signature Don Quillen Date 10/25/19

**Action of Governing Body**

15. Action taken on this application by local governing board of the county or city: Denied  Approved   
Approval subject to the following conditions: \_\_\_\_\_  
Chairman of Governing Body \_\_\_\_\_ Date \_\_\_\_\_

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT

341

October 16, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1137 28 St. N as submitted by Travis R. Kapp. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$235 with the City of Fargo's share being \$40.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment

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

**Property Identification**

1. Name of Property Owner Travis Kapp Phone No. 701-367-0243

2. Address of Property 1137 28 St N  
City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed. Lt 21, Blk 3, College 2nd

4. Parcel Number 01-0480-00580-000 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). Housing Rehab Project-Replace decks, insulate crawl space, new slab between house/garage, new entry doors

7. Building Permit No. 19070345 8. Year Built 1934

9. Date of Commencement of making the improvement July 2019

10. Estimated market value of property before improvement \$ 76,500

11. Cost of making the improvement (all labor, material and overhead) \$ 17,947.00

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 Travis Kapp Date 10-14-19

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has  has not  met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK  
Assessor's Signature Jon Orndorff Date 10/21/19

**Action of Governing Body**

15. Action taken on this application by local governing board of the county or city: Denied  Approved   
Approval subject to the following conditions: \_\_\_\_\_  
Chairman of Governing Body \_\_\_\_\_ Date \_\_\_\_\_

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 16, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

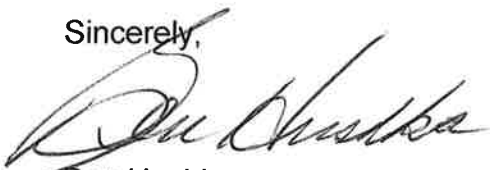
Chapter 57-02.2 of the North Dakota Century Code provides for a property tax exemption for certain types of improvements made to existing buildings.

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1533 8 St. N as submitted by Randall A. & Angela R. Lekander. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$65 with the City of Fargo's share being \$10.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment

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

**Property Identification**

1. Name of Property Owner <u>Randall &amp; Angela Lekander</u>	Phone No. <u>701-261-7592</u>
2. Address of Property <u>1533 8 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 16, Block 2 Chandlers Broadway</u>	
4. Parcel Number <u>01-0380-00390-000</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>Add bath in basement</u>	
7. Building Permit No. <u>190070</u>	8. Year Built <u>1946</u>
9. Date of Commencement of making the improvement <u>January 2019</u>	
10. Estimated market value of property before improvement	\$ <u>155,000</u>
11. Cost of making the improvement (all labor, material and overhead)	\$ <u>8,000</u>
12. Estimated market value of property after improvement	\$ <u>160,000</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>Angela R. Lekander</u>	Date <u>10-16-19</u>

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has <input checked="" type="checkbox"/> has not <input type="checkbox"/> met the qualifications for exemption for the following reason(s): <u>3 YEARS FOR QUALIFYING WORK</u>	
Assessor's Signature <u>Don Amick</u>	Date <u>10/21/19</u>

**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 _____

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 16, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 3130 8 St. N as submitted by Darwin T. & Corine C. Wittmier. 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 2015, 2016, 2017, 2018, & 2019.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$650 with the City of Fargo's share being \$110.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment



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

**Property Identification**

1. Name of Property Owner	<u>Darwin T. &amp; Corine C. Wittmer</u>	Phone No.	<u>701-238-5708</u>
2. Address of Property	<u>3130 8 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.	_____		
4. Parcel Number	<u>01-1660-00840-000</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>Construct addn to existing SFD to be 4 seas. room</u>		
7. Building Permit No.	<u>130623</u>	8. Year Built	<u>1968</u>
9. Date of Commencement of making the improvement	<u>01/22/2014</u>		
10. Estimated market value of property before improvement	\$ <u>138,100</u>		
11. Cost of making the improvement (all labor, material and overhead)	\$ <del>138,100</del> <u>50,000</u>		
12. Estimated market value of property after improvement	\$ <u>190,300</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>Darwin Wittmer</u> Date <u>10-15-19</u>

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has <input checked="" type="checkbox"/> has not <input type="checkbox"/> met the qualifications for exemption for the following reason(s): <u>5 YEARS FOR QUALIFYING WORK</u>
Assessor's Signature <u>[Signature]</u> Date <u>10/21/19</u>

**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 _____

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 11, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 82 23 Ave. N as submitted by Adam A. & Kristi L. Reich. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$2235 with the City of Fargo's share being \$380.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment

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

**Property Identification**

1. Name of Property Owner Adam & Kristi Reich Phone No. 701-320-1149

2. Address of Property 82 23 Ave N  
City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed. Lt 21, Blk 2, North Park

4. Parcel Number 01-2120-00430-000 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). Demo garage, construct new garage with living area above-only living area above qualifies for exemption

7. Building Permit No. 19061034 8. Year Built 1959

9. Date of Commencement of making the improvement July 2019

10. Estimated market value of property before improvement \$ 200,300

11. Cost of making the improvement (all labor, material and overhead) \$ 172,000

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

**Applicant's Certification and Signature**

13. I certify that the above information is correct to the best of my knowledge and I apply for this exemption.  
Applicant's Signature Adam Reich Date 10/09/19

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has  has not  met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK  
Assessor's Signature Don Hendrickson Date 10/14/19

**Action of Governing Body**

15. Action taken on this application by local governing board of the county or city: Denied  Approved   
Approval subject to the following conditions: \_\_\_\_\_  
Chairman of Governing Body \_\_\_\_\_ Date \_\_\_\_\_

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 16, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1525 5 St. N as submitted by Duane A & Korina Hilsendeger. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$40 with the City of Fargo's share being \$5.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment

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

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

**Property Identification**

1. Name of Property Owner Duane & Korina Hilsendeger Phone No. 701 866 6104

2. Address of Property 1525 5 St N  
 City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed. Lts 6, Blk 2, Hogans

4. Parcel Number 01-1280-00310-000 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). New flooring in 8' x 16' area, finish 2 exterior walls, update electrical & wall paneling on 2 walls

7. Building Permit No. 19070379 8. Year Built 1949

9. Date of Commencement of making the improvement July 2019

10. Estimated market value of property before improvement \$ 203,300

11. Cost of making the improvement (all labor, material and overhead) \$ 3,300

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 Korina Hilsendeger Date 10-11-2019

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has  has not  met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK  
 Assessor's Signature Dan Nussba Date 10/21/19

**Action of Governing Body**

15. Action taken on this application by local governing board of the county or city: Denied  Approved   
 Approval subject to the following conditions: \_\_\_\_\_  
 \_\_\_\_\_  
 Chairman of Governing Body \_\_\_\_\_ Date \_\_\_\_\_

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT



October 11, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1707 2 St. N as submitted by Christopher B. & Susan M. Langerud. 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 2018, 2019, 2020, 2021, & 2022.

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$45 with the City of Fargo's share being \$5.

Sincerely,

Handwritten signature of Ben Hushka in cursive.

Ben Hushka  
City Assessor

hah  
attachment

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

**Property Identification**

1. Name of Property Owner Christopher & Susan Langerud Phone No. 218-329-1908

2. Address of Property 1707 2 St N  
City FARGO State ND Zip Code 58102

3. Legal description of the property for which the exemption is being claimed. Pt of Lts 1-2, Blk 5  
McDermotts

4. Parcel Number 01-1890-00800-000 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). Remodel main floor bath

7. Building Permit No. 171303 8. Year Built 1950

9. Date of Commencement of making the improvement July 2017

10. Estimated market value of property before improvement \$ 194,000 185,500

11. Cost of making the improvement (all labor, material and overhead) \$ 3,500

12. Estimated market value of property after improvement \$ 194,000 *Includes Reappraisal Increase*

**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 Christopher Langerud Date 9-30-2019

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has  has not  met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK  
Assessor's Signature Den Decker Date 10/14/19

**Action of Governing Body**

15. Action taken on this application by local governing board of the county or city: Denied  Approved   
Approval subject to the following conditions: \_\_\_\_\_  
Chairman of Governing Body \_\_\_\_\_ Date \_\_\_\_\_

CITY OF  
**Fargo**  
ASSESSMENT DEPARTMENT

370

October 16, 2019

Board of City Commissioners  
City Hall  
Fargo, ND 58102

Dear Commissioners:

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

I have attached a copy of an application for real estate tax exemption of building improvements for the property at 1413 14 ½ St. S as submitted by Harry W. & Linda R. Bosch. A description of the property involved, types of improvements to be made, and assessment information are indicated on the application.

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

The estimated annual tax revenue lost by granting the exemption, based upon the estimated cost of the improvements, would be about \$50 with the City of Fargo's share being \$10.

Sincerely,



Ben Hushka  
City Assessor

hah  
attachment



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

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

**Property Identification**

1. Name of Property Owner Harry & Linda Bosch Phone No. 701-729-3399

2. Address of Property 1413 14 1/2 St S  
 City FARGO State ND Zip Code 58103

3. Legal description of the property for which the exemption is being claimed. Lot 5, Block 11  
Morton & Dotys

4. Parcel Number 01-2040-02650-000 Residential  Commercial  Central Business District

5. Mailing Address of Property Owner SAME  
 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). New siding

7. Building Permit No. 190204 8. Year Built 1940

9. Date of Commencement of making the improvement March 2019

10. Estimated market value of property before improvement \$ 91,800

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

12. Estimated market value of property after improvement \$ 95,800

**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 Harry Bosch Date 10-10-19

**Assessor's Determination**

14. The local assessor finds that the improvements in this application has  has not  met the qualifications for exemption for the following reason(s): 5 YEARS FOR QUALIFYING WORK  
 Assessor's Signature Don Quirk Date 10/21/19

**Action of Governing Body**

15. Action taken on this application by local governing board of the county or city: Denied  Approved   
 Approval subject to the following conditions: \_\_\_\_\_  
 \_\_\_\_\_  
 Chairman of Governing Body \_\_\_\_\_ Date \_\_\_\_\_



November 4, 2019

**To: Board of City Commissioners**  
**Fr: Michael Redlinger, Assistant City Administrator**  
**Re: Comprehensive Overview of 2020 Ground Transportation Center (GTC) Improvement Projects & Recommended Actions**

**Background**

On January 2, 2019, the City Commission received the MATBUS Transit Facility Study to evaluate short- and long-range needs for the City of Fargo’s existing transit facilities. The Metropolitan Council of Governments (Metro COG) sponsored the study, with professional services provided by KLJ Engineering (KLJ) to guide future decision making for the facilities. Recommendations regarding deferred maintenance, better utilization of the existing GTC footprint/square footage, and modernizing building utilities were key topics identified in the Transit Facility Study. It was determined that approximately 70% of the Ground Transportation Center’s square footage is underutilized today, and that a better alignment of the building program will increase efficiency and use of this existing City-owned asset.

Following receipt of the Facility Study in early 2019, on July 15, 2019 the City Commission received an update and proposed plan of action from Cassie McNames, P.E. and Project Manager for KLJ Engineering, regarding Ground Transportation Center (GTC) improvement projects for the Transit portion of the facility (above-grade).

Items discussed and approved by the City Commission on July 15, 2019 included:

- Approval of GTC Deck Concept C – A short- to mid-range configuration to meet the needs of MATBUS until such time a more extensive site reconfiguration, or replacement site/facility, is considered.
- Approval of additional repair cost estimates to support the overall GTC remodel for the Transit and underground portions of the facility.
- Acknowledgement of the City’s continued commitment to maintain the GTC structure in a state of good repair through a deferred maintenance schedule, to be prepared by KLJ.

The July 15, 2019 City Commission meeting material is attached for reference.

**Comprehensive Overview of GTC Transit (Above-Grade) & Parking Authority (Below-Grade) Capital Improvements**

The Transit Department and Parking Authority jointly operate the GTC. Each entity brings distinct revenue streams to their respective activity area, such as federal and state grants (above-grade Transit operations and capital funds); and parking lease revenues (below-grade parking operations and capital funds). An additional financing tool for below-grade capital improvements is the C-1 Tax Increment Finance District (TIF), extended by the City Commission on December 17, 2018 to assist with GTC underground/structural repairs and the Island Park land purchase and repairs. The GTC below-grade work is TIF-eligible and is an appropriate use of the C-1 TIF funds.

*Comprehensive, Unified Project Approach & Delivery*

At its July 15, 2019 meeting, the City Commission requested additional information regarding proposed “below-grade” improvements to the underground parking facility. Staff was asked to prepare a comprehensive overview of future above- and below-grade project expenditures; identify revenue sources for both work packages; and produce a comprehensive, unified project budget that illustrates how the proposed improvements are to be funded and costs assigned.

Table 1 (below) contains the original estimated expenditures for the three project components: GTC Jefferson Lines; GTC Above-Grade (Transit); and GTC Below-Grade (Parking Authority).

**Table 1. Original Estimated Expenditures by Project Area**

Project Name	Fargo Project No.	% Design Completed	A/E Fees	General Construction	Mechanical Construction	Electrical Construction	10% Contingency	Total Project Cost
GTC – Jefferson	F19011	95%	\$40,198.21	\$79,317.28	\$16,500.00	\$16,500	\$11,231.73	\$163,747.22
GTC – Above-Grade	F18006 F17008	60%	\$352,211.96	\$1,968,127.28	\$350,000.00	\$232,500.00	\$255,062.73	\$3,157,901.97
GTC – Below-Grade Structural	BP0041	30%	\$161,446.61	\$582,500.00	\$71,500.00	-	\$65,400.00	\$880,846.61
<b>Total:</b>								<b>\$4,202,495.80</b>

*Current Funding Status*

At this time, there are insufficient funds to complete the GTC Above-Grade (Transit) portion of the project as originally proposed. This funding shortfall necessitated a thorough review of the work proposed in this area, with alternatives developed to meet available revenues. Table 2 (below) outlines actual available revenue for designing and constructing the GTC Above-Grade project in 2020. The GTC Below-Grade Structural project is unchanged, as sufficient revenue is available to complete this work. The GTC Jefferson Lines project has been reduced \$28,359.61 from the original estimate.

**Table 2. “Modified Project” Consistent with Available Revenue**

Project Name	Fargo Project No.	Total Project Cost
GTC – Jefferson	F19011	\$135,387.61
GTC – Above-Grade	F18006 F17008	\$2,217,911.72
GTC – Below-Grade Structural	BP0041	\$880,846.61
<b>Total:</b>		<b>\$3,234,145.94</b>

The “Modified Project” removes \$939,990.24 from the GTC – Above Grade portion of the overall project. This \$3.23M total cost is consistent with available NDDOT/FTA grant revenues and the City’s local match requirements. Local matching funds were previously budgeted and approved by the City Commission.

*"Modified Project" Elements*

The proposed "Modified Project" includes the following elements:

- Preserves security and safety upgrades for Transit staff, MATBUS riders, and the public.
- Removes costly exterior modifications that will be considered in the future. This option reduces a bulk set of projects that can be completed later and are not of a critical nature.
  - The exterior changes can be considered during regularly scheduled maintenance in 2022. Additional funding may be available at that time. It is logical to not complete this portion of work if the same area will be revisited in 2022 in a separate project.
  - Existing canopy to remain in place and not removed in the 2020 project.
- Removes deck revisions from the proposed project that can be considered in 2022 with other exterior work packages.
- Increases space utilization and efficiencies. Transit is currently in need of additional administrative space, which is accomplished in the "Modified Project."
  - Staff will be able to operate effectively and efficiently once the interior construction project is completed.
  - Aligns resources to the correct locations, with adequate space to serve the public.

The "Modified Project" achieves critical safety, security, and efficiency objectives at the GTC while conforming to budgetary constraints (available capital funds). Table 3-A (below) is a summary of the revenue sources for the GTC Above-Grade improvements, and Table 3-B, immediately following, is a summary of the proposed cost for the original project and the "Modified Project."

**Table 3-A. GTC Above-Grade Improvements by Revenue Source**

Revenue Source (Funds)	Federal Share	Local Share	Total
NDDOT Contract No. 38181779 (City Code: F18006)	\$1,591,000	\$397,750	\$1,988,750
FTA Grant ND-2019-001-00 (City Code: F17008)	\$288,000	\$72,000	\$360,000
<b>Total Revenue:</b>	<b>\$1,879,000</b>	<b>\$469,750</b>	<b>\$2,348,750</b>

As shown above, sufficient capital funds are available to construct the "Modified Project" with its projected cost of \$2,217,911.72.

**Table 3-B. GTC Above-Grade Improvements by Cost Center**

Original Proposed Project Costs	Amount
<i>General Construction</i>	
General Requirements	\$237,000.00
Demolition	\$184,600.00
Concrete	\$16,073.00
Masonry	\$57,895.00
Metals	\$42,640.00
Wood and Plastics	\$80,606.00
Thermal and Moisture Protection	\$290,376.00
Openings/Doors and Windows	\$130,143.00
Finishes	\$122,841.00
Specialties	\$14,250.00

Furnishings	\$100,600.00
Special Construction	\$151,000.00
Deck Repairs and Renovations	\$329,232.50
Profit & Overhead	\$210,870.78
<i>Mechanical Construction</i>	\$350,000.00
<i>Electrical Construction</i>	\$232,500.00
<b>Subtotal</b>	<b>\$2,550,627.28</b>
10% Contingency	\$255,062.73
Architecture and Engineering Fees	\$352,211.96
<b>Original Estimate of Cost:</b>	<b>\$3,157,901.97</b>

<b>"Modified Project" – Post-Budget Adjustments</b>	<b>Amount</b>
Remove Exterior Façade Improvements & Canopy Modifications	(\$537,632.00)
Deck renovations	(\$125,550.00)
Adjusted General Conditions	(\$66,318.20)
Profit	(\$79,581.84)
10% Contingency	(\$80,908.20)
Architecture and Engineering Fees	(\$50,000)
Sum of Budget Adjustments	(\$939,990.24)
<b>"Modified Project" Estimate of Cost:</b>	<b>\$2,217,911.72</b>

Similar to the aforementioned GTC Above-Grade projects, the City Commission requested further information about the GTC Below-Grade projects at its July 15, 2019 meeting. These improvements include structural, safety, and asset preservation projects to repair the underground facility and ensure its safe operation into the future. Revenues in the C-1 TIF District and Parking Authority Repair and Replacement Funds (Table 4-A) are available to rehabilitate and renovate the underground portions of the GTC. These projects are detailed in Table 4-B and in the attached memorandum from Jim Gilmour.

**Table 4-A. GTC Below-Grade Improvements by Revenue Source**

<b>Revenue Source (Funds)</b>	<b>Amount</b>
C-1 TIF District	\$657,527.00
Parking Repair and Replacement Fund	\$223,320.00
<b>Total Revenue:</b>	<b>\$880,847.00</b>

**Table 4-B. GTC Below-Grade Improvements by Cost Center**

<b>Costs</b>	<b>Amount</b>
<i>General Construction</i>	
Repair Beam/Wall Connection	\$50,000.00
Repair Spalled Concrete Walls and Beams	\$42,500.00
Install Drain Tile – Garage Perimeter	\$490,000.00

<i>Mechanical Construction</i>	
Replace Ductwork and Dampers	\$37,000.00
Replace CO Detectors	\$34,500.00
<b>Subtotal</b>	<b>\$654,000.00</b>
10% Contingency	\$65,400.00
Architecture and Engineering Fees	\$161,446.61
<b>Total Estimate of Cost:</b>	<b>\$880,847.00</b>

### Summary

Together, the GTC Jefferson Lines, Above-Grade Transit, and Below-Grade Structural projects detailed in the proposed "Modified Project" will result in a local cost-share of \$1,350,597 (41% of total project cost) while leveraging \$163,747 from Jefferson Lines and \$1,879,000 from NDDOT/FTA sources (59% of total project cost). The City's \$1,350,597 contribution for all projects is summarized in Table 5 (below).

**Table 5. City of Fargo Cost Participation**

Project Name	City Share
GTC Jefferson Lines	-\$0-
GTC Above-Grade Transit	\$469,750
GTC Below-Grade Structural	\$880,847
<b>Total Estimate of City Share in the Comprehensive 2020 GTC Improvement Projects:</b>	<b>\$1,350,597</b>

### Recommended Actions:

The City Commission is requested to approve the unanimous recommendation of the Finance Committee on October 28, 2019 to:

1. Receive and file the Opinion of Probable Construction Cost Estimate; Budget Adjustment Worksheet; and anticipated revenues and expenditures for the 2020 Comprehensive GTC Improvement Projects.
2. Authorize staff to proceed with a combined design and bid process for the Jefferson Lines project; GTC Above-Grade Transit project (as revised); and GTC Below-Grade Structural project.

In addition to the October 28, 2019 Finance Committee recommendations, the City Commission is further requested to:

3. Approve KLJ Project Design & Bid Schedule (Attachment #3).
4. Approve KLJ Amendments to Engineer-Owner Agreements (Attachment #4).

Attachments: Attachment #1 – KLJ Opinion of Probable Construction Cost Estimate & Budget Adjustment Worksheet for Above-Grade Transit "Modified Project"  
Attachment #2 – GTC Renovation Work & C-1 TIF District Memorandum – Jim Gilmour  
Attachment #3 – KLJ Project Design & Bid Schedule  
Attachment #4 – KLJ Amendments to Engineer-Owner Agreements (3 projects)  
Attachment #5 – July 15, 2019 City Commission Meeting Materials

**Attachment #1**

**KLJ Opinion of Probable Construction Cost Estimate & Budget Adjustment  
Worksheet for Above-Grade Transit “Modified Project”**



**Opinion of Probable  
Construction Cost Estimate**

PROJECT 1804-00689, 1904-00485, 1904-00486  
 SHEET NO. 1 OF 1  
 CALCULATED BY clim DATE 10/30/2019  
 CHECKED BY cgm DATE 10/30/2019

Project Name	City of Fargo Project No.	% of Design Completed	A/E Fees*	General Construction**	Mechanical Construction**	Electrical Construction**	10% Contingency	Total Project Cost
GTC - Jefferson	F19011	95	\$ 37,388.20	\$ 59,090.37	\$ 13,500.00	\$ 16,500.00	\$ 8,909.04	\$ 135,387.61
GTC - Remodel	F18006	60	\$ 302,211.24	\$ 1,159,045.89	\$ 350,000.00	\$ 232,500.00	\$ 174,154.59	\$ 2,217,911.72
GTC - Underground	BP0041	30	\$ 161,446.61	\$ 582,500.00	\$ 71,500.00	\$ -	\$ 65,400.00	\$ 880,846.61
							<b>Grand Total</b>	<b>\$ 3,234,145.94</b>

\*Includes Contract Amendments Dated 10/29/2019

\*\*Includes budget modifications approved at Finance Committee meeting of 10/28/19





GTC Remodel (F18006)

PROJECT 1804-00689  
 SHEET NO. 1 OF 1  
 CALCULATED BY clm DATE 10/20/2019  
 CHECKED BY \_\_\_\_\_ DATE \_\_\_\_\_

## Budget Adjustment Worksheet - Interior + Minor Deck Repairs

Description		Opinion of Cost
Possible Budget Reducing Options		
1	Omit exterior façade improvements & canopy modifications	\$ (537,632.00)
2	Deck Renovations	\$ (125,550.00)
	Subtotal	\$ (663,182.00)
	Adjusted General Conditions	\$ (66,318.20)
	12% Profit	\$ (79,581.84)
	10% Contingency	\$ (80,908.20)
	Estimated A/E Fee Reduction for Deck Repairs & Renovations	\$ (50,000.00)
	Sum of Budget Reductions	\$ (939,990.24)
	60% Opinion of Probable Cost	\$ 3,157,901.97
	Adjusted Opinion of Probable Cost	\$ 2,217,911.72

**Attachment #2**

GTC Renovation Work & C-1 TIF District Memorandum – Jim Gilmour

**MEMORANDUM**

**TO: MICHAEL REDLINGER, ASSISTANT CITY ADMINISTRATOR**

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

**DATE: OCTOBER 8, 2019**

**SUBJECT: GTC RENOVATION WORK AND THE C-1 TIF DISTRICT**

I have been working with Michael Redlinger and Kent Costin on financing options for restoration work of the Ground Transportation Center. This memo lists items highly recommended by the Engineer, an option of funds that could be used for those costs, notes the delay of security camera systems, and the impact on parking fund balances.

**Recommended Restoration Work.**

KLJ and Kimley Horn are recommending work listed below. The estimated cost is \$880,847.

<b><u>Costs</u></b>		
Repair Beam and Wall Connection	\$	50,000.00
Repair Spalled Concrete Walls and Beams	\$	42,500.00
Install Drain Tile around Garage Perimeter	\$	490,000.00
Replace ductwork and dampers	\$	37,000.00
Replace CO detectors	\$	34,500.00
Architecture and Engineering	\$	161,446.61
Contingency - 10% of Construction	\$	65,400.00
<b>Total Cost Estimate</b>	<b>\$</b>	<b>880,846.61</b>

**Sources of Funds**

Funding options for the work include the C-1 TIF District. There will be about \$657,000 in the C-1 TIF Fund that could be used for parking-related work. The Parking Repair and Replacement Fund has \$381,000, although the General Parking Fund has a negative balance of \$331,000. An option to pay for the parking-related work at the GTC is listed below.

<u>Funds</u>		
C-1 TIF District	\$	657,527.00
Parking Repair and Replacement Fund	\$	223,320.00
	\$	880,847.00

A summary of sources and uses is attached.

Security Cameras

The previous amendment to the C-1 TIF district was to use \$140,000 for a new security camera system at the Island Park Ramp. In addition, there was a plan to use \$100,000 of the Parking Repair and Replacement Fund to install a security camera system in the Civic Center Ramp. Relocation of the money in each of these funds will cancel/delay these security camera projects. However, Information Services will explore low cost options to make improvements to the camera system at the Island Park Ramp.

Parking Fund Balances

As of today, the approximate parking fund balances are listed below. Overall, there is a positive balance. However, the \$50,000 committed to the "Smart Energy" Roberts Commons Garage changes and year-end debt payments could create a negative balance even before using parking money for GTC restoration work.

Parking Fund - 240	\$	(175,000)
Parking Repair and Replacement Fund - 241	\$	374,454
TOTAL	\$	199,454

C-1 TIF District

TIF funds for the GTC Parking restoration work is eligible. These are the amendments needed to amend the budget to use more of the TIF funds on the GTC.

- Decrease the budget for Island Park Ramp repairs to \$212,649.
- Increase the budget for Island Park land purchase to \$931,000. (The City owes Bank of the West for back taxes in an amount yet to be determined, so this may be a greater amount than needed.)
- Increase the budget for Ground Transportation Center parking repairs to \$779,176. (Plus any money not used for the land purchase.)

A summary sheet of previous amendments and a proposed 2020 amendment is attached.

<u>Funds</u>	
C-1 TIF District	657,527.00
Parking Repair and Replacement Fund	223,320.00
	<u>880,847.00</u>

<u>Costs</u>	
Repair Beam and Wall Connection	\$ 50,000.00
Repair Spalled Concrete Walls and Beams	\$ 42,500.00
Install Drain Tile around Garage Perimeter	\$ 490,000.00
Replace ductwork and dampers	\$ 37,000.00
Replace CO detectors	\$ 34,500.00
Architecture and Engineering	\$ 161,446.61
Contingency - 10% of Construction	\$ 65,400.00
Total Cost Estimate	<u>\$ 880,846.61</u>

## **Attachment #3**

### **KLJ Project Design & Bid Schedule**

#### **November 2019**

- 90% Submittal – November 25, 2019, due to KLJ November 22

#### **December 2019**

- Final Submittal – December 20, 2019, due to KLJ December 19
- Advertise for Bids – December 23, 2019

#### **January 2020**

- Open Bids – January 15, 2020
- Award – January 27, 2020

**Attachment #4**

**KLJ Amendments to Engineer-Owner Agreements (3 projects)**

**AMENDMENT TO ENGINEER-OWNER AGREEMENT**  
**Amendment No. 1**

Background Data

- a. Effective Date of Engineer-Owner Agreement: April 2019
- b. Engineer: Kadrmass, Lee & Jackson
- c. Owner: City of Fargo
- d. Project: GTC Jefferson Ticketing/Storage Counter
- e. This Part of the Project: Re-bid Project with GTC Remodel

Nature of Amendment (check all that apply)

- Additional services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications to payment to Engineer
- Modifications to time(s) for rendering Services

Description of Modifications

The project was originally bid in July 2019. Due to lack of bidder participation and high bid prices, the project is going to be rebid in conjunction with the GTC Remodel (KLJ Project 1804-00689) in early 2020 with an anticipated substantial completion date for the Jefferson portion of the project in April of 2020. In addition, the following elements will be removed from the project to help reduce the overall construction costs: omit window from west wall, omit glass above ticketing window, remove markerboard, remove center peninsula/counter, remove air curtain above exterior doors, leave wood soffit as is, and remove window tint from storage room windows. The services included with this amendment include repackaging design, plans and specifications and integrating them with the GTC Remodel. Due to the two projects having different funding sources (i.e. two different grants), the bid package will be structured to separate the project costs between Jefferson and the City of Fargo.



Agreement Summary

a. Original agreement amount:	\$35,987.60
b. Net change for prior amendments:	\$0
c. This amendment amount:	\$1,400.60
d. Adjusted Agreement amount:	\$37,388.20

Engineer and Owner hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is October 29, 2019.

ENGINEER: Kadrmas Lee & Jackson, Inc.

OWNER: City of Fargo



By: Mark Anderson

By: Tim Mahoney, MD

Title: Vice President

Title: Mayor

Date Signed: 10/29/2019

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



## ENGINEERING FEES

GTC - JEFFERSON TICKETING/STORAGE COUNTER - Contract Amendment No. 1 October 29, 2019							
1.	Direct Labor	Hours	X	Rate	=	Project Cost	Total
	Project Assistant	0	X	24	=	\$ -	\$ -
	Structural Engineer IV	0	X	58	=	\$ -	\$ -
	Structural Engineer III	0	X	43	=	\$ -	\$ -
	Planner IV	0	X	60	=	\$ -	\$ -
	CADD Tech III	0	X	32	=	\$ -	\$ -
			X		=	\$ -	\$ -
	<b>Subtotal</b>				=	\$ -	\$ -
2.	<b>Overhead/Indirect Cost (expressed as indirect rate x direct labor)</b>						185.39% \$ -
3.	<b>Subcontractor Costs</b>					\$	1,400.60 \$ 1,400.60
4.	<b>Materials and Supplies Costs</b>					\$	- \$ -
5.	<b>Travel Costs</b>					\$	- \$ -
6.	<b>Fixed Fee</b>						12% \$ -
7.	<b>Miscellaneous Costs</b>					\$	- \$ -
	<b>Total Cost</b>				=		\$ <b>1,400.60</b>

**AMENDMENT TO ENGINEER-OWNER AGREEMENT  
Amendment No. 2**

**Background Data**

- a. Effective Date of Engineer-Owner Agreement: April 2019
- b. Engineer: Kadrmass, Lee & Jackson
- c. Owner: City of Fargo
- d. Project: GTC Remodel
- e. This Part of the Project: Reduced Project Budget

**Nature of Amendment (check all that apply)**

- Additional services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications to payment to Engineer
- Modifications to time(s) for rendering Services

**Description of Modifications**

KLJ's scope of services have been modified as identified in the Exhibit A.2 attached.

Agreement Summary

a. Original agreement amount:	\$332,740.08
b. Net change for prior amendments:	\$19,471.16
c. This amendment amount:	\$(50,000.00)
d. Adjusted Agreement amount:	\$302,211.24

Engineer and Owner hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is October 29, 2019.

ENGINEER: Kadrmas Lee & Jackson, Inc.

OWNER: City of Fargo



By: Mark Anderson

By: Tim Mahoney, MD

Title: Vice President

Title: Mayor

Date Signed: 10/29/19

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



Contract Amendment No. 2  
October 29, 2019  
Architectural/Engineering Services  
GTC Remodel  
GTC Design Bid Build  
Fargo, ND

**Engineer's Services**

The following modifications have been made to the scope of work included in the original contract between city of Fargo and KLJ dated April 2019. Please note the project design had progressed to 60% of completion when the project scope was revised.

- I. Reduced Scope
  - A. Under the base bid, the GTC deck layout will remain as is such that no modifications will be made.
  - B. The canopy, roof, and exterior façade will remain as is such that no modifications will be made.
- II. Revised Scope
  - A. To maximize the funds available to MATBUS through the FTA grant, MATBUS has requested the following add alternates be included in the final bid documents:
    - 1. Replace the fence and gate between the GTC and Municipal Court buildings.
    - 2. Remove bus stanchions and re-stripe the bus parking layout to prevent buses from backing up. Under this layout, it is assumed buses will need to be released on at a time.
    - 3. Incorporate additional deck repairs along the east side of the GTC.
  - B. Construction documents associated with the additional scope of work as previously described in the original contract.
  - C. Bidding assistance associated with the additional scope of work as previously described in the original contract.
  - D. Construction administration associated with the additional scope of work as previously described in the original contract.
  - E. Team responsibilities:
    - 1. KLJ will be responsible for the concrete overlay repairs and bus stanchion removal.
    - 2. Kimley-Horn will be responsible for the bid alternates for the fence replacement and modified bus parking.
- III. Anticipated project schedule will be modified as noted below
 

Contract Execution/Notice to Proceed .....	April 2019
Preliminary Design .....	April - July 2019
Construction Documents .....	August - December 2019
Bidding Assistance.....	December 2019 - January 2020
Construction Administration.....	February 2020 - October 2020



## ENGINEERING FEES

GTC REMODEL - Contract Amendment #2 (October 29, 2019)								
1.	Direct Labor	Hours	X	Rate	=	Project Cost	Total	
	Project Assistant	0	X	24	=	\$ -	\$ -	
	Structural Engineer IV	0	X	58	=	\$ -	\$ -	
	Structural Engineer III	0	X	43	=	\$ -	\$ -	
	Structural Engineer II	0	X	33	=	\$ -	\$ -	
	Environmental Planner II	0	X	30	=	\$ -	\$ -	
	Planner IV	0	X	60	=	\$ -	\$ -	
	Engineer III	0	X	45	=	\$ -	\$ -	
	CADD Tech II	0	X	27	=	\$ -	\$ -	
	Surveyor IV-PM	0	X	55	=	\$ -	\$ -	
	Surveyor IV	0	X	44	=	\$ -	\$ -	
	Surveyor II	0	X	30	=	\$ -	\$ -	
	Surveyor I	0	X	26	=	\$ -	\$ -	
			X		=	\$ -	\$ -	
	<b>Subtotal</b>				=	\$ -	\$ -	
2.	<b>Overhead/Indirect Cost (expressed as Indirect rate x direct labor)</b>						185.39%	\$ -
3.	<b>Subcontractor Costs</b>					\$	(50,000.00)	\$ (50,000.00)
4.	<b>Materials and Supplies Costs</b>					\$	-	\$ -
5.	<b>Travel Costs</b>					\$	-	\$ -
6.	<b>Fixed Fee</b>						12%	\$ -
7.	<b>Miscellaneous Costs</b>					\$	-	\$ -
	<b>Total Cost</b>					=		\$ (50,000.00)

**AMENDMENT TO ENGINEER-OWNER AGREEMENT  
Amendment No. 2**

Background Data

- a. Effective Date of Engineer-Owner Agreement: April 2019
- b. Engineer: Kadrmass, Lee & Jackson
- c. Owner: City of Fargo
- d. Project: GTC Underground Parking Facility
- e. This Part of the Project: Reduced Scope

Nature of Amendment (check all that apply)

- Additional services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications to payment to Engineer
- Modifications to time(s) for rendering Services

Description of Modifications

KLJ's scope of services have been modified as identified in the Exhibit A.2 attached.

Agreement Summary

a. Original agreement amount:	\$155,931.40
b. Net change for prior amendments:	\$22,692.98
c. This amendment amount:	\$(17,177.77)
d. Adjusted Agreement amount:	\$161,446.61

Engineer and Owner hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is October 29, 2019.

ENGINEER: Kadrmas Lee & Jackson, Inc.

OWNER: City of Fargo



By: Mark Anderson

By: Tim Mahoney, MD

Title: Vice President

Title: Mayor

Date Signed: 10/29/19

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





**Exhibit A.2  
Contract Amendment No. 2  
October 29, 2019  
Architectural/Engineering Services  
GTC Underground Parking Facility  
GTC Design Bid Build  
Fargo, ND**

**Engineer's Services**

The following modifications have been made to the scope of work included in the original contract between city of Fargo and KLJ dated April 2019. Please note the project design had progressed to 30% of completion when the project scope was revised.

- I. Reduced Scope
  - A. The following items have been removed from the project per discussions with city staff on September 5, 2019:
    - 1. Replace or repair elevator.
    - 2. Address corrosion in fire sprinkler system.
    - 3. Replace emergency lighting.
    - 4. Patch cracks in columns and floor slab.
  
- II. Anticipated project schedule will be modified as noted below
  - Contract Execution/Notice to Proceed ..... April 2019
  - Preliminary Design ..... April - August 2019
  - Construction Documents ..... September - December 2019
  - Bidding Assistance..... December 2019 - January 2020
  - Construction Administration..... February - October 2020



## ENGINEERING FEES

GTC UNDERGROUND PARKING FACILITY - Contract Amendment #2 (October 29, 2019)								
1.	Direct Labor	Hours	X	Rate	=	Project Cost	Total	
	Project Assistant	0	X	24	=	\$ -	\$ -	
	Structural Engineer IV	0	X	58	=	\$ -	\$ -	
	Structural Engineer II	-8	X	33	=	\$ (264.00)	\$ (264.00)	
	Planner IV	0	X	60	=	\$ -	\$ -	
	Engineer III	-4	X	45	=	\$ (180.00)	\$ (180.00)	
	Engineer I	0	X	31	=	\$ -	\$ -	
	CADD Tech II	-12	X	27	=	\$ (324.00)	\$ (324.00)	
			X		=	\$ -	\$ -	
	<b>Subtotal</b>				=	\$ (768.00)	\$ (768.00)	
2.	<b>Overhead/Indirect Cost (expressed as indirect rate x direct labor)</b>						185.39%	\$ (1,423.80)
3.	<b>Subcontractor Costs</b>						\$ (14,722.96)	\$ (14,722.96)
4.	<b>Materials and Supplies Costs</b>						\$ -	\$ -
5.	<b>Travel Costs</b>						\$ -	\$ -
6.	<b>Fixed Fee</b>						12%	\$ (263.02)
7.	<b>Miscellaneous Costs</b>						\$ -	\$ -
	<b>Total Cost</b>					=		\$ (17,177.77)

**Attachment #5**

July 15, 2019 City Commission Meeting Materials

July 15, 2019

36

Board of City Commissioners  
City Hall - 225 4<sup>th</sup> St N  
Fargo, ND 58102

Commissioners:

The Transit Facility Study, received by the Commission January 2, 2019, included a series of generalized recommendations for improvements to the Ground Transportation Center (GTC).

On April 22, 2019 the Fargo City Commission approved an agreement between the City of Fargo and KLJ, Inc. for GTC improvements including renovation of the GTC above grade, renovation of the Jefferson space, and renovation of the below grade parking facility. As the engineering for these improvements has unfolded, additional facility related operations and maintenance needs have been identified which were not subject to previous planning level analysis. The intent of this correspondence is to ensure Fargo City Commission consent to a series of key decisions to guide the final design and construction of needed improvements. This includes a review of refinements made to previous planning assumptions as well as new investment needs identified through recent facility and site reconnaissance. These improvements are focused on extending the current useful life of the GTC and the underground parking structure. City staff, working in conjunction with KLJ, Inc., throughout this process include Michael Redlinger, Julie Bommelman, Matthew Peterson, Jordan Smith plus staff from Planning and Engineering.

To ensure for expeditious and timely completion of final design and bidding documents over the coming weeks and months, staff kindly requests approval from the Fargo City Commission for the items listed below, details of which are outlined in the attachments.

**Requested motion is to approve the following and sign the contract amendments:**

- Approve GTC Deck Concept C to meet existing and short-term needs for MATBUS; and leave open the option to reevaluate Concept B at a future date as conditions change both with MATBUS and parking dynamics downtown.
- Approve the additional \$725,000 in needed repair costs (as shown in Table 1) to support the overall GTC remodel, including for both costs related to transit and planning elements of the facility. These costs are estimated to be offset by \$400,000 due to proceeding with GTC Deck Concept C. The original cost estimates considered by the commission in January assumed a layout similar to Concept B. This offset will apply only the transit portion of the project cost shown in Table 2.
- An acknowledgement of the continued commitment to maintain the GTC structure in a state of good repair through the deferred maintenance schedule included in Table 3.

Thank you.



Julie Bommelman  
City of Fargo Transit Director  
701.476.6737

/enc

For Schedule Information: 701-232-7500



728 East Beaton Drive, Suite 101  
West Fargo, ND 58078-2650  
701 232 5353  
[KLJENG.COM](http://KLJENG.COM)

July 11, 2019

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

Re: Decisions Document to Support Advancement of GTC Design & Construction

Dear Commissioners:

### **Background**

The city of Fargo in cooperation with the Fargo-Moorhead Metropolitan Council of Governments (Metro COG) developed the MATBUS Transit Facility Study to evaluate both short and long-range needs for several existing transit facilities. The Final Report received by the city commission at its January 2, 2019, meeting included a series of recommendations for improvements at the Ground Transportation Center (GTC). At that time the Fargo city commission approved a funding strategy for a generalized set of improvements outlined for the GTC.

Several investments at the GTC were still in the planning phase when presented to the Fargo city commission in January. As the engineering for these improvements has unfolded additional facility related operations and maintenance needs have been identified which were not subject to previous planning level analysis.

The intent of this memorandum is to ensure city commission consent to a series of key decisions to guide the final design and construction of needed Improvements. This includes a review of refinements made to previous planning assumptions as well as new investment needs identified through recent facility and site reconnaissance. These improvements are focused on extending the current useful life of the GTC and the underground parking structure for at least an additional 20-years.

### **System Needs**

System needs relating to transit operations were evaluated during the referenced planning study. The planning study developed several modifications to the GTC which are now ready for design. Suggested changes at the GTC are responsive to the following key considerations.



- *Increase Vehicle & Passenger Safety* – Modifications to the GTC deck are needed to improve bus circulation and increase both passenger safety and efficient movement of vehicles through the site. The proposed set of preferred changes to the GTC deck allow for buses to pull straight through the facility without backing up.

The GTC deck modifications are developed in tandem with existing and projected changes along NP Avenue. In coordination with the Engineering Department, concurrence has been developed for future changes to the NP Avenue between 5<sup>th</sup> Street and 4<sup>th</sup> Street to improve bus movements and pedestrian conditions. These changes are done in coordination of the future street reconstruction of NP Avenue.

- *Improve Facility Function & Space Utilization* – Several changes and modifications were evaluated as part of the MATBUS Transit Facility Study to the internal components of the GTC. These recommended changes are achieved through a comprehensive remodel and update of several internal components at the GTC. Significant changes are proposed to improve dispatching functions and improved the overall internal layout of the facility.

The remodel at the GTC also allows for the renovation of a former large conference/training room space into a new home for Jefferson Lines. Jefferson Lines has again located its operations out of the GTC and are currently operating in a temporary location. Proposed changes will put them in a permanent location which matches with the overall renovation of the GTC.

- *Accommodate Growth & Expansion* – Proposed changes to the GTC deck allow for the continued growth of MATBUS. The GTC Deck modifications (discussed below) preferred by staff and recommended by the design team would provide for a total capacity of 15 buses on the GTC Deck and by utilizing space on NP Avenue directly in front of the GTC. This capacity is estimated to be adequate to address at least 10 years of projected growth. Options developed allow for the potential expansion of the recommended option to the south if conditions warrant.

The recommended changes to the internal components of the GTC allow for the balance of existing and projected administrative and operational space needs for the next 20-years. Changes at the GTC will allow for the realignment of functional components of MATBUS between the GTC and MTG. Better utilization of the GTC footprint through the proposed remodel extends the available capacity of existing administrative spaces at the Metro Transit Garage (MTG).



### **GTC Deck Options**

The MATBUS Transit Facility Study evaluated a series of potential modifications to the GTC deck to account for existing and projected conditions. The planning study allowed for 4 options to move into the current design phase of the project. Two of the four options considered during the design phase of the project have been dismissed. In coordination with several city departments, two options remain as discussed below and provided in Appendix B.

- **Concept B** – Represents a layout to meet the long range 20-year projection developed as part of the MATBUS Facility Study. Concept B allows for a total capacity of 18 vehicles to operate out of the GTC. City staff has indicated current parking dynamics prevent this option from being implemented at this time. Modifications to the 4<sup>th</sup> Street parking lot are not ideal at this time given impacts to both parking system revenue and supply.
- **Concept C** – Given the parking limitations noted above, Concept C is the preferred alternative for changes to the GTC deck. It allows for a total of 15 buses to operate out of the GTC. This option meets at least the next 10 years' worth of projected MATBUS fixed route operations. In the long term, Concept C could be expanded to use some of the existing 4<sup>th</sup> Street parking lot on the south end of the GTC, as shown in Concept B. Expansion to the south would be evaluated as conditions change both with parking needs and MATBUS operations.

### **Structural Assessment – GTC Underground Parking Garage and Deck**

Throughout the life of the facility, the deck and garage have been assessed periodically for repairs and maintenance. The most recent assessments occurred in 2002, 2003, 2004, 2009, 2016, and 2018 all of which resulted in recommendations to repair the facility. The repairs have included concrete overlay replacement, crack sealing, expansion joint replacement, slab sealing (water repellent), replacement of waterproofing, striping, fire suppression repairs, fire alarm repairs, security improvements and safety improvements.

Since MATBUS is in the process of renovating the GTC to accommodate their 20-year growth plan, a condition assessment for the garage and above ground bus parking deck was completed as part of our ongoing scope of work to repair and maintain the deck and underground parking garage at the GTC. The garage is an integral part of the GTC facility and the MATBUS operations as it is the foundation for the entire facility. The purpose of the assessment was to verify the condition of the facility and identify repair and maintenance issues to extend the useful life of the facility.



The assessment was completed by Kimley-Horn and Associates as a subconsultant to KLJ. Their scope of work included review of existing plans/reports available for the facility and site visits (April 1, 18 and 25, 2019) to observe the existing conditions inside the garage, on the bus parking deck, and areas exposed during exploratory construction. The exploratory construction was completed by Key Contracting which allowed Kimley-Horn to review the condition of the post tension (P/T) concrete slab and associated components that make up the bus parking deck that would otherwise remain enclosed/hidden to view.

This additional effort to observe the condition of the P/T slab, tendons and anchors makes the current study unique from previous studies, as the previous studies only observed the surface conditions of the deck and parking garage. Having insight into the condition of the P/T slab, tendons and anchors allows a true assessment and measure of the overall structural integrity of the facility. If corrosion was present in the P/T tendons and anchors, it would not necessarily be visible on the surface of the deck. The presence of corrosion inside the slab, if not corrected, may eventually lead to failure of the P/T anchors, tendons and slab. Investigation of the P/T system has been the missing link in the previous reports to allow a full assessment of the facility. With this having been completed by the current project, the city can be confident that the current recommendations will extend the life of the facility for the next 20-years.

A more detailed summary memorandum of the full report is attached as an appendix to this memorandum. A full copy of the assessment is available for the commission upon request. In conclusion, the overall condition of the parking garage was deemed to be in good condition by Kimley-Horn. However, multiple repairs are necessary to maintain the structural integrity of the facility into the future. It is recommended the following repairs be addressed with the planned improvements to the GTC facility in the upcoming year.

1. Remove and replace the concrete overlay (latex wearing course) with extensive cracks and areas that have debonded from the deck to provide protection of the deck reinforcing from corrosion.
  - a. In areas where the overlay is removed, additional observation should be done to identify potential cracks in the surface of the structural concrete.
2. Replacement and/or repair of the broken tendon and repair concrete beam to maintain structural integrity of the deck if more detailed structural analysis deems necessary.
3. Install new waterproofing and drainage along the perimeter of the garage to protect the horizontal joint between the deck and the foundation wall to maintain structural integrity of the garage.
  - a. When the drain tile and waterproofing are installed, it is recommended all the exposed post tension anchors be reviewed to identify potential areas of concern that may not have been exposed during the exploratory construction included with this assessment.





4. Replace the steel bearing plate at the horizontal joint between the deck and foundation wall to provide adequate support for the deck.
5. Repair the spalled concrete associated with the concrete beam at the perimeter of the deck to provide protection of the steel reinforcing in the beam.
6. Replace the expansion joint around the perimeter of the deck to minimize surface water infiltration along the perimeter of the garage.

Of these items, items 3-6 were included in the current design scope associated with the GTC renovation. However, items 1-2 were not, and are recommended for inclusion in the overall GTC project. These additional costs are shown below in Table 1.

#### **Recently Identified Maintenance and State of Good Repair Investments**

The goal of the GTC project is to improve the functionality and safety of the facility while maintaining its useful life throughout the next 20-years. As part of that process of investigative and design efforts on the project, there have been some maintenance and repair items brought forth by buildings and grounds staff which should be considered to support overall condition and state of good repair for the GTC. These additional maintenance items are as follows:

##### GTC Items:

1. Replace multi-zone HVAC system with packaged rooftop units and associated ductwork modifications
2. Replace pneumatic control system with digital control system
3. Replace boiler pumps

##### Parking Garage Items:

4. Replace elevator
5. Address corrosion in fire sprinkler system
  - a. KFI recommends adding a nitrogen generation system and further inspection of overall piping system
6. Replace rusted ductwork where required and replace motorized dampers that are inoperable
7. Replace CO detectors with new CO/NO2 detectors and commission system
8. Replace emergency lighting

A summary cost of the items above are listed below in Table 1. Costs are denoted as (P) for planning related costs and (T) for transit related costs.



**Table 1: Recently Identified Maintenance and Repair Items**

<b>Maintenance or Repair Item</b>	<b>Estimated Construction Cost</b>
Replace multi-zone HVAC system with packaged rooftop units and associated ductwork modifications (T)	\$130,000
Replace pneumatic control system with digital control system (T)	\$75,000
Replace boiler pumps (T)	\$5,000
Replace elevator* (P)	\$150,000
Address corrosion in fire sprinkler system (P)	\$32,000
Replace rusted ductwork where required and replace motorized dampers that are inoperable (P)	\$20,000
Replace CO detectors with new CO/NO2 detectors and commission system (P)	\$37,000
Replace emergency lighting (P)	\$5,000
Concrete Overlay Sealing & Replacement (T)	\$85,000
Broken P/T Tendon (T)	\$30,000
<b>Subtotal</b>	<b>\$569,000</b>
<b>20% Contingency</b>	<b>\$113,800</b>
Additional Engineering (T)	\$19,500
Additional Engineering (P)	\$22,700
<b>Total</b>	<b>\$725,000</b>

\*Alternate to repair the existing elevator = \$90,000

The costs listed in Table 1 are further separated by facility functional area in Table 2, showing the distribution between departmental cost centers within the city of Fargo.



**Table 2 - Costs by Functional Area**

<b>Cost by Functional Area</b>	<b>Estimated Construction Cost</b>
Transit Related Costs	\$325,000
Transit Contingency	\$65,000
Transit Engineering	\$19,500
<b>Total Transit</b>	<b>\$409,500</b>
Planning Related Costs	\$244,000
Planning Contingency	\$48,800
Planning Engineering	\$22,700
<b>Total Planning</b>	<b>\$315,500</b>
<b>Total</b>	<b>\$725,000</b>

**Useful Life Consideration – Projected Life Span**

The current GTC project is intended to extend the useful of the facility for an additional 20-years for the above ground MATBUS related elements of the facility. As part of the previously referenced GTC parking garage condition assessment, Kimley-Horn has also developed a list of deferred maintenance items which are recommended to maintain the integrity of the structure for the next 20-years. These items are shown in Table 3. Per discussions with transit, the current capital improvement plan allocates for regular improvements at 5-year intervals to cover the on-going maintenance. The transit components of these costs are traditionally funded through federal grants with local match.

**Table 3 – Deferred Maintenance Schedule**

<b>Deferred Maintenance Item</b>	<b>Frequency</b>	<b>Estimated Year for First Scheduled Maintenance**</b>
Water Repellent	10-15 years	2022
Traffic Membrane	5-7 years	2022
Concrete Spalls	10-12 years	2027
Chloride Ion Testing	3 years	2022
Caulk Joints - Rout & Seal Cracks & Control Joints	5-7 years	2027
Epoxy Inject Cracks	10-15 years	2027
Replace Expansion Joints	7-10 years	2027

\*\*Follows current scheduled maintenance for deck as included CIP for Transit



**Key Decisions Needed to Support the Proposed Project**

To ensure for expeditious and timely completion of final design and bidding documents over the coming weeks and months, staff would kindly request the following decisions from the city commission:

- Approve GTC Deck Concept C to meet existing and short-term needs for MATBUS; and leave open the option to reevaluate Concept B at a future date as conditions changes both with MATBUS and parking dynamics downtown.
- Approve the additional \$725,000 in needed repair costs (as shown in Table 1) to support the overall GTC remodel, including for both costs related to transit and planning elements of the facility. These costs are estimated to be offset by \$400,000 due to proceeding with GTC Deck Concept C. The original cost estimates considered by the commission in January assumed a layout similar to Concept B. This offset will apply only the transit portion of the project cost shown in Table 2.
- An acknowledgement of the continued commitment to maintain the GTC structure in a state of good repair through the deferred maintenance schedule included in Table 3.

If you have any questions, comments or concerns regarding the information presented in this letter, please contact me at 701-241-2317 or [cassie.mcnames@kljeng.com](mailto:cassie.mcnames@kljeng.com).

Sincerely,

**KLJ**

A handwritten signature in blue ink that reads "Cassie McNames".

Cassie McNames, PE  
Project Manager

Project #: 1804-00689

cc: Wade Kline, Julie Bommelman, Michael Redlinger, Jordan Smith, Matthew Peterson, Nicole Crutchfield, Mark Williams



**Appendix A: KLJ Summary of GTC Parking Garage Condition Assessment**



728 East Beaton Drive, Suite 101  
West Fargo, ND 58078-2650  
701 232 5353  
[KLJENG.COM](http://KLJENG.COM)

June 19, 2019

Ms. Julie Bommelman  
Transit Director  
City of Fargo  
650 23rd Street North  
Fargo, ND 58102

Re: GTC Parking Garage Condition Assessment Summary

Dear Ms. Bommelman:

As part of our ongoing scope of work to repair and maintain the underground parking garage at the Ground Transportation Center (GTC) at 502 NP Avenue North in Fargo, ND, our team has completed a condition assessment for the garage and aboveground bus parking deck. The parking garage is an integral part of the GTC facility and the MATBUS operations as it is the foundation for the entire facility. MATBUS is in the process of renovating the GTC to accommodate their 20-year growth plan. The purpose of the parking garage assessment was to verify the condition of the facility and identify repair and maintenance issues to extend the useful life of the facility.

The assessment was completed by Kimley-Horn and Associates as a subconsultant to KLJ. Their scope of work included review of existing plans available for the facility and site visits (April 1, 18 and 25, 2019) to observe the existing conditions inside the garage, on the bus parking deck, and areas exposed during exploratory construction. The exploratory construction was completed by Key Contracting which allowed Kimley-Horn to review the condition of the post tension concrete slab and associated components that make up the bus parking deck that would otherwise remain enclosed/hidden to view. The exploratory areas included removal of the concrete overlay (latex wearing course) on top of the deck to review the surface of the structural concrete and excavation alongside the perimeter of the deck to review the post tension anchorage and joint between the deck and garage walls. A full copy of their report is included in Appendix 1 and an overview summary is provided below. In general, Kimley-Horn's assessment determined the parking garage to be in good condition.

1. The bottom surface of the deck contains cracks, several of which were previously sealed with an epoxy injection. Some of these cracks have effloresced, which is the white residue that appears on the surface of concrete when water is exposed to salt or similar chemicals.
2. Water infiltration was actively observed along one of the concrete beams along the southwest quadrant of the garage. During the exploratory construction, an area of deck was exposed on the top side of the deck at this location to determine if the top side of the deck contained cracks. None were found, but portions of the concrete overlay (non-structural concrete wearing surface) had debonded from the deck near this location.
3. One post-tension tendon (steel cables embedded in the concrete deck for reinforcing) was observed to have broken loose causing spalling (breakout) of the concrete beam in the garage. This was located near the southwest quadrant of the garage. Observation of the tendon did not indicate that it was damaged or corroded. Further investigation of the anchorage points holding the tendons in



place along this beam was completed during the exploratory construction. One anchor point along the west end of the beam did show minimal rust, however, the anchors and tendons appeared to be in good to excellent condition. The assessment concluded this was an isolated incident.

- a. A limited structural analysis was performed in conjunction with the assessment to determine if overloading of the deck may have been a factor in the broken tendon. Assuming the original design of the deck was adequate, the analysis concluded the buses currently utilizing the deck are lighter than the vehicle loading used in the original design. Therefore, it does not appear the tendon was overstressed at the time of failure.
  - b. Since the concrete overlay was not removed along the entire length of the beam, the assessment could not determine if there may have been water infiltrating the beam causing the tendon to corrode.
4. Additional areas adjacent to the garage perimeter were also excavated to provide a thorough assessment of the condition of the post tension anchorage. Excluding some minor rust, all of the anchors exposed and observed were in good to excellent condition.
  5. There is a horizontal joint along the perimeter of the garage where the concrete deck sits on the concrete foundation wall. The deck itself has a concrete beam that extends down to sit on the foundation wall. Water seepage was observed at the joint in several areas, the beam has tipped in towards the garage along the bottom, and deterioration of the concrete was visible. The deterioration in some locations was so severe that portions of concrete had broken off the inside of the beam causing the rebar to be exposed. The rebar and steel bearing plates embedded in the top of the concrete wall at this joint were both corroded. The exterior surface of the horizontal joint between the concrete deck and concrete foundation wall was exposed in multiple locations during the exploratory construction. Some spalling of the concrete beam was evident on the exterior of the garage. However, the exterior surface of the perimeter deck beam was primarily plumb (i.e. tipping of the beam was not evident on the exterior of the garage).
  6. Hairline cracks were observed in the concrete columns supporting the deck, but no significant cracks or spalling was observed.
  7. The concrete slab on grade located on the floor of the garage was in good condition. Previous assessment reports suggested the garage had settled, however, Kimley-Horn suggests only the isolation joints/slabs adjacent to the columns have settled.
  8. The concrete curb along the entrance/exit ramp has settled. Deterioration of the concrete curb has caused the rebar to be exposed.
  9. The expansion joints around the perimeter of the bus parking deck are in very poor condition. In addition, the width of the expansion joint along the south side of the deck is much wider than the rest. It appears the concrete slab and grade along the south side of the garage has settled causing the joint to widen.
  10. The concrete overlay (latex wearing course) placed on top of the deck was sounded (process of tapping a hammer on the surface to identify hollow spots below) at select areas and determined some debonding of the overlay had occurred.

Kimley-Horn's assessment also includes general recommendations for repairs and periodic maintenance to extend the useful life of the parking garage. A summary of their recommendations is provided below.

1. Continue to monitor the cracks on the underside of the deck for water infiltration. Cracks exhibiting leakage should be sealed with epoxy injection to minimize potential for corrosion in the slab reinforcing (rebar and steel tendons).



2. Remove and replace the concrete overlay (latex wearing course) with extensive cracks and areas that have debonded from the deck to provide protection of the deck reinforcing from corrosion.
  - a. In areas where the overlay is removed, additional observation should be done to identify potential cracks in the surface of the structural concrete.
3. Replacement and/or repair of the broken tendon and repair concrete beam to maintain structural integrity of the deck if more detailed structural analysis deems necessary.
4. Install new waterproofing and drainage along the perimeter of the garage to protect the horizontal joint between the deck and the foundation wall to maintain structural integrity of the garage.
  - a. When the drain tile and waterproofing are installed, it is recommended all the exposed post tension anchors be reviewed to identify potential areas of concern that may not have been exposed during the exploratory construction included with this assessment.
5. Replace the steel bearing plate at the horizontal joint between the deck and foundation wall to provide adequate support for the deck.
6. Repair the spalled concrete associated with the concrete beam at the perimeter of the deck to provide protection of the steel reinforcing in the beam.
7. Replace concrete isolation pads adjacent to columns that have settled to prevent tripping hazards and water ponding.
8. Replace the concrete curb along the entrance/exit ramp.
9. Replace the expansion joint around the perimeter of the deck to minimize surface water infiltration along the perimeter of the garage.
10. Regular maintenance, such as inspections and cleaning, should be completed on the structure. A full list of items can be found in Appendix 1.
11. Longer-term maintenance items, such as expansion joint replacement, concrete overlay (wearing course) replacement and crack repair, should be completed every 5-10 years to extend the useful life of the structure as indicated in Kimley-Horn's report included in Appendix 1.

In conclusion, the overall condition of the parking garage was deemed to be in good condition by Kimley-Horn. However, multiple repairs are necessary to maintain the structural integrity of the structure into the future. It is recommended these repairs, specifically items 2-6 and 9, be addressed with the planned improvements to the GTC facility in the upcoming year. In addition, the city should implement an annual and deferred maintenance plan to ensure the longevity of the structure for the next 20 years.

Sincerely,

KLJ

A handwritten signature in blue ink that reads "Cassie McNames".

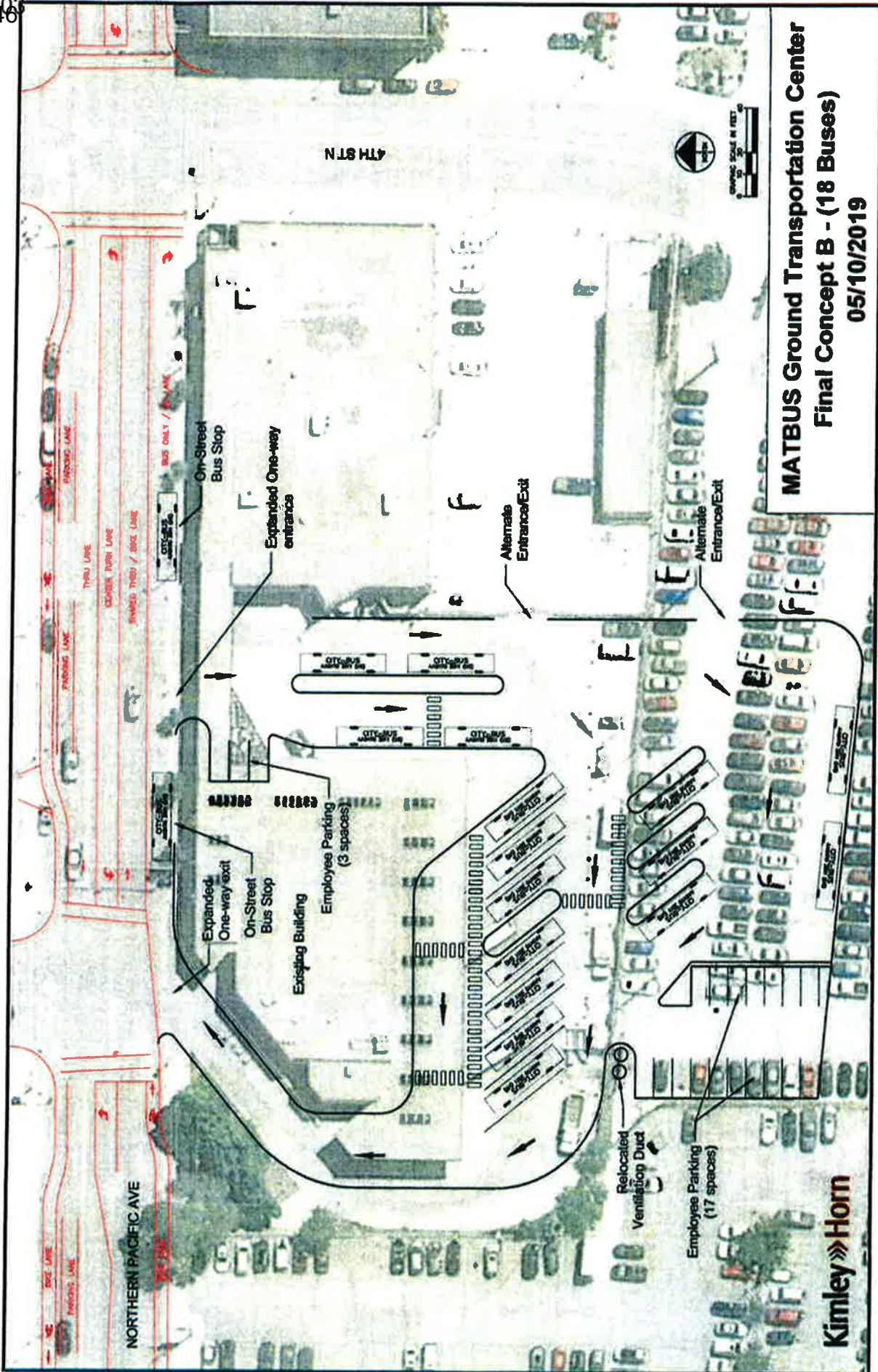
Cassie McNames  
Project Manager

Enclosure(s): Appendix 1: Kimley-Horn GTC Parking Garage Condition Assessment  
Project #: 1804-00689  
cc: Jerry Pertzsch; Mark Williams; Nicole Crutchfield





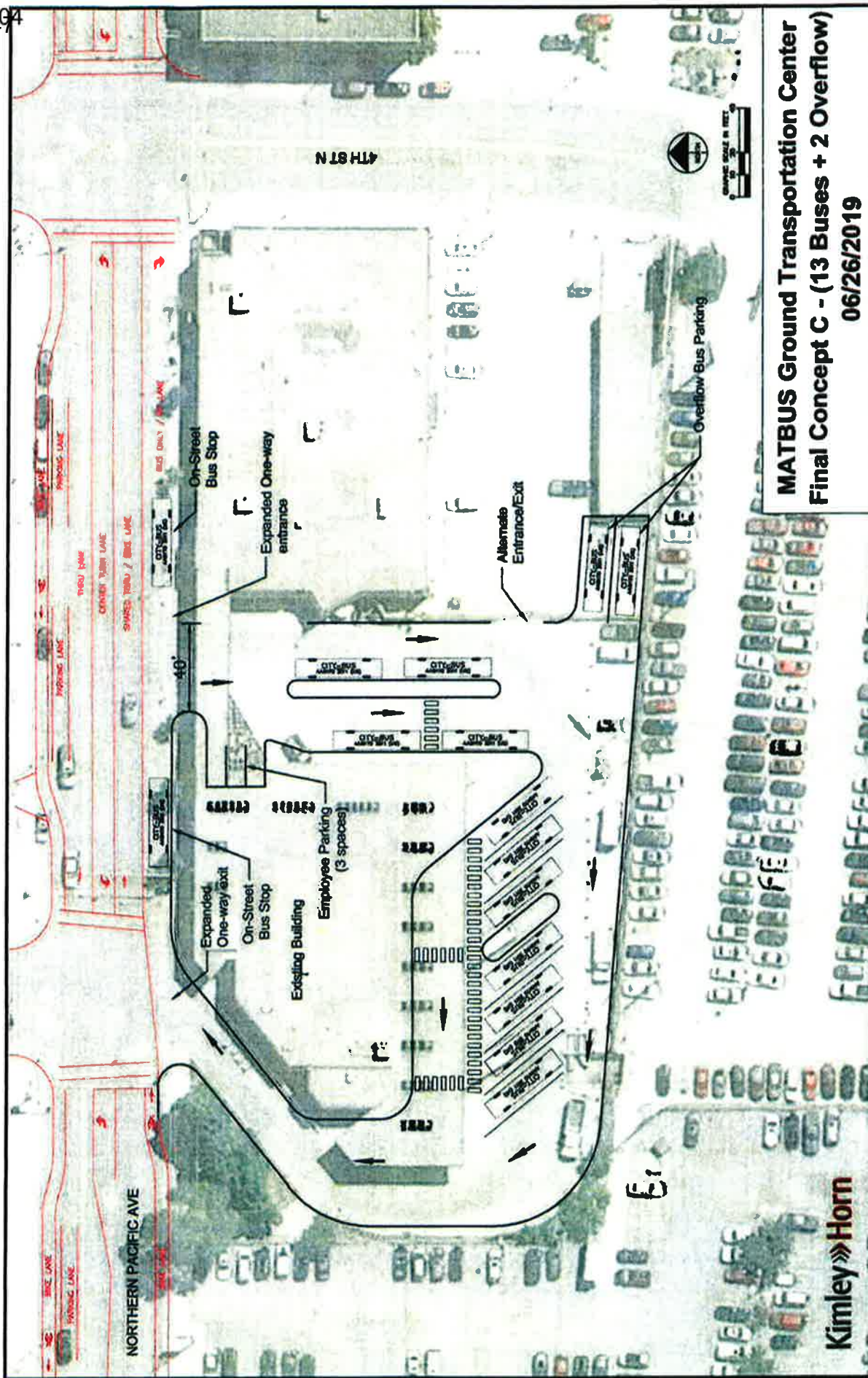
**Appendix B: GTC Deck Layout Concepts**



**MATBUS Ground Transportation Center**  
**Final Concept B - (18 Buses)**  
**05/10/2019**

**Kimley»Horn**

K:\TMC\_2019\TMC000000\MATBUS-000\MATBUS-000\051019\051019-FINAL-051019.dwg May 13, 2019 - 2:17pm



**MATBUS Ground Transportation Center**  
**Final Concept C - (13 Buses + 2 Overflow)**  
**06/26/2019**

**Kimley»Horn**

N:\TNC\Transit\PMO\NETMO-COOR\MATBUS STD Design\Bldg\CAOV\Plan Sheets\Enhance\MATBUS-OTC\_Concept-FINAL\_20190225.dwg, June 28, 2019 - 11:00am

**AMENDMENT TO ENGINEER-OWNER AGREEMENT**  
**Amendment No. 1**

**Background Data**

- a. Effective Date of Engineer-Owner Agreement: April 2019
- b. Engineer: Kadmas, Lee & Jackson
- c. Owner: City of Fargo
- d. Project: GTC Underground Parking Facility
- e. This Part of the Project: Revised Scope

**Nature of Amendment (check all that apply)**

- Additional services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications to payment to Engineer
- Modifications to time(s) for rendering Services

**Description of Modifications**

KLJ's scope of services have been modified as identified in the Exhibit A.1 attached.

**Agreement Summary**

a. Original agreement amount:	\$155,931.40
b. Net change for prior amendments:	\$0
c. This amendment amount:	\$22,692.98
d. Adjusted Agreement amount:	\$179,624.38

Engineer and Owner hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is July 16, 2019.

ENGINEER: Kadmas Lee & Jackson, Inc.

OWNER: City of Fargo



By: Mark Anderson

By: Tim Mahoney, MD

Title: Vice President

Title: Mayor

Date Signed: 7/11/19

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



**Exhibit A.1  
Contract Amendment No. 1  
July 08, 2019  
Architectural/Engineering Services  
GTC Underground Parking Facility  
GTC Design Bid Build  
Fargo, ND**

**Engineer's Services**

The following modifications have been made to the scope of work included in the original contract between city of Fargo and KLJ dated April 2019.

- I. **Modified Scope**
  - A. Based on observations made by Kimley-Horn in the structural assessment prepared for the GTC garage and deck on May 13, 2019, it was determined the existing waterproofing on the exterior of the parking garage is in need of replacement. Therefore, installing the drain tile utilizing a trenchless method is no longer feasible. KLJ's scope of work has been modified to account for a traditional installation method which accounts for excavation around the deck perimeter. Breirley's services will no longer be needed and KLJ and Braun Intertec will continue the design of the drain tile system.
    1. Braun's services will include the following:
      - a. Measure the in-place dry density, moisture content and relative compaction of fill placed for sidewalk, pavement and/or utility support, and of backfill for compliance with the project documents. This includes performing laboratory Proctor tests to provide maximum dry densities from which the relative compaction of fill can be determined, as well as the use of a nuclear density gauge to measure in-place dry densities and moisture contents.
      - b. Sample and test fresh concrete associated with sidewalk, pavement and/or curb-and-gutter for compliance with the project documents and cast test cylinders for laboratory compressive strength testing.
      - c. Measure and report the compressive strength of the concrete test cylinders for compliance with the project documents.
      - d. Project management, including scheduling of field personnel.
      - e. Reviewing test reports and communicating with project team and owner.
      - f. Transmit test results to the project team and owner on a weekly basis.
    2. Braun's scope assumes the following:
      - a. Braun's engineer will perform a design and specification review the project documents to evaluate compliance with their geotechnical evaluation report.
      - b. Braun's engineer will visit the site on 4 occasions to view the base of the excavation as each side of the garage is exposed.
      - c. Braun's technician will visit the site daily during soils and concrete work for a maximum of 15 hours a week for a maximum of four months.
      - d. Braun will perform 6 standard Proctor tests and 6 sieve analysis tests to evaluate conformance to project specifications.



e. Braun will require a minimum of 24 hours' notice for scheduling inspections for a specific time. Shorter than 24 hours' notice may impact their ability to perform the requested services.

II. Added Scope

A. Additional maintenance items requested to be included by buildings and grounds staff on May 2, 2019 which include the following:

1. Replace or repair elevator.
2. Address corrosion in fire sprinkler system; KFI recommends adding a nitrogen generation system and further inspection of overall piping system.
3. Replace rusted ductwork where required and replace motorized dampers that are inoperable.
4. Replace CO detectors with new CO/NO2 detectors and commission system.
5. Replace emergency lighting.

B. Construction documents associated with the additional scope of work as previously described in the original contract.

C. Bidding assistance associated with the additional scope of work as previously described in the original contract.

D. Construction administration associated with the additional scope of work as previously described in the original contract.

E. Team responsibilities:

1. KLJ will be responsible for the project management required to accommodate the additional maintenance items and the design of construction efforts needed to install the drain tile around the perimeter of the garage.
2. Foss Architecture + Interiors (along with their mechanical and electrical engineering consultants) will be responsible for the additional maintenance items described above.
3. Braun Intertec Corporation will provide the material testing for the installation of the drain tile system.

III. Anticipated project schedule will be modified as noted below

Contract Execution/Notice to Proceed .....	April 2019
Preliminary Design .....	April - August 2019
Construction Documents .....	September - December 2019
Bidding Assistance.....	January - February 2019
Construction Administration.....	March - September 2020

IV. Fees

A. The fees associated with the items listed above are as follows with the detailed breakdown included on the following page.

1. Modified Scope

a. Drain tile	<u>(\$1,404.44)</u>
Subtotal:	(\$1,404.44)

2. Added Scope

a. Additional maintenance items	<u>\$24,007.42</u>
Subtotal:	\$24,007.42
Grand Total:	\$22,692.98



### ENGINEERING FEES

GTC UNDERGROUND PARKING FACILITY - Contract Amendment #1 (July 8, 2019)								
1.	Direct Labor	Hours	X	Rate	=	Project Cost	Total	
	Project Assistant	0	X	24	=	\$ -	\$ -	
	Structural Engineer IV	18	X	58	=	\$ 1,044.00	\$ 1,044.00	
	Structural Engineer II	8	X	33	=	\$ 264.00	\$ 264.00	
	Planner IV	0	X	60	=	\$ -	\$ -	
	Engineer III	30.5	X	45	=	\$ 1,372.50	\$ 1,372.50	
	Engineer I	88	X	31	=	\$ 2,728.00	\$ 2,728.00	
	CADD Tech II	24	X	27	=	\$ 648.00	\$ 648.00	
			X		=	\$ -	\$ -	
	<b>Subtotal</b>					=	\$ 6,056.50	\$ 6,056.50
2.	<b>Overhead/Indirect Cost (expressed as indirect rate x direct labor)</b>						185.39%	\$ 11,228.15
3.	<b>Subcontractor Costs</b>						\$ 3,334.18	\$ 3,334.18
4.	<b>Materials and Supplies Costs</b>						\$ -	\$ -
5.	<b>Travel Costs</b>						\$ -	\$ -
6.	<b>Fixed Fee</b>						12%	\$ 2,074.16
7.	<b>Miscellaneous Costs</b>						\$ -	\$ -
	<b>Total Cost</b>					=		\$ 22,692.98



**AMENDMENT TO ENGINEER-OWNER AGREEMENT  
Amendment No. 1**

**Background Data**

- a. Effective Date of Engineer-Owner Agreement: April 2019
- b. Engineer: Kadmas, Lee & Jackson
- c. Owner: City of Fargo
- d. Project: GTC Remodel
- e. This Part of the Project: Revised Scope

**Nature of Amendment (check all that apply)**

- Additional services to be performed by Engineer
- Modifications to services of Engineer
- Modifications to responsibilities of Owner
- Modifications to payment to Engineer
- Modifications to time(s) for rendering Services

**Description of Modifications**

KLJ's scope of services have been modified as identified in the Exhibit A.1 attached.

**Agreement Summary**

- a. Original agreement amount: \$332,740.08
- b. Net change for prior amendments: \$0
- c. This amendment amount: \$19,471.16
- d. Adjusted Agreement amount: \$352,211.96

Engineer and Owner hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is July 16, 2019.

ENGINEER: Kadrmas Lee & Jackson, Inc.

OWNER: City of Fargo

  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

By: Mark Anderson

By: Tim Mahoney, MD

Title: Vice President

Title: Mayor

Date Signed: 7/11/19

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



Exhibit A.1  
Contract Amendment No. 1  
July 08, 2019  
Architectural/Engineering Services  
GTC Remodel  
GTC Design Bid Build  
Fargo, ND

**Engineer's Services**

The following modifications have been made to the scope of work included in the original contract between city of Fargo and KLJ dated April 2019.

- I. **Reduced Scope**
  - A. The GTC deck layout will be modified to reflect Concept C layout prepared by Kimley-Horn on June 26, 2019, such that no modifications will be made to the parking lot to the south.
  - B. Per discussions with the city, the city will be responsible for consulting with the NDDOT and FTA on the class of action for the environmental assessment and document. In addition, the city will prepare environmental documentation.
- II. **Added Scope**
  - A. Deck repairs were deemed necessary in a structural assessment report prepared by Kimley-Horn on May 13, 2019, which included repair of the concrete overlay (cracks and debonded areas) and replacement and/or repair of the broken tendon.
    1. Repairs will be based on the current City of Fargo and North Dakota Department of Transportation Standards.
    2. Site visit to review existing condition of deck (above and below grade) and joints, hammer sounding of cracks and spalling to determine extent of concrete overlay repairs.
    3. The scope associated with repair of the broken tendon will include:
      - a. Analyze existing beam to determine amount of strengthening required, if any.
      - b. Develop repair options.
    4. KLJ has requested the services of Braun Intertec Corporation to perform ground penetrating radar (GPR) to assist with determining the location and depth of reinforcing within the deck slab as it relates to the proposed canopy column locations and new floor penetrations associated with the relocation of the restrooms. This is critical to prevent further damage to the post tensioned tendons in the deck slab.
  - B. Additional maintenance items requested to be included by buildings and grounds staff on May 2, 2019 which include the following:
    1. Replace multi-zone HVAC system with packaged rooftop units and associated ductwork modifications
    2. Replace pneumatic control system with digital control system
    3. Replace boiler pumps
  - C. Construction documents associated with the additional scope of work as previously described in the original contract.
  - D. Bidding assistance associated with the additional scope of work as previously described in the original contract.
  - E. Construction administration associated with the additional scope of work as previously described in the original contract.



**F. Team responsibilities:**

1. KLJ will be responsible for the concrete overlay repairs and structural modifications required to accommodate the additional maintenance items.
2. Kimley-Horn will be responsible for the repairs associated with the broken tendon.
3. Foss Architecture + Interiors (along with their mechanical and electrical engineering consultants) will be responsible for the additional maintenance items described above.
4. Braun Intertec Corporation will provide the GPR testing for the project.

**III. Anticipated project schedule will be modified as noted below**

Contract Execution/Notice to Proceed .....	April 2019
Preliminary Design .....	April - July 2019
Construction Documents .....	August - October 2019
Bidding Assistance .....	October - November 2019
Construction Administration .....	December 2019 - August 2020

**IV. Fees**

**A. The fees associated with the items listed above are as follows with the detailed breakdown included on the following page.**

<b>1. Reduced Scope</b>	
a. Modified deck layout	(\$17,937.15)
b. Eliminate environmental documentation	<u>(\$8,809.19)</u>
Subtotal:	(\$26,746.34)
<b>2. Added Scope</b>	
a. Deck repairs	\$25,636.63
b. Additional maintenance items	<u>\$20,580.87</u>
Subtotal:	\$46,217.50
Grand Total:	\$19,471.16



### ENGINEERING FEES

GTC REMODEL - Contract Amendment #1 (July 8, 2019)							
1.	Direct Labor	Hours	X	Rate	=	Project Cost	Total
	Project Assistant	12	X	24	=	\$ 288.00	\$ 288.00
	Structural Engineer IV	22	X	58	=	\$ 1,276.00	\$ 1,276.00
	Structural Engineer III	20	X	43	=	\$ 860.00	\$ 860.00
	Structural Engineer II	20	X	33	=	\$ 660.00	\$ 660.00
	Environmental Planner II	-80	X	30	=	\$ (2,400.00)	\$ (2,400.00)
	Planner IV	-4	X	60	=	\$ (240.00)	\$ (240.00)
	Engineer III	0	X	45	=	\$ -	\$ -
	CADD Tech II	24	X	27	=	\$ 648.00	\$ 648.00
	Surveyor IV-PM	0	X	55	=	\$ -	\$ -
	Surveyor IV	0	X	44	=	\$ -	\$ -
	Surveyor II	0	X	30	=	\$ -	\$ -
	Surveyor I	0	X	26	=	\$ -	\$ -
			X		=	\$ -	\$ -
	<b>Subtotal</b>				=	\$ 1,092.00	\$ 1,092.00
2.	<b>Overhead/Indirect Cost (expressed as indirect rate x direct labor)</b>					185.39%	\$ 2,024.46
3.	<b>Subcontractor Costs</b>					\$ 15,980.73	\$ 15,980.73
4.	<b>Materials and Supplies Costs</b>					\$ -	\$ -
5.	<b>Travel Costs</b>					\$ -	\$ -
6.	<b>Fixed Fee</b>					12%	\$ 373.98
7.	<b>Miscellaneous Costs</b>					\$ -	\$ -
	<b>Total Cost</b>				=		\$ 19,471.16

**Office of the City Attorney**

**City Attorney**  
Erik R. Johnson

**Assistant City Attorney**  
Nancy J. Morris

October 31, 2019

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

**RE: Mercantile Project (Broadway and 4<sup>th</sup> Ave. N.)—Option for Lease of Parking Spaces by T&K Property Management LLC—Long Term Lease**

Dear Commissioners:

Enclosed for your review and approval is an Option Agreement. As you know, Tom Smith is the owner of Great Northern Bicycle Company located immediately north of the Mercantile Project which will include a City-owned multi-level parking garage. Mr. Smith is contemplating a construction of a small number of residential townhomes lying immediately north of, and adjacent to, the City-owned parking garage that is yet to be constructed. Mr. Smith's proposal is to rent 10-14 parking spaces within the City-owned garage along with some additional floor area (in the corners) which is not readily usable for parking purposes. If Mr. Smith (via his entity, T&K Property Management LLC) elects to exercise his option, he and the City would enter into a long-term parking lease agreement. The lease would allow Smith to fit up the leased parking spaces and storage areas with enclosures which would be used as personal garage structures and storage areas for the owners and occupants of his townhome project. The lease agreement is structured to be long-term in nature extending for a period of at least 40 years, but would extend until the parking garage structure is closed, demolished or destroyed at any time after 40 years. Jim Gilmour, Director of Strategic Planning and Research has been in charge of the overall Mercantile Project and has been negotiating the terms of this arrangement with Mr. Smith. Jim Gilmour will be available at your meeting to present this proposal.

The enclosed document consists of an Option for Parking Lease Agreement and Easement. Mr. Smith would have approximately 3 years to exercise this option after the expected completion date of construction of the City-owned parking garage. If he exercises the option, the City and Mr. Smith's entity would enter into the long-term parking lease agreement and the City would grant an easement allowing occupants of the Smith townhome project to have ingress and egress on to the parking garage structure for various purposes.

**SUGGESTED MOTION:** I move to approve the Option for Parking Lease Agreement

and Easement as presented, subject to legal review.

Sincerely,

A handwritten signature in black ink, appearing to read 'ERJ', with a long horizontal flourish extending to the right.

Erik R. Johnson

ERJ/lmw

Enclosures

**OPTION  
FOR  
PARKING LEASE AGREEMENT AND EASEMENT**

This Option Agreement ("Option Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **CITY OF FARGO**, a North Dakota municipal corporation ("CITY") and **T&K PROPERTY MANAGEMENT LLC**, a North Dakota Limited Liability Company ("T&K PROPERTY MANAGEMENT").

**RECITALS:**

**WHEREAS**, T&K PROPERTY MANAGEMENT is the owner of certain real property situate in the COUNTY OF CASS and STATE OF NORTH DAKOTA, described as follows:

A PORTION OF LOT \_\_\_\_ (\_\_\_\_), BLOCK TWENTY-ONE (21), KEENEY & DEVITTS 2<sup>ND</sup> ADDITION TO THE CITY OF FARGO, DESCRIBED MORE FULLY AS:

**[[[insert legal description]]]**

[the "T&K PROPERTY"]; and,

**WHEREAS**, the CITY intends to enter into a development agreement with a developer for the construction of a project to become known as the "Mercantile Project" which will consist of a CITY-owned parking garage [the "CITY PARKING GARAGE"] with a multi-use building integrated into the same project, said multi-use building to include office and retail uses as well as residential uses with the construction of the CITY PARKING GARAGE being scheduled for completion by December 31, 2020, said project to be constructed on property generally lying south of, the T&K PROPERTY; and,

**WHEREAS**, the Mercantile Project is to be constructed upon that certain real property situate in the County of Cass and state of North Dakota more fully described as set forth in the attached **Exhibit "A"**; and

**WHEREAS**, T&K PROPERTY MANAGEMENT intends to construct a multi-unit residential dwelling structure upon the T&K PROPERTY which dwelling structure is intended to be condominiumized for sale of individual residential units to third parties (referred to herein as the "T&K Project"); and

**WHEREAS**, T&K PROPERTY MANAGEMENT desires that the T&K Project be constructed at or near the property boundary between the T&K PROPERTY and the boundary of the



Mercantile Project and, in particular, adjacent to the City-owned parking garage to be constructed and T&K PROPERTY MANAGEMENT wishes to enter into an agreement with the CITY that would permit T&K PROPERTY MANAGEMENT to construct certain residential garage structures and certain residential storage structures within and upon various floors of the City-owned parking garage and would provide for rental by T&K PROPERTY MANAGEMENT of the parking spaces within the CITY PARKING GARAGE, and other floor space, necessary to accommodate said residential structures and the CITY is willing to enter into such agreement;

**NOW, THEREFORE**, in consideration of the foregoing, the mutual agreements hereinafter said forth, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, **IT IS HEREBY AGREED:**

1. **GRANT OF OPTION:** In consideration of the sum of One Dollar (\$1.00) and other valuable consideration the receipt of which is hereby acknowledged the City does hereby grant to T&K PROPERTY MANAGEMENT an option to enter into a written lease agreement for a certain number of specified parking spaces and other available space within the CITY-OWNED PARKING GARAGE, the terms of which are described in paragraph 3, below and to enter into a related Easement Agreement as set forth below.

The option may be exercised by T&K PROPERTY MANAGEMENT in the manner of, and as stated in, paragraph 3, below, at any time between the following dates:

- 1.1. The date in which the CITY is conveyed ownership in the CITY-OWNED PARKING GARAGE, said conveyance expected to be a deed transferring ownership to the CITY of a condominium unit established for the CITY-OWNED PARKING GARAGE; and,
- 1.2. The date three (3) years following said conveyance of ownership to the CITY but which is, in no event, later than **June 30, 2025**; and,

if the T&K OPTION is not exercised within said time period, it shall lapse and thereafter be of no further force or effect. The above-described option period shall be construed to include the two said dates that define the time period.

2. **CONSIDERATION:** The consideration for this option shall be the mutual promise contained herein, including the obligation borne by the parties should the option be exercised, the sufficiency and adequacy of such consideration is agreed.
3. **EXERCISE OF OPTION:**
  - 3.1. The form of Parking Lease Agreement, attached hereto as Exhibit "B", shall constitute the terms of an offer by the CITY, the terms of which may be accepted by the timely exercise of the option, as follows.
  - 3.2. The option may be exercised by delivering to the CITY a NOTICE, delivered to CITY by certified mail, return receipt requested.

- 3.3. The NOTICE shall constitute the acceptance by T&K PROPERTY MANAGEMENT of the CITY's offer.
- 3.4. The NOTICE shall contain certain essential terms to complete the Parking Lease Agreement, Exhibit "B", as follows:
  - 3.4.1. The number of parking spaces on each deck, the described additional floor space on each deck to be enclosed for storage and the total equivalent number of parking spaces must be set forth, all as provided in Section 1.1 of the Parking Lease Agreement, must be stated in the NOTICE.
  - 3.4.2. The proposed final copy of the floor plan outlining Tenant's Parking Spaces must be attached to the NOTICE, which floor plan must be substantially in conformance with that which attached to the form of Parking Lease Agreement (Exhibit B, hereto), all as provided in Section 1.1 of the Parking Lease Agreement.
  - 3.4.3. The proposed Fit-up, to be appended to the Parking Lease Agreement as Exhibit B, thereto, must be attached to the NOTICE. Said proposed Fit-up shall be subject to review by the CITY and to CITY approval, in its reasonable discretion.
4. **EXAMINATION OF ABSTRACT:** CITY shall provide T&K PROPERTY MANAGEMENT an abstract of title or a title insurance commitment to the CITY PARKING GARAGE (or relevant condominium unit). T&K PROPERTY MANAGEMENT shall have the abstract of title examined prior to closing as provided herein, and complete said examination 14 days prior to such closing date but no later than 45 days after the NOTICE. If title to the property is unmarketable, CITY shall have a period of 180 days in which to correct the title and make it marketable.
5. **TERMS OF SALE AND CLOSING:** Upon the exercise of this option by T&K PROPERTY MANAGEMENT, the closing shall occur within 90 days of the NOTICE unless such time shall be extended by the mutual consent of the parties or to allow title defects to be cured as provided in the preceding paragraph. At the closing, CITY and T&K PROPERTY MANAGEMENT shall enter into the Parking Lease Agreement, marked up appropriately to conform to the terms expressed in the NOTICE and an Easement for the benefit of the T&K Property shall be executed by the parties in a form substantially in conformance with Exhibit "C", hereto.
6. **CLOSING COSTS:** It is specifically acknowledged and agreed that T&K PROPERTY MANAGEMENT shall pay the following costs connected with the closing of this transaction should the Option be exercised:
  - a. The abstract continuation cost for the initial title examination and any costs for the review of said abstract by its attorney; and,
  - b. The costs for the closing agent.

7. **TIME OF THE ESSENCE**: T&K PROPERTY MANAGEMENT acknowledges and agrees that time shall be strictly of the essence in the performance of T&K PROPERTY MANAGEMENT'S obligations under this agreement. The failure of T&K PROPERTY MANAGEMENT to exercise its rights in the time and manner specified by this agreement shall release CITY from any further obligation under this agreement.
8. **BINDING EFFECT**: This agreement shall inure to and be binding upon the parties hereto, their respective heirs, administrators, executors, personal representatives, successors and assigns.
9. **AMENDMENT**: This Option Agreement may be amended from time to time by the parties only by written agreement signed by T&K PROPERTY MANAGEMENT and City.
10. **NOTICES**: All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by certified mail, postage prepaid, return-receipt requested, addressed as follows:

(A) if to T&K PROPERTY MANAGEMENT:

**T&K PROPERTY MANAGEMENT LLC**  
ATTN: Thomas Smith  
425 Broadway  
Fargo, ND 58102

(B) if to City:

City of Fargo  
ATTN: Steven Sprague, City Auditor  
225 4<sup>th</sup> Street North  
Fargo, N D 58102

AND

City of Fargo  
ATTN: James Gilmour, Director of Strategic Planning  
225 4<sup>th</sup> Street North  
Fargo, ND 58102

11. **Additional Covenants**. CITY covenants to maintain the CITY PARKING GARAGE in such a manner that the CITY PARKING GARAGE is suitable for its current use and to be responsible for all costs related thereto, including costs of insurance and taxes. Without limiting the foregoing, the City shall, at its expense, maintain the CITY PARKING GARAGE, and all improvements thereon other

than to the DEMISED PREMISES, as set forth herein, in clean, neat and good working order, condition and repair, reasonable wear and tear excepted. City shall also be responsible for, at its cost and expense, arranging janitorial and snow removal services for the CITY PARKING GARAGE.

12. Severability of Provisions. If anyone or more of the covenants, agreements, provisions or terms of this Option Agreement shall be held invalid for any reason whatsoever, then such covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Option Agreement and shall in no way affect the validity or enforceability of the other provisions of this Option Agreement.
13. Successors and Assigns. This Option Agreement shall be binding upon and inure to the benefit of T&K PROPERTY MANAGEMENT and City, and their respective successors in interest. The Option Agreement contained herein and other provisions of this Option Agreement shall run with the land benefitted and burdened thereby. T&K PROPERTY MANAGEMENT and City may assign their respective rights and obligations under this Option Agreement, but only in connection with a transfer of ownership to such assignee of the T&K PROPERTY or the CITY PARKING GARAGE, respectively. Any obligations arising under this Option Agreement following any such assignment shall be the sole responsibility of the assignee, and the assignor shall have no obligations under this Option Agreement for matters arising after any such assignment.
14. Entire Agreement: This Option Agreement sets forth all the covenants, promises, agreements, conditions and understandings between City and T&K PROPERTY MANAGEMENT concerning the CITY PARKING GARAGE project, the T&K Project described herein, and matters related thereto, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth.

**[Execution pages to follow]**

**IN WITNESS WHEREOF**, T&K PROPERTY MANAGEMENT and CITY have executed this Option Agreement, effective as of the date and year first above written.

T&K PROPERTY MANAGEMENT LLC,  
a North Dakota limited liability company

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

STATE OF NORTH DAKOTA

)

) ss.

COUNTY OF CASS

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, a notary public in and for said county and state, personally appeared THOMAS SMITH, to me known to be the \_\_\_\_\_ of T&K PROPERTY MANAGEMENT LLC, that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.

\_\_\_\_\_  
Notary Public

CITY OF FARGO,  
a North Dakota municipal corporation

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

Timothy J. Mahoney, M.D.

Its: Mayor

ATTEST:

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

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY, M.D. AND STEVEN SPRAGUE to me known to be the Mayor and City Auditor respectively of the CITY OF FARGO, that is described in and that executed the within instrument, and acknowledged to me that such municipal corporation executed the same.

\_\_\_\_\_  
Notary Public



**Exhibit "A" to Option**

**Legal Description for Mercantile Project**

**(See attached)**



**Exhibit "B" to Option**

**Parking Lease Agreement**

**(attached)**

[EXHIBIT "B" TO OPTION]

**PARKING LEASE AGREEMENT**

This Parking Lease Agreement ("Lease") is made and effective as of the date last signed by the parties hereto, by and between the **CITY OF FARGO**, a North Dakota municipal corporation ("CITY") and **T&K PROPERTY MANAGEMENT LLC**, a North Dakota Limited Liability Company ("T&K PROPERTY MANAGEMENT").

**The above-named parties agree as follows:**

**ARTICLE ONE – PREMISES**

**Section 1.1. Leased Premises.** Landlord does hereby lease unto Tenant the premises described as follows:

1.1.1. A total of \_\_\_\_\_ parking spaces, with \_\_\_\_\_ parking spaces located on the \_\_\_\_\_ deck, \_\_\_\_\_ parking spaces located on the \_\_\_\_\_ deck and \_\_\_\_\_ parking spaces located on the \_\_\_\_\_ deck and said parking spaces combining to total \_\_\_\_\_ parking spaces (cumulatively referred to herein as "Tenant's Parking Spaces"); and,

1.1.2. In addition, certain floor space to be enclosed for storage, as defined below, namely, certain floor space area located on the \_\_\_\_\_ deck, floor space area located on the \_\_\_\_\_ deck and floor space area located on the \_\_\_\_\_ deck (cumulatively referred to herein as "Tenant's Storage Area");

said decks being the decks or floors of the CITY PARKING GARAGE as constructed.

A copy of the floor plan outlining Tenant's Parking Spaces and the Tenant's Storage Area is attached to this agreement and is incorporated by reference hereto (Exhibit A) and will hereinafter be referred to as the "DEMISED PREMISES."

**Section 1.2. Use of Premises.** The DEMISED PREMISES shall be used and occupied by Tenant for the purposes of residential vehicular parking and storage related to, and accessory to, occupation of the adjacent townhomes and the use and occupancy of such parking and storage enclosures will be consistent with residential use.

**Section 1.3. Term of Lease.** This Lease shall be for a term ending on the later of the following dates:

1.1. The date of the fortieth (40<sup>th</sup>) yearly anniversary of the commencement date of this Lease; and,

1.2. A date occurring after said 40<sup>th</sup> anniversary on which date the CITY PARKING GARAGE is permanently closed and no longer operational, is demolished or destroyed;

unless this Lease is earlier terminated, whether by default of a party or other reason, as set forth herein. The CITY PARKING GARAGE shall be deemed to be permanently closed and no longer operational at such time as its use as a parking garage has been discontinued for a period of at least six months and the City, in its sole discretion, has determined that it does not intend to reopen it. In such event, for purposes of payment of rent, the term of this Lease shall be deemed to have ended at the beginning of the said six-month minimum closure period. Furthermore, once the residential garage enclosures and storage enclosure structures are complete, this Lease may be terminate by Tenant, in its sole discretion, upon sixty (60) days' notice to Landlord, at which time the DEMISED PREMISES shall be surrendered to the Landlord as set forth in Section 11.1, below.

**Section 1.4. Commencement Date:** The term of this Lease and the payment of rent hereunder shall commence on the first day of the month following the date this Lease is last signed by the parties, below.

**Section 1.5. Fit-up of Premises – Tenant.** Tenant shall be responsible for providing all fit-up of DEMISED PREMISES ("Fit-up") as set forth in Exhibit B, all at Tenant's sole expense. All fit-up must be performed by Tenant, or at Tenant's direction, in a manner that will not place the CITY PARKING GARAGE out of compliance with applicable building code, fire code or other codes applicable in the City of Fargo. In particular, the design and construction of such fit-up of enclosed areas shall not be such that it would trigger the requirement of a fire-retardant sprinkler system in the CITY PARKING GARAGE.

**Section 1.6. Mercantile Project Condominium.** T&K Property Management recognizes that CITY intends that a condominium organization will be established for the ownership of the Mercantile Project by which the CITY PARKING GARAGE will become identified as a single "unit" within the condominium and the mixed-use portion of the project will be identified as one or more other "units" within the condominium to be owned by the developer, or its successors in interest, and T&K Property Management recognizes and agrees that this Parking Lease Agreement is intended to be applicable to the CITY PARKING GARAGE, and to the condominium unit that is established therefore, and agrees that to the extent that it becomes necessary or appropriate in order to confine the application of this Lease Agreement to the CITY PARKING GARAGE portion of the Mercantile Project and to release any interest T&K Property Management may have in portions of the Mercantile Project other than the condominium unit associated with the CITY PARKING GARAGE, T&K Property Management agrees to execute such document or documents for such recording.

## **ARTICLE TWO – RENT, SERVICES AND ADDITIONAL PARKING SPACES TO BE AVAILABLE**

**Section 2.1. Rent.** Tenant shall pay by the first of each month, without demand, rent for the

The rent shall be adjusted annually, effective as of the anniversary of the Effective Date hereof. The adjustment for any particular year shall be calculated as follows:

**Monthly rent shall be in the sum of \$130 for each parking space within Tenant's Parking Spaces** as described in Section 1.1, above.

2.1.2. **Annual Rent Adjustment—Consumer Price Index.** The adjustment shall be automatically increased by two percent (2%) over the previous year's rent; unless either party provides notice to the other of a different rent adjustment based upon a "consumer price index" calculation, determined as follows:

2.1.2.1. **Computation.** Within 30 days after its publication and issuance, by the Bureau of Labor Statistics of the United States Department of Labor, a party may deliver to the other party suitable evidence as to the Revised Consumer Price Index-Cities (1967=100) (the Index) for the city of Minneapolis, Minnesota for "all items" for the first full calendar month immediately following the "Commencement Date" ("base month") and for the corresponding month of each year thereafter. [The "Index" may be obtained from the Bureau of Labor Statistics website: [https://www.bls.gov/regions/midwest/news-release/consumerpriceindex\\_minneapolis.htm](https://www.bls.gov/regions/midwest/news-release/consumerpriceindex_minneapolis.htm).] If the Index for each corresponding month in each subsequent lease year shows a decrease in the purchasing power of the annual base rent as compared, in each such year, to the Index for the base month, the notifying party, as soon as possible after delivery of each Index subsequent to the Index for the base month, shall furnish the other party with the computation of any adjusted (increased or decreased) amount to be paid by Tenant for the following year of this Lease. Such additional amount shall be divided into and paid in 12 equal monthly installments during each year of this Lease. Pending the determination of any adjustment to the rent amount to be paid by it, Tenant shall continue to pay such rent amount, adjusted by the above-stated two percent (2%) per year annual increase in base rent in monthly installments. The parties shall, in good faith, coordinate with each other to true-up any deficiency or surplus in rent that has been previously paid. Neither party shall be entitled under this Lease to look back farther than a single annual increase for any adjustment in other than the presumed two percent (2%) annual increase.

2.1.2.2. **Substitution.** If at the time required for the determination of the additional rent, the Index is no longer published or issued, or either the Lessor or the Lessee believes that the Index does not accurately reflect a relationship to the base data an increase in the cost of living, the parties shall use any other Index that is generally recognized and accepted for similar determinations of purchasing power.

**Section 2.2. Security Deposit.** None required.

**Section 2.3. Utilities and Common Area Maintenance (CAM) Expenses.** Costs for utilities and expenses shall be as follows (“N.A.” means not applicable):

	<u>Landlord</u>	<u>Tenant</u>
Heating & A/C	N.A.	N.A.
Electricity for City Parking Garage	X	
Electricity for Tenant’s Parking Spaces and Tenant’s Storage Area		X
Water/Sewer/Garbage	N.A.	N.A.
Grounds Maintenance/Repairs	X	
Snow Removal from City Parking Garage	X	
Taxes	X	
Common Areas-		
Maintenance/Janitorial	X	
Tenant Space – Cleaning/Janitorial		X
Window Cleaning –		
Exterior Surfaces	N.A.	
Interior Surfaces	N.A.	X
Real Property Insurance	X	
Personal Property Insurance		X

The Landlord, at Landlord’s expense, will be responsible for payment of all common charges and condominium assessments associated with the condominium established for the Mercantile Project.

**Section 2.4. Place of Payment.** Rent shall be paid to Landlord at Landlord’s address, stated above, or such other address as Landlord may require upon written notice to Lessee.

**Section 2.5. Additional Parking Spaces Available for Rental.** In addition to the lease of the DEMISED PREMISES as set forth herein and during the term hereof, the CITY grants to Tenant a non-exclusive right for the residential occupants of the T&K Property to enter into individual or separate leases—one for each occupant or one for each residential unit within the T&K Property, as the case may be, which grant is in the form of the CITY providing to T&K Property Management for such purposes the availability of sufficient parking spaces to accommodate such parking space needs of T&K Property Management, and its successors in interest, a maximum of five (5) parking spaces per day on a 24/7 basis (24 hours per day, seven days per week) for parking purposes in, over and on the CITY PARKING GARAGE, more fully described below. For purposes of the Lease, CITY will make said five (5) spaces available and grants T&K Property Management access to said five (5) spaces for said residential occupants of the T&K Property. The parties recognize that the CITY will have parking space rental agreements with multiple other users of the CITY PARKING GARAGE during daytime business hours and other times of the day; provided, however, that the CITY PARKING GARAGE will be operated in a manner consistent with other public parking garages wherein a significant portion of the

available parking spaces are leased to businesses or individuals for parking during customary office hours; a portion are available for daily and hourly parking during customary office hours by general members of the public and, as part of the management approach, no single parking spaces reserved to any single individual or business but, rather, collectively parking spaces are leased and rented to a number that will utilize the parking to a maximum capacity.

**2.5.1. T&K Property Management Users Parking Fee.** With respect to the said maximum of five (5) parking spaces to be made available for lease by the said residential occupants of the T&K Property, said parking space rental leases will include the payment to the CITY of a fee of \$53 per month for each of said spaces that are leased, said fee applicable for said 24/7 availability as described above. This rate shall remain fixed for a period of five years from the date of opening of the CITY PARKING GARAGE. Said lease, including said monthly rental rate, shall not be assignable by the said residential occupants. The CITY agrees to reserve a maximum of five (5) spaces, of all of the parking spaces that are to be leased or available for public parking, for lease to the said commercial tenants, including employees of commercial tenants working in the T&K Property, and residential tenants of the T&K Property. Said Eligible Lessees may contact the CITY, or its designated CITY PARKING GARAGE facility manager to determine whether any of the said maximum five (5) total available parking spaces are, in fact, available for lease. From and after the expiration of the initial said five-year period after the opening of the parking garage, for an additional period ending on the Termination Date above-defined, the same arrangements shall continue provided, however, that the monthly parking fee for said lease shall be at the rate established by the City for parking that is charged to other monthly parkers.

**2.5.2.** The City will install, control and validate equipment that is adequate and sufficient to monitor parking as required for purposes of controlling access to parking. The City shall be responsible for maintenance and repair of such equipment.

### **ARTICLE THREE – CARE OF PREMISES, SIGNAGE & PARKING**

**Section 3.1. Care and Repair of the DEMISED PREMISES.** Tenant shall, at its expense, keep the interior of the DEMISED PREMISES, including all partitions, walls, interior glass and windows, floor coverings, interior doors, trade fixtures, and appurtenances thereof in clean, neat and good order, condition and repair, but not including structural portions of the CITY PARKING GARAGE such as the foundation, outer walls, exterior doors or exterior plate glass.

**Section 3.2. Alterations, Installation, Fixtures.** For any future non-structural alterations or alterations to the residential garage structures or storage structures that have been fit-up by Tenant, Landlord's consent shall be required, which consent shall not be unreasonably withheld, conditioned or delayed.

All fit-up, alterations, installations, physical additions or improvements to the DEMISED PREMISES shall at once become the property of Landlord and shall be surrendered to Landlord upon the termination of this Lease.

**Section 3.3. Surrender of DEMISED PREMISES.** At the end of the term of this Lease and any renewals and extensions thereof, Lessee shall surrender the DEMISED PREMISES to landlord in clean condition and in as good a condition as at the completion of the initial construction of the fit-up after the start of the Lease, reasonable wear and tear and damage for fire or other casualty excepted.

#### **ARTICLE FOUR – PROPERTY TAXES**

**Section 4.1. Real Estate Taxes.** Landlord shall be responsible for payment of real estate taxes and installments of special assessments against the property.

#### **ARTICLE FIVE – RISK MANAGEMENT PROVISIONS**

**Section 5.1. Indemnity.** Tenant will indemnify the Landlord from loss, cost or expense including reasonable attorneys' fees incurred by reason of the negligent or willful acts or omissions of those for whom in the circumstances Tenant is responsible in law which also arise from Tenant's use or occupancy of the DEMISED PREMISES. Landlord will indemnify Tenant from loss, cost or expense including reasonable attorneys' fees incurred by reason of the negligent or willful acts or omissions of those for whom in the circumstances Landlord is responsible in law. These indemnities are limited (i) by the waivers set forth below, (ii) to the indemnitor's equitable share of the losses, costs or expenses based on the relative culpability of each person whose negligent or willful acts or omissions contributed to the loss, and; (iii) to direct, proximately caused damages as opposed to consequential or indirect damages or business interruption. Except for the foregoing limitations, neither party's right to damages or other relief for breach of this Lease or in negligence is limited.

**Section 5.2. Landlord's Insurance.** The Landlord will provide commercial general liability insurance including standard form contractual liability coverage in amounts equal to those customarily carried by (and with no exclusions or limitations not generally accepted by) institutional owners of first class office buildings in the area of the CITY PARKING GARAGE, for no less than \$2,000,000 combined single limit.

**Section 5.3. Tenant's Insurance.** Tenant will provide including standard form contractual liability coverage and commercial general liability insurance with a single limit of liability combined for bodily injury and property damage of \$2,000,000 which in accordance with its terms, will add Landlord as an additional insured with respect to vicarious liability for covered claims arising from Tenant's use, occupancy or maintenance of the DEMISED PREMISES.

**Section 5.4. Waiver of Claim.** Each party releases the other and the officers, directors, employees, and agents of the other (collectively, "Releasees") with respect to any claim the other party itself against any claim in tort or contract for direct or indirect loss, damage or destruction with respect to its property (including rental value or business interruption) resulting from the negligence of any Releasee or from any tortious act or breach of contract in the case of the other party itself. These releases are not conditioned on the terms of the insurance policies, if any, that each party obtains or the receipt of the proceeds thereof by a party.

**Section 5.5. Limitation of Landlord's Liability.**

1. **Transfer of DEMISED PREMISES.** If the CITY PARKING GARAGE is sold or transferred, voluntarily or involuntarily, Landlord's lease obligations and liabilities accruing after the transfer shall be the sole responsibility of the new owner if: (i) the new owner expressly agrees in writing to assume Landlord's obligations; (ii) any funds of Tenant that the Landlord is holding are given to the new owner who acknowledges receipt in writing, and; (iii) copies of the writings referred to in (i) and (ii) above are delivered to Tenant.
2. **Liability for Money Judgment.** If Landlord, its employees, officers, or partners are ordered to pay Tenant a money judgment because of Landlord's default, then except in those instances listed in paragraph (3) below, Tenant's sole remedy to satisfy the judgment shall be Landlord's interest in the CITY PARKING GARAGE including the rental income and proceeds from sale and any insurance or condemnation proceeds received because of damage or condemnation to, or of, the CITY PARKING GARAGE that are available for use by Landlord.
3. **Exceptions.** Paragraph (2) does not apply when: (i) Landlord failed to apply insurance or condemnation proceeds as required by the Lease; (ii) Landlord misappropriated escrow funds, or; (iii) Landlord violated any representation or warranty expressly set forth in this Lease.

Nothing in paragraphs (1), (2), or (3) shall be interpreted to mean that Tenant cannot be awarded specific performance or an injunction.

**ARTICLE SIX – BUILDING DESTRUCTION**

**Section 6.1. Total or Partial Destruction.** In the event of any damage or destruction to the DEMISED PREMISES by fire or other cause during the term hereof, the following provisions shall apply:

- 6.1.1 If the building is damaged by fire or any other cause to such extent that the cost of restoration, as reasonably estimated by an independent appraiser, will equal or exceed thirty percent (30%) of the replacement value of the building (exclusive of foundations) just prior to the occurrence of the damage, then



Landlord may, no later than the 60<sup>th</sup> day following the damage, give Tenant written notice of Landlord's election to terminate this Lease.

6.1.2 If the cost of restoration as estimated by an independent appraiser shall amount to less than thirty percent (30%) of said replacement value of the building, or if, despite the cost, Landlord does not elect to terminate this Lease, Landlord shall restore the building and the DEMISED PREMISES with reasonable promptness, subject to delays beyond Landlord's controls and delays in making of insurance adjustments by Landlord; and Tenant shall have no right to terminate this Lease except as herein provided.

6.1.3 In any case where damage to the building shall materially affect the DEMISED PREMISES so as to render them unsuitable in whole or in part for the purposes for which they are demised hereunder, then, unless such destruction was wholly or partially caused by the negligence or breach of the terms of this Lease by Tenant, its employees, contractors or licensees, a portion of the rent based upon the amount of the extent to which the DEMISED PREMISES are rendered unsuitable shall be abated until repaired or restored. If the destruction or damage was wholly or partially caused by negligence or breach of the terms of this Lease by Tenant as aforesaid and if Landlord shall elect to rebuild, the rent shall not abate and the Tenant shall remain liable for the same.

## **ARTICLE SEVEN – CONDEMNATION**

**Section 7.1. Eminent Domain.** In the event of any eminent domain or condemnation proceeding or private sale in lieu thereof in respect to the DEMISED PREMISES during this Lease, the following provisions shall apply.

**Section 7.2. Total Condemnation.** If the whole of the DEMISED PREMISES or the whole of the parking area shall be acquired or condemned by eminent domain for any public or quasi public use or purpose, then the term of this Lease shall cease and terminate as of the date possession shall be taken in such proceeding and all rentals shall be paid up to that date, and Tenant shall have no claim against the Landlord for any unexpired term of this Lease.

**Section 7.3. Partial Condemnation.** If any part constituting less than the whole of the DEMISED PREMISES shall be acquired or condemned as aforesaid, and in the event that such partial taking or condemnation shall materially affect the DEMISED PREMISES so as to render the DEMISED PREMISES unsuitable for the business of the Tenant then the term of this Lease shall cease and terminate as of the date possession shall be taken by the condemning authority and rent shall be paid to the date of such termination. If Landlord and Tenant are unable to agree as to whether such partial taking or condemnation shall materially affect the DEMISED PREMISES so as to render the DEMISED PREMISES unsuitable for the business of the Tenant then the matter shall be submitted to a judge for declaratory judgment on the issue.

**Section 7.4. Landlord's Damages.** In the event of any condemnation or taking as aforesaid, whether whole or partial, the Tenant shall not be entitled to any part of the award paid for such condemnation and Landlord is to receive the full amount of such award, the Tenant hereby expressly waiving any right to claim any part thereof.

**Section 7.5. Tenant's Damages.** Although all damages in the event of any condemnation shall belong to the Landlord whether such damages are awarded as compensation for diminution in value of the leasehold to the fee of the DEMISED PREMISES, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recovered by Tenant's own right on account of any and all damages to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment.

#### **ARTICLE EIGHT – LANDLORD'S ACCESS**

**Section 8.1. Landlord's Access to DEMISED PREMISES.** The Tenant agrees to permit the Landlord and the authorized representatives of the Landlord to enter the DEMISED PREMISES at all times during usual business hours for the purpose of inspection of the same and making any necessary repairs to the DEMISED PREMISES and performing any work therein that may be necessary to comply with any laws, ordinances, rules, regulations or requirements of any public authority or of the Board of Fire Underwriters or any similar body that the Landlord may deem necessary to prevent waste or deterioration in connection with the DEMISED PREMISES. The Landlord shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage of the Tenant by reason of making repairs or the performance of any work in the DEMISED PREMISES or on account of bringing materials, supplies and equipment into or through the DEMISED PREMISES during the course thereof and the obligations of the Tenant under this Lease shall not thereby be affected in any manner whatsoever provided that Landlord minimizes inconvenience or disruption to Tenant to the extent commercially reasonable to do so.

Landlord reserves the right to enter upon the DEMISED PREMISES at any time in the event of an emergency and at reasonable hours to exhibit the DEMISED PREMISES to prospective purchasers or others; and to exhibit the DEMISED PREMISES to prospective Tenant's and to display "for rent" lenders or similar signs on windows or doors in the DEMISED PREMISES during the last one hundred twenty (120) days of the term of this Lease, all without hindrance by Tenant.

#### **ARTICLE NINE – DEFAULT**

**Section 9.1.** In the event of any failure of Tenant to pay any rent due to Landlord within **one year** after the same shall be due, or any failure to perform any other of the terms, conditions or covenants of this Lease to be observed or performed by Tenant for more than 60 days after

written notice of such failure have been given to Tenant, or if Tenant or an agent of Tenant shall falsify any report required to be furnished to Landlord pursuant to the terms of this Lease, or if Tenant of this Lease shall become bankrupt or insolvent, or file any debtor proceedings or any person shall take or have against Tenant of this Lease in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency for the reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or if Tenant makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or if Tenant shall abandon the DEMISED PREMISES or suffer this Lease to be taken under any writ of execution, then in any such event Tenant shall be in default hereunder, and Landlord in addition to other rights of remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the DEMISED PREMISES and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service of notice or resort to legal process without being guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby. In addition to the foregoing, in the event that Tenant has become in arrears on unpaid rent for longer than 45 days more than three (3) times in any three (3) year period, upon the third such event, Tenant shall be deemed to have defaulted in the same manner as if Tenant had failed to pay any rent due to Landlord within one year, as set forth above.

9.1.1 Should Landlord elect to re-enter the DEMISED PREMISES, as herein provided, or should it take possession of the DEMISED PREMISES pursuant to legal proceedings or pursuant to any notice provided for by law, it may either terminate this Lease or it may from time to time, without terminating this Lease, make such alterations and repairs as may be necessary in order to re-let the DEMISED PREMISES or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such terms and conditions as Landlord in its sole discretion may deem advisable. Upon each subletting all rentals received by the Landlord from such reletting shall be applied first to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorneys fees and of costs of such alterations and repairs; third, to the payment of residue and unpaid hereunder, and the rent due, if any, shall be held by Tenant and applied in payment of future rent as the same may become due and payable hereunder. If such rentals received from such reletting during any month be less than that to be paid during that month by Tenant hereunder, Tenant, upon demand shall pay any such deficiency to Landlord. No such re-entry or taking possession of the DEMISED PREMISES by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention to given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time after such re-entry and reletting elect to terminate this Lease for such previous breach. Should Landlord at any time terminate this Lease for any such breach, in addition to any other remedies it may have, it may recover

from Tenant all damages it may incur by reason of such breach, including the cost of recovering the DEMISED PREMISES, reasonable attorneys' fees, and including the worth at the time of such termination the excess, if any, of the amount of rent and charges equivalent to rent reserved in this Lease for the remainder of the stated term over the then reasonable rental value of the DEMISED PREMISES for the remainder of the stated term, all of which amounts shall be immediately due and payable from Tenant to Landlord.

- 9.1.2 Landlord may, at its option, instead of exercising any other rights or remedies available to it in this Lease or otherwise by law, statute or equity, spend such money as is reasonably necessary to cure any default of Tenant herein and the amount so spent, and costs incurred, including attorneys fees in curing such default, shall be paid by Tenant, as additional rent, upon demand.
- 9.1.3 In the event suit shall be brought for recovery of possession of the DEMISED PREMISES, for the recovery of rent or any other amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Landlord or Tenant to be kept or performed, and a breach shall be established, the prevailing party in the suit shall be entitled to recover reasonable attorney's fees and costs incurred as a result of the litigation in addition to any amounts recoverable under this Lease. The prevailing party in the suit shall be entitled to recover interest on all damages, other than such reasonable attorney's fees and costs awarded by the court, shall accrue interest at the then current legal rate for interest on judgments under North Dakota law from the date of entry of judgment (hereinafter the "Contract Interest Rate").
- 9.1.4 Tenant waives any demand for possession of the DEMISED PREMISES, and any demand for payment of rent and any notice of intent to re-enter the DEMISED PREMISES, or of intent to terminate this Lease, other than the notices above provided in this Article, and waives any and every other notice or demand prescribed by any applicable statutes or laws.
- 9.1.5 No remedy herein or elsewhere in this Lease or otherwise by law, statute or equity, conferred upon or reserved to Landlord or Tenant shall be exclusive of any other remedy, but shall be cumulative, and may be exercised from time to time and as often as the occasion may arise.

**Section 9.2. Overdue Payments.** Monthly rent shall be due and payable, in advance, on the first date of each month. Additional rent shall be due thirty (30) days after the invoice is received by Tenant. Any rent not paid when due, shall be subject to an automatic penalty of \$100 per occurrence and bear interest at the rate of eight percent (8%) per annum, or the highest rate of interest permitted by law, whichever rate is less.

## ARTICLE TEN

**Section 10.1. Certificate of Estoppel.** The Tenant agrees at any time and from time to time upon not less than twenty (20) days' prior written request by the Landlord to execute, acknowledge and deliver to the Landlord a statement in writing certifying that this Lease is unmodified and in full force and effect, or if modified, in full force and effect, and stating the modifications, and the dates to which the basic rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by any prospective purchaser of the fee or mortgage or assignee of any mortgagee upon the fee of the DEMISED PREMISES.

**Section 10.2. Subordination.** Upon request of Landlord, Tenant will subordinate this Lease and its rights hereunder to the lien of any mortgage, trust deed or other instrument resulting from any method of finance and refinancing, now or hereafter in force against the land and buildings which constitute the DEMISED PREMISES, and to all advances made or hereafter to be made upon the security thereof, provided, however, that such mortgage or instrument of finance will agree that, in the event any action is taken to foreclose the lien of the mortgage, this Lease and all rights of the Tenant under its terms to use and quiet possession of the DEMISED PREMISES shall not be disturbed and shall continue in full force and effect so long as Tenant shall faithfully discharge each and every obligation on its part to be kept and performed under the terms of this Lease.

**Section 10.3. Event of Sale.** In the event of the sale of the DEMISED PREMISES, Landlord shall be and hereby is relieved of all of the covenants and obligations created hereby accruing from and after the date of sale, and such sale shall result automatically in the purchaser assuming and agreeing to carry out all the covenants and obligations of Landlord herein. Notwithstanding the foregoing provisions of this section, Landlord, in the event of a sale of the DEMISED PREMISES, shall cause to be included in the agreement of purchase and sale a covenant whereby the purchaser of the DEMISED PREMISES assumes and agrees to carry out all of the covenants and obligations of Landlord herein.

#### **ARTICLE ELEVEN – SURRENDER AND SUCCESSORS IN INTEREST.**

**Section 11.1. Surrender.** On the expiration date or upon the termination hereof upon a day other than the expiration date, Tenant shall peaceably surrender the DEMISED PREMISES broom-clean in good order, condition and repair, reasonable wear and tear and damage by fire or other casualty excepted. On or before the expiration date or upon termination of this Lease on a day other than the expiration date, Tenant shall, at its expense, remove all trade fixtures, personal property and equipment and signs from the DEMISED PREMISES and any property not removed shall be deemed to have been abandoned. Any damage caused in the removal of such items shall be repaired by Tenant at its own expense. All alterations, additions, improvements and fixtures (other than trade fixtures) which shall have been made or installed by Landlord or Tenant upon the DEMISED PREMISES and all floor covering so installed shall remain upon and be surrendered with the DEMISED PREMISES as a part thereof, without disturbance, molestation or injury, and without charge, at the expiration or termination of this Lease. Upon request by Tenant, Landlord and Tenant shall identify and designate such fixtures as "trade

fixtures" from time to time, as such trade fixtures are installed which designation by Landlord shall not be unreasonably withheld. If the DEMISED PREMISES are not surrendered on the expiration date or the date of termination, Tenant shall indemnify Landlord against loss or liability, claims, without limitation, made by any succeeding Tenant founded on such delay. Tenant shall promptly surrender all keys for the DEMISED PREMISES to Landlord at the place then fixed for payment of rent and shall inform Landlord of combinations of any locks and safes on the DEMISED PREMISES.

**Section 11.2. Successors in Interest.** This Lease shall run with the land and shall inure to the benefit of the successors in interest of Tenant and Landlord.

## **ARTICLE TWELVE – RESERVED**

## **ARTICLE THIRTEEN – LIENS**

**Section 13.1. Mechanics' Liens.** Tenant will not permit to be created or to remain undischarged in any lien, encumbrance or charge (arising out of any work done or materials or supplies furnished by any contractor, subcontractor, mechanic, laborer or materialmen, or any mortgage, conditional sale, security agreement or chattel mortgage, or otherwise by or for Tenant which might be or become a lien or encumbrance or charge upon the subject DEMISED PREMISES or any portion thereof or the income and interest of Landlord in the DEMISED PREMISES or any portion thereof that might be impaired. Any amount so paid by Landlord and all costs and expenses, including attorney's fees, incurred by Landlord in connection with discharge and/or removal of such lien, encumbrance or charge shall constitute additional rent payable by Tenant under the Lease and shall be paid by Tenant to Landlord on demand. Nothing herein contained shall obligate Landlord to pay or discharge any lien created by Tenant.

13.1.1 The provisions of this section shall apply with respect to Tenant's work or any other work performed on the DEMISED PREMISES at any time during the term hereof.

## **ARTICLE FOURTEEN – GARBAGE REMOVAL**

**Section 14.1. Garbage and Rubbish Removal.** Tenant shall be responsible for the removal of all garbage and rubbish generated from DEMISED PREMISES by the Tenant.

## **ARTICLE FIFTEEN – NOTICES & CONSENTS**

**Section 15.1. Notices.** Any notice required or permitted under this Lease shall be deemed sufficiently given or secured if sent by registered or certified return receipt mail to Tenant at the address stated above and to Landlord at the address stated above, and either party may by

like written notice at any time designate a different address to which notices shall subsequently be sent or rent to be paid.

**Section 15.2. Intent of Parties.** Except as otherwise provided herein, the Tenant covenants and agrees that if it shall at any time fail to pay any such cost or expense, or fail to take out, pay for, maintain or deliver any of the insurance policies above required, or fail to make any other payment or perform any other act on its part to be made or performed as in this Lease provided, then the Landlord may, but shall not be obligated to do so, and without notice to or demand upon the Tenant and without waiving or releasing the Tenant from any obligations of the Tenant in this Lease contained, pay any such cost or expense, effect any such insurance coverage and pay premiums therefore, and may make any other payment or perform any other act on the part of the Tenant to be made and performed as in this Lease provided, in such manner and to such extent as the Landlord may deem desirable, and in exercising any such right, to also pay all necessary and incidental costs and expenses, employ counsel and incur and pay reasonable attorneys fees. All sums so paid by Landlord and all necessary and incidental costs and expenses in connection with the performance of any such act by the Landlord, together with interest at the Contract Interest Rate from the date of making of such expenditure by landlord, shall be deemed additional rent hereunder, and shall be payable to Landlord on demand. Tenant covenants to pay any such sum or sums with interest as aforesaid and the Landlord shall have the same rights and remedies in the event of non-payment thereof by Tenant as in the case of default by Tenant in the payment of the base rent payable under this Lease.

In the event the Landlord fails to perform any covenant or obligation to be kept by Landlord under this Lease, Tenant at its option may cure the Landlord's failure to perform Landlord's covenants and obligations, having first given Landlord reasonable notice of such failure to perform, and a reasonable opportunity for Landlord to so perform. Tenant shall be entitled to an offset against future rents equal to the reasonable costs, including interest at the Contract Interest Rate from the date of payment, incurred by Tenant to complete performance of the Landlord's covenants and obligations under the Lease.

**Section 15.3. Consents by Landlord.**

15.3.1 Whenever provision is made under this Lease for Tenant securing the consent or approval by Landlord, such consent or approval shall only be in writing.

15.3.2 The following persons are authorized to act on behalf of Landlord/Tenant:

As to Landlord, any one or more of the following are authorized to act or make decisions:

[Insert City Contacts]

As to Tenant, any one or more of the following are authorized to make decisions:

\_\_\_\_\_ [Add name]

**Section 15.4. No Agency Relationship.** The Lease does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationship between the parties being that of Landlord and Tenant.

**Section 15.5. Governmental Regulations.** Tenant shall at Tenant's sole cost and expense comply with all of the requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force or which may hereafter be in force, pertaining to the said DEMISED PREMISES and shall faithfully observe in the use of the DEMISED PREMISES all municipal and county ordinances and state and federal statutes now in force or which may hereafter be in force.

**Section 15.6. Waiver.** The waiver by the Landlord of any breach or default of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach of the Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of said preceding breach at the time of acceptance of such rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing by Landlord.

**Section 15.7. Force Majeure.** In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive government laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required during the term of this Lease, the performance of such act shall be excused for the period of the delay. The provisions of this section shall not operate to excuse Tenant from the prompt payment of rent, additional rent or any other payments required by this Lease.

#### **ARTICLE SIXTEEN – HAZARDOUS WASTE**

**Section 16.1. Hazardous Waste.** During the term of this Lease, including any extensions hereof, and until Tenant surrenders possession of the lease DEMISED PREMISES, Tenant covenants that it shall not violate any present and future environmental laws, ordinances, rules or regulations, and that Tenant shall not permit the generation, creation, treatment, incorporation, discharge, disposal, escape, release or threat of release of any contaminant above, upon, under, within or from the lease DEMISED PREMISES.



## **ARTICLE SEVENTEEN – NOISE, QUIET ENJOYMENT**

**Section 17.1. Nuisance, Noise or Disturbance.** Tenant recognizes that downtown Fargo, where the DEMISED PREMISES is located, is a mixed use area and also recognizes the proximity of the railroad to the DEMISED PREMISES and waives any nuisance or other claim related to the noise, vibration, or other effect related to the use of, or proximity to, the railroad and or related to other noises or uses of other property nearby, including heating, air conditioning or other mechanical equipment.

**Section 17.2 Quiet Enjoyment:** Notwithstanding the above, Landlord covenants and agrees that so long as Tenant is not in default under the terms of this Lease, Tenant shall have quiet and peaceful possession of the DEMISED PREMISES and shall enjoy all the rights granted herein without interference.

**Section 17.3. Non-Disturbance Agreement.** With respect to any first lien mortgages, deeds of trust or other liens entered into by and between landlord and any such mortgage and/or any beneficiary of any deed of trust or other such lien granted by landlord, or lessor under any ground lease (collectively as "Landlord's Mortgagee"), at or prior to the time the lease is entered into, or thereafter, landlord shall secure and deliver to Tenant, at or prior to the time the lease is entered into, or as of the date of any subsequent first lien mortgages, deeds of trust or other liens, or ground lease, as the case may be, a non-disturbance agreement from executed by Landlord's Mortgagee for the benefit of Tenant whereby, as a condition to any attornment or subordination by Tenant to Landlord's Mortgagee, Tenant shall not be disturbed in its possession of the DEMISED PREMISES throughout the term or its rights under the Lease terminated by Landlord's Mortgagee so long as Tenant is not in material default (to be defined in the Lease) beyond a reasonable notice and cure period. The Landlord's Mortgagee must (a) agree to apply the proceeds of casualty insurance or condemnation awards to the restoration of the improvements unless the Lease is cancelled and (b) not require exculpations different in scope or nature from those granted to Landlord under the Lease.

## **ARTICLE EIGHTEEN – GENERAL PROVISIONS**

**Construction.** If any portion of this Lease is, or becomes, invalid or unenforceable, the remainder of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**Captions.** The captions are inserted only as a matter of convenience and for reference, and in no way define, limit or described the scope of this Lease nor the intent of any provision thereof.

**Counterparts.** This Lease may be executed in several facsimile or scanned counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

**LANDLORD:**

DATE SIGNED: \_\_\_\_\_

CITY OF FARGO,  
a North Dakota municipal corporation

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

**ATTEST:**

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

**TENANT:**

DATE SIGNED: \_\_\_\_\_

T&K Property Management LLC

By: \_\_\_\_\_  
Name: Thomas Smith  
Title: President

[IMPORTANT NOTICE: Commencement date of this Parking Lease will be the first of the month following the date this Lease is last signed by the parties, above. See Section 1.4, above.]

**EXHIBIT "A"**  
**FLOOR PLAN -- DEMISED PREMISES**

**(attached)**

**EXHIBIT "B"**

**FIT-UP**

**(attached)**

**Exhibit "C" to Option**

**EASEMENT**

**(INGRESS/EGRESS/EMERGENCY ACCESS)**

**(attached)**

**EXHIBIT "C" TO OPTION**

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT (the "Agreement") is entered into and effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between City of Fargo, a North Dakota municipal corporation ("City"), whose address is 225 North 4th Street, Fargo, ND 58102, and T&K Property Management LLC, a North Dakota limited liability partnership ("T&K Property Management"), whose address is 225 Broadway, Fargo, ND 58102.

RECITALS

A. City owns Unit \_\_\_\_, Mercantile Condominium, a condominium created under a Declaration Establishing a Plan of Condominium Ownership (the "Declaration") recorded in the office of the Recorder for Cass County, North Dakota as Doc. No. \_\_\_\_\_ (the "Garage Unit").

B. T&K Property Management owns certain real estate lying contiguous to and North of the Garage Unit, and more particularly described in attached Exhibit A (the "T&K Property").

C. City and T&K Property Management wish to establish an easement for access for certain occupants of the T&K Property to and from the Garage Unit.

D. The parties anticipate that a certain development project will be constructed on the T&K Property which will have a substantial completion date anticipated to be on or about \_\_\_\_\_ (the "Parking Easement Start Date"), and they wish to provide for certain access and to provide for ingress and egress, including emergency egress, from the T&K Property.

AGREEMENTS

NOW, THEREFORE, in consideration of the recitals, the mutual agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby declare, grant, covenant, and agree to the following:

## EXHIBIT "C" TO OPTION

1. Grant of Easement. City hereby grants to T&K Property Management, for the benefit of the T&K Property, an exclusive, appurtenant and perpetual easement over, upon and across certain parts of the Garage Unit to install, repair and maintain certain access doors between and connecting buildings located on the T&K Property and the Garage Unit to allow for pedestrian ingress and egress between the T&K Property and the Garage Unit (the "Access Doors"). The locations where the Access Doors shall be installed are shown on attached Exhibit C (the "Easement Areas"). The persons entitled to use such access doors are the owners and tenants of any residential spaces in the T&K Property and their contractors, guests, representatives, agents and the like. The "Access Doors" shall include and shall utilize a security system whereby entry from the building located on the Garage Unit to the building located on the T&K Property shall be controlled and limited at all times via key, fob, card reader or the like.

2. Tenant and the occupants, invitees and guests of the T&K Property will have access to an emergency egress space on the ground level (assuming such access is acceptable according to the applicable building code requirements; – **[[awaiting code-review, but it's on the attached ground-level drawing]]**)

3. T&K Property will have access to the ground-level space from the east and we will build an apron to 5<sup>th</sup> St. N. subject to approval of city access rules. **[[?????]]**

4. T&K Property will have the right to create openings in the north wall of the garage to gain at-grade access to the Garage Unit **[[subject to engineering, and building code review]]**

5. Maintenance. T&K Property Management shall be responsible for and shall bear all costs to install, operate, repair, maintain and replace all portions of the Access Doors. Upon reasonable advance notice to T&K Property Management, City shall be entitled to inspect the Access Doors and undertake work in and around the area of same necessary for maintenance or repairs to the Garage Unit.

6. Relocation. If the Garage Unit, or parts thereof, located on the Project and burdened by any of the Easement Areas are damaged, destroyed or redeveloped, the owner thereof shall have the right to modify the location of the Easement Areas and record an instrument reflecting the new areas of the easements for same; provided, however, the functionality of the new Easement Areas for the benefit of the T&K Property shall be substantially the same as existed prior thereto.

7. Non-Disturbance. The owner of the T&K Property shall exercise its rights as to the Easement Areas in such a manner that causes the least interference and disturbance to the owner and occupants of the Garage Unit as is commercially reasonable under the circumstances.

## EXHIBIT "C" TO OPTION

8. Alterations/Improvements. Any alterations or improvements (as contrasted with repair and maintenance, which shall not require the prior approval of the owner of the Garage Unit) to the Easement Areas desired by T&K Property Management must be approved in writing by the Owner of the Garage Unit and shall be subject to the reasonable discretion and approval of the Owner of the Garage Unit. T&K Property Management shall pay the entire cost of any and all authorized alterations or improvements. T&K Property Management shall not permit or suffer any construction liens against the Garage Unit, and if any arise, T&K Property Management shall undertake such actions as are necessary to cause the same to be fully discharged within 15 days after notice by the Owner of the Garage Unit.

9. Insurance. With respect to the Easement Areas, T&K Property Management shall keep in full force and effect, at its expense, a policy or policies of insurance with companies licensed to do business in North Dakota and reasonably acceptable to the Owner of the Garage Unit with the following coverages: (1) public liability and property damage insurance and automobile liability insurance with respect to the Easement Areas and the business of T&K Property Management, with a minimum coverage of \$2,000,000 per occurrence and not less than \$4,000,000 annual aggregate for this location; (2) if the nature of T&K Property Management's operation is such as to place any or all of its employees under the coverage of Workers' Compensation or similar statutes, T&K Property Management shall also keep in force, at its expense, Workers' Compensation or similar insurance affording statutory coverage and containing statutory limits; (3) any other special insurance coverages associated with T&K Property Management's use of the Easement Areas and reasonably requested by the Owner of the Garage units; and (4) insurance for fire and extended coverage, insuring for the full replacement cost, the Access Doors. Such policies, where applicable and to the maximum extent possible, shall name the Owner of the Garage Unit as an additional insured. Upon such Owner's written request, T&K Property Management shall furnish certificates evidencing any such insurance required of T&K Property Management is in effect and, if available, stating that such Owner shall be notified in writing 10 days prior to cancellation, material change or nonrenewal of insurance. T&K Property Management shall carry additional coverages and/or increased coverage limits, in amounts as the Owner of the Garage Unit may reasonably request from time to time.

10. Governmental Regulations. T&K Property Management shall, at T&K Property Management's sole cost and expense, comply with and faithfully observe all statutes, ordinances, rules, regulations, orders, laws and the like of all local, state and Federal and other applicable governmental authorities, present or future, having jurisdiction over the Project and related to exercising its rights under this Agreement.

11. Indemnification. T&K Property Management shall indemnify, defend, and hold harmless the Owner of the Garage Unit and its officers, agents, representatives, employees,



## EXHIBIT "C" TO OPTION

contractors, guests and the like (collectively, the "Indemnified Parties") from and against any claims, liens, liabilities, lawsuits, costs, expenses, damages and/or the like (including reasonable attorneys' fees) (collectively, "Claims") including, but not limited to, Claims for personal injury, wrongful death or property damage, resulting from, arising out of, or in any way related to exercising its rights as to the Easement Areas. Without limiting the foregoing, T&K Property Management shall indemnify, defend, and hold harmless the Indemnified Parties from and against all violations of Environmental Laws resulting from, arising out of, or in any way related to exercising its rights as to the Easement Areas.

12. Scope/Binding Effect. The rights and obligations herein provided shall inure to the benefit of and be binding upon the parties hereto, their successors, assigns, heirs, and legal representatives, and shall run with, benefit and burden the Garage Unit and the T&K Property.

13. Waiver. No waiver of any breach of the easements or of any rights, obligations, covenants, and/or provisions herein contained shall be construed as, or constitute, a waiver of any breach or a waiver, acquiescence in, or consent to any further or succeeding breach of the same or any other such easements, rights, obligations, covenants, and/or other provisions.

14. Recording. This Agreement shall be recorded against the Garage Unit and the T&K Property in the office of the County Recorder for Cass County, North Dakota.

15. Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms or provisions of this Agreement shall not be affected thereby, but such remaining terms and provisions shall be valid and enforceable to the fullest extent permitted by law.

16. Governing Law. This document shall be construed and enforced in accordance with the laws of the State of North Dakota.

*[The remainder of this page intentionally left blank – signature pages follow]*

**EXHIBIT "C" TO OPTION**

**CITY OF FARGO,  
a North Dakota municipal corporation**

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

Its: Mayor

ATTEST:

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

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

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a notary public in and for said county and state, personally appeared TIMOTHY J. MAHONEY and STEVEN SPRAGUE, to me known to be the Mayor and City Auditor, respectively, of the CITY OF FARGO, a North Dakota municipal corporation, described in and that executed the within and foregoing instrument, and acknowledged that said municipal corporation executed the same.

\_\_\_\_\_  
Notary Public  
Cass County, ND

(SEAL)

**EXHIBIT "C" TO OPTION**

**T&K Property Management LLC**

By: \_\_\_\_\_  
Thomas Smith, President

STATE OF NORTH DAKOTA        )  
  ) SS  
COUNTY OF CASS                )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of June, 20\_\_, by THOMAS SMITH, the President of T&K Property Management LLC, a North Dakota limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public  
State of North Dakota

**EXHIBIT "C" TO OPTION**

**CONSENT**

If and to the extent necessary pursuant to the Declaration, the undersigned hereby consents to this Agreement.

**MERCANTILE CONDOMINIUM ASSOCIATION, an  
unincorporated association**

By: \_\_\_\_\_  
[name of authorized person]  
Its: President

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

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the President of Mercantile Condominium Association, an unincorporated association, on behalf of the association.

\_\_\_\_\_  
Notary Public  
Cass County, ND

(SEAL)

**EXHIBIT "C" TO OPTION**

**EXHIBIT A  
Description of T&K Property**

**EXHIBIT "C" TO OPTION**

**EXHIBIT C**

**Depiction of Easement Areas**

[Insert depictions of Easement Areas]